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MONDAY, JANUARY 24, 1977

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

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
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DOT/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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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 7—Agriculture

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

CLOSING DATES; CORRECTION

In FR Doc. 76-34536, appearing at page 51582 in the FEDERAL REGISTER of November, 23, 1976, paragraph (a) of § 401.103, appearing at the left hand column of page 58583, under the heading "Sugar Beets" is corrected to read as follows:

§ 401.104 Application for insurance.

(a) * * *

(Closing Dates).

* * * * *

Sugar beets:	
Imperial County, Calif.	Aug. 31.
All other States	Apr. 15.

WARREN E. DIRKS,
Manager, Federal Crop Insurance Corporation.

[FR Doc.77-2097 Filed 1-21-77;8:45 am]

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

[Lemon Regulation 76]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

PREAMBLE

This regulation fixes the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period January 23-29, 1977. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910. The quantity of lemons so fixed was arrived at after consideration of the total available supply of lemons, the quantity of lemons currently available for market, the fresh market demand for lemons, lemon prices, and the relationship of season average returns to the parity price for lemons.

§ 910.376 Lemon Regulation 76.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this regulation to limit the quantity of lemons that may be marketed during the ensuing week stems from the production and marketing situation confronting the lemon industry.

(i) The committee has submitted its recommendation with respect to the quantity of lemons it deems advisable to be handled during the ensuing week. Such recommendation resulted from consideration of the factors enumerated in the order. The committee further reports the demand for lemons is easier this week due to the extremely cold weather. Average f.o.b. price was $5.13 per carton the week ended January 15, 1977 compared to $4.99 per carton the previous week. Track and rolling supplies at 100 cars were up 20 cars from last week.

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

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 18, 1977.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period January 23, 1977, through January 29, 1977, is hereby fixed at 180,000 cartons.

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

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

Dated: January 19, 1977.

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

[FR Doc.77-2346 Filed 1-21-77;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—GENERAL REGULATIONS

PART 1802—SUPERVISION OF BORROWERS

SUBCHAPTER I—LOAN AND GRANT PROGRAMS (INDIVIDUAL)

[FmHA Instruction 1924-B]

PART 1924—MANAGEMENT ASSISTANCE TO BORROWERS (INDIVIDUAL)

Subpart B—Management Assistance to Individual Borrowers and Applicants

On pages 50272-50274 of the FEDERAL REGISTER dated November 15, 1976, there was published a notice of proposed rulemaking to establish under Chapter XVIII, Title 7, Subchapter I—"Loan and Grant Programs (Individual)," a new Part 1924, "Management Assistance to Borrowers (Individual)," in the Code of Federal Regulations. Subpart B, "Management Assistance to Individual Borrowers and Applicants," (§§ 1924.51-1924.100) of this new Part 1924 is consolidated, transferred and redesignated from various sections and units of Subparts A through F of Part 1802, of this Chapter XVIII, and has been revised including a change in title. These changes are to clarify the regulations on manage-

ment assistance to individual borrowers and to provide for the assistance to better fulfill the particular needs of the borrower and protect the interest of the Government.

Interested persons were given until December 15, 1976, to submit written comments, suggestions or objections regarding the proposed amendments. All comments submitted were given due consideration and with minor editorial changes, the proposed new Subpart B of Part 1924 is hereby adopted and is set forth below.

Accordingly, 7 CFR Chapter XVIII is amended as follows:

1. Subparts A through F of 7 CFR Part 1802 are removed.

2. A new Subchapter I, consisting at this time of Subpart B to new Part 1924, is added as follows:

Subpart B—Management Assistance to Individual Borrowers and Applicants

Sec.

1924.51 General.
1924.52 —1924.54 [Reserved].
1924.55 Management assistance.
1924.56 Credit counseling.
1924.57 Planning.
1924.58 Record keeping.
1924.59 Supervision.
1924.60 Analysis.
1924.61 Nonfarm enterprises.
1924.62 State supplements.
1924.63 —1924.100 [Reserved].

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2492; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23, delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO 29 FR 14764, 33 FR 9850.

Subpart B—Management Assistance to Individual Borrowers and Applicants

§ 1924.51 General.

This Subpart sets forth policies for providing management assistance to individual applicants and borrowers. The term "individual" as used in this Subpart also applies to farming partnerships and corporations receiving Emergency (EM) and Soil and Water (SW) loans. This subpart pertains to all insured loans that depend on farm income for loan repayment, and also provides for the necessary supervision and appropriate credit counseling for Rural Housing (RH) loans not dependent on farm income for loan repayment.

§§ 1924.52–1924.54 [Reserved]

§ 1924.55 Management assistance.

Management assistance includes the following:

(a) Credit counseling with applicants and borrowers.

(b) Planning of farm operations with applicants and borrowers.

(c) Record keeping by borrowers.

(d) Borrower supervision, by Farmers Home Administration (FmHA).

(e) Analysis of borrower operations and/or enterprises by the borrower and FmHA.

§ 1924.56 Credit counseling.

The County Supervisor will provide credit counseling to applicants and borrowers, including individual RH applicants and borrowers, regarding prudent use of credit in making profitable adjustments in operations, sources of available credit, general conditions under which credit is usually available, and methods of presenting requests for credit to lenders.

(a) In credit counseling with applicants who do not qualify for FmHA loans, the County Supervisor will:

(1) Explain why the applicant does not meet FmHA eligibility requirements and, if appropriate, why other credit should be available.

(2) Advise applicants on adjusting plans of operation and credit requests.

(b) In credit counseling with eligible applicants and borrowers the County Supervisor will:

(1) Assist in planning for the use of FmHA and other credit.

(2) Advise the applicant or borrower of FmHA's policy with respect to the use of other credit and assist in the determination of the amount of other credit best suited for the applicant or borrower.

§ 1924.57 Planning.

(a) *Purpose.* Provide a basis for:

(1) Attaining specific production and financial management objectives.

(2) Applicant or borrower management decisions.

(3) FmHA credit and management assistance determinations.

(b) *Responsibility of applicant or borrower.* Applicant or borrower will complete the plans required by FmHA. This will require giving thorough consideration to:

(1) Analyzing total resources available and their use.

(2) Adjustments, improvements, practices, and capital requirements needed for a successful operation.

(3) Determining the gross income, expenses, and net income that can reasonably be expected from the operation.

(c) *Responsibility of County Supervisor.* County Supervisor will assist the applicant or borrower in completing the plans required through:

(1) Stressing the need to correlate long-time and annual plans when both are being developed.

(2) Use of key farm management and financial management practices. These will be established for major farm enterprises, and will be updated annually. Key management practices not already established in an operation will be considered and incorporated into the operation when developing long-time and annual plans.

(3) Requiring applicants when developing their long-time and annual plans to fully utilize plans developed, if any, with the assistance of the Soil Conservation Service (SCS), the Extension Service (ES), or other agency or farm management service.

(4) Planning for the appropriate use of income with the applicant. Priorities for the use of income follow:

(i) Family living and farm operating expenses.

(ii) Payment of scheduled debt installments.

(iii) Payment of delinquencies on secured debts, followed by payments on delinquent unsecured debt.

(iv) Proper use of anticipated remaining income to increase cash reserve, or to make necessary capital purchases.

(v) Advance payments on chattel and real estate debts.

(5) Determining the feasibility of the plans. After considering inventory changes, the net income and cash flow should be sufficient to enable the applicant to:

(i) Pay all operating expenses.

(ii) Meet necessary payments on debts.

(iii) Maintain necessary livestock, farm and home equipment, and buildings to the extent that such items have not been provided for in the operating expenses.

(iv) Have a reasonable standard of living.

(d) *Long-time plans (Form FmHA 431-1, "Long-Time Farm and Home Plan").* The long-time plan reflects the long-time aims and objectives of families. It will be required of each applicant or borrower engaged in farming who is receiving a loan when the major adjustments or improvements needed will not be completed the first full crop year. The long-time plan, when developed, will be completed before preparing the annual plan, and revised as conditions require.

(e) *Annual plans (Form FmHA 431-2, "Farm and Home Plan").* An annual plan will be required of each applicant or borrower engaged in farming who receives an FmHA loan or funds from other credit sources as a result of FmHA executing either a subordination agreement or a lien waiver. Also, an annual plan for a typical year will be required when installments are deferred for more than one year or when major adjustments are being made to the operation. The annual plan will cover the 12 month period (or crop year) which most accurately reflects the annual production cycle of the operation.

(1) Complete annual plans will be required for those borrowers:

(i) Receiving initial loans.

(ii) Receiving subsequent FmHA loans or funds from other credit sources under FmHA subordination agreements or lien waivers.

(2) Interim plans may be developed for the remainder of the current years operation to supplement an annual plan for the following year in those cases where the annual plan alone would not be sufficient to accurately show the complete cycle of operation. This plan will show the planned use of income to be received from livestock and crops held for sale, and cash on hand at that time.

(f) *Documentation and revision of plans.* (1) Plans will be documented in sufficient detail to adequately reflect the overall condition of the operation.

(2) Initial and subsequent plans will be revised whenever significant changes in the borrower's operation occur during the year, including change in use of loan funds or loan amount.

The plan will be marked "Revision" and changes noted by crossing out any

original estimates and inserting new estimates immediately above. The borrower will initial and date major revisions to the plan.

§ 1924.58 Record keeping.

(a) *Purpose.* All borrowers engaged in farming must maintain and use the appropriate type of farm records which after the loan is made will enable:

(1) Borrowers to make management decisions and to analyze their farming operations.

(2) FmHA to determine eligibility for loan assistance and assist the borrowers in analyzing their farming operations and in making prudent management decisions.

(b) *Responsibilities.* (1) Borrowers must select and maintain a record keeping system which adequately meets the needs of their farming operations and FmHA requirements.

(2) County Supervisors will assist borrowers in selecting, establishing, and maintaining record keeping systems. Such systems may include the farm record book (Form FmHA 432–1, "Farm Family Record Book") available through FmHA, other record books, or a suitable system offered by a farm management service, State Extension Service, or commercial record keeping or accounting service.

(3) The system selected must provide, as a minimum, a record of the annual cash flow, beginning and end of year balance sheets, and an income statement. Borrowers receiving EM loans of $250,000 or more will be required to use a record keeping system or accounting service which provides, as a minimum, a monthly cash flow statement, beginning and end of year balance sheets, and an income statement.

§ 1924.59 Supervision.

(a) *Purpose.* Supervision will be given by the County Supervisor to protect the Government's interest and to assist the borrower in accomplishing the purpose of the loan.

(b) *Responsibility of County Supervisor.* The County Supervisor will determine and select the appropriate method of supervision to be used in assisting each borrower.

(c) *Supervisory methods.* Supervision may be given through farm visits, review of farm records, collateral inspections, meetings with borrowers on an individual or group basis, letters, telephone, media releases, etc. Cash flow analysis and enterprise analysis should also be used as supervisory methods when applicable. A complete record of each visit, meeting, or other contact will be made in the case file running record, underscoring those items which require followup action.

(d) *Farm visits.* (1) A minimum of one visit a year will be made by the County Supervisor to borrowers who have been indebted for less than one full crop year, or classified as problem cases. Borrowers who have been delinquent more than 1 year will be visited by the County Supervisor, accompanied by the District Director, unless this requirement is waived in writing by the State Director on an individual borrower basis following a review of the annual county delinquent and problem case review. In cases involving borrowers with RH loans on nonfarm tracts, periodic inspection ordinarily will be made only if foreclosure action is likely to be taken, the property has been abandoned, or when necessary to protect the interest of the Government.

(2) Visits will be coordinated with inspections of security property required for the FmHA loan or loans owed by the borrower.

(3) The County Supervisor will use the following priorities in scheduling routine visits:

(i) Problem case borrowers.

(ii) Initial borrowers.

(iii) Borrowers receiving annual production type loans.

(iv) Other borrowers.

§ 1924.60 Analysis.

(a) *Purpose.* Analysis by the County Supervisor assists the borrower in a review and evaluation of the farm operation to determine progress, problems, and corrective actions needed.

(b) *Responsibility of County Supervisor.* The County Supervisor will:

(1) Adjust the analysis to the needs of each borrower and FmHA.

(2) Determine the date and place of the analysis, and scheduling the analysis at the time of year when the most effective results will be obtained.

(3) Document and report the results of the analysis.

(i) Assist the borrower in completing the "actual" plan for the current year if necessary, and in recording a complete plan for the next year.

(ii) Obtain copy of completed plans. Make a complete entry in the case file running record of results and agreements reached during the analysis, underscoring those items requiring followup action.

(c) *Conducting analysis.* An analysis will be conducted for borrowers:

(1) Seriously delinquent or problem cases.

(2) Experiencing financial and/or production management problems.

(3) Reorganizing or implementing a major change in operations which has not been completed.

(4) At the end of the first full crop year after receiving an initial Operating loan and each year thereafter until the County Supervisor determines the borrower is conducting the operation satisfactorily.

§ 1924.61 Nonfarm enterprises.

This is any business enterprise which supplements farm income by providing goods or services for which there is a need and a reasonably reliable market. The same general policies covered in this Subpart for giving management assistance to an applicant or borrower on farm loans will be followed in dealing with an applicant or borrower on nonfarm enterprise loans. The appropriate plans and record book will be substituted for the nonfarm enterprise. Form FmHA 431–4, "Business Analysis Nonagricultural Enterprise," and FmHA 432–10, "Business and Family Record Book," available at most FmHA offices can be used for these purposes.

§ 1924.62 State supplements.

The State Director may supplement this Subpart as necessary to:

(a) Assure that each area included under the heading of management assistance will be carried out uniformly and effectively and to assign responsibilities to District Directors and other members of the State staff.

(b) Obtain information needed in the State about the performance of individual borrowers and the results of management assistance carried out in each County Office.

(c) Assure key farm management and financial management practices are established, and kept current in each County Office.

§ 1924.63–1924.100 [Reserved]

Effective date: This regulation shall become effective January 24, 1977.

Dated: January 6, 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77-1962 Filed 1-21-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION

[Docket No. 13243; Amdt. 36–6]

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

Noise Regulations for Propeller-Driven Small Airplanes Submitted to the FAA by the Environmental Protection Agency; Notice of Decision

Correction

In FR Doc. 76–37649 appearing on page 56056 in the issue of Thursday, December 23, 1976, on page 56064, the third column, paragraph numbered (2) should read as follows:

Section F36.111 Flight procedures.

* * * * *

(b) * * *

(2) At stabilized speed with propellers synchronized and with the airplane in cruise configuration, except that if the speed at the power setting prescribed in this paragraph would exceed the maximum speed authorized in level flight, accelerated flight is acceptable.

[Docket No. 75–NW–23–AD, Amdt. 39–2812]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing 707–300, –400, –300B, –300C Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to the Boeing 707 –300, –400, –300B, –300C series airplanes was published in 41 FR 29714 and 41 FR 41711. There has been significant cracking in the upper wing skin and rear spar of these airplanes that

results in loss of strength in the wing. Interested persons have been afforded an opportunity to participate in the making of the amendment. Comments were received from the Air Transport Association of America and The Boeing Company, as well as from two foreign operators.

Several comments were made concerning the fact that reference had been made to Boeing Service Bulletin No. (S.B.) 3280 which had not as yet been received by the airlines. The NPRM comment period was extended to allow interested parties time to review the service bulletin.

One operator suggested that the X-ray inspections of paragraph A be increased to 530 landings in conjunction with a suggested visual inspection to be conducted at 265 landings rather than the proposed 400 landing X-ray inspection. The 400 landing inspection interval has been changed to 500 landings. If an operator shows that his inspection methods, techniques, or experience are adequate to elevate the repetitive inspection intervals, he may do so with approval of the Chief, Engineering and Manufacturing Branch, FAA Northwest Region upon contacting his FAA Principal Maintenance Inspector per paragraph H of the AD. Additionally, if an operator can show that aircraft used exclusively in passenger service should have different inspection intervals, this may be accommodated upon adequate substantiation in accordance with paragraph H of this AD.

Another comment suggests that the paragraph dealing with terminating action be clarified and note that inspections required by paragraph A.1., B.1.a., and B.1.b. need not be accomplished after S.B. 2607 or S.B. 2427, Part X(a), have been accomplished. FAA believes the AD is clear as written.

An operator objected to paragraph D of the NPRM requiring him to contact the FAA Northwest Region if he had accomplished modifications or repairs which interfered with the required inspections. Paragraph C of the AD now provides an alternative means of inspection and contacting the FAA Northwest Region is not necessary.

An operator suggests that the AD incorporate provisions for flying airplanes with cracks present in accordance with FAR 21.197. The AD has becn modified accordingly.

An operator objected that the NPRM required accomplishment of S.B. 2607 together with S.B. 2892, Revision 1. The AD has been modified for clarity. Upon accomplishment of the modifications in accordance with S.B. 2607 Part V, or VI, the mandatory inspections noted in the AD are terminated. Additionally, termination is possible if an airplane has been modified in accordance with S.B. 2427, Part X(a), (Drawing 65-62721) and S.B. 2892, Revision 1 adding the longer splice angles at the fuel filler cap area. The FAA recognizes that the accomplishment of S.B. 2607 without the accomplishment of S.B. 2892, Revision 1, and the oversizing of S.B. 3239, may result in fatigue service lives less than that of the adjoining structure. The FAA feels, however, that the operators who have made these modifications are aware of the possible need for additional work and will inspect in accordance with the maintenance procedures which will locate small fatigue cracks should they occur. If subsequent service experience shows evidence of further significant cracking, additional mandatory corrective action may be necessary.

Another comment stated that the inclusion in the AD of the inspections and rework of S.B. 2892, the oversizing of the fasteners in the fuel filler cap fitting, and the inspections of the wing skin outboard of the beavertail stringers 1 through 12, is not supported by service experience. During the FAA/Industry January 1976 meeting, as noted in the Notice of Proposed Rulemaking, FAA desired to combine existing mandatory inspections of this wing skin with additional problem areas. These areas are included in the AD as they have in fact shown adverse service experience.

An operator suggested that his X-ray inspections be used for inspecting the wing skin and upper rear spar chord in areas where external splice plates make the use of low frequency eddy current inspections impractical. If any operator desires to use radiographic procedures, he can submit his proposal to the Chief, Engineering and Manufacturing Branch, FAA Northwest Region as noted in the AD.

An operator suggested that some unique modifications should be considered equivalent to terminating action specified by S.B. 2427, Part X(a) (Drawing 65-62721). Paragraph G of the AD provides for approval of unique modifications.

An operator suggested that higher inspection thresholds should be allowed for aircraft which have had taper-lock fasteners installed, wing skins and stringers oversized, in accordance with S.B. 2892 and S.B. 2626. FAA recognizes such modifications and the AD gives appropriate credit.

It was suggested that the AD incorporate the inspections of AD 74-15-03 which requires eddy current inspection of four critical fasteners in the stringer splice area of stringers 10 and 11. FAA does not agree.

An operator questioned the need for the inspections and modifications under the beavertail from stringer 12 to 14. The FAA has eliminated this requirement from the AD.

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

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

BOEING. Applies to Model 707 -300, -400, -300B, -300C series airplanes certificated in all categories listed in Boeing Service Bulletin No. (S.B.) 3168 with more than 5000 landings.

Compliance required as indicated unless already accomplished.

A. Within the next 250 landings unless accomplished within the last 250 landings and at intervals thereafter not to exceed 500 landings, accomplish the following:

1. X-ray inspect the wing skin under the beavertail for cracks from the rear spar through stringer No. 12 and the rear spar chord and the adjacent wing skin from the side of the body to W.S. 197 in accordance with S.B. 3168, Revision 1.

2. Wing skins and rear spar chords found cracked are to be repaired prior to further flight in accordance with S.B. 2427 or S.B. 2607. Inspections are to continue until terminating action per paragraph F of this AD has been accomplished.

B. Within the next 600 landings unless accomplished within the last 600 landings and at intervals thereafter not to exceed 1200 landings, accomplish the following:

1. Using low frequency eddy current or X-ray inspection techniques described in S.B. 3280, inspect the following areas for cracks:

a. Rear spar upper chord and wing skin along the rear spar from wing station 197 to 270.

b. Wing skin and upper flange of the stringers from rear spar through stringer No. 12, outboard (only) of the beavertail at the stringer splice fasteners as described in S.B. 3280.

c. Wing skin and upper flanges of stringer Nos. 10 and 11 at the right and left hand fuel filler cap fittings at W.S. 298 as described in S.B. 3280.

2. Wing skins, rear spar upper chords, stringers and stringer splices found cracked are to be repaired prior to further flight in accordance with S.B. 3280. Inspections are to continue until terminating action of paragraph F of this AD is accomplished.

C. If rear spar and/or adjacent upper wing skin repairs or modifications interfere with any of the inspections of paragraph A or B of this AD, inspect as follows for cracks:

1. At the intervals specified in paragraph A or B of this AD (as apropriate to the area in which the required inspections are interfered with), eddy current inspect the wing skin in the area adjacent to the repairs.

2. At intervals not to exceed 4800 landings, visually inspect the exposed wing skin and exposed upper rear spar chord from inside and outside the wing.

D. For aircraft having the fastener holes oversized in the fuel filler cap area per Boeing Service Bulletin 2892, the inspections of paragraph B.1.c. of this AD may be deferred until the accumulation of 8000 landings after the oversizing.

E. For aircraft having the fastener holes oversized outboard, under and through the beavertail in accordance with S.B. 2626, Revision 2, the inspections of paragraph B.1.b. of this AD and the inspections of paragraph A.1 of this AD forward of the rear spar to stringer 12, may be deferred until the accumulation of 5000 landings after the oversizing.

F. Terminating action for this AD is:

1. Installation of a new wing skin and associated structure in accordance with S.B. 2607, Parts V or VI, or

2. Installation of external doublers in accordance with S.B. 2427, Part X(a) Drawing 65-62721, and the installation of the longer stringer splice angles at the fuel filler cap fittings in accordance with S.B. 2892, Revision 1.

G. For airplanes with rear spar and/or upper wing skins already modified in accordance with S.B. 2427, Part X(a) Drawing 65-68302, or S.B. 2606, Revision 2, and 2626, Revision 2 and 2731, or similar repairs the threshold for the inspections of paragraph A, B.1.a., and B.1.b., of this AD may be deferred upon submittal of airplane serial number, specific applicable modification accomplished, number of flights when modification was made and current number of flights, to the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

H. Upon request of the operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA Northwest Region, may adjust the repetitive inspection intervals in this AD, if the request contains substantiating data to justify the increase for that operator.

I. Airplanes requiring repair or modification prior to the next flight may be flown in accordance with FAR 21.197 and 21.199 to a base where corrective action can be taken.

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). References herein to manufacturer's service bulletins are current at the time of issuance of this directive. In each instance where the directive requires compliance with one or more such service bulletins, the requirements of the directive may also be met by compliance with later FAA approved revisions of the applicable service bulletins, or in a manner approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

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.

This supersedes AD 68-7-3 (Amendment 39-571), AD 68-16-3 (Amendment 39-629), and paragraph (a) of AD 64-11-1 (Amendment 39-629).

This amendment becomes effective February 22, 1977.

NOTE.—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.

Issued in Seattle, Wash., January 12, 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.77-2072 Filed 1-21-77;8:45 am]

[Docket No. 76-NW-18-AD; Amdt. 39-2811]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 727 -100 and -200 Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring enlargement of the static port sensing holes from 0.047" dia. to 0.125" dia. on all Boeing Model 727 -100 and -200 series airplanes was published in 76 FR 28418.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were raised to the enlargement of the static port holes. However, the Air Transport Association (ATA) objected to the proposed 2000 hour compliance time stating that the tooling, precision and care needed to enlarge the static port holes required this work be accomplished at the operator's major maintenance base. To schedule aircraft into these maintenance bases and meet the proposed 2000 hours compliance time would require special aircraft routing and possible flight cancellations.

The FAA agrees that it is highly desirable to extend the compliance time to 3000 hours so that the static port holes may be enlarged by competent personnel at a major maintenance base to preclude degradation of a critical system that could affect information to both airspeed and altimeter systems.

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

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

BOEING. Applies to Boeing Model 727-100 and -200 series airplanes certificated in all categories with 0.047" dia. static sensing holes.

Compliance required within 3000 hours time in service after the effective date of this AD unless already accomplished.

To prevent fluctuations in airspeed and altitude information due to water being ingested and retained in the static port fittings, enlarge the static port sensing holes from 0.047" dia. to 0.125" dia. in accordance with Boeing Service Bulletin 727-34-94 (to be released) or later FAA approved service bulletins, or in a manner approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

Boeing 727-100 airplanes already incorporating Boeing S.B. 727-25-42, Revision 1, dated March 4, 1968, with elbow fitting MS 21908D6, and Boeing S.B. 727-34-57, dated April 7, 1968, enlarging the static sensing holes, are in compliance with this AD.

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.

NOTE.—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 22, 1977.

Issued in Seattle, Wash., on January 12, 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.77-2076 Filed 1-21-77; 8:45 am]

[Docket No. 76-CE-7-AD, Amdt. 39-2810]

PART 39—AIRWORTHINESS DIRECTIVES

Cessna 210 Series Airplanes

Amendment 39-2517 (41 FR 7936), as revised by Amendments 39-2556 (41 FR 11811), 39-2686 (41 FR 33245), and 39-2767 (41 FR 49804), AD 76-04-01, is an Airworthiness Directive (AD), applicable to certain Cessna 210 series airplanes having Electrol manufactured Cessna P/N 1280102 -1 and -2 or 1280501 -1 and -2 main landing gear actuator assemblies. AD 76-04-01 requires the installation of Cessna Service Kit 1209005-1 R/L (improved spindle shafts in the aircraft's main landing gear actuators) in accordance with Cessna Service Letter SE75-21. The compliance time for AD 76-04-01 was revised in Amendment 39-2767 to within 100 hours' time in service after February 26, 1976, or February 1, 1977, whichever occurs later. The last two revisions to AD 76-04-01 were the result of parts unavailability. Information now received from the manufacturer shows that it is unable to supply a sufficient number of parts until April 1, 1977, which will not permit AD accomplishment for all aircraft prior to exhausting the current compliance time specified in AD 76-04-01. Even the April 1, 1977, date is contingent on owners/operators ordering the necessary parts on a timely basis. In addition, it is advantageous for owners/operators to comply with both ADs 76-04-01 and 76-14-07 at the same time. The latter AD, also applicable to Cessna 210 series airplanes, requires in part the installation of improved landing gear saddle fittings by April 1, 1977, or within 100 hours' time in service after August 16, 1976, whichever occurs later. Consequently the agency must weigh the alternatives of extending compliance for AD 76-04-01 to prevent the economic hardship that would result from grounding aircraft and/or causing the disassembly of the landing gear on two different occasions in order to comply with both ADs versus the remote possibility of an adverse effect on safety that could result from extending AD 76-04-01's compliance time. In order to afford relief without unduly compromising safety the agency believes it is in the public interest to again amend AD 76-04-01 to extend its compliance time to April 1, 1977, and permit affected aircraft to be operated in the normal manner until the actuators have been modified. With this revision, the FAA believes it has allowed ample time for all concerned to comply with AD 76-04-01. Accordingly, we anticipate no further extension of the compliance date

and the manufacturer and owners/operators are hereby put on notice to act expeditiously.

Since this amendment is relieving in nature, notice and public procedure hereon are not necessary and the amendment may become effective in less than thirty (30) days.

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.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator 14 CFR 11.89 (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendments 39-2686, 39-2767, AD 76-04-01, is revised in the following respects:

1. In the paragraph immediately preceding Note 1, delete the date "February 1, 1977", and insert in its place the date "April 1, 1977.".

2. In Note 3 delete the date "October 31, 1976." and insert in its place the date "April 1, 1977.".

This amendment, 39-2810, becomes effective January 27, 1977, and supplements Amendments 39-2686 and 39-2767.

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

Issued in Kansas City, Mo., on January 12, 1977.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc.77-2077 Filed 1-21-77;8:45 am]

[Docket No. 76-CE-34-AD; Amdt. 39-2813]

PART 39—AIRWORTHINESS DIRECTIVES

Certain Beech Model Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive (AD) applicable to Beech Models E55, E55A, A56TC, 58, 58A, 60, A60, 65-B80, 70, B90, C90, E90, 95-B55, 95-B55A, 100 and A100 airplanes which are equipped with non-explosion proof wing tip strobe lights, was published in the FEDERAL REGISTER on November 18, 1976 (41 FR 50840, 50841). This proposal, if adopted, would require that strobe light systems having strobe lights that are not explosion proof be deactivated until the lights are replaced with explosion proof strobe lights.

Interested persons have been afforded the opportunity to participate in the making of the amendment. Two comments were received, both of which were from strobe light manufacturers. While neither commentator objected to the proposal, both submitted part numbers of additional wing tip strobe lights which are explosive proof and which may be installed in the above referenced airplanes. The FAA agrees that the strobe lights identified by the manufacturers, if installed on the subject aircraft, should be identified in the Final Rule and are excepted from its applicability.

Although this amendment modifies the original proposal, it provides clarification, is relieving in nature and is in the interest of safety. Accordingly, no further notice and public procedure hereon are necessary.

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.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new AD.

BEECH. Applies to the following Beech Models and Serial Numbers of airplanes if equipped with wing tip strobe lights, except those airplanes having Grimes Manufacturing Company (Grimes) P/Ns 30-1467-1, 30-1467-3, 30-1467-5, 30-0467-5, 30-0531-1 or 30-0692-1, Symbolic Displays P/N 701148-7-2, and Whelen Engineering Company P/Ns A429, A429PR, A429PG, A430, A460, A460A, or A500 wing tip strobe lights installed.

Models:	*Serial Nos.*
E55 and E55A	TE-768 through TE-903.
A56TC	TG-84 through TG-94.
58 and 58A	TH-1 through TH-302.
60 and 60A	P-3 through P-222.
65-B80	LD-270 through LD-480.
70	LB-1 through LB-35.
B90 and C90	LJ-318 through LJ-502.
E90	LW-1.
95-B55 and 95-B55A.	TC-1299 through TC-1525
100 and A100	B-1 through B-157.

Compliance: Required as indicated, unless already accomplished.

To preclude wing tip explosion, within the next 100 hours' time in service after the effective date of this AD, accomplish the following:

1. Visually inspect the wing tip strobe lights to determine whether Grimes P/N 30-0669-1 or Hoskins P/N 30-0187-21 strobe lights or any other strobe lights other than those excepted above are installed.

2. On those airplanes having non-explosion proof strobe lights such as Grimes Manufacturing Co. P/N 30-0669-1, Hoskins P/N 30-0187-21 or strobe lights other than those excepted by this AD, deactivate the strobe light system by installing a guard over the switch, by pulling and blocking the circuit breaker so that it cannot be inadvertently reset, or by any other suitable means.

3. Systems having Grimes Manufacturing Co. P/N 30-0669-1 or Hoskins P/N 30-0187-21 strobe lights, may be reactivated upon the installation of either Grimes Manufacturing Company P/N 30-1467-1 explosion proof strobe lights in accordance with Beechcraft Service Instructions 0800-362 or later approved revisions, or upon the installation of any explosion proof strobe lights excepted by this AD.

4. Do not reactivate strobe light installations, other than those modified per Paragraph 3, until data showing that the strobe lights are explosion proof have been submitted to and approved by the Chief, Engineering and Manufacturing Branch or Division of the FAA Region issuing the original strobe light approval.

5. Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

This amendment becomes effective February 24, 1977.

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

Issued in Kansas City, Mo., on January 13, 1977.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc.77-2078 Filed 1-21-77;8:45 am]

[Docket No. 76-CE-27-AD, Amdt. 39-2815]

PART 39—AIRWORTHINESS DIRECTIVES

Cessna 401, 402 and 411 Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive (AD) applicable to Cessna 401, 402 and 411 series airplanes was published in the FEDERAL REGISTER on October 18, 1976 (41 FR 45848). The proposed AD would require repetitive eddy curent inspections in accordance with Cessna Service Letter ME76-19 to detect fatigue cracks that may have developed in critical areas of the wing front spar lower cap on these series airplanes and the repair or replacement of cracked components pursuant to instructions provided by the manufacturer.

Interested persons were afforded an opportunity to participate in the making of the amendment. No adverse comments were received.

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.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator 14 CFR 11.89 (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new AD.

CESSNA. Applies to 401, 402 and 411 Series Airplanes.

Compliance: Required as indicated, unless already accomplished.

To detect fatigue cracks in critical components of the wing structure, accomplish the following:

(A) On all 401 and 402 series airplanes: Within 200 hours' time in service after the effective date of this AD on aircraft with 10,800 or more hours' time in service, or upon the accumulation of 11,000 hours' time in service for aircraft with less than 10,800 hours' time in service and at each 1,000 hours' time in service interval thereafter, and

On all 411 series airplanes: Within 200 hours' time in service after the effective date of this AD on aircraft with 8,800 or more hours' time in service or upon the accumulation of 9,000 hours' time in service for aircraft with less than 8,800 hours' time in service and at each 1,000 hours' time in service interval thereafter. Inspect the front wing spar lower cap and wing front spar root attach fittings for fatigue cracks using eddy current inspection methods at ten (10) locations along the wing front spar lower cap (5 locations on the right wing and 5 identical locations on the left wing) in accordance with Cessna Service Letter ME76-19, dated August 23, 1976, or later approved revisions.

The ten locations are clearly defined in said service letter.

(B) If cracks are found as a result of any inspection performed pursuant to Paragraph A, prior to further flight, contact Cessna Aircraft Corporation for repair or replacement instructions approved in accordance with its Delegation Option Authorization and satisfactorily perform said instructions.

(C) Inspection intervals set forth in Paragraph A may be adjusted up 50 hours' time in service to 350 hours and 1,050 hours' respectively to allow said inspections to be performed at regularly scheduled inspections or maintenance periods.

(D) Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

This amendment becomes effective February 28, 1977.

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

Issued in Kansas City, Mo., on January 14, 1977.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc.77-2079 Filed 1-21-77;8:45 am]

[Airspace Docket No. 76-PC-5]

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

Revocation of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to revoke the Johnston Island, Johnston Atoll control zone and transition area.

The control tower at this location has been decommissioned and the terminal operations have been reduced to the extent that the control zone and transition area are no longer required.

Since this action involves, in part, the revocation of designated controlled 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.

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

Since this action returns airspace to public use and it is desirable to incorporate this change in the regulations to correctly reflect current airspace use, good reason exists for making this change effective on less than 30 days notice.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective on January 24, 1977, as hereinafter set forth.

In § 71.171 (42 FR 355) Johnston Island, Johnston Atoll title and text is deleted.

In § 71.181 (42 FR 440) Johnston Island, Johnston Atoll title and text is deleted.

(Secs. 307(a), 1110, Federal Aviation Act of 1958, (49 U.S.C. 1348(a), 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 13, 1977.

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

[FR Doc.77-2073 Filed 1-21-77;8:45 am]

[Airspace Docket No. 76-PC-6]

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

Revocation of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to rescind the control zone and transition area at Wake Island.

The control tower at this location has been decommissioned for some time and the terminal operations have been reduced to the extent that the control zone and transition area are no longer justified as an airspace assignment.

Since this action involves, in part, the revocation of designated controlled 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.

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

Since this action returns airspace to public use and it is desirable to incorporate this change in the regulations to correctly reflect current airspace use, good reason exists for making this change effective on less than 30 days notice.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective on January 24, 1977, as hereinafter set forth.

In § 71.171 (42 FR 355) Wake Island title and text is deleted.

In § 71.181 (42 FR 440) Wake Island title and text is deleted.

(Sec. 307(a), 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 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 13, 1977.

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

[FR Doc.77-2074 Filed 1-21-77;8:45 am]

[Airspace Docket No. 76-SW-48]

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

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Airways, Jet Routes and Area High Routes; Correction

In FR Doc. 76-37737 appearing at page 55863 in the FEDERAL REGISTER of December 23, 1976, paragraph 3. in § 75.100 is corrected in the third line of that paragraph by deleting "INT Humble 347°" and substituting "INT Humble 349°".

Issued in Washington, D.C., on January 12, 1977.

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

[FR Doc.77-2075 Filed 1-21-77;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-983, Amdt. 7]

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

Editorial Amendment

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. January 18, 1977.

Effective: February 14, 1977.

Adopted: January 18, 1977.

Part 207 of the Board's Economic Regulations provides for charter trips by U.S. certificated scheduled air carriers. This editorial amendment is being issued to correct a reference in § 207.11(b)(3) to Part 297, and particularly § 297.23 of the same chapter. The Board, by adoption of ER-917, dated June 27, 1975, consolidated, recodified, and revised Parts 296 and 297 of the Economic Regulations. The consolidation was accomplished by revising Part 296 to include the substantive content of Parts 296 and 297 and by republishing the revised Part 296. Therefore, § 207.11(b)(3) is being amended to reflect the consolidation of Part 297 into Part 296, and particularly § 297.23 into § 296.41.

This editorial amendment is issued by the undersigned pursuant to delegation of authority from the Board to the General Counsel, in 14 CFR § 385.19, and shall become effective on February 14, 1977. Procedures for review of this amendment are set forth in Subpart C of Part 385 (14 CFR §§ 385.50 through 385.54).

Accordingly, the Board hereby revises § 207.11(b)(3) to read as follows:

§ 207.11 Charter flight limitations.

* * * * *

(b) * * *

* * * * *

(3) By an air freight forwarder or international air freight forwarder hold-

ing a currently effective operating authorization under Part 296 of this subchapter for the carriage of property in air transportation; by a person authorized by the Board to transport by air used household goods of personnel of the Department of Defense; or, with respect to flights from the United States in foreign air transportation, by a foreign air freight forwarder holding a currently effective foreign air carrier permit issued by the Board under section 402 of the Act, and, with respect to flights to the United States in foreign air transportation, by any foreign air freight forwarder who has complied with the provisions of § 296.41 of this chapter;

* * * * *

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

By the Civil Aeronautics Board:

JAMES C. SCHULTZ,
General Counsel.

[FR Doc.77-2168 Filed 1-21-77;8:45 am]

[Reg. ER-984, Amdt. 7]

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

Charter Flight Limitations

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., January 18, 1977.

Effective: February 14, 1977.

Adopted: January 18, 1977.

Part 208 of the Board's Economic Regulations provides for charter trips by U.S. supplemental air carriers. This editorial amendment is being issued to correct a reference in § 208.6(b)(3) to Part 297, and particularly § 297.23 of the same chapter. The Board, by adoption of ER-917, dated June 27, 1975, consolidated, recodified, and revised Parts 296 and 297 of the Economic Regulations. The consolidation was accomplished by revising Part 296 to include the substantive content of Parts 296 and 297 and by republishing the revised Part 296. Therefore, § 208.6(b)(3) is being amended to reflect the consolidation of Part 297 into Part 296, and particularly §§ 297.23 into 296.41.

This editorial amendment is issued by the undersigned pursuant to delegation of authority from the Board to the General Counsel, in 14 CFR 385.19, and shall become effective on February 14, 1977. Procedures for review of this amendment are set forth in Subpart C of Part 385 (14 CFR 385.50 through 385.54).

Accordingly, the Board hereby amends § 208.6(b)(3) to read as follows:

§ 208.6 Charter flight limitations.

* * * * *

(b) * * *

(3) By an air freight forwarder or international air freight forwarder holding a currently effective operating authorization under Part 296 of this subchapter for the carriage of property in air transportation; by a person authorized by the Board to transport by air used household goods of personnel of the Department of Defense; or, with respect to flights from the United States in foreign air transportation, by a foreign air freight forwarder holding a currently effective foreign air carrier permit issued by the Board under section 402 of the Act, and, with respect to flights to the United States in foreign air transportation, by any foreign air freight forwarder who has complied with the provisions of § 296.41 of this chapter;

* * * * *

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

By the Civil Aeronautics Board.

JAMES C. SCHULTZ,
General Counsel.

[FR Doc.77-2167 Filed 1-21-77;8:45 am]

[Regulation ER-982, Amdt. 56]

PART 288—EXEMPTION OF AIR CARRIERS FOR MILITARY TRANSPORTATION

Editorial Amendment

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., January 18, 1977.

Effective: February 14, 1977.

Adopted: January 18, 1977.

By ER-962, adopted July 27, 1976, 41 FR 32208, the Board amended Part 288 of the Economic Regulations (14 CFR Part 288) establishing new rates for foreign and overseas air transportation services performed by air carriers for the Department of Defense (DOD) and procured by the Military Airlift Command (MAC). Subsequently the Board issued Order 76-12-35, December 7, 1976, announcing its disposition of a petition for reconsideration of ER-962 and including its determination to amend ER-962 by revising the effective date thereof to July 27, 1976.

This Editorial Amendment is being issued in order to have reflected in the codification of the Board's Economic Regulations said revised effective date of the regulation promulgated by ER-962.

This Editorial Amendment is issued by the undersigned pursuant to delegation of authority from the Board to the General Counsel, in 14 CFR 385.19, and shall become effective on February 14, 1977. Procedures for review of this amendment are set forth in Subpart C of Part 385 (14 CFR 385.50 through 385.54).

Accordingly the Board hereby amends ER-962 by revising the effective date thereof to July 27, 1976.

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

By the Civil Aeronautics Board:

JAMES C. SCHULTZ,
General Counsel.

[FR Doc.77-2169 Filed 1-21-77;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2856]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

American Academy of Orthopaedic Surgeons

Subpart—Combining or conspiring: § 13.430 To enhance, maintain or unify prices; § 13.470 To restrain or monopolize trade. Subpart—Corrective actions and/or requirements: § 13.533 Corrective actions and/or requirements; 13.533-53 Recall of merchandise, advertising material, etc. Subpart—Maintaining resale prices: § 13.1155 Price schedules and announcements.

(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 the American Academy of Orthopaedic Surgeons, a Corporation

Consent order requiring a Chicago, Ill., professional association, among other things to cease publishing, promulgating and participating in the development of relative value scales which have the effect of establishing prices for medical and surgical services. Respondent is required to permanently cancel, repeal, abrogate and withdraw any and all relative value scales heretofore developed or disseminated and send copies of this order to association members and certain third-party payers together with a request for the return of all copies of relative value scales in their possession.

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

ORDER

I

A. The term "relative value scale" means any list or compilation of surgical and/or medical procedures and/or services which sets forth comparative numerical values for such procedures and/or services, without regard to whether those values are expressed in monetary or non-monetary terms.

B. The term "AAOS" means the American Academy of Orthopaedic Surgeons.

C. The term "Effective date of this order" means the date of service of this order.

II

It is ordered that AAOS, its successors, or assigns, and its officers, agents representatives and employees, directly or through any corporation, subsidiary, division, or other device, shall:

A. Cease and desist from directly or indirectly initiating, originating, developing, publishing, or circulating the whole or any part of any proposed or existing relative value scale(s);

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

B. Cease and desist from directly or indirectly advising in favor of or against the use of, or contributing to the whole or any part of any proposed or existing relative value scale(s); *Provided, however,* That nothing contained herein shall prohibit AAOS from furnishing testimony to any government body, committee, or instrumentality, or from furnishing to any third party or government body, committee, or instrumentality such information as may be requested; to the extent, however, that such information or testimony may bear directly or indirectly on compensation levels for orthopaedic services or procedures, it shall be limited to historical data, free of editing or interpretation, and shall be completely described as to methodology.

C. Permanently cancel, repeal, abrogate, and withdraw any and all relative value scales which it has heretofore developed, published, circulated, or disseminated;

D. Within thirty (30) days after the effective date of this order, distribute by first class mail a copy of the Commission's Complaint and order in this matter, as well as a letter, in the form shown in Appendix "A" to this order, to each of its Fellows and to each of the third-party payers and others listed in Appendix "B" to this order, instructing such third-party payers and others to return to AAOS all copies of AAOS relative value scales in their possession.

III

It is further ordered that AAOS shall notify the Commission at least thirty (30) days prior to any proposed change in its organization which might affect compliance obligations under this order, such as, but not limited to, dissolution, the emergence of a successor corporation, and the creation and/or dissolution of subsidiaries.

IV

It is further ordered that AAOS shall within sixty (60) days after the effective date of this order, file with the Commission a written report showing in detail the manner and form of its compliance with each of the provisions of the order.

V

Nothing in this order shall be construed to exempt The American Academy of Orthopaedic Surgeons from complying with the antitrust laws or the Federal Trade Commission Act. The fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws.

The Decision and Order was issued by the Commission December 14, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2060 Filed 1-21-77;8:45 am]

[Docket No. C-2855]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

American College of Obstetricians and Gynecologists

Subpart—Combining or conspiring: § 13.430 To enhance, maintain or unify prices; § 13.470 To restrain or monopolize trade. Subpart—Corrective actions and/or requirements: § 13.533 Corrective actions and/or requirements; 13.533-53 Recall of merchandise, advertising material, etc. Subpart—Maintaining resale prices: § 13.1155 Price schedules and announcements.

(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 the American College of Obstetricians and Gynecologists, a Corporation

Consent order requiring a Chicago, Ill., professional association, among other things to cease publishing, promulgating and participating in the development of relative value scales which have the effect of establishing prices for medical and surgical services. Respondent is required to permanently cancel, repeal, abrogate and withdraw any and all relative value scales heretofore developed or disseminated and send copies of this order to association members and certain third-party payers together with a request for the return of all copies of relative value scales.

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

ORDER

I

A. The term "relative value scale" means any list or compilation of surgical and/or medical procedures and/or services which sets forth comparative numerical values for such procedures and/or services, without regard to whether those values are expressed in monetary or non-monetary terms.

B. The term "ACOG" means the American College of Obstetricians and Gynecologists.

C. The term "effective date of this order" means the date of service of this order.

It is ordered that ACOG, its successors, or assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, shall:

A. Cease and desist from directly or indirectly initiating, originating, developing, publishing, or circulating the whole or any part of any proposed or existing relative value scale(s);

B. Cease and desist from directly or indirectly advising in favor of or against the use of, or contributing to the whole or any part of any proposed or existing relative value scale(s): *Provided, however,* That nothing contained herein shall prohibit ACOG from furnishing testimony to any government body, committee, or instrumentality, or from furnishing to any third party or government body, committee, or instrumentality such information as may be requested; to the extent, however, that such information or testimony may bear directly or indirectly on compensation levels for obstetrical or gynecological services or procedures, it shall be limited to historical data, free of editing or interpretation, and shall be completely described as to methodology;

C. Permanently cancel, repeal, abrogate, and withdraw any and all relative value scales which it has heretofore developed, published, circulated, or disseminated;

D. Within thirty (30) days after the effective date of this order, distribute by first class mail a copy of the Commission's complaint and order in this matter, as well as a letter, in the form shown in Appendix "A" to this order, to each of its Fellows and to each of the third-party payers and others listed in Appendix "B" to this order, instructing such third-party payers and others to return to ACOG all copies of ACOG relative value scales in their possession.

III

It is further ordered that ACOG shall notify the Commission at least thirty (30) days prior to any proposed change in its organization which might affect compliance obligations under this order, such as, but not limited to, dissolution, the emergence of a successor corporation, and the creation and/or dissolution of subsidiaries.

IV

It is further ordered that ACOG shall, within sixty (60) days after the effective date of this order, file with the Commission a written report showing in detail the manner and form of its compliance with each of the provisions of the order.

V

Nothing in this order shall be construed to exempt the American College of Obstetricians and Gynecologists from complying with the antitrust laws or the Federal Trade Commission Act. The fact that any activity is not prohibited by this order shall not bar a challenge to it under such laws.

The Decision and Order was issued by the Commission December 14, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2061 Filed 1-21-77;8:45 am]

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

Title 17—Commodity and Securities Exchanges

CHAPTER 1—COMMODITY FUTURES TRADING COMMISSION

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

PART 155—TRADING STANDARDS

Trading Standards for Floor Brokers and Futures Commission Merchants and Records of Cash Commodity and Futures Transactions; Extension of Comment Period

The Commodity Futures Trading Commission ("Commission") announced today the extension of the comment period from January 21, 1977 to February 22, 1977 for new Part 155, Trading Standards; amendments to § 1.35, Records of Cash Commodity and Futures Transactions; and proposed amendments to §§ 1.35 and 155.3 of the regulations under the Commodity Exchange Act, as amended ("Act"). In addition, the implementation date for new Part 155 was deferred from February 14, 1977 to March 16, 1977. The June 13, 1977 implementation date for the amendments to regulation 1.35 was not changed.

On December 23, 1976, the Commission adopted a new Part 155, establishing trading standards for floor brokers and for those futures commission merchants which are members of a contract market. 41 FR 56134 (December 23, 1976). The scheduled effective date for Part 155 was listed in the FEDERAL REGISTER release as February 14, 1977.

In that release, the Commission also announced the adoption of certain amendments to the recordkeeping requirements imposed upon contract markets by § 1.35. These amendments require contract markets, among other things, to maintain a record of the time sequence of transactions on the contract market. The amendments to § 1.35 are scheduled to take effect on June 13, 1977.

While the Commission determined to adopt these rules in the form as published, the Commission announced that it would "consider any comments on the new regulations submitted by interested persons on or before January 21, 1977, in determining whether any further or different actions should be taken with respect to any of the matters dealt with in these regulations." 41 FR 56144.

In a separate FEDERAL REGISTER release issued the same day as the newly adopted regulations, the Commission proposed certain additional amendments to regulations 1.35 and 155.3. 41 FR 55887 (December 23, 1976). These proposed amendments would (i) extend the requirements of regulation 155.3 to futures commission merchants which are not members of any contract market; (ii) require each member of a contract market to make a specific written record of all orders he receives on the floor of the contract market, for the account of another person, including the date and time to the nearest minute each order is received, where such orders are not received in appropriate written form; and (iii) require each contract market to adopt a rule requiring that certain information on the opposite sides of each trade accurately correspond before the trade is accepted for clearance by the clearing organization which clears trades for the contract market. The Commission announced that it would consider all comments pertaining to the proposed rules which it received on or before January 21, 1977.

Interested persons have requested that the Commission extend the effective date of newly adopted Part 155 and the amendments to §1.35 and that the comment period for these regulations and the proposed amendments to §§ 1.35 and 155.3 be extended as well.[1] Accordingly, the Commission believes that it is appropriate to defer the effective date of Part 155 to March 16, 1977, and the comment period on the newly adopted regulations and the proposed regulations to February 22, 1977. However, the Commission does not believe it is necessary or appropriate to defer the effective date of the amendments to § 1.35 beyond the June 13, 1977 effective date announced in the FEDERAL REGISTER release of December 23, 1976, 41 FR 56144.

Issued in Washington, D.C. on January 19, 1977, by the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc.77-2282 Filed 1-21-77;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[TD. 77-30]

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Security of International Cargo Transported in Bond

The President, in Executive Order No. 11836, dated January 27, 1975 (40 FR 4255), directed the Secretary of the Treasury, to, among other things, foster the security of international cargo in Customs custody within ports of entry and in its movement and storage in bond.

In response to this Executive Order, Customs has reevaluated the present metal strap seal for in-bond cargo. Use of this type of seal was first approved for Customs use in 1912 (T.D. 32294), and is designed more to indicate a violation of the integrity of the transport unit than to offer physical protection to the contents of the shipment. Customs has extensively examined security seals. These examinations have included laboratory tests and fields evaluations of several high security seals which were found in laboratory tests to be very effective in preventing the theft of cargo.

Seals which tests show provide both accountability and sufficient physical protection for cargo have been approved by Customs as high security seals. The names and addresses of manufacturers whose seals have been approved by Customs as high security seals may be obtained from district directors of Customs as provided for in § 24.13a(b) of the Customs Regulations (19 CFR 24.13a(b)).

In order to further respond to Executive Order No. 11836, on March 23, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 12017), which proposed to amend § 18.4(a)(1) of the Customs Regulations (19 CFR 18.4(a)(1)) to provide that conveyances or compartments in which bonded merchandise is transported shall be sealed with high security red in-bond Customs seals, or if incapable of being so sealed, with red in-bond Customs seals, with certain exceptions presently provided in that section. It was also proposed that high security red in-bond seals be stamped and purchased in the same manner as red in-bond seals, the stamp and purchase of which is provided for in paragraphs (b) and (c), and (f), of § 24.13 respectively. Further, it was proposed to amend § 24.13(f) by substituting the words "district director" for the word "collector" wherever it appears and to provide that the price charged for high security red in-bond seals sold by district directors shall be the current manufacturer's list price for the quantity purchased.

Interested persons were given 60 days from the date of publication of the notice to submit relevant data, views, or arguments regarding the proposed amendments. After consideration of all comments received, the wording of § 18.4(a)(1) has been changed to specify that only conveyances or compartments in which carload lots of bonded merchandise are transported shall be sealed with high security red in-bond Customs seals. Less than carload lots need not be sealed in this manner.

Accordingly, the proposed amendments, modified to include this change, are adopted as set forth below.

Effective date: In order to permit carriers to utilize existing stocks of strap seals, these amendments shall not become effective until April 25, 1977.

VERNON D. ACREE,
Commissioner of Customs.

Approved: January 11, 1977.

JERRY THOMAS,
Under Secretary of the Treasury.

Section 18.4(a)(1) is amended to read as follows:

§ 18.4 Sealing conveyances and compartments; labeling packages; warning cards.

(a)(1) Except as provided in section 123.33 of this chapter, conveyances or compartments in which carload lots of bonded merchandise are transported shall be sealed under Customs supervision with high security red in-bond Customs seals, or if incapable of being so

[1] Several contract markets stated that the proximity of the publication date with the national holidays made it difficult to adopt the exchange rule changes necessitated by the new regulations and to comment on the new regulations and the proposed amendments to the new regulations within the alloted time.

sealed, with red in-bond Customs seals. When the compartment or conveyance cannot be effectively sealed, as in the case of merchandise shipped in open cars or barges, or on the decks of vessels, or when it is known that any seals would necessarily be removed outside the jurisdiction of the United States for the purpose of discharging or taking on cargo, or when it is known that the breaking of the seals will be necessary to ventilate the hatches, or in other similar circumstances, such sealings may be waived with the consent of the carrier and an appropriate notation of such waiver shall be made on the manifest. The Commissioner of Customs may authorize the waiver of sealing of conveyances or compartments in which bonded merchandise is transported in other cases when in his opinion the sealing thereof is unnecessary to protect the revenue or to prevent violations of the Customs laws and regulations.

* * * * *

The first sentence of paragraph (b) and paragraph (f) of § 24.13 is amended to read as follows:

§ 24.13 Car, compartment, and package seals; kind, procurement.

* * * * *

(b) Red in-bond and high security red in-bond seals used for sealing imported merchandise shipped between ports in the United States shall be stamped "U.S. Customs in Bond." * * *

* * * * *

(f) In-bond seals may be purchased only by a Customs bonded carrier, by a nonbonded carrier permitted to transport articles in accordance with section 553 of the Tariff Act of 1930, as amended (19 U.S.C. 1553), or in the case of red in-bond and high security red in-bond seals, by the carrier's commercial association or comparable representative approved by the district director. In-transit seals may be purchased by a bonded or other carrier of merchandise or, in the case of blue in-transit seals, by the carrier's commercial association or comparable representative approved by the district director. Except for uncolored in-transit seals, uncolored Customs seals may not be purchased by private interests and shall be furnished by district directors for authorized use without charge. In-bond and in-transit seals sold by district directors shall be charged for at the rate of 10 cents per seal, except for high security red in-bond seals which shall be charged for at the current manufacturer's list price for the quantity purchased.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

[FR Doc.77-2171 Filed 1-21-77;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7449]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Election To Have Investment Credit for Movie and Television Films Determined in Accordance with Previous Litigation

Correction

In FR Doc. 76-38099, appearing at page 56629, in the issue of Wednesday, December 29, 1976, the filing time which now reads "4:45 pm", should read "4:44 pm".

[T.D. 7459]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Various Elections

Correction

In FR Doc. 77-703, appearing at page 1469 in the issue for Friday, January 7, 1977, the table in § 7.0(a) should read as set forth below:

Section	Description of election	Availability of election
	(1) FIRST CATEGORY	
167(o) of Code	Substantially rehabilitated historic property.	Additions to capital account occurring after June 30, 1976, and before July 1, 1981.
172(b)(3)(E) of Code	Forego of carryback period	Any taxable year ending after December 31, 1975.
191(b) of Code	Amortization of certain rehabilitation expenditures.	Additions to capital account occurring after after June 14, 1976, and before June 15, 1981.
402(e)(4)(L) of Code	Lump sum distributions from qualified plans.	Distributions and payments made after December 31, 1975, in taxable years beginning after such date.
451(e) of Code	Livestock sold on account of drought	Any taxable year beginning after December 31, 1975.
812(b)(3) of Code	Forego of carryback period by life insurance companies.	Any taxable year ending after December 31, 1975.
819A of Code	Contiguous country branches of domestic life insurance companies.	All taxable years beginning after December 31, 1975.
825(d)(2) of Code	Forego of carryback period by mutual insurance companies.	Any taxable year ending after December 31, 1975.
911(e) of Code	Foregoing of benefits of section 911	All taxable years beginning after December 31, 1975.
	(2) SECOND CATEGORY	
185(d) of Code	Amortization of railroad grading and tunnel bores.	All taxable years beginning after December 31, 1974.
528(c)(1)(E) of Code	Certain homeowners associations	Any taxable year beginning after December 31, 1973.
1057 of Code	Transfer to foreign trusts etc	Any transfer of property after October 2, 1975.
6013(g) of Code	Joint return for nonresident alien	All taxable years ending on or after December 31, 1975.
6013(h) of Code	Joint return for year in which nonresident alien becomes resident.	Any taxable year ending on or after December 31, 1975.

Title 31—Money and Finance: Treasury

CHAPTER I—MONETARY OFFICES, DEPARTMENT OF THE TREASURY

PART 128—TRANSACTIONS IN FOREIGN EXCHANGE, TRANSFERS OF CREDIT, AND EXPORT OF COIN AND CURRENCY

Additional Statutory Authority; Form Revisions

The Department of the Treasury herewith promulgates amendments to the Treasury Regulations on the reporting of transactions in foreign exchange, transfers of credit, and the export of coin or currency by financial institutions and other reporting firms governed by the provisions of Part 128. The amendments acknowledge the effects of the International Investment Survey Act of 1976, 90 Stat. 2059, 22 U.S.C. 3101 note, as providing additional authority for the collection of data pursuant to Subpart B, and as modifying the provisions for disclosure of such data to other Federal agencies, redesignate the Treasury Foreign Exchange (TFEX) reporting system as the Treasury International Capital (TIC) reporting system to describe more aptly the nature of the data collected and redesignate the Treasury Foreign Exchange forms as Treasury International Capital forms.

In addition, certain TIC (formerly TFEX) forms have been consolidated or otherwise revised: the country stubs of TIC Forms B-1, B-2, and B-3 shall now include those geographical data formerly reported on Forms B-1a, B-2a, and B-3a; the data formerly reported separately on Forms S-1, S-1a, and S-2 shall now be reported on a new Form S; the country stub of Form C-1/2 has been expanded so as to be identical with the stubs on the S and B series reports.

The amendments add TIC Form S to the TIC reporting system and delete Forms B–1a, B–2a, B–3a, S–1, S–1a, and S–2. In addition, the amendments correct a typographical error appearing in the last sentence of § 128.2(c) of Subpart A in the 1976 edition of the CFR, where the word "at" should be replaced by the word "as."

The Department finds that notice and public procedures under the provisions of 5 U.S.C. 553 are not necessary in this case since the amendments pertain only to rules of agency procedure, are minor in scope, and serve generally to reduce the reporting burden upon the public. In addition, there is good cause to make the amendments effective immediately on January 24, 1977. The amendments shall apply to all reports filed as of January 31, 1977, and for any period ending after January 31, 1977.

The text of the amendments is as follows:

1. Section 128.2 (a) and (c) are amended to read as follows:

§ 128.2 Reports.

(a) In order to effectuate the purposes of the Emergency Banking Act of 1933 (12 U.S.C. 95a), Executive Order 6560 of January 15, 1934 (Part 127 of this chapter), and the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101 note), and in order that information requested by the International Monetary Fund under the articles of agreement of the Fund may be obtained in accordance with section 8(a) of the Bretton Woods Agreements Act (sec. 8(a) 59 Stat. 515; 22 U.S.C. 286f and Executive Order No. 10033, 14 FR 561; 3 CFR, 1949 Supp.), every person subject to the jurisdiction of the United States engaging (1) in any transaction in foreign exchange; (2) in any transfer of credit between any person within the United States and any person outside of the United States; or (3) in the export or withdrawal from the United States of any currency or silver coin which is legal tender in the United States, shall furnish information relative thereto to such extent and in such manner and at such intervals as is required by report forms and instructions prescribed in Subpart B of this part.

* * * * *

(c) All persons required to report, other than banks and banking institutions, shall furnish the reports required under Subparts B and C of this part to the Federal Reserve Bank of New York. Banks and banking institutions shall furnish the required reports to the Federal Reserve Bank of the district in which such bank or banking institution has its principal place of business in the United States. In the event that any person required to report has no principal place of business within a Federal Reserve district, the information shall be furnished directly to the Office of the Assistant Secretary for International Affairs, Department of the Treasury, Washington, D.C. 20220 or to such agency as the Department of the Treasury may designate.

2. Section 128.3 is revised to read as follows:

§ 128.3 Use of information reported.

The information reported on the forms required under Subparts B and C will not be disclosed publicly by the Department of the Treasury or by any other Federal agency having access to the information as provided herein. Data reported on these forms may be published or released in the aggregate in a manner which will not reveal the amounts reported by any individual reporting bank or nonbanking firm. The Department may furnish to other Federal agencies data reported on these forms to the extent permitted by the Federal Reports Act, 44 U.S.C. 3501, et seq. In addition, the Department may furnish other Federal agencies data reported on the forms required under Subpart B to the extent permitted by the International Investment Survey Act of 1976, 22 U.S.C. 3101 note, et seq.

3. Section 128.11 is amended by revising the section heading and the text to read as follows:

§ 128.11 International Capital Form B–1: "Short-term" liabilities to "foreigners."

On this form banks and banking institutions in the United States are required to report monthly to a Federal Reserve bank "short-term" liabilities to "foreigners" or assets held on behalf of "foreigners" which represent claims on institutions or individuals in the United States, as of the last day of business of the month.

4. Section 128.11a is revoked as follows:

§ 128.11a [Deleted]

5. Section 128.12 is amended by revising the section heading and the text to read as follows:

§ 128.12 Supplement to International Capital Form B–1: "Short-term" dollar liabilities to "foreigners" in countries not listed separately on Form B–1.

On this form banks and banking institutions in the United States are required to report twice a year, as of April 30 and December 31, to a Federal Reserve bank "short-term" dollar liabilities to "foreigners" in countries not listed separately on Form B–1.

6. Section 128.13 is amended by revising the section heading and the text to read as follows:

§ 128.13 International Capital Form B–2: "Short-term" claims on "foreigners."

On this form banks and banking institutions in the United States are required to report monthly to a Federal Reserve bank "short-term" assets owned by the reporter or held for the account of domestic customers which represent claims on "foreigners," as of the last day of business of the month.

7. Section 128.13a is revoked as follows:

§ 128.13a [Deleted]

8. Section 128.14 is amended by revising the section heading and text to read as follows:

§ 128.14 International Capital Form B–3: "Long-term" liabilities to, and claims on "foreigners."

On this form banks and banking institutions in the United States are required to report monthly to a Federal Reserve bank "long-term" liabilities to, and claims on, "foreigners" acquired or held, either in the United States or abroad, by reporting organizations for their own account or for the account of others, as of the last day of business of the month.

9. Section 128.14a is revoked as follows:

§ 128.14a [Deleted]

10. Section 128.15 is amended by revising the section heading and text to read as follows:

§ 128.15 International Capital Form C–1/2: Liabilities to, and claims on, "foreigners."

On this form exporters, importers, industrial and commercial concerns and other nonbanking institutions in the United States are required to report quarterly, as of the last day of business of the quarter, to the Federal Reserve Bank of New York, "short-term" and certain other liabilities to, and claims on, "foreigners" acquired or held, either in the United States or abroad, by the reporting organizations for their own account or for the account of others.

11. Section 128.16 is amended by revising the section heading and text to read as follows:

§ 128.16 International Capital Form C–3: "Short-term" liquid claims on "foreigners."

On this form exporters, importers, industrial and commercial concerns and other nonbanking institutions in the United States are required to report monthly to the Federal Reserve Bank of New York data on a portion of their claims on "foreigners," as of the last day of business of the month.

12. Section 128.17 is amended by revising the section heading and text to read as follows:

§ 128.17 International Capital Form S: Purchases and sales of "long-term" securities by "foreigners."

On this form banks and banking institutions, brokers and dealers in the United States are required to report monthly to a Federal Reserve bank transactions in "long-term" and certain other securities executed in the United States for account of "foreigners" and by "foreign official institutions" and transactions in "long-term" securities executed abroad for their own account and for the account of their domestic customers.

13. Section 128.17a is revoked as follows:

§ 128.17a [Deleted]

15. Section 128.19 is revoked as follows:

§ 128.19 [Deleted]

Effective date: January 24, 1977.

GERALD L. PARSKY,
Assistant Secretary for International Affairs.

[FR Doc.77-2129 Filed 1-21-77; 8:45 am]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

COMMEMORATIVE STAMPS AND NEW STAMP ISSUES

Miscellaneous Amendments

AGENCY: U.S. Postal Service.

ACTION: Final rule.

SUMMARY: The primary purpose of this document is to revise the regulations of the Postal Service on commemorative stamps and new stamp issues. Among other things, the revisions provide for a single national policy, set by the Stamps Division at Headquarters of the Postal Service, concerning the release, sale, and discontinuance of postage stamps and stamp products. A number of minor, technical, and conforming amendments are also made to the regulations.

EFFECTIVE DATE: January 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Paul J. Kemp, 202-245-4638.

Accordingly, 39 CFR is amended as follows:

PART 233—INSPECTION SERVICE AUTHORITY

§ 233.1 [Amended]

1. In paragraph (b)(2) of § 233.1 by deleting the period at the end thereof and inserting "(see 243.419 of the Postal Service Manual)." in lieu thereof.

PART 257—PHILATELY

2. By revising §§ 257.1 and 257.2 to read as follows:

§ 257.1 Policy.

There shall be a single national policy relative to the release, sale and discontinuance of postage stamps and stamp products. All policy matters shall be set by the Stamps Division, Headquarters, Washington, D.C. 20260. The standardization of policy relating to sales will provide a high degree of integrity to the program with resultant stimulated sales at a minimum of cost. All post offices shall comply with the national philatelic policies as set forth in this Part 257.

§ 257.2 Commemorative Stamps.

(a) *Purpose.* Commemorative stamps are issued in limited quantities to focus attention on historical places, events or personages. The Postal Service encourages the widespread use of these stamps to promote our ideals, progress, and heritage reflected by the stamps. They do not replace regular stamps of the same class, but are provided upon request, when available.

(b) *Commemorative Stamp Supplies.* Periodically evaluate the philatelic demand and, when necessary, forward a separate requisition for stock needed in addition to the automatic distribution. Postmasters should when necessary reduce the quantity of stamps received automatically to preclude costly overstocking and subsequent destruction. Sectional centers designated to distribute accountable paper shall make certain that less-than-bulk quantities of stamps are supplied to post offices to permit sales the day after the official first-day sale, in accordance with instructions issued in the Postal Bulletin.

(c) *Sale Of Commemorative Stamps.* Place commemorative stamps on sale at all offices on the general release date in accordance with the following schedule:

(1) *Plate Number Blocks and Marginal Markings.* Plate number blocks are the stamps located on one corner of a sheet of stamps with a plate number(s) printed on the margin. The plate blocks may include as few as four stamps where a single number appears or as many as 20 where multiple numbers or other markings such as Mr. ZIP and Mail Early appear. There shall be no wholesale removal of plate number blocks in advance from a large number of sheets for the benefit of individual purchasers. Plate blocks may be laid aside, however, as sheets are broken for regular sale purposes and may be sold as an accommodation to local stamp collectors.

(2) *Regular Stamp Windows.* Place commemorative stamps on regular sale, holding aside only enough for the local philatelic demand. Sell all stock within 60 days if possible. Offer any remaining commemorative stamps, including those previously set aside for philatelic use, to all customers in place of other sheet stamps. An exception would be a commemorative stamp issued for a special areawide event which is being celebrated beyond the 60-day period. It is the Postal Service's intent that all commemorative stamps be sold and none destroyed.

(3) *Philatelic Windows and Postal Stores*—(i) *Time On Sale.* Those offices with full or part-time philatelic windows may keep an issue on sale until the Philatelic Sales Branch publishes in the Postal Bulletin a notice of its removal from sale. Upon notification, immediately withdraw and sell the stock for regular postage purposes for a period of 30 days. After 30 days any remaining stock shall be handled in accordance with section 224, Handbook F-1, *Financial and Cost Controls.*

(ii) *Stamp Credit-Accountability.* Philatelic outlets should maintain a good working level of stamp stock and accountable paper to encourage philatelic interest and be able to readily meet the needs of collectors. In this regard, philatelic outlets are authorized stamp credits of $50,000 to $125,000. Under no circumstances shall the stamp credit exceed $125,000.

(iii) *Plate Numbers.* The sale of plate numbers and marginal markings at philatelic outlets shall be restricted as follows:

Denomination	*Minimum purchase*
1 cent to 16 cents, inclusive.	Full panes of each.
18 cents to 50 cents, inclusive.	Strips of 20 stamps each.
60 cents	Strip of 10 stamps.
$1 to $5, inclusive	4 stamps each.

(iv) *Availability of Back-Issue Commemoratives.* Post offices which maintain or establish special philatelic windows should request the Stamp Management Branch, U.S. Postal Service, Washington, D.C. 20260, to keep them informed of available back-issue commemoratives. Lists of available back issues will periodically appear in the Postal Bulletin.

(v) *Packaged Stamps.* Philatelic windows, postal stores, stamp collecting centers, and the Philatelic Sales Branch may sell stamps previously withdrawn from sale provided the stamps are incorporated in a philatelic product such as the mint set or collecting kit.

(4) *Outside Sales of Commemorative Stamps.* Do not accept mail orders for postage stamps from customers outside the limits of the area served by your post office. Return any such requests to the sender calling attention to the services provided by the Philatelic Sales Branch, Washington, D.C. 20265.

(d) *Announcement Of New Issues.* New stamp and other special issues are announced by notices displayed in the post office lobbies, in the Postal Bulletin, and through the press and philatelic periodicals.

(e) *First-Day Sale.* A post office or post offices selected because of some historical connection with the person, event, or place being commemorated may be authorized to have exclusive sale of a new stamp on its first day of sale. All other post offices may sell the stamp the following day.

(f) *First-Day Covers.*—(1) *Description.* A first-day cover is an envelope, post card, or other mailing piece bearing a new stamp; a new postal card; a new stamped envelope; or a new aerogramme, cancelled with a special die reading "First Day of Issue" and dated to show the first day of issue.

(2) *Requests.* (i) Customers who want first day cancellations of a new stamp have two options:

(A) They may buy and affix their own newly issued stamps to their envelopes and mail them to the postmaster at the city of issuance for cancellation; or (B) They may submit their envelopes with proper remittance to cover the cost of the stamps desired and the Postal Service will affix and cancel the stamps. Remittance should be made by money order, cashiers, certified, or personal check made payable to U.S. Postal Service. Do not send cash. Postage stamps, as well as foreign coins and currency will not be accepted.

All covers must bear addresses and must be postmarked no later than 15 days from the date of issuance to qualify for cancellation service.

(ii) Cover envelopes should be of ordinary letter-size and must be properly addressed low and to the left. Place a filler of postal card thickness in each envelope, and either turn in the flaps or seal it. Endorse the envelope enclosing the covers to the postmaster, "First-Day Covers". If applicable, put a pencil notation in the upper right corner of each cover to show the number of postage stamps to be placed there.

(iii) With orders for first-day covers, do not include requests for uncanceled stamps.

(iv) The Philatelic Sales Branch does not service first-day covers.

PART 258—SPECIAL CANCELLATIONS

3. In paragraph (a) of § 258.1 by revising the first sentence thereof to read as follows:

§ 258.1 Authorization.

(a) Special canceling machine die hubs may be used only in post offices having 190 or more revenue units. * * *

* * * * *

4. In paragraph (b) (1) of § 258.4 by revising the first sentence thereof to read as follows:

§ 258.4 Disposition.

* * * * *

(b) *Unserviceable die hubs.* (1) Authorized post offices having 950 or more revenue units shall order replacement repair parts for a die hub that is used annually, from the Western Area Supply Center, Repair Parts Section, Topeka, Kansas 66624, on Form 4984, "Repair Parts Requisition," if the die hub can be repaired at the post office. * * *

* * * * *

(39 U.S.C. 401, 404(4), 404(5))

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc.77-2107 Filed 1-21-77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 673-6]

NEW SOURCE REVIEW

Delegation of Authority to the State of South Carolina

The amendments below institute certain address changes for reports and applications required from operators of new sources. EPA has delegated to the State of South Carolina authority to review new and modified sources. The delegated authority includes the reviews under 40 CFR Part 52 for the prevention of significant deterioration. It also includes the review under 40 CFR Part 60 for the standards of performance for new stationary sources and review under 40 CFR Part 61 for national emission standards for hazardous air pollutants.

A notice announcing the delegation of authority is published elsewhere in the notices section of this issue of the FEDERAL REGISTER. These amendments provide that all reports, requests, applications, submittals, and communications previously required for the delegated reviews will now be sent to the Office of Environmental Quality Control, Departpartment of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, instead of EPA's Region IV.

The Regional Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. The delegation which is reflected by this administrative amendment was effective on October 19, and it serves no purpose to delay the technical change of this addition of the State address to the Code of Federal Regulations.

This rulemaking is effective immediately, and is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as amended, 42 U.S.C. 1857c-5, 6, 7 and 1857g.

Dated: January 11, 1977.

JOHN A. LITTLE,
Acting Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

DELEGATION OF AUTHORITY FOR PREVENTION OF SIGNIFICANT DETERIORATION TO THE STATE OF SOUTH CAROLINA

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

Subpart PP—South Carolina

1. Section 52.2131 is amended by adding a new paragraph (c) as follows:

§ 52.2131 Significant deterioration of air quality.

* * * * *

(c) All applications and other information required pursuant to § 52.21 from sources located in the State of South Carolina shall be submitted to the Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, instead of the EPA Region IV office.

* * * * *

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

DELEGATION OF AUTHORITY TO THE STATE OF SOUTH CAROLINA

2. Part 60 of Chapter I, Title 40, Code of Federal Regulations, is amended by revising subparagraph (PP) of § 60.4(b) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(A)-(OO) * * *

(PP) State of South Carolina, Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

* * * * *

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

DELEGATION OF AUTHORITY TO THE STATE OF SOUTH CAROLINA

3. Part 61 of Chapter I, Title 40, Code of Federal Regulations, is amended by revising subparagraph (PP) of § 61.04(b) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(A)-(OO) * * *

(PP) State of South Carolina, Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

* * * * *

[FR Doc.77-1969 Filed 1-21-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 9—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

[ERDA-PR Temporary Reg. No. 26]

PART 9-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 9-4.52—Unsolicited Proposals

JANUARY 17, 1977.

• 1. *Purpose.* To revise ERDA-PR Temporary Regulation No. 21 to reinstate the applicability of ERDA-PR 9-4.51 to certain proposals. •

ERDA-PR Temporary Regulation No. 21, dated July 23, 1976, 41 FR 30330, was issued for the purpose of expanding and clarifying the policies and procedures concerning the receipt, evaluation, acceptance or rejection of unsolicited proposals. Its provisions were expanded to encompass all unsolicited proposals from whatever source obtained (e.g. educational institutions). Such sources had for many years prior to the issuance of ERDA-PR Temporary Regulation No. 21 been treated under Subpart 9-4.51 entitled Research Agreements and Contracts with Educational Institutions. However, after approximately six months of experience with ERDA-PR Temporary Regulation No. 21 in the processing of unsolicited proposals submitted by such sources, it has been determined that the provisions of ERDA-PR Subpart 9-4.51 are a more appropriate mechanism for processing these proposals. Therefore, effective immediately, the provisions of ERDA-PR Subpart 9-4.51 are reinstated as previously applicable. However, for the purpose of establishing a central control point for accountability, tracking and reporting, educational institutions are instructed to submit their proposals directly to:

Office of University Programs, U.S. Energy Research and Development Administration, Washington, DC 20545.

Other organizations, such as not-for-profit organizations which can be treated in the same manner as educational institutions (e.g. charitable institutions which conduct education and training activities, or whose facilities are used in joint programs with universities for such purposes; hospitals conducting research activities of interest to ERDA) should submit their proposals directly to:

Division of Procurement, C-167, Proposal Coordination Section, U.S. Energy Research and Development Administration, Washington, DC 20545.

2. Effective date. This revision to ERDA-PR Temporary Regulation No. 21 is effective on January 24, 1977. Interested persons may submit comments on this regulation to: Director of Procurement, Attention: M. Kestenbaum, U.S.

Energy Research and Development Administration, Washington, DC, 20545. Comments received on or before February 28, 1977, will be considered in determining whether changes to this revision are advisable.

3. Expiration date. This devision will remain in effect until canceled or until its provisions are incorporated into a permanent ERDA Procurement Regulation.

4. Explanation of change. ERDA-PR Temporary Regulation No. 21 is hereby revised by making the changes described in the following paragraphs:

a. At 41 FR 30331 in § 9-4.5203, *Procedure*, delete lines 5 through 9 starting with "In the event of * * * proposals are concerned."

b. At 41 FR 30332 in § 9-4.5203-1(b)(9), Notice of program interest, delete "'Guide for the Submission of Research Proposals from Educational Institutions' (available from ERDA, Office of University Programs, Washington, DC, 20545); and".

c. At 41 FR 30332 in § 9-4.5203-3, Submission of proposals, in the sixth line, delete "both" and put a period after "Procurement". Delete remainder of that second sentence and all the third sentence of that paragraph.

d. At 41 FR 30332 in § 9-4.5203-3(a), in the first line delete ", except those from educational institutions," and delete the last sentence of that paragraph, "Unsolicited proposals from * * * Washington, DC 20545."

(Sec. 105, Energy Reorganization Act of 1974 (Pub. L. 93-438).)

M. J. TASHJIAN,
Director of Procurement.

[FR Doc.77-2115 Filed 1-21-77;8:45 am]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 56b—GRANTS FOR REGIONAL MEDICAL PROGRAMS

CFR Correction

The authority for Part 56b appearing on page 316 of 42 CFR revised as of October 1, 1976 is incorrect. The correct text is set forth below:

AUTHORITY: Sec. 215, 58 Stat. 690, as amended, sec. 906, 79 Stat. 930; 42 U.S.C. 216, 299f. Interpret or apply secs. 900, 901, 902, 903, 904, 905, 909, 79 Stat. 926, 927, 928, 929, 930; 42 U.S.C. 299, 299a, 299b, 299c, 299d, 299e, 299l.

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 249—SERVICES AND PAYMENT IN MEDICAL ASSISTANCE PROGRAMS

Termination of Payment for Inpatient Services in Certain Institutions

SRS is amending 45 CFR 249.10 by adding a new paragraph (d)(3). This new paragraph establishes rules to govern the continuation of Federal Financial Participation (FFP) in payments to States for certain inpatient services in institutions and facilities which no longer meet standards for accreditation and certification, as defined and required by Federal law and regulations. This disqualification of institutions causes, in most instances, hardships and chaos for both the Medicaid recipient and State agencies because:

(1) Federal matching funds are immediately cut off; and

(2) States must immediately relocate recipients in qualified institutions and facilities.

The purpose of this new regulation is to provide for a period, not to exceed 30 days from the effective date on which an institution or facility is determined not in compliance with Federally-defined qualifying standards for accreditation or certification, in which Federal matching may continue. However, there must be a bona fide effort on the part of the State to make other arrangements for care of these institutionalized recipients. The basis for this new regulation is the Secretary's determination that States should be allowed a reasonable period in which to provide for the orderly transfer of such individuals to other fully qualified institutions and facilities.

Existing regulations for skilled nursing facilities and intermediate care facilities contain a similar provision allowing for a 30-day period from the termination of their provider agreements to make arrangements for alternate care.

This new paragraph (d)(3) also includes a provision for retroactive application where loss of qualification occurred prior to the effective date of this regulation (Subparagraph (iv)), in order that States will not be penalized unfairly in these situations.

The following services are affected by this regulation:

(1) Inpatient hospital services (45 CFR 249.10(b)(1));

(2) Inpatient hospital services for individuals age 65 or over in institutions for mental diseases (45 CFR 249.10(b)(14)); and

(3) Inpatient psychiatric facility services for individuals under age 22 (45 CFR 249.10(b)(16)).

In response to the Notice of Proposed Rulemaking, published on June 18, 1976 in the FEDERAL REGISTER (41 FR 24717), SRS received 14 comment letters: 9 from State agencies and 5 from providers and provider-organizations. Although all those responding agreed with the intent of the regulation, the major area of concern expressed was that the proposed 30-day period would be insufficient to provide for relocation of recipients.

Recommendations included extending the time period to 60 days, 90 days, and 120 days.

One primary objective of SRS, in the area of regulations, has been to have, where possible, similar provisions under Medicaid and Medicare, since many facilities participate in both programs. In most instances, the 30-day period for continuation of FFP after loss of accreditation or certification, provided for under existing Medicaid and Medicare regulations, has proved adequate for relocation of recipients. The 30-day time frame would also appear to lessen the likelihood of abuse; i.e., there should be no unnecessary delay in relocating recipients from disqualified to qualified facilities. Therefore, the 30-day time period is retained in the regulation.

One suggestion was made that in instances when a hospital appeals a determination of disqualification, FFP should continue until an administrative decision is reached. This suggestion was not accepted because, when an institution or facility is disqualified, the health and safety of the patients can no longer be assured and continuing payments beyond the 30-day period would not be justified. To reiterate, this regulation is to provide States a reasonable time period in which to relocate recipients from disqualified to qualified facilities. In essence, the facility or institution has received a final determination of disqualification.

It was suggested that the regulation specify that concurrent notification of decisions be made to the single State agency (Medicaid) and the State agency (Certification and Licensure), in order to assure timely notice of loss of accreditation. This would require administrative procedures rather than a regulatory mandate. Therefore, a mechanism at the Federal level is being established in order to achieve this objective. Accordingly, the proposed regulation is hereby adopted with clarifying changes in format.

Section 249.10, Part 249, Chapter II, Title 45 of the Code of Federal Regulations is revised by adding new § 249.10(d)(3).

§ 249.10 Amount, duration, and scope of medical assistance.

* * * * *

(d) *General provisions.* * * *

(3) *Continuation of Federal financial participation under specified conditions.* (i) FFP may be continued for the following services provided for eligible individuals:

(A) Inpatient hospital services, other than services in an institution for tuberculosis or mental diseases (paragraph (b)(1) of this section);

(B) Inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals 65 years of age or over in institutions for tuberculosis or mental diseases (paragraph (b)(14)(i) of this section); and

(C) Inpatient psychiatric facility services for individuals under the age of 21 (paragraph (b)(16) of this section);

in institutions or facilities which, on or after April 25, 1977, met the applicable definition, but later no longer meets it.

(ii) FFP may be continued for a period not to exceed 30 days from:

(A) The effective date of termination by the Social Security Administration of the facility's provider agreement under title XVIII of the Act;

(B) The date of termination by the single State agency of the provider agreement in those institutions and facilities which participate under title XIX of the Act only;

(C) With respect to patients under 21 in a psychiatric facility, the earlier of either the effective date of loss of accreditation by the Joint Commission on Accreditation of Hospitals (JCAH), or the termination by the State title XIX agency of the provider agreement with respect to these services.

(iii) The continuation of FFP is applicable only:

(A) For payments in behalf of individuals admitted to the institution or facility before loss of qualification as determined under paragraph (d)(3)(i) of this section; and

(B) If the State makes a reasonable effort to facilitate the orderly transfer of such individuals to alternate care.

(iv) When an institution's or facility's loss of qualification occurred on or prior to April 25, 1977, FFP is available after the date of such loss only:

(A) When the State continued to claim FFP in payments to such institution or facility; and

(B) When the SRS Regional Commissioner has, by written notification to the single State agency, authorized such continuation, and for such period as the SRS Regional Commissioner has specified. In no event may the period of continuation extend beyond 45 days from the date of such notification or 30 days after April 25, 1977, whichever is earlier. The requirements in paragraph (d)(3)(iii) are not applicable.

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

Effective date: The regulations in this section will be effective April 25, 1977.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program.)

Answers to specific questions may be obtained by calling Emily Nichols, 202-245-0701.

NOTE.—The Social and Rehabilitation Service has determined that this document does not require preparation of an inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: December 17, 1976.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: January 18, 1977.

MARJORIE LYNCH,
Acting Secretary.

[FR Doc.77-2157 Filed 1-21-77;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 55 (Sub-No. 14)]

PART 1100—GENERAL RULES OF PRACTICE

Processing of Specified Proceedings; Adoption of Amended Rules; Correction

By notice published in the FEDERAL REGISTER (41 FR 53,798-53,802 (1976)) the Interstate Commerce Commission announced that it has adopted certain amended rules designed to improve and expedite the processing of specified proceedings. The purpose of this document is to notify interested persons that paragraph (e)(3) of amended § 1100.247, appearing at 41 FR 53,800-53,801, contains an inadvertent inclusion, namely: "* * * Protestants shall name the carrier(s) with whom interline operations shall be performed and shall specifically detail the operation that can be performed thereunder."

The above-quoted phrase should be excised from the amended rule so that, as corrected, paragraph (e)(3) of § 1100.247 reads as follows:

§ 1100.247 Special rules governing notice of filing of applications by motor carriers of property or passengers and brokers under sections 206 (except section 206(a)(6) relating to certificates of registration), 209 and 211, by water carriers under sections 302(e), 303, and 309, and by freight forwarders under section 410 of the Interstate Commerce Act, and certain other procedural matters with respect thereto. (Rule 247)

* * * * *

(e) * * *

(3) A protest against any application shall set forth specifically the grounds upon which it is made and contain a detailed statement of the protestant's interest in the proceeding (including a copy of only the specific portions of its pertinent authority and including direct operations held by virtue of the gateway elimination regulations either published in the FEDERAL REGISTER as letter-notices or granted in separate gateway elimination certificates, which protestant believes to be in conflict with that sought in the application, and describing in detail the method (whether by joinder, interline, or other means) by which protestant would use such authority to provide all or part of the service proposed), shall request an oral hearing if one is desired, and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests phrased in general terms and not complying with these specifications may be rejected.

* * * * *

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2149 Filed 1-21-77;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

Agricultural Marketing Service

[7 CFR Part 1033]

[Docket No. AO-166-A49]

MILK IN THE OHIO VALLEY MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Ohio Valley marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Columbus, Ohio, on May 4, 1976, pursuant to notice thereof issued on March 30, 1976 (41 FR 14192).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Program Operations, on October 27, 1976 (41 FR 47940) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under "1. Enabling handlers to make payments to nonmember producers", three paragraphs are added immediately following the 9th paragraph.

2. Under "3. Modification of the pooling procedure to consider as one plant the operation of two or more distributing plants for purposes of pool qualifications", a paragraph is added following the 11th paragraph.

3. Under "5. Classifying in Class III the skim milk and butterfat in products containing less than 6.5 percent nonfat milk solids", five paragraphs are added immediately following the 3rd paragraph.

The material issues on the record relate to:

1. Payment procedures which would permit handlers to make payments to nonmember producers directly rather than through the market administrator.

2. Procedure for pooling a plant that qualified under the Ohio Valley order and another order in the same month.

3. Modification of the pooling procedure to consider as one plant the operation of two or more distributing plants for purposes of pool qualification.

4. Inclusion of interplant transfers of packaged fluid milk products as a route disposition from the transferor-plant for purposes of determining such plant's status as a pool plant.

5. Classifying in Class III the skim milk and butterfat in products containing less than 6.5 percent nonfat milk solids.

6. Classifying in Class III the skim milk and butterfat in products in hermetically sealed containers.

7. Conforming changes.

This decision deals with all the above issues except Issue No. 2. The latter issue was dealt with separately in a prior partial decision on this record.

Findings and Conclusions

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

1. *Enabling handlers to make payments directly to nonmember producers.* Under certain conditions payments for producers' milk for whom a cooperative is not receiving payment from the market administrator should be made by the market administrator to the handler who receives such producers' milk for distribution to the producers. The producers to whom this would apply are generally only those who are not members of a cooperative. Of the 6,279 producers on the market in February 1976, 752 were not members of a cooperative.

Under the present order, handlers must pay all order obligations for milk to the market administrator. Payment is then made by him, in terms of the uniform price, directly to producers or to a cooperative for the milk of those producers for whom the cooperative is authorized to collect payment.

A handler who receives milk from more than 150 nonmember producers proposed that a handler, if he so requested, receive from the market administrator the payments due his nonmember producers. The handler would then pay such producers directly. Proponent contended that the present provision, which was adopted in 1970 and which requires the market administrator to pay nonmember producers directly, interferes with the normal handler-producer relations that have been built up over a number of years. Also, enabling him to pay his nonmember producers directly, he held, would facilitate the money transactions between him and his producers. The proponent handler must now issue separate checks to each of his producers for his payments to them in excess of the order's uniform price. This, he contends, is confusing to producers since they receive this third check in addition to the two (a partial and a final payment) received directly from the market administrator. If he were permitted to pay his producers directly, as proposed, the amount in excess of the order's uniform price that he pays them could be included in the check for the final payment to such producers under the order rather than issuing them additional checks.

Prior to the dates when payments are due under the order, the proponent handler (and apparently others receiving milk from nonmember producers) advances funds to some producers and pays producers' creditors (e.g., for assignments and hauling). The amounts thus paid by a handler, which are deducted from his payment obligation to the market administrator for producer milk, are in turn deducted by the market administrator from the payments for milk due the producer. Proponent handler claimed that enabling him to make payments directly to his producers (instead of having the market administrator making such payments) could avoid much of the confusion that he now claims exists.

The spokesman for a cooperative that supplies milk to the proponent handler expressed the view that it is inequitable not to allow handlers to pay nonmember producers directly while cooperatives may pay their producers directly.

A handler who receives milk from 42 nonmember producers and three of those producers testified in support of the proposal. They contended that if producers were paid by the handler instead of by the market administrator, the producers would receive their payments more promptly than at present. The producers stated that the checks mailed to them from the market administrator's office are often delayed and that any questions regarding them must involve extensive correspondence with the market administrator. Producers expressed the view that if the handler were allowed to pay them directly, they would be assured of being paid promptly because the checks could be hand-delivered to them by the handler. Also, they claimed, any questions regarding payments for their milk could be readily resolved locally with the handler instead of through time-consuming correspondence with the market administrator.

A handler receiving milk from about 100 nonmember producers also supported the proposal. He indicated, however, that if a handler who elected to pay producers directly became delinquent in making such payments, that handler should be precluded from continuing to make such direct payments until he subsequently established over a reasonable period of time a record of compliance with the order's payment provisions.

The major cooperatives in the market opposed any order change that would enable a proprietary handler to pay his nonmember producers directly. In their

view, the present system is operating satisfactorily and should not be disturbed. However, they held that if the proposed change is adopted, appropriate safeguards should be provided to assure that the payments to nonmembers are being made on time. They also urged (if the proposal is adopted) that any handler who became delinquent in his payments to the market administrator or to nonmember producers not be eligible to receive payments from the market administrator to make such direct payments until he had made such payments when due for several consecutive months.

It is reasonable that handlers be permitted to receive payment from the market administrator for distribution to nonmember producers. Although opposed by cooperatives, it was not established that the change adopted herein would adversely affect any producers or handlers on the market. On the other hand, enabling a handler to pay his nonmember producers directly will facilitate the money transactions between them.

In its exceptions, the federation of major cooperatives in the market argued that since it is opposed to enabling a proprietary handler to pay producers and because the number of producers it represents is substantially greater than those supplying the handlers who supported the payment proposal here adopted, the proposal should be denied. It would be inconsistent with the intent of the Act, and with the Department's regulations governing the procedure for amending marketing orders, to amend an order on the basis that more people favored an action rather than on the basis of the record evidence of the hearing.

Another argument by the federation against permitting a handler to pay nonmember producers directly is its claim that it is illegal for a hauler to handdeliver to producers a payment due from the handler. Nothing in the provisions here adopted provides that payments to producers must be delivered by a hauler. The order only requires that a handler must make the payments due producers under the order by specified dates. The manner in which a handler transmits payments to producers is not specified in the order.

The cooperatives' exceptions suggested that permitting proprietary handlers to pay producers as adopted herein will enable such handlers to obtain milk from producers at prices less than what other handlers must pay and, additionally, will enable such handlers to take producers away from cooperatives by offering the producers something in excess of the order's minimum prices. Whether or not a handle elects to pay his nonmember producers directly, the amount of money that he must pay the producers in accordance with the terms of the order will in no way be affected. Also, the extent to which a handler pays his producers in excess of the minimum prices provided by the order compared to such amounts in excess of the minimums paid by cooperatives is outside the scope of the order and is not a matter that can be considered as being affected by the order change provided in this decision.

It is necessary, however, that appropriate safeguards be provided to assure that such payments to producers are made when due. Otherwise, the order could place those handlers who are in compliance with the payment provisions at a competitive disadvantage with those delinquent handlers who are using money due producers as a free source of funds for operating expenses.

A handler who the market administrator determines is delinquent in any payment obligations under the order should not be eligible to receive money from the market administrator for payment to producers. Any transfer of money by the market administrator to a handler in this circumstance would remove much of the incentive for a handler to consistently comply with the order's payment requirements. So that there might be a reasonable demonstration of compliance with the order, a delinquent handler should not be eligible to pay his producers until he has met all prescribed payment obligations for three consecutive months.

3. *Modification of the pooling procedure to consider as one plant the operation of two or more distributing plants for purposes of pool qualifications.* The operator of two or more distributing plants should be permitted to consider them collectively as one plant for the purpose of meeting the total monthly route disposition percentage requirement (50 percent in September-February and 45 percent in other months) for pooling a single plant. Each plant in such a unit would have to meet individually the present requirement that at least 15 percent of the total monthly route disposition from a plant be made in the marketing area. It was not proposed that this latter requirement be changed.

The handler who proposed unit pooling operates six pool distributing plants. He contended that requiring him to qualify each plant separately necessitates his making uneconomic movements of milk between plants. Proponent handler claimed that the pooling provisions unwarrantedly set a higher performance standard to qualify his total operation for pooling than is required of an operation comparable to it in a single plant. Allowing him to qualify his plants as a unit, he argued, would put him on essentially the same basis as a handler operating one plant.

The handler maintains a substantial manufacturing operation at one of his six distributing plants. Cottage cheese, a principal product made at that plant (in New Bremen, Ohio), is produced there for other plants. The other five plants are essentially Class I operations. Each of the six plants meets individually the pooling requirement that at least 15 percent of its total monthly route disposition is in the marketing area. Based on the total quantities of milk physically handled at each plant, all plants except the New Bremen plant easily meet the total monthly route disposition percentage requirement (50 percent in September-February and 45 percent in other months) for pooling.

In order to keep the New Bremen plant pooled, the handler regularly diverts milk to such plant from his other distributing plants rather than associating the milk directly with the New Bremen plant. This is because the diverted milk is considered as a receipt of producer milk at the pool plant from which diverted and is not counted as a receipt at the New Bremen plant in calculating its total route disposition percentage for pooling. In reality, a substantial proportion of the diverted milk received at the New Bremen plant is actually a regular part of that plant's milk supply.

The handler's pooling efforts are further complicated by the order requirement that at least two days' production of a producer be physically received at a pool plant during the month to qualify his remaining production for diversion to other plants. This makes it necessary for producers whose milk regularly goes to the New Bremen plant by diversion to deliver at least two days' production during the month to other pool distributing plants.

Providing for unit pooling will eliminate the shifting of loads of producers' milk between a multi-plant operator's various plants, which is now done to insure the pooling of all the handler's plants. With unit pooling, it will be possible to assign producers regularly to plants where it is most practicable for them to deliver. The increased recordkeeping necessitated by producers delivering to a number of plants during the month would be eliminated.

The shifting of producers' deliveries between a multi-plant operator's plants solely for the purpose of qualifying such plant individually, and the added recordkeeping caused by it, is of no practical benefit to handlers or producers. Removing the need for this burdensome practice will facilitate the movement of milk from producers' farms to plants where it is actually needed.

Also, the proposal here adopted, by affording him greater flexibility in operating his plants than is now possible under the order, will enable a multi-plant operator to obtain the optimum utilization of the facilities available at each plant. In effect, it will enable him to achieve an economy of scale comparable to that which would be realized by maintaining his total operation in one plant.

A multi-plant handler may find it impractical and uneconomical to maintain at each of his plants the equipment necessary to process and package (and in each container size) all fluid milk products and other dairy products (e.g., sour cream, cottage cheese, eggnog) commonly distributed to retail and wholesale outlets from such plants. In fact, confining certain specialized operations (e.g., cottage cheese manufacture) to one plant may at times be the only economically feasible means that justifies the investment required to install and maintain the equipment and facilities needed for such specialized operations.

Presently, under the order, a multiplant operator is placed at a disadvantage vis-a-vis a single plant operator. That is, to insure pool plant status for all his plants he may be forced to fragment his other than Class I operations among his various plants or to resort to a program of moving milk between his plants solely for the purpose of qualifying them. Neither of these alternatives, which result in increased costs to a handler, actually serves any useful purpose.

Although a federation of the market's cooperatives did not testify in opposition to the proposal, its spokesman suggested that adopting it could result in attaching unneeded additional milk to the pool. However, it is not apparent that the proposed unit pooling could provide a means of pooling any significant quantities of additional milk. Although unit pooling would provide a handler more flexibility in directing the movement of milk from producers' farms to his various plants, the handler's potential for associating milk supplies with the market actually would be no greater whether he qualifies his distributing plants individually or on a combined basis.

In its exceptions to the recommended decision, the federation of cooperatives suggested that the provision here adopted does not give equal consideration to single plant operators who also process large amounts of Class II and Class III items in conjunction with their fluid milk operations. On the contrary, only by permitting the operator of two or more distributing plants to consider them as a unit for pooling purposes, as provided in this decision, will it be possibe for him to qualify his total operation for pooling on the same basis that single plant operators qualify their total operations for pooling.

The order accords pool plant status for the month to a distributing plant that failed to meet the total route disposition percentage requirement for pooling if it met that requirement in the three immediately preceding months. This provision, which was adopted to deal with a single plant operation, should not be applicable for the month to a plant that qualified for pooling within a unit in any of the three immediately preceding months. Since the route disposition from such a plant would have been used as a basis to qualify collectively it and and all other plants in the unit, one or more of which apparently would not qualify individually as a pool plant, such plant cannot be reasonably considered as having met the same conditions that a single plant must have met for three consecutive months as a basis for pooling in the following month.

4. *Inclusion of interplant transfers of packaged fluid milk products as a route disposition from the transferor-plant for determining such plant's status as a pool plant.* Packaged fluid milk products transferred to a distributing plant from a plant from which no fluid milk products are distributed to wholesale or retail outlets in the marketing area should not be considered as a route disposition from the transferor-plant in determining its pool plant status. Such transfers to a distributing plant from any plant are now counted as a route disposition in the marketing area from the transferor-plant to the extent of the in-area disposition of the transferee-plant. If the in-area disposition thus assigned to the transferor-plant is at least 15 percent of its total route disposition, and it otherwise meets the order's monthly total route disposition requirement for pooling (50 percent of its receipts in September–February and 45 percent in other months), the plant qualifies as a pool plant.

A handler proposed that packaged fluid milk products received at a distributing plant from a plant having no distribution in the marketing area be considered an interplant transfer instead of as a route disposition from the transferor-plant in determining its pool plant status. Except for the single purpose of qualifying a distributing plant as a pool plant, such packaged fluid milk products moved between plants are now handled as an interplant transfer.

Cooperatives opposed the handler proposal. They were concerned that it might result in providing a competitive advantage to a nonpool plant from which packaged fluid milk products were transferred to a pool plant. However, their spokesman did not explain how such an advantage could be realized.

Until recently, milk in gallon containers distributed on routes from the proponent handler's Beckley, West Virginia, pool plant was packaged at his plant in Radford, Virginia, a plant from which no fluid milk products are distributed to wholesale or retail outlets in the marketing area. Since these packaged transfers were considered as a route disposition in the Ohio Valley marketing area from the Radford plant in determining its pool status and since they represented more than 15 percent of the Radford plant's total route disposition, it qualified as a pool plant.

When the equipment for packaging milk in gallon containers was moved from Radford to the Beckley plant, the Radford plant became a nonpool plant and its packaged gallon container requirements have since been received from the Beckley plant. The intent of the handler's proposal is to enable him to again package milk in gallon containers for his Beckley and Radford operations at his Radford plant without this affecting the nonpool plant status of the Radford plant.

The present provision was adopted a number of years ago because custom-bottling for other handlers in this market is a substantial part of some plants' operations compared to their own route disposition. In this circumstance, such plants can not always meet the route disposition percentage requirements for pooling without being credited with the route disposition of the handlers for whom they custom-bottle. Counting the custom-packaged fluid milk products as a route disposition from the plant where packaged (the transferor-plant) assures the pooling of such plant.

When the provision that considers transfers of packaged milk as a route disposition from the transferor-plant to qualify it as a pool plant was adopted, it did not contemplate packaged transfers to a pool plant from a nonpool plant (e.g., Radford). Regulating such a plant, from which no fluid milk products are distributed to wholesale or retail outlets in the marketing area, is not necessary to insure the integrity of the regulation. A plant from which a limited quantity of packaged fluid milk products is transferred to a pool distributing plant cannot reasonably be considered an integral part of the regulated market. This would not be the case, however, if a substantial portion of the fluid milk products processed at the plant were transferred to pool distributing plants. In that circumstance, it could qualify for pooling as a supply plant in the same manner as a plant from which bulk fluid milk products are shipped to pool distributing plants.

Under Ohio Valley and all other Federal orders with marketwide pooling, when fluid milk products transferred to pool plants during the month are insufficient to qualify the transferor-plant as a pool plant, such transfers are considered as a receipt of other source milk at the pool plants. On such transfers classified in Class I, a pool plant operator is required to pay the producer-settlement fund the difference between the Class I price and uniform price value for such milk. This compensatory payment rate has been found as a reasonable and equitable basis for removing any price advantage that a pool plant operator may have for obtaining milk from an unregulated plant rather than from producers or from a regulated plant.

5. *Classifying in Class III the skim milk and butterfat in products containing less than 6.5 percent nonfat milk solids.* The order should specify that the skim milk and butterfat in a product containing less than 6.5 percent nonfat milk solids shall be classified in Class III. The present order specifies no minimum percentage of nonfat milk solids as a basis for determining the classification of skim milk and butterfat in the product. In the absence of a designated classification, such a product is now classified as Class I.

The handler who proposed the order change here adopted supplies lowfat milk to a bottler for use in the production of a beverage comparable to soda pop. The beverage, which contains a very limited amount of milk solids, is sold in competition with soda pop. Providing a Class III classification for the skim milk and butterfat used to produce that product will enable the bottler to continue to use dairy products and to compete more equitably with the manufacturers of similar products.

Fluid products that contain only minimal amounts of nonfat milk solids are not milk products and are not considered as being competitive with fluid milk products. It is appropriate, therefore, to provide a reasonable basis to exclude

such products from the fluid milk product definition and to classify in Class III the skim milk and butterfat used in their manufacture. Excluding from the fluid milk product definition (and including in the Class III classification) the skim milk and butterfat in a product containing less than 6.5 percent nonfat milk solids is an appropriate standard for this purpose.

The major cooperatives in the market excepted to classifying in Class III the skim milk and butterfat in products containing les than 6.5 percent nonfat milk solids. They claimed that "there is no easy way to test for milk solids" and that enforcing the provision would not be feasible.

All handlers must account on their monthly reports to the market administrator for the disposition of the skim milk and butterfat in all milk and milk products received during the month. Each handler is required to maintain complete and accurate records of the quantities of skim milk and butterfat used to produce the various products produced in his plant, or moved to other plants. The handler's records are audited regularly by the market administrator to verify the utilizations claimed by the handler. Also, in verifying the utilizations claimed by the handler on his reports, the market administrator routinely runs laboratory tests to confirm the quantities of butterfat and nonfat milk solids claimed to have been used in the production of the various products.

Through these procedures, the market administrator should be able to ascertain whether a beverage intended as a non-fluid milk product contains less than 6.5 percent nonfat milk solids. To deny a Class III classification for the skim milk and butterfat used to produce a product containing less than 6.5 percent nonfat milk solids, based on the assertion that there is no easy or practical way to test for nonfat milk solids, is not justified.

The provision here adopted is the same as that adopted for 39 orders in the Assistant Secretary's February 2, 1974, decision (39 FR 8452) of which official notice is taken.

6. *Classifying in Class III the skim milk and butterfat in products in hermetically sealed containers.* No change should be made in the classification of skim milk and butterfat in sterilized products in hermetically sealed containers.

The order excludes dietary products and infant formulas in hermetically sealed containers from the fluid milk product definition. The skim milk and butterfat in such products are classified in Class III. In all other instances, skim milk and butterfat are classified on the same basis whether or not the end product is sterilized and packaged in a hermetically sealed container.

A handler proposed that the skim milk and butterfat in all products in hermetically sealed containers be excluded from the fluid milk product definition. This would have the effect of classifying in Class III the skim milk and butterfat in fluid milk products packaged in hermetically sealed containers for which a Class I classification is now specified in the order.

Milk transferred from proponent's and other handlers' pool plants to a nonpool plant is used in the manufacture of a variety of food products. The milk products made at the nonpool plant, all of which are sterilized and packaged in hermetically sealed containers, include a beverage that is marketed for medicinal purposes. Since this beverage falls in the category of a fluid milk product under the order, the skim milk and butterfat in it are classified in Class I.

The product in question is sold for fluid consumption. The production of it apparently requires milk comparable in quality to that in Class I fluid milk products. It is not a manufactured milk product for which a Class II or Class III classification is provided.

The operator of the nonpool plant contended that since all milk products made in his plant are sterilized and packaged in hermetically sealed containers, they are not competitive with unsterilized products. Accordingly, he argued, any sterilized fluid milk product made at his plant should be classified in Class III and not in Class I, as now provided in the order.

The packaging of fluid milk products in hermetically sealed containers, or the sterilization of such products, does not change the form or purpose of such products. As in the case of the unsterilized fluid milk products that they resemble, such products are disposed of in fluid form for fluid consumption as a beverage.

Returns to producers for milk disposed of in the form of fluid milk products should be the same whether such products are sterilized or unsterilized. Such products in either form are marketed for the same or a comparable beverage use. Classifying all such products in Class I assures that returns from producer milk used in sterilized fluid milk products will contribute on the same basis as returns from producer milk used in unsterilized fluid milk products toward inducing an adequate supply of milk for fluid use. Except for dietary products and infant formulas the uniform classification plan for 39 orders, adopted in the Assistant Secretary's February 2, 1974, decision (39 FR 8452), removed any exception to a Class I classification of a fluid milk product that was sterilized or packaged in a hermetically sealed container.

The record of this hearing affords no basis for providing a classification of fluid milk products packaged in hermetically sealed containers different from that which has been found to be appropriate in this and other orders. Accordingly, the proposal to classify the skim milk and butterfat in fluid milk products packaged in hermetically sealed containers in Class III is denied.

7. *Conforming changes.* In § 1033.12 (b) of the order, the term "dairy farmers" should be replaced with the word "producers" and in § 1033.60(g), the term "nonpool plants" should be replaced with the term "unregulated plants". These changes were requested by the Dairy Division to clarify the order language. The wordings adopted will not result in any different application of the order provisions wherein the changes are made. They will, however, remove any ambiguity in the interpretation of the order that might result from the present language.

In § 1033.12(b), which is the definition of a pool supply plant, the word "producers" (which is defined in the order) designates more specifically than "dairy farmers" those persons a specified percentage of whose total deliveries to a supply plant must be transferred to pool distributing plants to qualify the supply plant for pooling.

Paragraph (g) in § 1033.60 is a step in computing the compensatory payment obligation of a handler on milk received from unregulated plants. The present reference to "nonpool plants" instead of "unregulated plants" is technically incorrect. This paragraph has no application to milk received from other order plants, which are nonpool plants but which are not unregulated plants.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RULINGS ON EXCEPTIONS

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Ohio Valley marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

DETERMINATION OF PRODUCER APPROVAL AND REPRESENTATIVE PERIOD

November 1976 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Ohio Valley marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

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

Signed at Washington, D.C. on January 17, 1977.

RICHARD L. FELTNER,
Assistant Secretary.

Order[1] amending the order, regulating the handling of milk in the Ohio Valley marketing area.

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Ohio Valley marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activities specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Ohio Valley marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Program Operations, on October 27, 1976, and published in the FEDERAL REGISTER on (41 FR 47940) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

1. Section 1033.7 is revised as follows:

§ 1033.7 Fluid milk product.

"Fluid milk product" means the following products or mixtures in either fluid or frozen form, including such products or mixtures that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milk shake mixes containing less than 20 percent total solids, and mixtures of cream and milk or skim milk containing less than 10.5 percent butterfat. The term "fluid milk product" shall not include eggnog, yogurt, frozen desserts, frozen dessert mixes, dietary products and infant formulas in hermetically sealed metal or glass containers, evaporated or condensed milk or skim milk in plain or sweetened form, any product containing six percent or more nonmilk fat (or oil), and any product that contains by weight less than 6.5 percent nonfat milk solids.

2. Section 1033.8 is revised as follows:

§ 1033.8 Route disposition.

"Route disposition" means a delivery, either directly or through any distribution facility (including disposition from a plant store or by a vendor or vending machine), of a fluid milk product classified as Class I pursuant to § 1033.41(a), except a delivery to a plant. However, for the single purpose of determining the qualification of a plant as a pool distributing plant, packaged fluid milk products transferred as Class I milk from a plant (except a plant from which no fluid milk products are distributed to wholesale or retail outlets in the marketing area) to another plant shall be considered as route disposition of the transferor-plant and shall be considered as route disposition in the marketing area to the extent of the transferee-plant's route disposition in the marketing area.

3. In § 1033.12, paragraph (a)(2)(i), (ii), and (iii) is revised as follows:

§ 1033.12 Pool plant.

* * * * *

(a) * * *

(2) * * *

(i) Both such route disposition and receipts shall be exclusive of filled milk and of packaged fluid milk products received from other plants if priced as Class I milk under this or any other Federal order;

(ii) A distributing plant (except a plant that qualified under paragraph (a)(2)(iii) of this section) that does not meet such percentage requirement in the current month shall not be disqualified under this subparagraph as a pool plant if such percentage was met in each of the three immediately preceding months; and

(iii) Two or more plants of a handler may be considered as a unit for the purpose of meeting the percentage requirement under this subparagraph in any month for which the handler notifies the market administrator that they should be so considered.

* * * * *

4. In § 1033.12, paragraph (b) is amended by replacing the words "dairy farmers" with the word "producers".

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

5. In § 1033.41, paragraph (c)(1) is revised as follows:

§ 1033.41 Classes of utilization.

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, nonfat dry milk, dry whole milk, dry whey, dry buttermilk, casein, cheese (except cottage cheese and cottage cheese curd), frozen cream, milk shake mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, dietary products and infant formulas in hermetically sealed metal or glass containers, evaporated or condensed milk or skim milk in plain or sweetened form, any product containing six percent or more nonmilk fat (or oil), and any product that contains by weight less than 6.5 percent nonfat milk solids.

* * * * *

§ 1033.60 [Amended]

6. In § 1033.60, paragraph (g) is amended by replacing the words "nonpool plants" with the words "unregulated supply plants".

7. In § 1033.72, a new paragraph (c-1) is added as follows:

§ 1033.72 Payments from the producer-settlement fund.

* * * * *

(c-1) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the day prior to the dates specified in such paragraphs, to each handler who so requests for milk received by the handler from producers for whom a cooperative association is not collecting payments pursuant to paragraph (c) of this section an amount equal to the sum of the individual payments otherwise due them by the respective dates specified in paragraphs (a) and (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months. In making payments to producers pursuant to this paragraph, the handler shall furnish each producer the following information:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

* * * * *

[FR Doc.77-2175 Filed 1-21-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 70-SW-62]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to designate a transition area at McGehee, Ark.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before February 23, 1977, will be considered before action is taken on the proposed amendment. No public 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 part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (42 F.R. 440), the following transition area is added:

MCGEHEE, ARK.

That airspace extending upward from 700 feet above the surface within a 6.5-statute-mile radius of McGehee Municipal Airport, McGehee, Ark. (latitude 33°37'15" N., longitude 91°22'00" W.).

The transition area will provide controlled airspace for aircraft executing a proposed VOR/DME instrument approach procedure to McGehee Municipal Airport. Coincident with this action, the airport will be changed from VFR to IFR.

The FAA 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.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655 (c)).

Issued in Fort Worth, Texas, on January 11, 1977.

PAUL J. BAKER,
Director, Southwest Region.

[FR Doc. 77-2080 Filed 1-21-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-SW-64]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter the Dallas-Fort Worth, Tex., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before February 23, 1977, will be considered before action is taken on the proposed amendment. No public 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 part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Council, Southwest Region, Federal Aviation Administration, Fort Worth, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (42 F.R. 440), the Dallas-Fort Worth, Tex., transition area is amended to read, in part, by deleting: "to latitude 32°44'00" N., longitude 96°26'-00" W.; to latitude 32°34'00" N., longitude 96°37'00" W.; and substituting therefor: "to latitude 32°44'00" N., longitude 96°26'00" W.; to latitude 32°41'-00" N., longitude 96°29'30" W.; to latitude 32°37'30" N., longitude 96°30'15" W.; to latitude 32°37'45" N., longitude 96°32'45" W.; to latitude 32°34'00" N., longitude 96°37'00" W.;".

Alteration of the transition area is necessary to provide controlled airspace for a standard instrument approach procedure (NDB-A., Original) to the Hudson Airport, Mesquite, Tex.

This notice will also apprise airspace users of a proposal to change the airport category from VFR to IFR operations.

The FAA has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Ex-

ecutive Order 11821 and OMB Circular A-107.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Fort Worth, Texas, on January 11, 1977.

PAUL J. BAKER,
Acting Director, Southwest Region.

[FR Doc.77-2081 Filed 1-21-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-SW-63]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter the Monroe, La., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before February 23, 1977, will be considered before action is taken on the proposed amendment. No public 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 part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Texas. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (42 FR 440), the Monroe, La., transition area is amended as follows:

MONROE, LA.

That airspace extending upward from 700 feet above the surface within a 20-mile radius of the Monroe Municipal Airport (latitude 32°30'30" N., longitude 90°02'20" W.); and within an 8.5-mile radius of Morehouse Memorial Airport, Bastrop, La. (latitude 32° 45'25" N., longitude 91°52'50" W.); and within an 8.5-mile radius of Rayville Municipal Airport, Rayville, La. (latitude 32°29' 00" N., longitude 91°46'15" W.).

The proposed alteration will provide the necessary controlled airspace required for radar operations that will be conducted upon completion of the radar installation at the Monroe Municipal Airport.

The FAA 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.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Fort Worth, Tex., on January 11, 1977.

PAUL J. BAKER,
Acting Director, Southwest Region.

[FR Doc.77-2082 Filed 1-21-77;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 76-AL-12]

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 Yakataga, Alaska, transition area.

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Alaskan Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 632 Sixth Avenue, Anchorage, Alaska 99501. All communications received on or before February 23, 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 delete the Yakataga, Alaska, Transition Area and substitute the following:

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Yakataga Airport (Lat. 60°04'57" N., Long. 142°29'30" W.); within 3 miles each side of the 268°T (240°M) bearing from the Yakataga NDB, extending from the 5-mile radius area to 18 miles west of the NDB.

The proposed 700 feet transition area would accommodate the revised instrument approach procedure predicated on the 268°T (240°M) bearing of the Yakataga NDB. The 1200 feet transition area would no longer be required.

This amendment is proposed under the autority of section 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 section 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.77-2083 Filed 1-21-77;8:45 am]

[14 CFR Part 152]

[Docket No. 16419; Notice No. 77-1]

AIRPORT AND AIRWAY DEVELOPMENT ACT AMENDMENTS OF 1976: CIVIL RIGHTS

Notice of Proposed Rule Making

Correction

In FR Doc. 77-1245, appearing at page 2850 in the issue for Thursday, January 13, 1977, the next to last line of § 152.151 on page 2851, second column, should read, "action may not be brought against the".

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Parts 1 and 155]

TRADING STANDARDS AND RECORDS OF CASH COMMODITY AND FUTURES TRANSACTIONS

Proposed Amendments; Extension of Comment Period

NOTE.—For a document extending the comment period on a proposal appearing at 41 FR 55887, December 23, 1976 see FR Doc. 77-2282 appearing in the Rules and Regulations section in this issue.

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 201]

[Docket RM 76-1]

TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM

Extension of Comment Period

This notice extends the period for public comments in response to the notice, published November 15, 1976 (41 FR 50300), proposing a new regulation to govern the form, content, manner of service, and recordation of notices of termination of transfers and licenses of the renewal term of copyright as extended by Pub. L. 94-553 (90 Stat. 2541).

(NOTE.—The notice published on November 15, 1976 also proposed a new regulation pertaining to the filing of agreements between copyright owners and public broadcasting entities, an amendment of the Copyright Office regulation prohibiting the use of Office records for the purpose of compiling mailing lists, and technical corrections of other regulations. These proposals are not subject to this extension.)

A number of comments were received by the Copyright Office in response to the earlier notice. The purpose of this extension is to permit comment upon, reply to, or reconciliation of the comments already received, particularly those pertaining to the following matters:

1. Whether the list of elements required as "contents" of the notice of termination in proposed regulation § 201.10 (b) should be expanded, contracted, or otherwise modified;

2. Issues arising in cases where a further transfer has been made by the original grantee or grantees; and

3. Whether the method of service prescribed in proposed regulation § 201.10 (d) should be modified.

Copies of the comments received in response to the earlier notice are available for public inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, in the Public Information Office of the Copyright Office, Room No. 101, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

The comment period is hereby extended to February 15, 1977. Submissions made in response to this notice should be addressed to the Office of the General Counsel, Copyright Office, Washington, D.C. 20559.

Dated: January 9, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved by:

DANIEL J. BOORSTIN,
Librarian of Congress.

[FR Doc.71-2318 Filed 1-21-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 674-1]

ALABAMA: PROPOSED PLAN REVISION

Approval and Promulgation of Implementation Plans

On May 31, 1972 (37 FR 10847) the Administrator approved the Alabama plan to attain and maintain the National Ambient Air Quality Standards. Numerous revisions have been made in the original plan since that date to improve its effectiveness. On June 30, 1976, and October 28, 1976, the State of Alabama submitted, for EPA's approval, further changes in the Alabama State implementation plan. These changes involve standards of performance for new stationary sources and continuous in-stack monitoring of stationary sources. The purpose of this notice is to announce these revisions as proposed rulemaking and to solicit comment on them.

On May 25, 1976, after notice and public hearing, the Alabama Air Pollution Control Commission acted to incorporate by reference in its Air Pollution Control Rules and Regulations the Environmental Protection Agency's Standards of Performance for New Stationary Sources, including the requirements for continuous monitoring (40 CFR Part 60, Section 60.2, Definitions of Subpart A and Subparts D through Y and AA). In submitting these revisions, Alabama also requested delegation of responsibility for enforcement of the Federal new source performance standards, and on September 20, 1976 (41 FR 40467), this authority was delegated.

On October 6, 1975, the Environmental Protection Agency promulgated revisions in 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans. Section 51.19 was expanded to require States to revise their implementation plans to include a mechanism for requiring certain specified categories of existing stationary sources to monitor emissions on a continuous basis. States are required to revise their plans to include legally enforceable procedures to require emission monitoring, recording, and reporting for at least the following source categories: coal and oil-fired steam generators of more than 250 million BTU per hour heat input, nitric acid plants, sulfuric acid plants, and petroleum refinery fluid bed catalytic cracking unit catalyst regenerators.

After proper notice and public hearing, the Alabama Air Pollution Control Commission revised its regulations on October 26, 1976, to satisfy the revised requirements of 40 CFR 51.19. No provision was made for the continuous monitoring of nitrogen oxide emissions from fossil fuel-fired steam generators and nitric acid plants since no Air Quality Control Regions in Alabama are required to develop a control strategy for nitrogen dioxide. Also, opacity monitoring for existing petroleum refinery fluid bed catalytic cracking unit catalyst regenerators is not required in the proposal since no units of greater than 20,000 barrels per day of fresh feed capacity exist in Alabama. The exclusions above are provided for an Appendix P to 40 CFR Part 51. Fossil fuel-fired steam generators and sulfuric acid plants which are constructed after August 17, 1971, are required to install, calibrate, operate and maintain all monitoring equipment necessary for continuously monitoring pollutants. The fossil fuel-fired steam generators with an annual capacity factor greater than thirty percent, and a heat input greater than 250 million BTUs per hour, shall conform to the monitoring requirements set forth in Appendix P to 40 CFR Part 51, and in the performance specifications of Appendix B to 40 CFR Part 60. When gaseous fuel or an oil and gas mixture is burned and the source complies with particulate matter and opacity regulations, these requirements do not apply. Sulfuric acid plants with greater than 300 tons per day production capacity, the production being expressed as 100 percent acid, shall conform to the monitoring procedures in Appendix B to 40 CFR Part 60 and minimum specifications in Appendix P to 40 CFR Part 51.

The Director of the Commission may exempt any source from these requirements if the source is scheduled for permanent shutdown by October 6, 1980, with the appropriate legal guarantees. He may also grant extensions to those unable to meet 18-month time frame.

Copies of the information submitted by Alabama and the Alabama plan itself may be examined by the public during normal hours at the following locations:

Air Programs Branch, Air and Hazardous Materials Division, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30308.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Alabama Air Pollution Control Commission, State of Alabama Department of Public Health, 645 South McDonough Street, Montgomery, Alabama 36104.

Interested persons are encouraged to submit written comments on the Alabama plan revisions. To be considered, such comments must be received on or before February 23, 1977 and should be addressed to Eliot Cooper of the Agency's Region IV Air Programs Branch in Atlanta (see address above). After carefully weighing relevant comments received and all other information available to him, the Administrator will take approval/disapproval action on these changes in the Alabama plan.

(Section 110 of the Clean Air Act (42 U.S.C. 1857c-5))

Dated: January 13, 1977.

JOHN A. LITTLE,
Acting Regional Administrator.

[FR Doc.77-1972 Filed 1-21-77;8:45 am]

[40 CFR Part 52]

[FRL 673-8]

NORTH CAROLINA: PROPOSED PLAN REVISIONS

Approval and Promulgation of Implementation Plans

On May 31, 1972 (37 FR 10859), the Administrator approved the North Carolina plan to attain and maintain the national ambient air quality standards in that State. The State subsequently made a number of revisions in the plan's regulations to improve its effectiveness. On October 21, 1976, after notice and public hearing, the North Carolina Environmental Management Commission of the North Carolina Department of Natural and Economic Resources adopted additional changes in its air pollution control regulations. These changes include: (1) Copies of Referenced Federal Regulations (two new regulations, one in Emission Control Standards Section, one in Air Contaminants; Monitoring, Reporting Section); (2) Amendments to Episode Criteria; (3) Series of Minor Amendments to Air Pollution Control Requirements Subchapter with exception of Emission Control Standards Section; (4) Amendments to Particulates from Miscellaneous Industrial Processes; (5) Amendments to (Permit) Applications; (6) (Post Attainment Policy) Extensions, Modifications; (7) Amendments to Control and Prohibition of Open Burning.

Item (1) given notice where referenced sections of the Code of Federal Regulations are available for public inspection.

Item (2) changes oxidant emergency levels to conform with the Environmental Protection Agency (EPA) regulatory requirements and North Carolina legislative changes. These levels are: 200 μg/m3 (0.1ppm), 1-hour average (alert); 800 μg/m3 (0.4ppm), 1-hour average (warning); and 1000 μg/m3 (0.5 ppm), 1-hour average (emergency).

Item (3) are corrections and clarifications and are not policy or procedural changes in the Emission Control Standards Section.

Item (4) slightly modifies the applicable sources and clarifies other aspects of particulates from Miscellaneous Industrial Processes Emission Control Standards.

Item (5) subjects to public comment permit applications and ambient effect analyses for sources on EPA's list to be reviewed for Prevention of Significant Deterioration, as a minimum.

Item (6) sets forth requirements and procedures for extensions and modifications in extraordinary cases.

Item (7) clarifies the exception for fire-fighting instruction and training from Control and Prohibition of Open Burning Emission Control Standards.

Copies of the information submitted by North Carolina may be examined by the public during normal business hours at the following locations:

Air Programs Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

North Carolina Department of Natural and Economic Resources, Division of Environmental Management, 216 West Jones Street, Raleigh, North Carolina 27611.

Interested persons are encouraged to submit written comments on the North Carolina plan revisions. To be considered, such comments must be received on or before February 23, 1977, and should be addressed to Eliot Cooper of the Agency's Region IV Air Programs Branch in Atlanta (see address above). After carefully weighing relevant comments received and all other information available to him, the Administrator will take approval/disapproval action on these changes in the North Carolina plan.

(Section 110 of the Clean Air Act (42 U.S.C. 1857c-5))

Dated: January 13, 1977.

JOHN A. LITTLE,
Acting Regional Administrator.

[FR Doc.77-1974 Filed 1-21-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Assistant Secretary for Planning and Evaluation

[45 CFR Part 63]

TELECOMMUNICATIONS DEMONSTRATIONS

Grant Regulations

Section 392A of the Communications Act of 1934, as amended by Section 8 of the Educational Broadcasting Facilities and Telecommunications Demonstrations Act of 1976, (47 U.S.C. 392a), establishes a program to promote the development of telecommunications facilities and services for the transmission, distribution, and delivery of health, education, and public or social service information. The Secretary of Health, Education, and Welfare (hereafter the Secretary) is authorized to make grants to, and enter into contracts with public and private non-profit agencies, organizations, and institutions for the purpose of carrying out telecommunications demonstrations. The Secretary is also authorized to prescribe the regulations, terms, and conditions governing the selection, award, and administration of such grants (use of the *contract* as opposed to the *grant* authority is not planned). This authority has been delegated to the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary).

Therefore, pursuant to Section 392A of the Act, the Assistant Secretary, with the approval of the Secretary, is establishing rules and procedures for the award of grant assistance. This is being done by amending 45 CFR Part 63, Grant Programs Administered by the Assistant Secretary for Planning and Evaluation. The principal effect of those regulations is to adopt, with minor changes, 45 CFR Part 74, Administration of Grants, which establishes uniform administrative standards and cost principles for HEW grants.

This notice does not constitute a solicitation of grant proposals. Any such solicitation will be published at a later date.

Regulations governing the Educational Broadcasting Facilities Program, which is also authorized by Section 392 of Pub. L. 94-309, can be found in 47 CFR Part 153.

The following brief analysis of the proposed regulations summarizes the intent of the various paragraphs.

The purpose of the changes described in paragraphs 2, 4, 5, 6, 7, 8, and 10 is merely to make the editorial changes in format and wording of 45 CFR Part 63 to accommodate the additional provisions necessary for the Telecommunications Demonstrations.

The language of paragraph 3, explaining the overall objective of the Telecommunications Demonstrations Program is taken verbatim from Section 392A of the Communications Act of 1934.

Paragraph 9 establishes the criteria which will be used for review and evaluation of grant applications in conjunction with any supplemental criteria which may be published later in a solicitation for grant applications.

Paragraph 11 sets forth restrictions on the use of funds, requirements for coordination with the Federal Communications Commission and a definition of "non-broadcast telecommunications facilities."

Interested persons are invited to submit written comments, suggestions, or objections regarding these provisions to the Office of the Assistant Secretary for Planning and Evaluation, Attention: Grants Officer, Room 422E, D/HEW, 200 Independence Avenue, SW, Washington, D.C. 20201. Comments received in response to this notice will be available for public inspection at the above office on Mondays through Fridays between 9:00 a.m. and 5:30 p.m. All relevant materials

received on or before March 10, 1977, will be considered. If no substantial comments are received, these regulations will take effect immediately upon republication in the FEDERAL REGISTER as final rules.

NOTE.—It is hereby certified that this proposal has been screened pursuant to Executive Order No. 11821, and does not require an Inflation Impact Evaluation.

Dated: January 3, 1977.

WILLIAM A. MORRILL,
Assistant Secretary for Planning and Evaluation.

Dated: January 18, 1977.

MARJORIE LYNCH,
Acting Secretary of Health, Education, and Welfare.

Therefore, it is proposed to amend 45 CFR Part 63 as follows:

PART 63—GRANT PROGRAMS ADMINISTERED BY THE OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION

1. By amending § 63.1 as follows:

a. By revising the second sentence of paragraph (a);

b. By revising the heading of paragraph (c); and

c. By adding a new paragraph (c)(2).

§ 63.1 Purpose and scope.

(a) * * * Such grants include those under section 232 of the Community Services Act (42 U.S.C. 2835), section 1110 of the Social Security Act (42 U.S.C. 1310), section 392A of the Communications Act of 1934, and such other authority as may be delegated to the Assistant Secretary for policy research activities. * * *

* * * * *

(c) *Objectives*—(1) *Policy Research.* * * *

(2) *Telecommunications Demonstrations.* The overall objective of the Telecommunications. Demonstrations Program is to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution, and delivery of health, education, and social service information.

§ 63.2 [Amended]

2. By adding after the words "Projects Eligible" in paragraph (b) of § 63.2 a new subparagraph heading as follows:

(b) * * * (1) *Policy Research.* * * *

3. By adding to paragraph (b) § 63.2 a new paragraph to read as follows:

(b) * * *

(2) *Telecommunications Demonstrations.* Any projects which meet the special criteria in § 63.6(c) shall be eligible for a telecommunications demonstration grant.

§ 63.6 [Amended]

4. By revising the last sentence of paragraph (a) of § 63.6 to read as follows:

(a) * * * Such supplements may modify the criteria in paragraphs (b) and (c) of this section to provide greater specificity or otherwise improve their applicability to a given announcement or solicitation.

* * * * *

7. By revising the heading of paragraph (b) of § 63.6 to read as follows:

* * * * *

(b) *Criteria for Evaluation of Policy Research Projects.* * * *

8. By adding after the end of paragraphs (b)(8) of § 63.6 the word "and"; deleting the word "and" from the end of paragraph (b)(9) and inserting in lieu thereof a period; and by redesignating paragraph (b)(10) as paragraph (d) and inserting as a heading thereof (d) *Applicants Performance on Prior Award.*

9. By inserting, after paragraph (b) of § 63.6 a new paragraph (c) to read as follows:

(c) *Criteria for Evaluation of Telecommunications Demonstrations Projects.* Review of applications for Telecommunications Demonstrations grants will take into account such factors as are listed in paragraphs (c)(1) through (10) of this section. Each applicant must include in the application, prior to final evaluation by ASPE, documentation indicating specifically and separately how and to what extent each of these criteria have been or will be met:

(1) That the project for which application is made demonstrate innovative methods or techniques of utilizing nonbroadcast telecommunications equipment or facilities to satisfy the purpose of this authority;

(2) That the project will have original research value which will demonstrate to other potential users that such methods or techniques are feasible and cost-effective;

(3) That the services to be provided are responsive to local needs as identified and assessed by the applicant;

(4) That the applicant has assessed existing telecommunications facilities (if any) in the proposed service area and explored their use of interconnection in conjunction with the project;

(5) That there is significant local commitment (e.g., evidence of support, participation, and contribution by local institutions and agencies) to the proposed project, indicating that it fulfills local needs, and gives some promise that operational systems will result from successful demonstrations and will be supported by service recipients or providers;

(6) That demonstrations and related activities assisted under this section will remain under the administration and control of the applicant;

(7) That the applicant has the managerial and technical capability to carry out the project for which the application is made;

(8) That the facilities and equipment acquired or developed pursuant to the applications will be used substantially for the transmission, distribution, and delivery of health, education, or social service information, and that use of such facilities and equipment may be shared among these and additional public or other services;

(9) That the provision has been made to submit a summary and factual evaluation of the results of the demonstration at least annually for each year in which funds are received, in the form of a report suitable for dissemination to groups representative of national health, education, and social service telecommunications interests; and,

(10) That the project has potential for stimulating cooperation and sharing among institutions and agencies, both within and across disciplines.

§ 63.16 [Amended]

10. By adding at the end of § 63.16 the following: ", except as specified in § 63.23 of this subpart."

11. By adding a new section at the end of subpart B to read as follows:

§ 63.23 Broadcast and Telecommunications Demonstrations Grants.

The provision of this section apply only to grants awarded under authority of 392A of the Communications Act of 1934.

(a) Funds provided under the Telecommunications Demonstrations Program shall be available to support the planning, development, and acquisition or leasing of facilities and equipment necessary to the demonstration. However, funds shall not be available for the construction, remodeling, or repair of structures to house facilities or equipment acquired or developed with such funds, except that such funds may be used for minor remodeling which is necessary for and incident to the installation of such facilities or equipment.

(b) Funds shall not be available for the development of programming materials or content.

(c) The funding of any demonstration under this authority shall continue for not more than three years from the date of the original grant or contract.

(d) The use of equipment in demonstration projects shall be subject to the rules and regulations of the Federal Communications Commission (FCC), an grant funds may not be expended or obligated for purchase, lease, or use of such equipment prior to appropriate and necessary coordination by the grantee with the Commission. In particular:

(1) Any FCC authorization or authorizations required for the project must be on file with the FCC.

(2) If the project is to be associated with an existing telecommunications activity requiring an FCC authorization, such operating authority for that activity must be current and valid.

(3) For any project requiring a new or modification of an existing authorization(s) from the FCC, the applicant must file with the Secretary of Health, Education, and Welfare a copy of each FCC application and any amendments thereto.

(4) For any project requiring a new or modification of an existing authorization(s) from the FCC, the applicant must file with the FCC a copy of the application to the Secretary for a telecommunications demonstration grant.

(5) If the applicant fails to file a required application or applications by the closing date established pursuant to these regulations, or if the FCC returns, dismisses, or denies an application required for the project, or any part thereof, or for the operation of any facility with which the project is associated, the Secretary may return the application for Federal assistance.

(e) For the purposes of this program, the term 'non-broadcast telecommunications facilities' includes but is not limited to, cable television systems, communications satellite systems and related terminal equipment, and other methods of transmitting, emitting, or receiving images and sounds or intelligence by means of wire, radio, optical, electromagnetic, and other means (including non-broadcast utilization of telecommunications equipment normally associated with broadcasting use).

(f) Each applicant shall provide such information as the ASPE deems necessary to make a Federal assessment of the impact of the project on the quality of the human environment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (including the National Historical Preservation Act and other environmental acts). (42 U.S.C. 4332(2)(C)).

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Office of the Secretary

[45 CFR Part 74]

ADMINISTRATION OF GRANTS

Proposed Amendments Primarily To Implement OMB Circular No. A-110

Background. On July 30, 1976, the Office of Management and Budget (OMB), at 41 FR 32016, published OMB Circular No. A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations—Uniform Administrative Requirements." For grants to those types of organizations, the circular prescribes policies to be followed in a number of areas of general grants administration (e.g., reporting by grantees, payment methods, treatment of grant-related income). Essentially, the circular extends to grants to nongovernmental organizations the same policies, with some modifications, as have already been promulgated for grants to States and local governments by Federal Management Circular (FMC) 74-7 (formerly OMB Circular No. A-102). The objectives of both these circulars are to standardize and simplify grants administration and to place greater reliance on the grantees' own management systems.

OMB Circular No. A-110 is addressed to Federal agencies. The policies it promulgates must be incorporated, with such modifications or additions as appropriate, into regulations and other legally binding issuances of Federal agencies. As the first and principal step to accomplish this, the Department of Health, Education, and Welfare (HEW) proposes to amend, as set forth below, its Departmentwide grants administration regulation in 45 CFR Part 74. As soon as possible after these amendments are issued in final form, HEW will issue conforming amendments to its individual grant program regulations.

Changes: 1. Extension of Applicability to Nongovernmental Organizations. Part 74 currently applies by its own terms to grants to States, local governments, and Federally recognized Indian tribal governments, that is, to grants subject to FMC 74-7. HEW granting agencies, however, have had the option to apply all or portions of Part 74 to their grants to nongovernmental organizations as well, and this option has been widely exercised.

Now that Part 74 is to be used to implement the new OMB Circular No. A-110 as well as FMC 74-7, the amendments being proposed will extend the mandatory applicability of the part to grants to the nongovernmental grantees that are subject to the new circular. Because HEW granting agencies, as explained above, have to a large extent already extended the applicability of Part 74 to their grants to those organizations, this change will have much less impact on the grantee community than would otherwise be the case.

Because of differences between the two circulars, it will not always be possible to apply the same rules to grants to nongovernmental organizations as to grants to governments. Where a provision is intended to apply to one class of grants and not the other, the provision will so state. In accordance with the two circulars, grants to government-operated hospitals and grants to government-operated institutions of higher education are made subject to the same rules as grants to nongovernmental organizations (see § 74.4).

Changes: 2. Adoption of OMB Circular No. A-110 Changes. Most of the changes in the proposed amendments are simply adoptions of provisions in OMB Circular No. A-110 that differ, in one way or another, from their counterparts in FMC 74-7. Many of these differences between the two circulars represent merely a clearer way of expressing the same intent, and are not substantive changes. Of those that are substantive, most result in less restrictive requirements on grantees or more options available to granting agencies in selecting rules that best fit the programs for which they are responsible. Examples of substantive difference are:

(a) It is specified that the periodic audits grantees are required to have performed need include only a sampling of Federal grants.

(b) A liberalization is made in the exception which allows grantees to use or sell, without compensation to the Federal Government, nonexpendable personal property acquired under a grant when the property can no longer be used for Federally sponsored activities. The exception is made to apply to property with a unit acquisition cost of up to $1,000 rather than just to property costing less than $500 per unit and used four years or more.

(c) Granting agencies may approve counting the full value of donated property for cost-sharing or matching purposes in some circumstances where previously only amounts equal to depreciation or use charges were allowed.

The majority of the substantive differences between OMB Circular No. A-110 and FMC 74-7 are not based on differences in the types of grantees affected by the two circulars. Rather, the A-110 provisions are intended to be improvements over their counterparts in FMC 74-7. Accordingly, and with the concurrence of OMB, the proposed amendments apply most of these improvements to all classes of grantees.

Changes: 3. Changes Based on HEW Experience. HEW has now had over three years' experience administering grants pursuant to Part 74. As would be expected, a number of problems in Part 74 have been identified by grantees and others. Many of the changes in the proposed amendments represent attempts to solve these problems. In some cases, an existing provision is clarified or modified to ensure that its intent is understood and achieved; in other cases, a provision is added to deal with a situation or aspect not now adequately covered. Examples are:

(a) The definition of "grantee" is revised to make clear that the term means the entire legal entity receiving the grant, not just the particular component (such as a welfare department of a State, or a school of medicine of a university) named in the award document. This clarification, it is hoped, will help clarify other provisions in Part 74. For example, the Procurement Standards in Subpart P apply to the procurement of goods and services by the grantee from third parties and not to transfers of goods and services within the grantee. Therefore, it should become clear that those standards do not apply to the acquisition by one component of goods or services from another component of the same legal entity.

(b) In the subpart on grant-related income (Subpart F), provisions are added dealing with (1) income earned from copyrighted works developed under a grant other than income specifically in the form of copyright royalties and (2) income earned after the period of grant support from a residual inventory of tangible personal property acquired primarily for sale or rental rather than for use in the supported activities.

(c) A provision is added (§ 74.54) explaining how to determine to what grant period or funding period a third-party in-kind contribution is to be credited for the purpose of counting its value toward satisfying cost-sharing or matching requirements.

Change: 4. Extension of Applicability to Subrecipients. OMB Circular No. A-110 makes clear that a number of the Government-wide policies it promulgates are intended to be applied to subrecipients, that is, to subgrantees and to contractors under grants. Accordingly, these proposed amendments extend the provisions implementing those policies to

all or certain classes of such subrecipients. In addition, in a number of cases, it has been found necessary to add amplifying provisions dealing specifically with the requirements of a policy as they affect subrecipients.

In developing the proposed provisions for subrecipients, HEW has attempted to keep requirements to a minimum and as simple and nonrestrictive as possible. In particular, an attempt has been made not to intrude into the relationship between the grantee and its subrecipients and to allow the grantee to maintain all its customary prerogatives. For example, the property rules (Subpart O) provide that, in the case of real or tangible personal property acquired by subrecipients, the division of the non-Federal share of the market value or proceeds from sale of the property upon disposition shall be determined by the non-Federal parties involved and not by rules prescribed by the Federal Government.

Treatment of Options. The degree of latitude allowed Federal agencies by OMB Circular No. A–110 and FMC 74–7 varies from area to area. In some areas, such as standards for grantee financial management systems, agencies are flatly prohibited from imposing additional requirements on grantees unless the requirements are pursuant to applicable Federal statutes. In other areas, such as treatment of royalties earned on copyrighted works developed under a grant, virtually unlimited discretion is allowed. In still other areas, such as treatment of general program income, a limited number of specific alternatives are provided.

The amendments being proposed continue the current practice of passing down to individual HEW granting agencies most of the options, alternatives, and other choices explicitly stated or clearly implied in the circulars. A granting agency may exercise its options in these discretionary policy areas by setting a single rule for grants under all its programs, by setting different rules for different programs or for different classes of grants, or by making individual decisions on a grant-by-grant basis. In almost all cases, the amendments set forth a back-up policy that will govern if a granting agency remains silent on the question involved.

The purpose of passing down the options to granting agencies is to ensure that the granting agencies are able to adopt policies in these areas that are responsive to the specific needs of their grantees or grant programs. These options are of the kind that are best exercised in the light of the particular circumstances involved or the particular objectives of the grant programs or grants affected. In some cases, the diversity of grant programs administered by HEW would, in fact, make it impossible to establish a single policy that would be appropriate and effective for all HEW grants. For example, the circulars permit Federal agencies to allow or to prohibit counting towards satisfying a cost-sharing or matching requirement costs which are financed by program income earned by the grantee. A decision on this matter which would be appropriate in one HEW program may defeat the very purposes for the cost-sharing requirement in another.

Exceptions to Treatment of Options. In a few cases, however, the amendments being proposed would eliminate an option now available to HEW granting agencies. For example, Part 74 now allows granting agencies to require that grantees obtain their prior approval before making transfers among direct cost object class categories in a grant budget if the cumulative amount of those transfers would exceed an amount specified by Part 74. Because this option has proven of limited value as a tool for exercising proper stewardship of grant funds and because HEW wishes, wherever feasible, to place greater reliance on grantees to manage their own projects, it is proposed to eliminate this option.

Another example pertains to the option Part 74 now gives granting agencies of reserving the right to require grantees to transfer to the Federal Government or to a third party named by the Federal Government any item of nonexpendable personal property (equipment) acquired under a grant which cost $1,000 or more. This right is seldom exercised in HEW, and for the most part only where a grant project is transferred from one institution to another, as may occur when the principal investigator of a research project transfers to another institution. Although the right is infrequently exercised, it is believed prudent for a granting agency to always reserve it, simply as a precaution. Consequently, those amendments include a blanket reservation of the right for all HEW granting agencies for all covered grants. (See § 74.135 in the proposed amendments.)

Issues. In the immediately succeeding sections of this preamble, several significant issues in grants administration are identified. Each of these issues falls within the scope of Part 74 but, HEW believes, is now not adequately resolved in that part. In addition, each of these issues arises in an area in which OMB Circular No. A–110 and FMC 74–7 appear to permit a degree of discretion on the part of Federal agencies. HEW is therefore including in the proposed amendments changes to Part 74 which it hopes will effect significant improvements in that part's treatment of the issues. Comments would be particularly welcome in regard to these issues and HEW's proposed treatment of them in Part 74.

Issue No. 1. Income Earned on Cost-Reimbursement Basis. In some cases, grantees (or subgrantees) may earn income from activities supported by a grant. For example, under certain circumstances, a grantee will charge fees for services whose costs are borne by the grant. Subpart F of Part 74 sets forth policy governing how such program income is to be used and accounted for.

In some cases, a grantee or subgrantee may provide services to a third party under a cost-type contract awarded by that party. Under this type of contract, the purchaser's payments are based on the actual costs incurred by the grantee or subgrantee in providing the services, with or without an increment above costs for profit. Thus, some or all of this income could be identified as applicable to specific costs that could also be borne by the grant. The issue is what effect such income should have on the grant.

HEW proposes to treat this type of income (i.e., reimbursements for the actual costs of services sold) in the same way as general program income earned on a lump sum basis without regard to actual costs (e.g., from a fixed price contract). Under this approach, the disposition of the income would depend upon which of two alternatives is prescribed by the granting agency for general program income. Under one alternative, the income must be applied to allowable costs of the grant-supported project in the period in which earned; since these costs would be offset by the income, they would not in effect be borne by the grant. Under the second alternative, a more liberal one, the income must be applied to costs of activities that further the objectives of the Federal legislation under which the grant was made, but not necessarily to the allowable costs of the particular project supported by the grant.

If, under that second alternative, the grantee applies the income to costs of a different project, some of the costs that were used to calculate the income from the cost-type procurement contract could be borne by the grant. This may create a situation in which it appears at first glance that the grantee is unjustly enriched by being paid twice for the same costs—once from the granting agency and once from the third-party purchaser of the services.

In reality, however, there would be no such unjust enrichment; the income from the contract, although calculated on the basis of costs borne by the grant, would actually be applied to other costs as permitted by the more liberal income alternative of the grant.

An alternative approach was considered under which all costs that are used to calculate the amount of the payments from the cost-type contract would be unallowable as charges to the grant. This approach was rejected because, in effect, it requires that the income be used for those costs, thus unnecessarily negating the more liberal alternative in Subpart F. This would amount to an indirect or hidden penalty merely for having agreed to a cost-type, rather than fixed-price, contract for sale of the services to the third-party. The main difference between the two types of contracts lies in how the parties determine the amounts to be paid for the services. This difference does not seem to warrant treating income from the two types of contracts differently.

Issue No. 2. Replacement of Property. Subpart O of Part 74 implements the government-wide rules concerning nonexpendable personal property (i.e., equipment) acquired under a grant. These rules require that the property be used in the grantee's Federally sponsored activities as long as there is a need for the property in those activities. When an

item of property can no longer be so used, rules concerning disposition of property must be observed. For items of property originally costing over a specified amount ($1,000 in the proposed amendments) the rules will result either (1) in the grantee's compensating the Federal Government for the Federal share of the current fair market value or proceeds from sale of the property or (2) in the grantee's shipping or otherwise disposing of the property in accordance with the granting agency's instructions.

A serious problem resulting from these rules has come to HEW's attention. The problem arises when the item of property is no longer efficient or serviceable but otherwise continues to be needed in the grantee's Federally supported activities. Ordinarily, one would expect a well-managed organization to trade the property in for a replacement, or sell it and apply the proceeds towards the cost of its replacement. However, the current regulation, if literally interpreted, requires that the disposition rules be followed before any trade-in or sale can take place. These disposition rules, by requiring the grantee either to compensate the Federal Government or to dispose of the property as instructed, obviously can prevent or discourage the grantee from making the trade-in or sale.

HEW proposes to explicitly permit replacement of nonexpendable personal property subject to certain requirements and to treat such replacement as not subject to the disposition rules. Under the proposed procedure, the Federal share in the property replaced would be transferred, with suitable adjustment, to the replacement property, and the replacement property would be subject to the same rules that applied to the property replaced.

HEW is not aware of any plausible alternative treatment of this issue other than retention of the current rules that do not provide for replacement of property.

Issue No. 3. Federal Share of Property. Several of the rules in Subpart O, Property, of Part 74 require a determination of the Federal share of real property or of tangible personal property (equipment and supplies) acquired under a grant. In certain situations, this Federal share figure (which is usually expressed as a percentage) will be applied against the market value of the property or the proceeds from sale of the property in order to determine how much money is due the Federal Government upon disposition of the property.

OMB Circular No. A-110, in effect, equates the Federal share of property to "the percentage of Federal participation in the cost of the original project or program." The intent seems clear: to ensure that the Federal share of the property is computed fairly and is independent of whether the accounting system of the grantee charges the acquisition cost of the item of property to Federal funds or to cost sharing or matching. However, HEW believes that the rule given in the circular needs considerable amplification in order to provide for all the situations in which it is necessary to determine the Federal share of property. For example, provision must be made for property acquired by subgrantees and for replacement property. In addition, HEW feels that, when Federal funds and required cost sharing or matching account for only a portion of the project or program, it should not be necessary for the grantee to report or account for the voluntary additional cost sharing or overmatching merely to calculate the Federal share in property acquired in whole or in part under the grant.

HEW is proposing a set of rules for calculating the Federal share which it believes will achieve the desired objectives. These rules together with their rationale are set forth beginning at § 74.142 of the proposed amendments. HEW believes that these rules will resolve the issue of how to calculate the Federal share of real or tangible property acquired under a grant in a manner that is correct and fair to everyone concerned.

Two aspects of this issue deserve special attention. The first is the question whether the values of third-party in-kind contributions should be included in the calculations of the non-Federal share of property acquired under a grant. The proposed amendments exclude them since such contributions do not make the donor a party to the acquisition of the property and are not part of the funds used for the actual outlays of the grantee.

The second aspect deserving attention relates to costs financed by program income but not counted towards satisfying a cost-sharing or matching requirement of the grant. The proposed rules for calculating the Federal and non-Federal shares treat such costs always like costs not for the grant-supported activity. In addition, the opening section of the proposed subpart on property, § 74.130, applies the subpart only to property whose cost was borne by a grant or used to meet a cost-sharing or matching requirement of a grant. The results will be as follows:

(1) If the entire acquisition cost of property is treated as borne by program income and not counted towards a cost-sharing or matching requirement, the grantee will not have any obligation to the Federal Government with respect to the property. There will be no Federal share in the property.

(2) If part of the acquisition cost of property is so treated, the Federal share in the property will be reduced accordingly.

Consistency with OMB Circular A-90. Transmittal Memorandum No. 1, dated September 7, 1976, of Office of Management and Budget Circular No. A-90 requires Federal agencies to perform a review of any policies and administrative regulations on the acquisition or use of computer systems by State or local governments where such systems are financed in whole or in part with Federal funds. Accordingly, HEW has reviewed the Procurement Standards set forth in tentative form in Subpart P and the Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments set forth in Appendix C. Both Subpart P and Appendix C of this regulation were found to be consistent with the requirements of OMB Circular No. A-90.

Comments. Consideration will be given to any comments submitted to the Deputy Assistant Secretary for Grants and Procurement Management, Department of Health, Education, and Welfare, 200 Independence Avenue, SW, Washington, D.C. 20201 on or before March 10, 1977. Comments received will be available for public inspection in Room 517D of the Department's Offices at 200 Independence Avenue, SW, Washington, D.C. on Monday through Friday of each week from 9 a.m. to 5:30 p.m. (area code 202-245-8901).

Interested persons are reminded that, as explained above, much of the following Part 74 is derived from Government-wide policies from which HEW cannot unilaterally deviate. Consequently, the Department's discretion to act on any comments which take issue with provisions required by OMB circulars may be limited to referral of those comments to Federal officials who are in a position to change the circulars.

For statutory reasons, when these proposed amendments are issued in final form, they will not become effective for programs administered by the Office of Education (OE) and the National Institute of Education (NIE) until adopted or implemented in regulations issued by, respectively, the Commissioner of Education and the Director of the National Institute of Education, with the approval of the Secretary of Health, Education, and Welfare.

INFLATION IMPACT. 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 No. A-107.

Dated: January 18, 1977.

MARJORIE LYNCH,
Acting Secretary of Health, Education, and Welfare.

Part 74 of Title 45, Code of Federal Regulations, is amended by revising Subparts A through Q and reserving new Subparts R and S, as follows:

Subpart A—General

Sec.
74.1 Purpose and scope of this part.
74.2 Scope of subpart.
74.3 Definitions.
74.4 Applicability of this part.
74.5 Appeals.
74.6 Deviations.
74.7 Special grant conditions.

Subpart B—Cash Depositories

74.10 Physical segregation and eligibility.
74.11 Checks-paid basis letter of credit.
74.12 Minority-owned banks.

Subpart C—Bonding and Insurance

74.15 General.
74.16 Construction and facility improvement.
74.17 Loan guarantees.
74.18 Fidelity bonds.
74.19 Source of bonds.

Subpart D—Retention and Access Requirements for Records

Sec.
74.20 Applicability.
74.21 Length of retention period.
74.22 Starting date of retention period.
74.23 Substitution of microfilm.
74.24 Access to records.
74.25 Restrictions on public access.

Subpart E—Waiver of Single State Agency Requirements [Reserved]

Subpart F—Grant-Related Income

74.40 Scope of subpart.
74.41 Meaning of program income.
74.42 General program income—meaning and basic rule.
74.42a General program income—restrictive alternative.
74.42b General program income—liberal alternative.
74.42c General program income—use for cost sharing or matching.
74.43 Proceeds from sale of real property and of tangible personal property acquired for use.
74.44 Royalties and other income earned from copyrights or copyrighted materials.
74.45 Royalties and other income earned from patents or from inventions.
74.46 Proceeds earned after the support period from tangible personal property acquired for sale or rental.
74.47 Records for program income.
74.48 Interest earned on advances of grant funds.

Subpart G—Cost Sharing and Matching

74.50 Scope of subpart.
74.51 Definitions.
74.52 Basic rule: Costs and contributions acceptable.
74.53 Qualifications and exceptions.
74.54 Timing of third-party in-kind contributions.
74.55 Valuation of third-party in-kind contributions.
74.56 Supporting records for third-party in-kind contributions.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems

74.60 Scope of subpart.
74.61 Standards.

Subpart I—Financial Reporting Requirements

74.70 Scope of subpart.
74.71 Definitions.
74.72 Authorized forms and instructions.
74.73 Financial Status Report.
74.74 Report of Federal Cash Transactions.
74.75 Request for Advance or Reimbursement.
74.76 Outlay Report and Request for Reimbursement for Construction Programs.

Subpart J—Monitoring and Reporting of Program Performance

74.80 Scope of subpart.
74.81 Monitoring by grantees.
74.82 Performance reports for nonconstruction grants.
74.83 Performance reports for construction grants.
74.84 Significant developments between scheduled reporting dates.
74.85 Site visits.

Subpart K—Grant Payment Requirements

74.90 Scope of subpart.
74.91 Definitions.
74.92 Payment methods for nonconstruction grants.
74.93 Payment methods for construction grants.
74.94 Withholding of payments.

Sec.
74.95 Requesting advances or reimbursements.
74.96 Consolidation of payments.
74.97 Requests for reimbursement: Prompt payment.

Subpart L—Budget Revision Procedures

74.100 Scope of subpart.
74.101 Budget.
74.102 Nonconstruction grants.
74.103 Construction grants.
74.104 Construction and nonconstruction work under the same grant.
74.105 Authorized funds exceeding grantee needs.
74.106 Method of requesting approvals.
74.107 Notification of approval or disapproval.

Subpart M—Grant Closeout, Suspension, and Termination

74.110 Definitions.
74.111 Closeout.
74.112 Violation of grant terms and conditions.
74.113 Suspension.
74.114 Termination.

Subpart N—Forms for Applying for Grants

74.120 Scope of subpart.
74.121 Authorized forms and instructions.
74.122 Preapplications for Federal Assistance.
74.123 Notice of Preapplication Review Action.
74.124 Application for Federal Assistance (Nonconstruction Programs).
74.125 Application for Federal Assistance (for Construction Programs).
74.126 Application for Federal Assistance (Short Form).

Subpart O—Property

74.130 Scope of subpart.
74.131 General.
74.132 Definitions.
74.133 Real property.
74.134 Nonexpendable personal property—title.
74.135 Nonexpendable personal property—Federal right to require transfer.
74.136 Nonexpendable personal property—use.
74.137 Nonexpendable personal property—replacement.
74.138 Nonexpendable personal property—disposition.
74.139 Nonexpendable personal property—procedural requirements.
74.140 Exemptions for nonexpendable personal property acquired under grants subject to certain statutes.
74.141 Expendable personal property.
74.142 Federal share of property—general.
74.143 Federal share of property acquired by a grantee.
74.144 Federal share of property acquired by a subgrantee.
74.145 Federal share of property acquired by a cost-type procurement contractor under a grant or subgrant.
74.146 Federal share of property acquired only in part under a grant.
74.147 Federal share of replacement property.
74.148 Federal share of property under annual grants.
74.149 Division of non-Federal share of market value or proceeds.
74.150 Inventions and patents.
74.151 Copyrights.
74.152 Right of grantees to impose additional requirements.

Subpart P—Procurement Standards

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AUTHORITY: 5 U.S.C. 301.

Subpart A—General

§ 74.1 Purpose and scope of this part.

This part establishes uniform requirements for the administration of HEW grants and principles for determining costs applicable to activities assisted by HEW grants.

§ 74.2 Scope of subpart.

This subpart sets forth (a) general rules and regulations pertaining to this Part 74 (definitions, purpose and scope, applicability, and appeals) and (b) procedures for control of deviations from the part.

§ 74.3 Definitions.

As used in this part, the words defined in this section shall have the meanings set forth below.

"Cost-type contract" means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs, except that the term does not include such subcontracts under a non-cost-type contract or subcontract.

"Expenditure report" means: (1) For nonconstruction grants, the "Financial Status Report" (or other report equivalent thereto); (2) for construction grants, the "Outlay Report and Request for Reimbursement for Construction Programs" (or other report equivalent thereto). (See Subpart I of this part.)

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Na-

tive village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs. However, for policies applicable to tribal government hospitals and institutions of higher education, see § 74.4, "Applicability of this part."

"Government" means a State or local government or a Federally recognized Indian tribal government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4, "Applicability of this part."

"Grant" means money, or property provided in lieu of money, paid or furnished by the Federal Government to an eligible recipient under programs that provide financial assistance. The term includes such financial assistance when provided by contract, but does not include any Federal procurements subject to the procurement regulations in 41 CFR, nor does it include technical assistance which provides services instead of money or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include a fellowship or other award of a fixed amount of funds which the recipient is not required to account for on an actual cost basis.

"Grantee" means the organization or person to which a grant is made and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even though a particular component of the entity may be designated in the award document. For example, a grant award document may name as the grantee an agency of a State, or one school or campus of a university. In such cases, the granting agency usually intends that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provisions of grant programs in which eligibility is limited to organizations, such as State welfare departments, which may be only components of a legal entity.) The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant.

"Granting agency" means any of the following organizations which are authorized to make grants:

(a) *Public Health Service agencies.* However, the Public Health Service may elect to treat the Public Health Service as a single granting agency.

(b) *Education agencies.* However, the Education Division may elect to treat the Education Division as a single granting agency.

(c) Other principal operating components of HEW.

(d) The Office of the Assistant Secretary for Planning and Evaluation.

"HEW" means the U.S. Department of Health, Education, and Welfare.

"Local government" means a local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), "sponsor or sponsoring local organization" of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975), any other regional or interstate government entity, or any agency or instrumentality of a local government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4, "Applicability of this part."

"OGPM" means the Office of Grants and Procurement Management, which is an organizational component within the Office of the Secretary of Health, Education, and Welfare, reporting to the Assistant Secretary for Administration and Management.

"OMB" menas the Office of Management and Budget within the Executive Office of the President.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4, "Applicability of this part."

"Subgrant" means money, or property provided in lieu of money paid or furnished by a grantee to an eligible recipient as financial assistance under a grant. The term also includes such financial assistance paid or furnished under a Federal grant by the recipient of such a subgrant, and so on. The term includes financial assistance when provided by contract, but does not include procurements; nor does it include any form of assistance which is excluded from the definition of "grant" in this section.

"Subgrantee" means the organization or person to which a subgrant is made and which is accountable to the party awarding the subgrant for the use of the funds provided. The subgrantee is the entire legal entity even though a particular component of the entity may be designated in the subgrant award document.

"Terms and conditions" of a grant or subgrant means all legally binding requirements imposed on the grant or subgrant by statute, regulations, the award document, or otherwise.

§ 74.4 Applicability of this part.

Except where inconsistent with Federal statutes, regulations, or other terms and conditions of a grant, this part is applicable to all HEW grants except when the grantee is a Federal agency, foreign government or organization, international organization such as the United Nations, profit-making organization, or individual. Note, however, that some portions have a more limited applicability as stated therein. Where that limited applicability specifies governmental or nongovernmental organizations, hospitals and institutions of higher education operated by a government shall be subject to the policies prescribed for nongovernmental organizations.

§ 74.5 Appeals.

Attention is called to the fact that, in accordance with Part 16 of this title, grantees may formally appeal certain postaward administrative decisions made by HEW officials.

§ 74.6 Deviations.

(a) Except as provided in § 74.7, a deviation shall be considered to be either of the following, unless required by Federal legislation without allowance of agency discretion:

(1) Use of any policy, procedure, form, standard, or grant condition which is inconsistent with an applicable provision of this part, or

(2) Failure to use any applicable policy, procedure, form, standard, or grant condition which is required by this part.

(b) In order to maintain uniformity to the greatest extent feasible, deviations shall be kept to a minimum. A deviation, whether proposed by an applicant for a grant, a grantee, or an official of the granting agency, may be authorized only when it is necessary to meet programmatic objectives, or to conserve grant funds, or when it is otherwise essential in the public interest.

(c) Deviations from Subparts B through P, inclusive, of this part may be made on an HEW grant, or a class of HEW grants, only when authorized by both:

(1) The head of the granting agency or other officials if designated in or pursuant to formal deviation control procedures established by the agency, and

(2) OGPM

(d) Deviations from Subpart Q of this part and Appendices C, D, E and F to this part may be made only as follows:

(1) In individual cases (i.e., where only a single grant is involved) deviations may be authorized by the head of the granting agency or by other officials if designated in or pursuant to formal deviation control procedures established by the agency.

(2) Deviations in classes of cases may be authorized only by the head of the granting agency or other officials if designated in or pursuant to formal deviation control procedures, established by the agency and approved by OGPM, which shall include appropriate provisions for approval by the Division of Financial Management Standards and Procedures, in the Office of the Assistant Secretary, Comptroller.

§ 74.7 Special grant conditions.

(a) Without regard to the deviation control procedures of § 74.6, special grant conditions more restrictive than those prescribed in this Part 74 may be imposed to protect the Federal Govern-

ment's interest when the granting agency has determined that the grantee:

(1) Is financially unstable,

(2) Has a history of poor performance, or

(3) Has a management system which does not meet the standards of this part.

(b) When special conditions are imposed under paragraph (a) of this section, the grantee will be notified in writing:

(1) Why the special conditions were imposed and

(2) What corrective action is needed.

Furthermore, in accordance with OMB Circular A-110, OMB and other Federal agencies in a granting relationship with the grantee will be provided copies of the notice to the grantee.

Subpart B—Cash Depositories

§ 74.10 Physical segregation and eligibility.

Except as provided in § 74.11, HEW will not:

(a) Require separate bank accounts for HEW grant funds which are provided to a grantee or subgrantee;

(b) Establish any eligibility requirements for cash depositories in which HEW grant funds are deposited by grantees or their subgrantees.

§ 74.11 Checks-paid basis letter of credit.

A separate bank account shall be used when payments under letter of credit are made on a "checks-paid" basis in accordance with agreements entered into by a grantee, the Federal Government, and the banking institutions involved. A checks-paid basis letter of credit is one under which funds are not drawn from the Treasury until the grantee's checks have been presented to its bank for payment.

§ 74.12 Minority-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, grantees are encouraged to use minority-owned banks. OGPM will furnish grantees, upon request, a list of minority-owned banks.

Subpart C—Bonding and Insurance

§ 74.15 General.

In administering HEW grants, grantees shall observe their regular requirements and practices with respect to bonding and insurance. HEW will not impose additional bonding and insurance requirements, including fidelity bonds, except as provided in §§ 74.16 through 74.19.

§ 74.16 Construction and facility improvement.

The recipient of an HEW grant which requires contracting for construction or facility improvement (including any HEW grant which provides for alterations or renovations of real property) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, the granting agency may determine that the grantee's bonding provisions adequately protect the Federal Government's interest; otherwise the minimum requirements shall be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 74.17 Loan guarantees.

Where in connection with an HEW grant, HEW also guarantees the payment of money borrowed by the grantee, the granting agency may at its discretion require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interests of the Federal Government.

§ 74.18 Fidelity bonds.

If the grantee is a nongovernmental organization, the granting agency may require adequate fidelity bond coverage where the absence of coverage of any of the grant-supported activities jeopardizes the Federal Government's interest.

§ 74.19 Source of bonds.

Any bonds obtained pursuant to §§ 74.16(a) through (c), 74.17, or 74.18 shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223).

Subpart D—Retention and Access Requirements for Records

§ 74.20 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to all financial records, supporting documents, statistical records and other records of grantees, of subgrantees, and of contractors and subcontractors under grants and subgrants, which:

(1) Are required by the terms and conditions of an HEW grant, or

(2) May otherwise reasonably be considered as pertinent to an HEW grant.

(b) This subpart is not applicable to records maintained by the recipient under a grant of:

(1) Any contract or subcontract of $10,000 or less, or

(2) Any contract or subcontract awarded using the formal advertising method of procurement, whether or not required to be so awarded, or

(3) Any subcontract awarded under a contract or subcontract described in paragraph (b)(2) of this section.

§ 74.21 Length of retention period.

(a) Except as provided in paragraphs (b) and (c) of this section, records shall be retained for three years from the starting date specified in § 74.22.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started by or on behalf of the Federal Government before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

(c) In order to avoid duplicate record-keeping, granting agencies may make special arrangements with grantees to retain any records which are continuously needed for joint use. The granting agency will request transfer of records to its custody from grantees when it determines that the records possess long-term retention value. When the records are transferred to or maintained by HEW, the three-year retention requirement is not applicable to the grantee.

§ 74.22 Starting date of retention period.

(a) *General.* Except for records covered by paragraphs (b) through (d) of this section, where HEW grant support is continued or renewed on an annual or essentially annual basis, the retention period for each year's records starts from the date of submission to HEW of the grantee's annual or last expenditure report for that year; in all other cases the retention period starts from the date of submission to HEW of the grantee's final expenditure report.

(b) *Records for nonexpendable property.* The retention period for records for nonexpendable personal property required by § 74.139 starts from the date of disposition of the property. However, for property that has been replaced pursuant to § 74.137, the retention period starts from the date of disposition of the replacement property. Date of disposition is defined in § 74.138(c).

(c) *Records pertaining to certain classes of income.* For records required by § 74.47 that relate to classes of program income subject to §§ 74.44 and 74.46, the three-year retention period starts from the end of the grantee's fiscal year in which the income is earned or, in the case of income earned by a subgrantee, from the end of the subgrantee's fiscal year in which the income is earned.

(d) *Records for indirect cost rate proposals, etc.*—(1) *Applicability.* This paragraph applies to records supporting (i) indirect cost rate proposals, (ii) cost allocation plans pursuant to Appendix C to this part, (iii) hospital patient care rate proposals, and (iv) any similar accounting computations of the rate at which a particular group of costs is chargeable to HEW grants or to a subgrant, contract, or subcontract under an HEW grant. This includes, but is not limited to, computer usage chargeback

rate computations and composite fringe benefit rate computations.

(2) *If submitted to the Federal Government.* If the proposal, plan, or other computation is required to be submitted to the Federal Government to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.

(3) *If not submitted to the Federal Government.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government for negotiation purposes, then the three-year retention period for its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 74.23 Substitution of microfilm.

Microfilm or other adequate copies may be substituted for the original records.

§ 74.24 Access to records.

(a) HEW and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to a specific HEW grant, in order to make audit, examination, excerpts, and transcripts.

(b) In the case of a subgrant under an HEW grant, HEW, the Comptroller General of the United States, the grantee, any intermediate subgrantee, or any of their authorized representatives shall have the right of access to any books, documents, papers, or other records of the subgrantee which are pertinent to the HEW grant, in order to make audit, examination, excerpts, and transcripts.

(c) Except as provided in § 74.20(b), in the case of a contract (or subcontract) under an HEW grant, HEW, the Comptroller General of the United States, the grantee, any intermediate subgrantee, contractor, or subcontractor, or any of their authorized representatives shall have the right of access, to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to the HEW grant, in order to make audit, examination, excerpts, and transcripts.

§ 74.25 Restrictions on public access.

Unless otherwise required by law, HEW will not place restrictions on grantees which will limit public access to records covered by this subpart except after a determination that the records must be kept confidential and would have been excepted from disclosure under Part 5 of this title, "Availability of information to the public pursuant to Pub. L. 90–23," if the records had belonged to HEW.

Subpart E—Waiver of Single State Agency Requirements—[Reserved]

Subpart F—Grant-Related Income

§ 74.40 Scope of subpart.

This subpart sets forth policies and requirements relating to (a) program income and (b) interest and other investment income earned on advances of grant funds.

§ 74.41 Meaning of program income.

(a) For the purposes of this part, program income means gross income earned by a grantee or a subgrantee from activities supported in whole or in part by a grant or subgrant. It includes but is not limited to such income in the form of fees for services rendered, proceeds from sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties.

(b) Program income does not include interest or investment income earned on advances of grant or subgrant funds. (See § 74.48.)

(c) Revenues raised by a government grantee or subgrantee under its governing powers, such as taxes, special assessments, levies, and fines, shall be considered program income only if the revenues are specifically earmarked for the project supported by the grant or subgrant in accordance with the terms and conditions of the grant. Otherwise, the revenues shall not be considered grant-related, and the grantee shall have no obligation to the Federal Government with respect to the revenues.

(d) If income meets the definition in the preceding paragraphs of this section, it shall be considered program income regardless of the method used to calculate the amount—whether, for example, by a cost-reimbursement method or fixed price arrangement. Nor will the fact that the income is earned by the grantee or subgrantee from a Federal procurement contract or from a procurement contract under a Federal grant awarded to another party affect the income's classification as program income.

(e) For the purposes of this subpart, program income is divided into a number of classes, which are treated in separate sections of the subpart.

§ 74.42 General program income—meaning and basic rule.

(a) General program income means all program income earned by a grantee during the period of grant support or by a subgrantee during the period of subgrant support, other than the special classes of such income treated in §§ 74.43 (a), 74.44, and 74.45.

(b) General program income shall either be:

(1) Applied to the grantee's or subgrantee's allowable costs (as determined by the cost principles specified in Subpart Q of this part) during the grant or subgrant funding period in which the income was earned; or

(2) Used for any purposes that further the objectives of the Federal legislation under which the grant was made.

(c) If the granting agency does not specify which alternative is to apply, the alternative in paragraph (b)(1) of this section shall apply.

§ 74.42a General program income—restrictive alternative.

(a) If the alternative in § 74.42(b)(1) applies, the amount of the general program income shall be deducted from the grantee's or subgrantee's allowable costs along with other deductions that may be required (such as the amount of costs paid by cash donations from third parties or by other Federal grants) for the purpose of determining the maximum amount of those costs which may be borne by Federal funds under the grant or subgrant.

(b) If the alternative in § 74.42(b)(1) applies to a discretionary grant, any general program income earned by the grantee in excess of the amount estimated in the approved application shall not be used to expand the scope of the grant-supported project unless so authorized by the granting agency. This requirement for Federal granting agency authorization to use income to expand a project's scope shall not apply to income earned by a subgrantee in a subgrant project unless so specified by the granting agency.

§ 74.42b General program income—liberal alternative.

(a) If the alternative in § 74.42(b)(2) applies, the requirement in that paragraph shall be satisfied by use of the income to defray costs that meet all of the following requirements:

(1) The costs must be incurred for projects or activities that further the objectives of the Federal legislation under which the grant was made, although not necessarily for the particular project or activity for which the grant that gave rise to the income was awarded.

(2) The costs must be reasonable and allocable to the projects or activities involved, although they need not necessarily be kinds of costs that would permissible as charges to the grant. For example, construction of a building to house the project or similar projects could meet this requirement even where such construction would not be a permissible charge to the grant itself.

(3) The costs must be incurred before the expiration of three years

(i) From the date of submission to HEW of the grantee's final expenditures report, or

(ii) Where grant support is continued or renewed on an annual or essentially annual basis, from the date of submission to HEW of the grantee's annual expenditures report for the year in which the income was earned or, in the case of subgrantee income, the year in which the grantee awarded the subgrant which, directly or through a lower tier subgrant, gave rise to the income.

(b) (1) Pursuant to paragraph (a) of this section, the grantee may elect to apply some or all of the income to allowable costs during the grant or subgrant funding period in which the income was earned. Such costs should be included in the total project costs reported by the grantee to the granting agency, and an equivalent amount of income should be deducted from total project costs on the appropriate line of the financial report.

(2) Any other costs defrayed by the program income pursuant to paragraph (a) of this section should not be reported

as part of total project costs, nor should an equivalent amount of income be deducted on account of those other costs. However records for those other costs shall be maintained, retained and made available as required by §§ 74.47(c) and Subpart D of this part.

(c) If the alternative in § 74.42(b)(2) applies, grantees may impose more stringent policies with respect to general program income earned by their subgrantees: *Provided*, That all the requirements in paragraph (a) of this section are, as a minimum, satisfied.

§ 74.42c General program income—use for cost sharing or matching.

A rule governing the use of allowable costs financed by general program income to meet a cost-sharing or matching requirement is set forth in § 74.53(c).

§ 74.43 Proceeds from sale of real property and of tangible personal property acquired for use.

(a) The following kinds of program income shall be governed by the rules in Subpart O of this part:

(1) Proceeds from the sale of real property purchased or constructed under a grant or subgrant.

(2) Proceeds from the sale of tangible personal property fabricated or purchased under a grant or subgrant and intended primarily for use in the grant or subgrant-supported activity or project rather than for sale or rental.

(b) Proceeds from the sale or rental of merchandise inventory or other tangible personal property fabricated or purchased under a grant or subgrant and intended primarily for such sale or rental is subject to §§ 74.42–74.42c, if earned during the period of grant or subgrant support, or to § 74.46, if earned after that period. An example of such proceeds is the income earned from the sale of merchandise fabricated in a grant-supported workshop.

§ 74.44 Royalties and other income earned from copyrights or copyrighted materials.

(a) This section applies to the following kinds of program income:

(1) Royalties, license fees, and other income earned by a grantee or subgrantee from a copyright on a work developed under a grant or subgrant.

(2) Proceeds in forms other than specifically copyright earnings received by a grantee or subgrantee from the sale, rental, dissemination, exhibition, or broadcast of materials embodying a copyrighted work developed under the grant or subgrant. In determining the amount of such proceeds to be treated as program income, there shall be deducted from the gross proceeds any fabrication, dissemination or other costs which are incurred by the grantee or subgrantee in generating the proceeds but which are neither borne by the HEW grant nor counted towards satisfying a cost-sharing or matching requirement of the grant.

(b) Except as otherwise provided in the terms and conditions of the grant, there shall be no obligation to HEW with respect to such income.

§ 74.45 Royalties or equivalent income earned from patents or from inventions.

Disposition of royalties or equivalent income earned on patents or inventions arising out of activities assisted by a grant shall be governed by determinations made or agreements entered into pursuant to the Department's patent regulations. (See Parts 6 and 8 of this title.) If such a determination or agreement does not provide for the disposition of the royalties or equivalent income, the disposition shall be in accordance with the grantee's own policies.

§ 74.46 Proceeds earned after the support period from tangible personal property acquired for sale or rental.

(a) Some grants and subgrants support the fabrication or purchase of tangible personal property primarily for sale or rental rather than for use in the supported activities. This section applies to proceeds earned by a grantee or subgrantee after the period of grant or subgrant support from any residual inventory of such property (other than proceeds from copyrighted materials subject to § 74.44).

(b) The proceeds shall be used for any purposes that further the objectives of the Federal legislation under which the grant was made. This requirement shall be satisfied by use of the proceeds to defray costs that (1) meet the requirements in §§ 74.42b(a)(1) and 74.42b(a)(2) and (2) are incurred before the expiration of three years from the end of the grantee's fiscal year in which the proceeds are earned or, if the proceeds are earned by a subgrantee, from the end of the subgrantee's fiscal year in which the proceeds are earned. Grantees may impose more stringent policies with respect to such proceeds earned by their subgrantees provided that the requirement in this paragraph is satisfied as indicated.

§ 74.47 Records for program income.

(a) This section applies to the following classes of program income: (1) General program income subject to §§ 74.42–74.42c; (2) royalties and other income from copyrights subject to § 74.44 where there is an obligation to HEW with respect to such income; and (3) property proceeds subject to § 74.46.

(b) A grantee or subgrantee shall maintain records identifying the source and amounts of all program income subject to this section.

(c) If, pursuant to § 74.42b or other portions of this subpart, the income is applied to costs other than the allowable costs of the grant or subgrant supported project or activity which gave rise to the income, the record shall also identify the purposes and specific costs to which the income is applied and shall include source documentation for those costs.

(d) Records required by this section shall be subject to the retention and access requirements of Subpart D of this part.

§ 74.48 Interest earned on advances of grant funds.

(a) Except where provided otherwise by Federal statute, interest and other investment income earned by grantees on advances of HEW grant funds shall be remitted by check to the Department of Health, Education, and Welfare.

(b) Except as otherwise provided by Federal statute, interest and other investment income earned by a subgrantee on advances from an HEW grantee shall, to the extent that the subadvances are attributable to advances of HEW grant funds to the grantee, be remitted by check to the Department of Health, Education, and Welfare.

(c) For statutory exemptions from accountability for interest earned on advances of grant funds, attention is directed to the following:

(1) The Intergovernmental Cooperation Act of 1968, which provides that States, as defined in the Act, shall not be held accountable for interest earned on funds from a grant-in-aid, as defined in the Act, pending their disbursement for program purposes.

(42 U.S.C. 4213.)

(2) The Indian Self-Determination and Education Assistance Act, which provides that Indian tribal organizations, as defined in the Act, shall not be held accountable for interest earned on payments of a grant awarded pursuant to certain sections of the Act, pending their disbursement by such organization.

(25 U.S.C. 450j(b).)

Subpart G—Cost Sharing and Matching

§ 74.50 Scope of subpart.

This subpart sets forth rules relating to the satisfaction of requirements for cost sharing or matching on projects or activities supported by HEW grants.

§ 74.51 Definitions.

For purposes of this subpart:

"Cost sharing and matching" means, in general, that portion of the costs of a grant-supported project or activity not borne by the Federal Government.

"Expendable Personal property" means all tangible personal property other than "nonexpendable personal property" as defined in this section.

"Nonexpendable personal property" shall have the same meaning given to that term in § 74.132, except that instead of "acquisition cost," the word "fair market value at the time of donation" shall be substituted.

"Third-party in-kind contributions" means property or services provided without charge by non-Federal third parties directly benefiting and specifically identifiable to a grant-supported project or activity. The term does not include allowable costs which are incurred by subgrantees (or cost-type procurement contractors under the grant) but which are not borne by the grant.

§ 74.52 Basic rule: Costs and contributions acceptable.

With the exceptions and qualifications listed in § 74.53, a cost-sharing or matching requirement may be satisfied by either or both of the following:

(a) Allowable costs incurred by the grantee (or by subgrantees or cost-type procurement contractors under the grant) which are not borne by the grant.

(b) The value of third-party in-kind contributions applicable to the grant-period or funding period to which the cost-sharing or matching requirement applies.

§ 74.53 Qualifications and exceptions.

(a) *Costs paid by third-party cash donations or assistance funds from other Federal grants.* Allowable costs that are financed by cash contributions from non-Federal third parties may count toward satisfying a cost-sharing or matching requirement. However, costs (or third-party in-kind contributions) which are paid by funds received as assistance under another Federal grant may not count towards satisfying a cost-sharing or matching requirement unless such counting is authorized by Federal law.

(b) *Costs or contributions counted towards other Federal cost-sharing requirements.* Neither costs nor the values of third-party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of an HEW grant if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

(c) *Costs financed by general program income.* Costs financed by general program income, as defined in § 74.42, shall not count towards satisfying a cost-sharing or matching requirement of the HEW grant supporting the activity giving rise to the income unless the terms and conditions of that grant so provide.

(d) *Records.* Neither costs nor third-party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement unless they are verifiable from the grantee's or subgrantee's records.

(e) *Standards for third-party in-kind contributions.* Third-party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement only if they are necessary for proper and efficient accomplishment of project activities. In addition, such contributions shall count only where, if the grantee or subgrantee were required to pay for them, the payments would be allowable costs. For example, entertainment costs are not allowable; therefore, third-party in-kind contributions of entertainment shall not count as cost-sharing or matching.

§ 74.54 Timing of third-party in-kind contributions.

(a) Except as explained in the succeeding paragraphs of this section, a third-party in-kind contribution shall be considered as applying to the grant period or funding period in which the service or property constituting the contribution is provided.

(b) A third-party in-kind contribution provided to a project supported by a subgrant shall be considered as applying to the HEW grant period or funding period in which the subgrant was awarded.

(c) In some cases, a third party providing property or services pursuant to a fixed-price type of procurement contract under a grant or subgrant may make an in-kind contribution by providing without charge a portion of the property or services contracted for. In such a case, the contribution shall be considered as applying to the HEW grant period or funding period during which the contract was awarded or, in the case of a contract under a subgrant, the HEW grant period or funding period in which the subgrant giving rise to the contract was awarded.

§ 74.55 Valuation of third-party in-kind contributions.

For the purpose of cost-sharing or matching requirements, third-party in-kind contributions shall be valued as follows:

(a) *Volunteer services.* Services provided by volunteers shall be valued at rates consistent with those paid by the grantee or subgrantee to its own employees for similar work. If the grantee or subgrantee does not have employees performing similar work, the rates shall be consistent with those ordinarily paid by other employers for similar work in the labor market in which the grantee or subgrantee competes for services. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) *Employees of other organizations.* When an employer other than the grantee, a subgrantee, or a cost-type procurement contractor under the grant furnishes free of charge the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of the employer's fringe benefits and overhead costs) provided these services are in the same line of work for which the employee is normally paid. If these services are in a different line of work, paragraph (a) of this section shall apply.

(c) *Donated expendable personal property.* Donated expendable personal property, as defined in § 74.51, shall be valued at the fair market value of the property at the time of donation.

(d) *Donated nonexpendable personal property, buildings, and land.* If the donor transfers title to nonexpendable personal property, as defined in § 74.51, or to buildings or land, the amount that shall be allowed for purposes of cost-sharing or matching shall depend upon the purpose of the grant, as follows:

(1) *Grants for capital expenditures.* If the purpose of the grant is to assist the grantee or subgrantees in the acquisition of equipment, buildings, or land, the total fair market value of the property at the time of donation may be claimed as cost sharing or matching.

(2) *Grants for current operations.* If the purpose of the grant is to support activities that require the use of equipment, buildings or land:

(i) Except as provided in paragraph (d)(2)(ii) of this section, no amount of cost sharing or matching may be claimed for the donated land. Also except as provided in paragraph (d)(2)(ii) of this section, the donated nonexpendable personal property or buildings will not be treated as third-party in-kind contributions. Instead, depreciation or use allowances based on the fair market value of the donated nonexpendable personal property or buildings at the time of donation will constitute allowable costs incurred by the grantee or subgrantee. Such depreciation or use allowances will be determined and allocated in accordance with the cost principles specified by Subpart Q of this part, in the same manner as depreciation or use charges for property purchased by the grantee or subgrantee, and therefore usually will be treated as indirect costs.

(ii) If the granting agency approves, the fair rental rate for the donated land and the full fair market value at the time of donation of the donated nonexpendable personal property or buildings may be claimed as cost sharing or matching in the form of third-party in-kind contributions. Ordinarily, the granting agency will give its approval only where it would have approved an actual purchase of the property or rental of the land as an allowable cost.

(e) *Loaned space and nonexpendable personal property.* If only the use of space in a building or nonexpendable property is donated and the donor retains title, the contribution shall be valued at the fair rental rate of the space or property.

(f) *Appraisal of real property.* Paragraphs (d) and (e) of this section require that, in certain cases, a determination be made of (1) the fair market value of land or of a building or (2) the fair rental rate of land or of space in a building. In these cases, the granting agency shall have the right to require, as a precondition to allowability for cost-sharing or matching purposes, that the fair market value or fair rental rate be determined by a certified real property appraiser or a representative of the U.S. General Services Administration and that the value or rate be certified by the responsible official of the grantee.

(g) *Other contributions.* The values placed on other kinds of third-party contributions shall be reasonable and justifiable.

§ 74.56 Supporting records for third-party in-kind contributions.

(a) Grantees and subgrantees shall maintain records supporting the values placed on all third-party in-kind contributions.

(b) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the grantee or subgrantee for its employees performing similar services.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems

§ 74.60 Scope of subpart.

This subpart prescribes standards for financial management systems of grant-supported activities conducted by grantees and their subgrantees. Neither the Department nor its granting agencies will impose additional standards unless specifically provided for in the applicable statutes (e.g., the Joint Funding Simplification Act, Pub. L. 93–510) or elsewhere in this part. However, suggestions and assistance may be provided in establishing or improving financial management systems when needed or requested.

§ 74.61 Standards.

Grantee financial management systems for grants and subgrantee financial management systems for subgrants shall provide for:

(a) Accurate, current, and complete disclosure of the financial results of each grant project or program in accordance with the financial reporting requirements of the grant, and for each subgrant in accordance with the grantee's requirements. Except when specifically required by law, HEW will not require financial reporting on the accrual basis from organizations whose records are not maintained on that basis. However, when accrual reporting is required by law, organizations whose records are not maintained on that basis will not be required to convert their accounting systems to the accrual basis; they may develop the accrual information through an analysis of the documentation on hand or on the basis of best estimates.

(b) Records which identify adequately the source and application of funds for grant or subgrant-supported activities. These records shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all grant or subgrant funds, and, in accordance with Subpart O of this part, for all real and personal property that is subject to that subpart. Grantees and subgrantees shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(d) Comparison of actual with budgeted amounts for each grant or subgrant, and, when specifically required by the performance reporting requirements of the grant or subgrant, relation of financial information with performance or productivity data, including the production of unit cost information.

(e) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever cash is advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns as close as possible to the time of making disbursements. Grantees shall require subgrantees to institute analogous procedures when subadvances are made by the grantee.

(f) Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable cost principles prescribed by Subpart Q of this part and the terms and conditions of the grant.

(g) Accounting records which are supported by source documentation.

(h) (1) External or internal audits made by qualified individuals who are sufficiently independent of those who authorize the expenditure of funds to produce unbiased opinions. Auditors shall meet the independence criteria of Chapter 3, part 3, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, issued by the Comptroller General of the United States.

(2) It is not required that each grant or subgrant awarded to the organization be audited. Rather, audits may, and generally should, be made on an organization-wide basis to ascertain the effectiveness of financial management systems and internal procedures, and to test the fiscal integrity of financial transactions as well as compliance with terms and conditions of awards. Such tests shall include an appropriate sampling of Federal grants (and subgrants) awarded to the organization.

(3) These audits shall be conducted on a continuing basis or at scheduled intervals, usually annually, but not less often than every two years. The frequency of these audits shall be based upon the nature, size, and complexity of the grant-supported activities. These audits will not relieve HEW of its audit responsibilities, but may affect the frequency and scope of Federal audit.

(i) A systematic method to assure timely and appropriate resolution of audit findings and recommendations. A copy of each audit report, and its resolution, shall be furnished to the granting agency upon request.

Subpart I—Financial Reporting Requirements

§ 74.70 Scope of subpart.

This subpart prescribes requirements for grantees to report financial information to granting agencies, and to request advances and reimbursement when a letter-of-credit method is not used, and promulgates standard forms incident thereto.

§ 74.71 Definitions.

As used in this subpart or in the forms identified by this subpart:

"Accrued expenditures" are the charges by the grantee during a given period requiring the provision of funds for: (a) Goods and other tangible property received; (b) services performed by employees, contractors, subgrantees, and other payees; and (c) amounts becoming owed under programs for which no current services or performances are required such as annuities, insurance claims, and other benefit payments.

"Accrued income" is the sum of (a) earnings during a given period from (1) services performed by the grantee; and (2) goods and other tangible property delivered to purchasers; and (b) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Federal funds authorized" represents the total amount of Federal funds obligated by the Federal Government and authorized for use by the grantee. This amount includes any authorized carryover from prior fiscal years of funds unobligated by the grantee.

"In-kind contributions" shall have the meaning given that term in § 74.51.

"Obligations" are the amounts of orders placed, contracts and grants or subgrants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

"Outlays" represent charges made to the grant project or programs. Outlays may be reported on a cash or accrued expenditure basis.

"Program income" shall have the meaning given that term in § 74.41.

"Unobligated balance" is the portion of the Federal funds authorized which has not been obligated by the grantee and is determined by deducting the grantee's cumulative obligations from the cumulative Federal funds authorized.

"Unliquidated obligations," for reports prepared on a cash basis, represent the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expediture basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

§ 74.72 Authorized forms and instructions.

(a) Except as provided in paragraphs (d) and (e) of this section, only those forms specified in §§ 74.73, through 74.76 inclusive, and such supplementary or other forms as may from time to time be authorized by OGPM and OMB, may be used:

(1) For obtaining financial information from grantees for grant programs, or

(2) For requesting advances or reimbursements when letters of credit are not used.

(b) All applicable standard instructions promulgated by OMB for use in connection with the forms specified in §§ 74.73 through 74.76 inclusive shall be followed. Granting agencies may issue substantive supplementary instructions only with the approval of OGPM and OMB. On any report, granting agencies may shade out or instruct the grantee to disregard any line item that the granting agency finds unnecessary for its decision-making purposes.

(c) Grantees shall submit the original and two copies of forms required pursuant to this subpart. However, granting agencies may waive the requirement for the second copy, or both copies, when not needed.

(d) Granting agencies may provide computer outputs to grantees when it

will expedite or contribute to the accuracy of reporting. Also, granting agencies may accept the required information from grantees in machine usable format or computer printouts in lieu of prescribed formats.

(e) When a granting agency has determined that a grantee does not meet the standards for financial management systems contained in Subpart H of this part, financial reports may be required with more frequency or more detail (or both), upon written notice to the grantee (without regard to § 74.7) until such time as the standards are met.

§ 74.73 Financial Status Report.

(a) *Form.* Grantees shall use the standard Financial Status Report prescribed by Attachment G of OMB Circular No. A–110 to report the status of funds for all nonconstruction grants. However, at the option of the granting agency, governmental grantees shall use the Financial Status Report form prescribed by Attachment H of General Services Administration Federal Management Circular 74–7. Granting agencies, however, have the option of not requiring the Financial Status Report when the Request for Advance or Reimbursement (see § 74.75) or Report of Federal Cash Transactions (see § 74.74) provides adequate information to meet their needs, except that a final Financial Status Report shall be required at the completion or termination of the grant when the Request for Advance or Reimbursement form is used only for advances.

(b) *Accounting basis.* Each grantee shall report program outlays and program income on the same accounting basis, i.e., cash or accrued expenditure (accrual), which is used in maintaining its accounting records. The basis used by a grantee must be consistent for all HEW grants.

(c) *Frequency.* The granting agencies shall prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually except as provided in § 74.72(e) and paragraph (a) of this section. If the granting agency does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon completion or termination of grant support.

(d) *Due date.* When reports are required on a quarterly or semiannual basis, they shall be due thirty days after the end of the specified reporting period. When required on an annual basis, they shall be due 90 days after the end of the grant year. Final reports shall be due 90 days after the completion or termination of grant support. Justified requests from individual grantees for extension of reporting due dates will be approved whenever feasible.

§ 74.74 Report of Federal cash transactions.

(a) *Form.* When funds are advanced to grantees through letters of credit or with Treasury checks, each grantee shall submit the Report of Federal Cash Transactions prescribed by Attachment G of OMB Circular No. A–110. However, at the option of the responsible HEW finance officer, governmental grantees shall use the Report of Federal Cash Transactions form prescribed by Attachment H of General Services Administration Federal Management Circular 74–7. The Report of Federal Cash Transactions will be used by HEW financial officers to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from the grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment, provided that the information to be submitted is not changed in substance.

(b) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(c) *Cash in hands of secondary recipients.* When considered necessary and feasible by the responsible HEW finance officer, grantees may be required to report the amount of cash advances in excess of three days' requirements in the hand of subgrantees or other secondary recipients, and to provide short narrative explanations of actions taken by the gantee to reduce the excess balances.

(d) *Frequency and due date.* Grantees shall submit the Report of Federal Cash Transactions no later than 15 working days following the end of each quarter. However, where a letter of credit authorizes advances at an annualized rate of one million dollars or more, the responsible HEW financial officer may require the reports to be submitted within 15 working days following the end of each month.

(e) *Waiver.* HEW finance officers may waive the requirement for submission of the Report of Federal Cash Transactions when a grantee's monthly advances do not exceed $10,000: *Provided,* That such advances are monitored through other forms authorized pursuant to this subpart, or in the HEW finance officer's opinion, the grantee's accounting controls are adequate to minimize excessive Federal advances.

§ 74.75 Request for Advance or Reimbursement.

(a) (1) When letters of credit or predetermined automatic Treasury check advances are not used, grantees shall submit their requests for advance payments or reimbursements under nonconstruction grants on the Request for Advance or Reimbursement form prescribed by Attachment G of OMB Circular No. A–110. However, at the option of the responsible HEW finance officer, governmental grantees shall use the Request for Advance or Reimbursement form prescribed by Attachment H of General Services Administration Federal Management Circular 74–7.

(2) Additionally, grantees shall use these forms when requesting Treasury check advance under construction grants (see § 74.76(b)(4)) and may be required to use these forms when requesting reimbursements under construction grants (see § 74.76(a)(1)).

(b) Grantees will be authorized to submit their requests no less often than monthly.

§ 74.76 Outlay Report and Request for Reimbursement for Construction Programs.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on the Outlay Report and Request for Reimbursement for Construction Programs form prescribed by Attachment G of OMB Circular No. A–110. However, at the option of the granting agency, governmental grantees shall use the Outlay Report and Request for Reimbursement for Construction Programs form prescribed by Attachment H of General Services Administration Federal Management Circular 74–7. Granting agencies may, however, prescribe the Request for Advance or Reimbursement form specified in § 74.75 instead of these forms.

(2) Grantees will be authorized to submit no less often than monthly their requests for reimbursement under construction grants.

(b) *Construction grants paid by letter of credit or Treasury check advance.* (1) When a construction grant is paid by letter of credit or Treasury check advances, the grantee shall report its outlays to the granting agency using an Outlay Report and Request for Reimbursement for Construction Programs form in accordance with paragraph (a)(1) of this section. The grantee should leave blank those items on the form which are applicable only when requesting reimbursement.

(2) The spaces on the form for certifying signatures should be left blank. Instead:

(i) The following certification, signed on behalf of the grantee by an authorized official of the grantee organization, should be submitted to the granting agency with the outlay report:

> I certify that to the best of my knowledge and belief the accompanying report is correct and complete and that all outlays reported therein are for the purposes set forth in the grant award documents.

(ii) Information as to percentage of project completion and certification thereof should be submitted independently of the outlay report, at such times and by such means as may be prescribed by the granting agency.

(3) Frequency and due date shall be governed by § 74.73 (c) and (d).

(4) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances shall be requested on the form specified in § 74.75. In these cases, the granting agency may waive the Outlay Report and Request for Reimbursement entirely if the latter's more detailed outlay information is not needed.

(5) Where a construction grant is paid by letter of credit or predetermined automatic Treasury check advances, requests for payments are not submitted to the granting agency. In these cases the granting agency may substitute the Financial Status Report specified in § 74.73

for the Outlay Report and Request for Reimbursement.

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 74.73 (b).

Subpart J—Monitoring and Reporting of Program Performance

§ 74.80 Scope of subpart.

This subpart sets forth the procedures for monitoring and reporting program performance under HEW grants. These procedures are designed to place substantial reliance on grantees to manage the day-to-day operations of their grant-supported activities.

§ 74.81 Monitoring by grantees.

Grantees shall monitor the performance under grant-supported activities to assure that adequate progress is being made towards achieving the goals of the grant. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application or State plan, or the grant award document.

§ 74.82 Performance reports for nonconstruction grants.

(a) Where the granting agency determines that performance information sufficient to meet its programmatic needs will be available from subsequent applications, the granting agency will require the grantee to submit a performance report only upon completion or termination grant support. This report will be due on the same date as the final Financial Status Report (or other financial report equivalent thereto) unless a different due date is specified by the granting agency. Note that the "Application for Federal Assistance (Nonconstruction Programs)" prescribed by Subpart N of this part, when used to request continued support, provides information substantially equivalent to a performance report.

(b) Except as provided in paragraph (a) of this section, or as otherwise authorized by OGPM, granting agencies may require grantees to submit performance reports in the same frequency, and with the same due dates, as is authorized for the Financial Status Report by Subpart I of this part. If the granting agency does not specify the frequency of the performance report, it shall be submitted annually. When performance reports and Financial Status Reports are required with the same frequency, they shall cover the same time periods. Otherwise the time periods covered by performance reports and Financial Status Reports shall be coordinated to facilitate comparability of performance information with financial information.

(c) The content of performance reports shall conform to any instructions issued by the granting agency, including, to the extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons for slippage in those cases where established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

§ 74.83 Performance reports for construction grants.

In general, granting agencies rely heavily on on-site technical inspection and certified percentage-of-completion data to keep themselves informed as to progress under construction grants. Therefore formal performance reports from grantees to supplement those sources of information shall be required only if considered necessary by the granting agency, and in no case more frequently than quarterly.

§ 74.84 Significant developments between scheduled reporting dates.

Between the scheduled performance reporting dates, events may occur which have significant impact upon the grant-supported activity. In such cases, the grantee shall inform the granting agency as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objectives of the grant. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(b) Favorable developments or events which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

§ 74.85 Site visits.

Site visits may be made by representatives of HEW to:

(a) Review program accomplishments and management control systems.

(b) Provide such technical assistance as may be required.

Subpart K—Grant Payment Requirements

§ 74.90 Scope of subpart.

This subpart sets forth HEW's methods of making grant payments to grantees. These methods will minimize the time elapsing between the disbursement by a grantee and the transfer of funds from the United States Treasury to the grantee, whether such disbursement occurs prior to or subsequent to the transfer of funds.

§ 74.91 Definitions.

As used in this subpart:

"Advances by Treasury check" is a payment made by a Treasury check to a grantee, upon its periodic request or through the use of predetermined payment schedules, before payments are made by the grantee.

"Letter of credit" is an instrument certified by an authorized Federal official which authorizes a grantee to draw funds when needed from the Treasury, through a Federal Reserve Bank and the grantee's commercial bank.

"Percentage of completion method" refers to a system under which payments are made to the recipient of a construction grant according to a schedule which relates the amount and timing of each payment primarily or solely to the actual percentage of completion of the construction work under the grant rather than to the grantee's actual rate of disbursements.

"Reimbursement by Treasury check" is a payment made to a grantee with a Treasury check upon request for reimbursement from the grantee.

§ 74.92 Payment methods for nonconstruction grants.

(a) Letters of credit will be used to pay HEW grantees when all of the following conditions exist:

(1) There is or will be a continuing relationship between the grantee and the responsible HEW finance office for at least a twelve-month period and the total amount of advances to be received from the responsible HEW finance office is $250,000 or more, ($120,000 for certain jointly funded projects).

(2) The grantee has maintained, or demonstrated to HEW the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the grantee, and

(3) The grantee's financial management system meets the standards for fund control and accountability prescribed in Subpart H of this part.

(b) Advances by Treasury check will be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraph (a) of this section except those in paragraph (a) (1) of this section.

(c) Reimbursement by Treasury check will be the preferred (although not mandatory) method when the grantee does not meet the requirements specified in either or both of paragraph (a) (2) and (a) (3) of this section. However, determinations to use the reimbursement by Treasury check method on these grants may be made only by or with the concurrence of the Assistant Secretary, Comptroller, Department of Health, Education, and Welfare, or his designees. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and the Federal grant assistance constitutes a minor portion of the program.

(d) Grantees will be authorized to submit no less often than monthly their requests for advances or reimbursements when letters of credit or predetermined automatic Treasury check advances are not used.

§ 74.93 Payment methods for construction grants.

(a) Reimbursement by Treasury check shall be the preferred method when the grantee does not meet the requirements specified in § 74.92(a) (2) and (3), and may be used for any other HEW construction grant except where HEW has entered into an agreement with a grantee to use a letter of credit for all HEW grants, including construction grants.

(b) When the reimbursement by Treasury check method is used, grantees will be authorized to submit no less often than monthly their requests for reimbursement.

(c) When the reimbursement by Treasury check method is not used, § 74.92 (a) and (b) shall be applicable to the construction grant. Implementing procedures under § 74.92 (a) and (b) will be insofar as possible the same for construction grants as for nonconstruction grants awarded to the same grantee.

(d) The percentage of completion method will not be used to pay HEW construction grants.

§ 74.94 Withholding of payments.

Unless otherwise required by law, payments for proper charges incurred by grantees will not be withheld unless the grant is suspended pursuant to § 74.113, or the grantee is indebted to the United States, and collection of the indebtedness will not impair the accomplishement of the objectives of any project or program sponsored by the United States. When a grant is suspended, payment adjustments will be made in accordance with § 74.113. When an indebtedness is to be collected, HEW may, upon reasonable notice to the grantee, withhold from the grantee the right to receive payments under any or all grants or require appropriate accounting adjustments to recorded grant cash balances for which the grantee is accountable to the Federal Government, in order to liquidate the indebtedness.

§ 74.95 Requesting advances or reimbursements.

Subpart I of this part sets forth the procedures and forms for requesting advances or reimbursements.

§ 74.96 Consolidation of payments.

When the letter-of-credit procedure is used, the grantee will to the extent feasible be issued a single or consolidated letter-of-credit to cover anticipated cash needs for all HEW grants. Similarly, to the extent feasible, when the advance by Treasury check method is used, advances will be consolidated.

§ 74.97 Requests for reimbursement: Prompt payment.

When the reimbursement by Treasury check method is used, the grantee will be paid as promptly as possible, ordinarily within thirty days after receipt of a proper request for reimbursement.

Subpart L—Budget Revision Procedures

§ 74.100 Scope of subpart.

(a) This subpart sets forth criteria and procedures to be followed by grantees in requesting deviations from budgets and requesting approvals for budget revisions.

(b) For those State plans or other grants which do not involve a "budget" as defined in § 74.101, only § 74.105 is applicable. However, such grants are nevertheless subject to the prior approval requirements set forth in the cost principles in Appendices C, D, E, and F to this part.

§ 74.101 Budget.

(a) The term "budget" as used in this subpart means the financial plan approved by the granting agency for carrying out the purposes of the grant. Except for research grants, the budget may cover either (1) the sum of the Federal and non-Federal shares, or (2) only the Federal share, when specified by the granting agency in its grant application instructions. For research grants the budget shall cover only the Federal share.

(b) The granting agency will require that the budget be related to performance for program evaluation purposes whenever appropriate.

§ 74.102 Nonconstruction grants.

(a) For budget revisions on nonconstruction grants, grantees shall obtain prior approval, in writing, from granting agencies whenever:

(1) The revision will result from changes in the scope or the objective of the grant-supported project.

(2) The revision will result from transferring to a third party, by subgranting, contracting or other means, substantive grant-supported activities.

(3) The revision will involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs.

(4) The revision will involve additional costs requiring approval under the cost principles prescribed in Subpart Q of this part. (See § 74.176.)

(5) The grantee is a nongovernmental organization and the revision will involve transfer of amounts previously budgeted for student support (tuition waivers, stipends and other payments to trainees).

(6) The revision will involve:

(i) Budgeting funds for research patient care (when no such costs had been previously budgeted), or

(ii) Increasing the amounts previously budgeted for research patient care.

(7) The revision will consist of adding funds for any purpose or type of cost that was expressly disapproved as a special condition of the grant.

(b) Except as provided in § 74.104, other changes to nonconstruction grant budgets do not require HEW approval.

(c) Paragraphs (a)(3), (a)(5) and (a)(6)(ii) of this section may be waived by the granting agency.

§ 74.103 Construction grants.

For construction grants, grantees shall request prior approvals promptly from granting agencies for budget revisions whenever the revision will result from changes in the scope or the objective of the grant-supported project.

§ 74.104 Construction and nonconstruction work under the same grant.

When a grant provides support for both construction and nonconstruction work, the granting agency may require the grantee to obtain prior approval from the granting agency before making any fund or budget transfers between the two types of work.

§ 74.105 Authorized funds exceeding grantee needs.

For both construction and nonconstruction grants grantees shall notify the granting agency promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the grantee by more than $5,000 or 5 percent of the Federal grant, whichever is greater. This notification will not be required if applications for additional funding are submitted for continuing grants, and such applications include the grantee's estimate of what the unobligated balance of Federal authorized funds will be at the end of the current period.

§ 74.106 Method of requesting approvals.

When requesting approval for budget revisions, grantees shall use the budget forms which were used in the grant application. However, grantees may request by letter the approvals required by the § 74.102(a)(4).

§ 74.107 Notification of approval or disapproval.

Within 30 days from the date of receipt of the request for budget revisions, the granting agency shall review the request and notify the grantee whether or not the budget revisions have been approved. If the revisions is still under consideration at the end of 30 days, the granting agency shall inform the grantee in writing as to when the grantee may expect the decision.

Subpart M—Grant Closeout, Suspension, and Termination

§ 74.110 Definitions.

As used in this subpart:

"Date of completion" means the date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

"Grant closeout" means the process by which a granting agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the granting agency.

"Suspension" means an action by a granting agency which temporarily suspends Federal assistance under the grant pending corrective action by the grantee or pending a decision to terminate the grant by the granting agency.

"Termination" means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of competion. The following do not constitute termination:

(a) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(b) Failure on the part of the granting agency to ward a continuation, extension, renewal, supplemental, or other additional grant;

(c) Withdrawal of the unobligated balance as of the end of a grant budget period because a continuation, renewal, or extension grant will not be made;

(d) Annulment, i.e. voiding, of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

§ 74.111 Closeout.

(a) Each grant shall be closed out as promptly as is feasible after completion or termination.

(b) In closing out HEW grants, the following shall be observed:

(1) Upon request, the granting agency shall make, or arrange for, prompt payment to the grantee for allowable reimbursable costs not covered by previous payments.

(2) The grantee shall immediately refund or otherwise dispose of in accordance with instructions from the granting agency or the HEW financial officers representing the granting agency, any unencumbered balance of cash advanced to the grantee.

(3) The grantee shall submit within 90 days of the date of completion or termination, all financial, performance, and other reports required as a condition of the grant. The agency may grant extensions when requested by the grantee.

(4) The granting agency shall make a settlement for any upward or downward adjustment of the Federal share of costs, to the extent called for by the terms and conditions of the grant.

(c)(1) The closeout of a grant shall not affect the retention period for, or Federal rights of access to, grant records pursuant to Subpart D of this part.

(2) If a grant is closed out without audit on behalf of the Federal Government, the granting agency retains the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from a subsequent audit on behalf of the Federal Government.

(3) The closeout of a grant does not affect the grantee's responsibilities with respect to property pursuant to subpart O of this part, or with respect to any program income for which the grantee is still accountable pursuant to Subpart F of this part.

(d)(1) With respect to each grant, there shall be payable to the Federal Government the total sum of:

(i) Any grant funds paid to the grantee by the Federal Government in excess of the amount to which the grantee is finally determined to be entitled pursuant to the terms and conditions of the grant,

(ii) Any interest or other investment income earned on advances of grant funds which is due to the Federal Government pursuant to § 74.48,

(iii) The Federal share of any program income for which the grantee is accountable pursuant to Subpart F of this part, but which is not used or otherwise disposed of in accordance with the requirements of that subpart,

(iv) Any amounts due the Federal Government pursuant to Subpart O of this part, and

(v) Any other amounts finally determined to be due to the Federal Government pursuant to the terms and conditions of the grant.

(2) The total sum payable pursuant to paragraph (d)(1) of this section shall constitute a debt owed by the grantee to the Federal Government, and shall, if not paid upon demand, be recovered from the grantee or its successors or assignees by set-off or other action as provided by law.

§ 74.112 Violation of grant terms and conditions.

When a grantee has materially failed to comply with the terms and conditions of a grant, the granting agency may suspend the grant, in accordance with § 74.113, terminate the grant for cause, as provided in § 74.114, or take such other remedies as may be legally available and appropriate in the circumstances.

§ 74.113 Suspension.

(a) When a grantee has materially failed to comply with the terms and conditions of a grant, the granting agency may, upon written notice to the grantee, suspend the unused balance of the grant in whole or in part. Notice of suspension will contain a statement of the reasons for that action and any corrective action required of the grantee, and shall be given as far in advance of the effective date of the suspension as is reasonable considering the granting agency's responsibilities to protect the Federal Government's interest. Suspensions shall remain in effect until the grantee has taken corrective action satisfactory to the granting agency, or given evidence satisfactory to the granting agency that such corrective action will be taken, or until the granting agency terminates the grant.

(b) Except as authorized by the granting agency, new obligations incurred by the grantee during the suspension period will not be allowable. Any new obligations not authorized by the granting agency at the same time as or after it gives notice will be made solely at the grantee's own risk; the granting agency need not allow costs which result from them. In any case, however, necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(c) Appropriate adjustments to payments under the suspended grant will be made either by withholding subsequent payments or by not allowing the grantee credit for disbursements made in payment of unauthorized obligations incurred during the suspension period.

§ 74.114 Termination.

(a) *Termination for cause.* The granting agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it determines that the grantee has materially failed to comply with the terms and conditions of the grant. The granting agency shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to grantees or recoveries by granting agencies under grants terminated for cause shall be in accordance with the legal rights and obligations of the parties.

(b) *Termination on other grounds.* (1) Except as provided in paragraph (a) of this section, grants may be terminated in whole or in part only as follows:

(i) By the granting agency with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial terminations, the portion to be terminated, or

(ii) By the grantee, upon written notification to the granting agency, setting forth the reasons for such termination, the effective date, and in the case of partial terminations, the portion to be terminated. However, if, in the case of a partial termination, the granting agency determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, the granting agency may terminate the grant in its entirety pursuant to either paragraph (a) or paragraph (b)(1)(i) of this section.

(2) When a grant is terminated pursuant to paragraph (b)(1) of this section, the grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The granting agency shall allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to termination.

Subpart N—Forms for Applying for Grants

§ 74.120 Scope of subpart.

(a) This subpart promulgates forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying to HEW for grants. This subpart is not applicable, however, to those formula grant programs which do not require applicants to apply to HEW for funds on a project basis.

(b) This subpart permits granting agencies to prescribe the form of applications by nongovernmental organizations (including hospitals and institu-

tions of higher education operated by a government), but prescribes the use of a standard facesheet for certain of these applications.

§ 74.121 Authorized forms and instructions.

(a) *Governmental organizations.* (1) In applying to HEW for grants, governmental organizations shall use only the forms specified in §§ 74.122 through 74.126 inclusive, and such supplementary or other forms as may from time to time be prescribed by the granting agency with the approval of OGPM and OMB.

(2) Governmental applications shall submit the original and two copies of their applications. However, granting agencies may waive the requirement for the second copy, or both copies, when not needed.

(3) Governmental applicants shall follow all applicable standard instructions promulgated by OMB for use in connection with the forms specified in § 74.122 through § 74.26, inclusive. Granting agencies may promulgate substantive supplementary instructions only with the approval of OGPM and OMB.

(4) Except as provided by § 74.106 all requests by governmental grantees for renewals, revisions continuations, and augmentations (i.e., supplements) to approved grants shall be submitted on the same form as the original application. For those purposes, only the SF 424 and the affected pages of the forms should be submitted.

(b) *Nongovernmental organizations.* Nongovernmental organizations shall use application forms prescribed by the granting agency, except that the facesheet of such applications shall be Standard Form 424 for grants under programs covered by Attachment A, Part 1, of OMB Circular No. A-95.

§ 74.122 Preapplications for Federal Assistance.

(a) The Preapplication for Federal Assistance form prescribed by Attachment M of General Services Administration Federal Management Circular 74-7 shall be used to:

(1) Establish communication between the applicant and the granting agency;

(2) Determine the applicant's eligibility;

(3) Determine how well the project can compete with similar applications from others; and

(4) Eliminate any proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application.

(b) Preapplication shall be mandatory when the potential applicant is a governmental organization and the proposed project would require more than $100,000 of Federal funding for construction, land acquisition, or land development. The granting agency may require preapplications from any type of organization, for any type of project, and irrespective of the amount of estimated Federal funding. In addition any governmental organization has the right to submit a preapplication even when not required by the granting agency.

§ 74.123 Notice of Preapplication Review Action.

The Notice of Preapplication Review Action form prescribed by Attachment M of General Services Administration Federal Management Circular 74-7 will be used by granting agencies to inform the applicant of the results of the review of the preapplications submitted to them. The granting agency will send a notice to the applicant originally within 45 days of the receipt of the preapplication form. When the review cannot be made within 45 days, the applicant will be informed by letter as to when the review will be completed.

§ 74.124 Application for Federal Assistance (Nonconstruction Programs).

The Application for Federal Assistance (Nonconstruction Programs) form prescribed by Attachment M of General Services Administration Federal Management Circular 74-7 shall be used by governmental organizations in applying for any grant to which this subpart is applicable except where a form specified in § 74.125 or § 74.126 is to be used.

§ 74.125 Application for Federal Assistance (for Construction Programs).

The Application for Federal Assistance (for Construction Programs) form prescribed by Attachment M of General Services Administration Federal Managenment Circular 74-7 shall be used by governmental organizations in applying for any grant whose purpose is solely or primarily construction, land acquisition, or land development.

§ 74.126 Application for Federal Assistance (Short Form).

The Application for Federal Assistance (Short Form) form prescribed by Attachment M of General Services Administration Federal Management Circular 74-7 shall be used by governmental organizations in applying for any single-purpose, one-time grant of less than $10,000 not requiring clearinghouse approval, an environmental impact statement, or the relocation of persons, businesses, or farms. Granting agencies may, at their discretion, authorize or prescribe this form for applications for larger amount.

Subpart O—Property

§ 74.130 Scope of subpart.

(a) This subpart sets forth requirements relating to real property and tangible personal property, part or all of the acquisition cost of which is either borne as a direct cost by a grant or counted as a direct cost towards satisfying a cost-sharing or matching requirement of a grant. The subpart does not apply to (1) real property or tangible personal property for which only depreciation or use allowances are charged, or (2) real property or tangible personal property which is donated as a third-party in-kind contribution (as defined in § 74.51), or (3) tangible personal property acquired primarily for sale or rental rather than for use in the supported activities (see § 74.46).

(b) This subpart also sets forth or references policies relating to intangible personal property arising out of activities assisted by a grant.

§ 74.131 General.

Grantees, subgrantees, and cost-type contractors under a grant managing property subject to this subpart may follow their own property management policies and procedures, provided they observe the requirements of this subpart. With respect to such property, granting agencies will not impose any requirements not authorized by this part unless specifically required by Federal law.

§ 74.132 Definitions.

As used in this subpart:

"Acquisition" of property includes purchase, construction, or fabrication of property.

"Acquisition cost" of an item of purchased nonexpendable personal property means the net invoice price of the property, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the property.

"Expendable personal property" means all tangible personal property other than nonexpendable personal property.

"Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit except that organizations subject to Cost Accounting Standards Board (CASB) regulations may use the CASB standard of $500 or more per unit and useful life of two years. An organization may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined herein.

"Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

"Real property" means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

"Replacement property" means nonexpendable personal property purchased to take the place of other nonexpendable personal property. To qualify as replacement property, it must serve the same function as the property replaced and must be of the same nature or character, although not necessarily of the same grade or quality.

§ 74.133 Real property.

Except as otherwise provided by Federal law, real property to which this subpart applies shall be subject to the following requirements, in addition to any other requirements imposed by the terms and conditions of the grant:

(a) *Title.* Title to real property acquired by the grantee or by the recipient of a cost-type procurement contract awarded by the grantee shall vest in the grantee upon acquisition. Title to real property acquired by a subgrantee or by the recipient of a cost-type procurement contract awarded by a subgrantee shall vest in the subgrantee upon acquisition. The grantee, or the subgrantee through the grantee, may request approval from the granting agency to transfer title to an eligible third party for continued use for authorized purposes in accordance with paragraph (b) of this section. If such approval is permissible under Federal law and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this section.

(b) *Use.* The property shall be used for the originally authorized purpose as long as the property is needed for that purpose. When the property is no longer so needed, the grantee, or the subgrantee through the grantee, may request approval of the granting agency to use the property for other purposes. Use for other purposes shall be limited to:

(1) Projects or activities supported by other Federal grants or assistance agreements.

(2) Projects or activities not supported by other Federal grants or assistance agreements but having, nevertheless, purposes consistent with those of the legislation under which the original grant was made.

(c) *Disposition.* When the real property is no longer to be used as provided in paragraph (b) of this section, the grantee, or the subgrantee through the subgrantee, shall follow the disposition instructions of the granting agency or its successor agency. Those instructions will provide for one of the following alternatives:

(1) The property shall be sold under guidelines provided by the granting agency, and the Federal Government shall be paid an amount computed by multiplying the Federal share of the property times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return.

(2) The grantee or subgrantee shall be permitted the option either to sell the property in accordance with paragraph (c)(1) of this section or to retain title. If title is retained, the Federal Government shall be paid an amount computed by multiplying the fair market value of the property by the Federal share of the property.

(3) The grantee or subgrantee shall transfer title to the property to the Federal Government in accordance with instructions provided by the granting agency and the grantee shall be entitled to be paid an amount computed by multiplying the current fair market value of the property by the non-Federal share of the property.

§ 74.134 Nonexpendable personal property—title.

Title to nonexpendable personal property acquired by a grantee shall vest in the grantee upon acquisition. Title to such property acquired by a subgrantee or a cost-type procurement contractor under a grant or subgrant shall vest, upon acquistion, in the grantee, subgrantee, contractor, or an intermediate awarding party, as the non-Federal parties involved may determine.

§ 74.135 Nonexpendable personal property—Federal right to require transfer.

For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, the granting agency shall have the right to require transfer of the property, including title to the property, to the Federal Government or to a non-Federal party named by the granting agency when such party is eligible under law to be furnished the property. This right will normally be exercised by HEW granting agencies only when the project or activity for which the property was acquired is transferred from one grantee to another. The right is subject to the following conditions:

(a) In order to exercise the right, the granting agency must issue disposition instructions to the grantee, or to the subgrantee or contractor through the grantee, before other permissible disposition of the property takes place and not later than the 120th day after the end of Federal grant support for the project or activities for which it was acquired. If the granting agency fails to issue disposition instructions within that time, the right shall lapse.

(b) If the right is exercised, the grantee shall be entitled to be paid any reasonable shipping or storage costs incurred, plus an amount computed by multiplying the current fair market value of the property by the non-Federal share of the property.

§ 74.136 Nonexpendable personal property—use.

(a) Nonexpendable personal property which has not been transferred pursuant to § 74.135 shall be used in the project or activity for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or activity, the property shall be used in other projects or activities having a need for the property and currently or previously sponsored by the Federal Government, in the following order of priority:

(1) Projects or activities currently or previously sponsored by the granting agency which awarded the grant under which the property was acquired.

(2) Projects or activities currently or previously sponsored by other Federal agencies.

(b) During the time that nonexpendable personal property is held for use in the project or activity for which it was acquired, the grantee, subgrantee, or contractor shall make it available for use in other projects or activities which it conducts if such other use will not interfere with the work on the project or activity for which the property was originally acquired. First preference for such other use shall be given to other projects or activities currently or previously sponsored by the same granting agency which awarded the grant under which the property was acquired; second preference shall be given to projects or activities currently or previously sponsored by other Federal agencies; and third preference shall be given to projects or activities not currently or previously approved by the Federal Government.

§ 74.137 Nonexpendable personal property—replacement.

(a) Nonexpendable personal property which is being used in accordance with § 74.136 or which is exempt from that section but still subject to the right in § 74.135 may be traded in for replacement property, as defined in § 74.132. Alternatively, the property may be sold separately and the proceeds applied to the purchase price of such replacement property: *Provided, however*, That the time interval between sale of the property and purchase or firm order for the replacement property will not exceed 30 days or any longer interval authorized by the granting agency.

(b) If the property is traded in, the amount received for trade-in will be considered to be the difference between the amount that would have been paid for the replacement property without a trade-in and the amount actually paid with the trade-in. This amount plus the additional outlay will constitute the full acquisition cost of the replacement property for the purposes of paragraph (d) of this section and § 74.147.

(c) Except as provided in § 74.140, if the property replaced is sold separately and the proceeds from sale exceed the acquisition cost of the replacement property, the granting agency shall be paid an amount calculated by multiplying the excess proceeds by the Federal share of the property replaced.

(d) Replacement property acquired pursuant to this section shall be subject to the same use, disposition, and other provisions of this subpart that would apply to the property replaced. Where applicability of a provision depends upon the acquisition cost of property, the acquisition cost of the original property shall be used to determine whether the provision applies unless the additional outlay for the replacement property, if any, is also supported by an HEW grant. In the latter case, the full acquisition cost of the replacement property (the amount for the replaced property plus

the additional outlay) shall be used to determine whether the provision applies.

§ 74.138 Nonexpendable personal property—disposition.

When nonexpendable personal property can no longer be used as provided in § 74.136, disposition of the property shall be made as follows:

(a) *Property with a unit acquisition cost of less than $1,000.* The property may be sold or used for other activities without compensation to the Federal Government. In the case of property acquired under a subgrant or cost-type contract, the non-Federal parties involved shall determine amongst themselves who shall have the right to sell or use the property.

(b) *Property with a unit acquisition cost of $1,000 or more.* The property may be retained for other uses, provided the granting agency or its successor is paid an amount calculated by multiplying the current fair market value of the property by the Federal share of the property. In the case of property acquired under a subgrant or cost-type contract, the non-Federal parties involved shall determine amongst themselves who shall have the first option to retain the property. If the property has further use value but is not needed by any of the parties involved, the grantee shall request disposition instructions from the granting agency. Normally, the granting agency will issue instructions to the grantee within 120 days after receipt of the request. The following procedures shall govern:

(1) If the grantee is so instructed or if disposition instructions are not issued within the 120 day period, the property shall be sold and the granting agency shall be paid an amount calculated by multiplying the sales proceeds by the Federal share of the property. However, $100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from that amount for selling and handling expenses.

(2) If the grantee is instructed to have the property shipped elsewhere, the grantee shall be entitled to be paid any reasonable shipping or interim costs incurred, plus an amount computed by multiplying the current fair market value of the property by the non-Federal share of the property.

(3) If the grantee is instructed to dispose of the property otherwise, the grantee shall be entitled to be reimbursed by the granting agency for any costs incurred in such disposition.

(c) *Date of disposition.* (1) Disposition of property subject to Paragraph (a) of this section shall be considered to occur on the date the property can no longer be used in projects or activities currently or previously sponsored by the Federal Government.

(2) Disposition of property subject to paragraph (b) of this section shall be considered to occur on the earliest of the following: (i) The date the Federal Government is compensated for its share of the fair market value or (ii) the date the property is determined to have no further use value or (iii) the date the property leaves the physical possession of the grantee and the subgrantees or contractors, if any, who acquired or used the property. However, replacement of property pursuant to § 74.137 will not be considered a disposition of the property that was replaced.

§ 74.139 Nonexpendable personal property—procedural requirements.

Procedures for managing nonexpendable personal property subject to this subpart shall, as a minimum, meet the requirements listed in this section. These requirements shall be observed until the date of disposition of the property, determined in accordance with § 74.138(c), or until the property is replaced pursuant to § 74.137. In addition, the property records required by paragraph (a) of this section shall be subject to the retention and access requirements of Subpart D of this part. In the case of property in the hands of subgrantees or cost-type contractors, the grantee is responsible for ensuring that these requirements are met, regardless of whether the procedures themselves are performed by the contractor, subgrantee or grantee or by a combination of the parties involved.

(a) Property records shall be maintained accurately and shall include:

(1) A description of the property, including manufacturer's model number, if any.

(2) An identification number, such as the manufacturer's serial number.

(3) Identification of the grant under which the property was acquired.

(4) Whether title vests in the grantee, subgrantee, or contractor.

(5) Acquisition date and unit acquisition costs. If replacement property, a cross reference to the property records of the property replaced.

(6) The Federal share of the property as determined in accordance with §§ 74.142 through 74.148.

(7) Location, use and condition of the property and the date this information was reported.

(8) Ultimate disposition data, including date of disposition and selling price or the method used to determine current fair market value if the granting agency was compensated for the Federal share of that value. If the property was replaced pursuant to § 74.137, in lieu of the preceding disposition data, data on the trade-in or sale and a cross reference to the property records of the replacement property.

(b) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable personal property shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(e) Where sale of the property is authorized or required, proper selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

§ 74.140 Exemptions for nonexpendable personal property acquired under grants subject to certain statutes.

Some Federal statutes (e.g., Pub. L. 83-934, 42 U.S.C. 1892) provide that, in grants for the conduct of certain specified activities at certain specified kinds of institutions or organizations, granting agencies shall have authority to vest title to equipment purchased with the grant funds in such an institution or organization without further obligation to the Federal Government or on such terms and conditions as deemed appropriate. Nonexpendable personal property purchased by such an institution or organization under a grant subject to such a statute shall be exempt from §§ 74.136, 74.137(c), 74.138, and 74.139. For the purposes of § 74.135(a), disposition of such property shall be considered to take place when the property is no longer needed for the project or activities for which it was acquired.

§ 74.141 Expendable personal property.

(a) Title to expendable personal property acquired by a grantee shall vest in the grantee upon acquisition. Title to such property acquired by the recipient of a subgrant or of a cost-type procurement contract awarded under a grant or subgrant shall vest in the grantee, the recipient, or an intermediate awarding party, as the non-Federal parties involved may determine.

(b) If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value upon termination or completion of the grant, subgrant, or cost-type contract for which it was acquired and the property is not needed for any other project or activity, currently or previously sponsored by the Federal Government the property shall either be retained for use in other activities or be sold. In either case, the granting agency shall be paid an amount computed by multiplying the current fair market value or the proceeds from sale by the Federal share of the property. If the property is sold, ten percent of the proceeds may be deducted and retained from the amount otherwise due the granting agency, for selling and handling expenses.

§ 74.142 Federal share of property—general.

(a) Several sections of this subpart require a determination of the Federal (or non-Federal) share of real or tangible personal property. Sections 74.143 through 74.148 set forth rules by which such a determination shall be made.

These rules are intended to produce equitable results that are independent of whether the accounting system of the grantee or any other party involved charges the acquisition cost of an item of property to HEW funds, to required cost-sharing or matching, or partly to each. To this end, the rules provide that the Federal share of property shall be the same as the granting agency's share of the acquiring party's total costs under the grant.

(b) In all calculations pursuant to these rules, the value of third-party in-kind contributions (as defined in Subpart G of this part) is excluded, since those contributions do not make the donor a party to the acquisition of the property and are not part of the Federal and non-Federal funds used for the actual outlays of the acquiring party.

(c) These calculations also exclude project costs which are neither borne by an HEW grant nor required to meet a cost-sharing or matching requirement of an HEW grant. The purpose of this exclusion is to make it unnecessary for the grantee or others to report or account for such costs merely in order to calculate the Federal and non-Federal shares in property. It is, of course, recognized that a portion of the acquisition cost of property acquired for a project may constitute voluntary cost-sharing or overmatching, or may otherwise neither be borne by a grant nor counted towards a cost-sharing or matching requirement of a grant. Accordingly, provision is made for appropriate reductions to the Federal share of the property in such cases. (See § 74.146).

§ 74.143 Federal share of property acquired by a grantee.

Except as explained in § 74.146 through 74.148, the Federal share of real or tangible personal property acquired by a grantee shall be the same as the granting agency's share of the grantee's costs under the grant and shall be calculated as follows:

(a) Determine the total costs incurred by the grantee which were either borne by the grant or counted toward meeting a cost-sharing or matching requirement of the grant. Include costs incurred by subgrantees only to the extent they were paid for by the grantee.

(b) Divide the figure determined in accordance with paragraph (a) of this section into the amount of those costs borne by the HEW grant.

§ 74.144 Federal share in property acquired by a subgrantee.

Except as explained in § 74.146 through 74.148, the Federal share of real or tangible personal property acquired by a subgrantee shall be the same as the granting agency's share of the subgrantee's costs under the grant and shall be calculated as follows:

(a) Determine the granting agency's share of the grantee's costs in accordance with § 74.143.

(b) Determine the grantee's share of the subgrantee's costs. Exclude all subgrantee costs that are not ultimately borne by or counted towards a cost-sharing or matching requirement of the HEW grant.

(c) Multiply the ratios obtained in paragraphs (a) and (b) of this section. For example, if the granting agency bears 50 percent of the grantee's costs under the grant (paragraph (a)) and the grantee bears 50 percent of the subgrantee's costs under the HEW grant (paragraph (b)), the Federal share of the subgrantee's costs and of property acquired by that subgrantee shall be 25 percent.

(d) If the property was acquired under a lower tier subgrant (i.e., a subgrant under a subgrant), continue the preceding procedure as far as necessary by multiplying the share last obtained times the subgrantee's share of the costs of the lower tier subgrantee.

§ 74.145 Federal share of property acquired by a cost-type procurement contractor under a grant or subgrant.

The Federal share of real or tangible personal property acquired by the recipient of a cost-type procurement contract awarded by the grantee or a subgrantee shall be determined as if the contractor were a subgrantee.

§ 74.146 Federal share of property acquired only in part under a grant.

If only a portion of the acquisition cost of an item of real or tangible personal property is borne by a grant or counted toward meeting a cost-sharing or matching requirement of a grant, the Federal share in that item of property shall be calculated as follows:

(a) Divide the total acquisition cost of the property into the amount of that cost borne by the grant or counted toward meeting a cost-sharing or matching requirement of the grant. For example, if the property cost $10,000 and $5,000 of that cost was neither borne by the grant nor required to meet a cost sharing or matching requirement then count only one-half.

(b) Multiply the ratio obtained in paragraph (a) of this section by the Federal share of the costs of the grantee, subgrantee, or cost-type contractor determined in accordance with §§ 74.143–74.145.

§ 74.147 Federal share of replacement property.

The Federal share of replacement property shall be calculated as follows:

(a) Determine the Federal share in the property replaced.

(b) Divide the full acquisition cost of the replacement property into the amount received for trade-in of the property replaced or the proceeds from sale of that property (less any reasonable and necessary selling expenses).

(c) Multiply the ratios obtained in paragraphs (a) and (b) of this section.

(d) If the additional outlay for the replacement property is also supported by an HEW grant, determine the Federal share in the property resulting from that support (calculated as explained in § 74.146) and add that share ratio to the share ratio calculated in paragraph (c) of this section.

§ 74.148 Federal share of property under annual grants.

Where grant support is continued or renewed on an annual or essentially annual basis, the Federal share of real property or tangible personal property shall be based on grantee costs pertaining to (a) the grant funding period or periods in which the grantee incurs the obligation or obligations resulting in the acquisition of the property or (b) in the case of property acquired under a subgrant, the grant funding period in which the grantee awards the subgrant which, directly or through another subgrant, gives rise to the acquisition of the property.

§ 74.149 Division of non-Federal share of market value or proceeds.

In the case of real property or tangible personal property acquired under a subgrant or cost-type contract under a grant, the division of the non-Federal share of the market value or proceeds from sale of the property among the grantee, the recipient of the subgrant or contract, and any intermediate recipients, upon disposition of the property pursuant to this subpart, shall be a matter for the non-Federal parties involved to determine.

§ 74.150 Inventions and patents.

HEW's regulations on inventions and patents arising out of activities assisted by a grant are set forth in Parts 6 and 8 of this title.

§ 74.151 Copyrights.

(a) When copyrightable material is developed in the course of or under a grant or subgrant to a government, the government which developed the work is free to copyright it or to permit others to do so.

(b) Unless otherwise provided by the terms and conditions of the HEW grant, when copyrightable material is developed in the course of or under a grant or subgrant to a nongovernmental organization, the grantee or subgrantee which developed the work is free to copyright it or to permit others to do so.

(c) If the work is developed under a subgrant, the subgrantee's rights pursuant to paragraphs (a) and (b) of this section shall be subject to any prohibitions or restrictions of the grantee which may have been part of the terms of the subgrant.

(d) If any material developed in the course of or under a grant or subgrant is copyrighted, HEW shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

§ 74.152 Right of grantees to impose additional requirements.

With respect to any property subject to this subpart which is acquired or developed under a subgrant or a contract under a grant or subgrant, the grantee is not prohibited by this subpart from imposing additional requirements not inconsistent with the requirements in this subpart or in other terms and conditions

of the grant. For example, the grantee may prohibit subgrantees from using real property acquired under a subgrant for any project or activity other than the one originally authorized unless the grantee, as well as the granting agency, gives its approval (see § 74.133(b)).

Subpart P—Procurement Standards

§ 74.160 Scope of subpart; terminology.

(a) This subpart provides standards for use by grantees and subgrantees in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is either borne as a direct cost by a grant or counted as a direct cost towards satisfying a cost-sharing or matching requirement of a grant. Except where stated otherwise (see § 74.166), this subpart does not apply to the awarding of subgrants.

(b) The standards in this subpart are intended to insure that materials and services procured under HEW grants and subgrants are obtained in an effective manner and in compliance with the provisions of applicable Federal law and Executive Orders.

(c) The term "procuring party," as used in this subpart, means the grantee or the subgrantee, whichever is making a procurement that is subject to this subpart.

§ 74.161 General.

(a) Procuring parties may use their own procurement policies, provided that procurements and procedures subject to this subpart are made in accordance with the standards set forth in this subpart.

(b) The standards contained in this subpart do not relieve the procuring party of the contractual responsibilities arising under its contracts. The procuring party is the responsible authority, without recourse to HEW, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements that are subject to this subpart. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

§ 74.162 Code of conduct.

(a) The procuring party shall maintain a code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts that are subject to this subpart. The code or standards shall provide for disciplinary actions to be applied for violations of the code or standards by the procuring party's officers, employees, or agents. For governmental procuring parties, such disciplinary actions are required only to the extent otherwise permissible under the government's laws, rules, or regulations, but, to the extent so permissible, shall also include disciplinary actions to be applied for violations by contractors or their agents.

The procuring party's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

(c) No employee, officer, or agent of a nongovernmental procuring party shall participate in the selection, award, or administration of a contract subject to this subpart where, to his or her knowledge, any of the following has a financial interest in that contract:

(i) The employee, officer, or agent;

(ii) Any member of his or her immediate family;

(iii) His or her partner;

(iv) An organization in which any of the above is an officer, director, or employee;

(v) A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment.

§ 74.163 Free competition.

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

(b) The procuring party should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In particular, a contractor that develops or drafts specifications, requirements, a statement of work, an invitation for bids or a request for proposals for a particular procurement by a nongovernmental procuring party should be excluded from competing for that procurement.

(c) Solicitations shall clearly set forth all requirements that the bidder/offerer must fulfill in order for his bid/offer to be evaluated. Awards shall be made to the responsible bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the procuring party, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid. Any and all bids/offers may be rejected when it is in the procuring party's interest to do so, and, in the case of governmental procuring parties, such rejections are in accordance with the government's applicable law, rules, or regulations.

§ 74.164 Procedural requirements.

The procuring party shall establish procurement procedures which provide for as a minimum, the following:

(a) Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(b) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used, the specific features of the named brand which must be met by bidders/offerors should be clearly specified.

(c) Where applicable, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e (b)) shall be observed.

(d) Positive efforts shall be made by procuring parties to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts subject to this subpart.

(e) The type of procuring instruments used, e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the procuring party but must be appropriate for the particular procurement and for promoting the best interest of the grant project or program involved. The "cost-plus-a-percenatge-of-cost" method of contracting shall not be used.

(f) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(g) The following shall be subject to prior approval at the discretion of the granting agency if the aggregate expenditure is expected to exceed $5,000: (1) Any proposed sole source contract; (2) any proposed contract to be awarded by a nongovernmental procuring party where only one bid or proposal has been received.

(h) Nongovernmental procuring parties should make some form of price or cost analysis in connection with every negotiated procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost proposed by the offeror to determine reasonableness, allocability and allowability.

(i) Procurement and files for purchases in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Justification for lack of competition when competitive bids or offers are not obtained;

(3) Basis for award cost or price.

(j) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

§ 74.165 Requirement for governments to use formal advertising.

(a) Except as provided in paragraph (b) of this section, in making procurements that are subject to this section, governmental procuring parties shall use the formal advertising method of procurement, involving adequate purchase descriptions, sealed bids, and public openings of bids.

(b) Procurements may be negotiated if it is not practicable or feasible to use formal advertising. Generally, such procurements may be negotiated if one or more of the following conditions prevail:

(1) The public exigency will not permit the delay incident to advertising.

(2) The material or service to be procured is available from only one person or firm.

(3) The aggregate amount involved does not exceed $10,000.

(4) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution.

(5) The material or services are to be procured and used outside the limits of the United States and its possessions.

(6) No acceptable bids have been received after formal advertising.

(7) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, or for technical or specialized supplies requiring substantial initial investment for manufacture.

(8) Formal advertising is otherwise not practicable or feasible, and negotiation is authorized by applicable State, local, or tribal law, rules, or regulations.

(c) Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(d) For every negotiated procurement in excess of $10,000 by a governmental procuring party, written justification for the use of negotiation in lieu of formal advertising shall be included in the government's procurement records and files, in addition to the information required by § 74.164(i). The justification may be on a class basis, i.e., covering a group of related or similar contracts, or it may be on an individual contract basis.

§ 74.166 Contract and subgrant provisions.

(a) *Scope.* (1) This section sets forth requirements relating to provisions that must be included in contracts for procurements that are subject to this part. The requirements shall also apply to subcontracts of any tier under such contracts, and the term "contracts" in this section shall be construed as including subcontracts.

(2) Certain requirements in this section also apply to subgrants and so state.

(b) *General.* All contracts and subgrants shall contain sufficient provisions to define a sound and complete agreement.

(c) *Administrative remedies for violations.* Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as appropriate.

(d) *Termination provisions.* Contracts in excess of $10,000 shall contain suitable provisions for termination by the awarding party, including the maner by which termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(e) *E.O. 11246.* Where applicable, construction contracts in excess of $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(f) *Copeland Act.* Contracts or subgrants in excess of $2,000 for construction of repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulation (29 CFR Part 3). All suspected or reported violations shall be reported to the granting agency by the grantee or through the grantee and any intermediate awarding parties.

(g) *Davis-Bacon Act.* When required by the Federal legislation governing the grant program, all construction contracts in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276 a to a7) as supplemented by Department of Labor regulations (29 CFR Part 5). All suspected or reported violations shall be reported to the granting agency by the grantee or through the grantee and any intermediate awarding parties.

(h) *Contract Work Hours and Safety Standards Act.* All contracts subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) shall include a provision requiring the contractor to comply with the applicable sections of the Act and the Department of Labor's implementing regulations (29 CFR Parts 5 and 1926).

(i) *Inventions and patents.* Contracts or subgrants which may give rise to inventions subject to Parts 6 and 8 of this title shall include a provision requiring compliance with those parts.

(j) *Clean Air and Water Acts.* Contracts and subgrants in excess of $100,000 shall contain provisions requiring compliance with all applicable standards, order, or regulations issued pursuant to the Clean Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported in writing by the party awarding the contract or subcontract to the appropriate regional office of the Environmental Protection Agency, and a copy of the report shall be submitted to the granting agency through the intermediate awarding parties, if any.

Subpart Q—Cost Principles

§ 74.170 Scope of subpart.

This subpart establishes the principles to be used (except to the extent inconsistent with an applicable Federal statute or regulation) in determining costs applicable to HEW grants, and to subgrants or cost-type contracts under HEW grants.

§ 74.171 Grants to governmental organizations.

The principles to be used in determining the allowable costs of activities conducted or administered by governmental organizations under grants (and subgrants or cost-type contracts awarded to them under grants) are set forth in Appendix C to this part.

§ 74.172 Grants to institutions of higher education.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by institutions of higher education (other than profit-making institutions) under grants (and subgrants or cost-type contracts awarded to them under grants) are set forth in Part I of Appendix D to this part.

(b) *Training and other educational services.* The principles for determining the allowable costs of training and other educational services provided by institutions of higher education (other than profit-making institutions) under grants (and subgrants or cost-type contracts awarded to them under grants) are set forth in Part II of Appendix D to this part.

(c) *Other activities.* Appendix D to this part shall be used as a guide for determining the allowable costs of other activities conducted by institutions of higher education (other than profit-making institutions) under grants (and subgrants or cost-type contracts awarded to them under grants).

§ 74.173 Grants to hospitals.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by hospitals under grants (and subgrants or cost-type contracts awarded to them under grants) are set forth in Appendix E to this part.

(b) *Other activities.* Appendix E to this part shall be used as a guide for determining the allowable costs of other activities conducted by hospitals under grants (and subgrants or cost-type contracts awarded to them under grants).

§ 74.174 Grants to other nonprofit organizations.

(a) *Nonconstruction.* The principles for determining the allowable costs of activities conducted by nonprofit organizations other than institutions of higher education, hospitals, and governmental organizations under nonconstruction grants (and nonconstruction subgrants

or cost-type contracts awarded to them under grants) are set forth in Appendix F to this part.

(b) *Construction.* Appendix F to this part shall be used as a guide for determining the allowable costs of work under construction grants to nonprofit organizations (other than institutions of higher education, hospitals and governmental organizations) and any construction subgrants or cost-type contracts awarded to such nonprofit organizations under grants.

§ 74.175 Subgrants and cost-type contracts.

(a) It should be noted that the cost principles applicable to a subgrantee or cost-type contractor under an HEW grant will not necessarily be the same as those applicable to the grantee. For example, where a State government awards a subgrant or cost-type contract to an institution of higher education, Appendix D to this part would apply to the costs incurred by the institution of higher education, even though Appendix C would apply to the costs incurred by the State.

(b) The principles to be used in determining the allowable costs of work performed by commercial organizations other than hospitals under cost-type contracts awarded to them under HEW grants are set forth in 41 CFR Subpart 1–15.2.

§ 74.176 Costs allowable with approval.

Each set of cost principles identifies certain costs that are allowable to the extent that they are approved by the granting agency. The following procedures govern approval of these costs.

(a) When costs are treated as indirect costs (or are allocated pursuant to a government-wide cost allocation plan), acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.

(b) When the costs are treated as direct costs, they must be approved in advance by the granting agency. If the costs are specified in the grant budget, approval of the budget shall constitute approval of the costs. If they are not specified in the budget, the grantee shall obtain specific prior approval in writing from the granting agency.

(c) A granting agency may conditionally waive the requirement for its approval of the costs. The condition will be that the grantee establish adequate safeguards to ensure that a meaningful review of the propriety of the costs is conducted by an appropriate grantee official prior to the incurrence of the costs. Such a waiver shall apply only to the requirement for granting agency approval. If, upon audit or otherwise, it is determined that the costs do not meet other requirements or tests for allowability specified by the applicable cost principles, such as reasonableness and necessity, the costs may be disallowed.

Subpart R—[Reserved]

Subpart S—Construction Grants—[Reserved]

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[FR Doc. 77-2155 Filed 1-21-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 21048; RM-2370]

FM BROADCAST STATION IN ADEL, GEORGIA

Proposed Change in Table of Assignments

Adopted: January 13, 1977.

Released: January 18, 1977.

1. *Petitioner, Proposal and Comments.* (a) Notice of Proposed Rule Making is given concerning the amendment of the FM Table of Assignments (§ 73.202(b) of the Commission's Rules and Regulations) as concerns Adel, Georgia.

(b) A "Petition for Rule Making" and amendment were filed by Timberland Communications, Inc. ("petitioner"), through counsel, proposing the assignment of either Channel 221A or Channel 237A to Adel, Georgia. Timberland had initially requested Channel 249A. As a result of Commission action in Docket No. 19551 assigning Channel 249A to Ocilla, Georgia, Timberland amended its proposal. The Broadcast Good Music! Committee, one of the parties in Docket 19551, supra, appealed the Commission's decision to Federal Court.[1] Good Music! then filed a Request for Stay with the Commission regarding matters in this Notice, stating that is felt the Channel 237A proposal for Adel could prove to be mutually exclusive with its appeal and could create a multiplicity of litigation. Resolution of the petition to stay became unnecessary when Good Music! reversed its position and agreed not to object to issuance of this Notice.[2] As will be indicated in the comments below, these associated controversies need not be considered in this Notice, since Channel 221A can be assigned to Adel thereby avoiding the peripheral issues which would arise if Channel 237A were considered at this time as a possible alternative.[3]

3. *Community Data.* (a) *Location.* Adel is located in the south-central region of Georgia approximately 209 kilometers (130 miles) south of Macon, 344 kilometers (214 miles) south of Atlanta and 233 kilometers (145 miles) northwest of Jacksonville, Florida.

(b) *Population.* Adel, 4,972; Cook County, 12,129 (1970 U.S. Census figures).

(c) *Local Broadcast Service.* Daytime-only AM Station WBIT (Class III, D) licensed to petitioner is the only AM aural service licensed to the community. Adel is also within the 1 mV/m contour of Moultrie FM Station WMTM and Valdosta FM Stations WGOV and WAFT.

(d) *Economic Data.* The city of Adel, seat of Cook County, was incorporated in 1919 and currently has 18 manufacturing industries within its area employing over 1,600 persons. The city has two industrial areas which it hopes will attract new industry, and a five-million dollar expansion by the Weyerhauser Company is pointed to by petitioner as evidence of the city's growth potential. Petitioner indicates that between 1960 and 1970, Adel's population increased 15.1 percent and Cook County's population increased 2.6 percent. Petitioner's data would appear to indicate a growing community with only limited aural service which needs a first local full-time FM service to serve the needs of its citizens and to further stimulate its planned economic growth. For these reasons, a rule making proceeding would be appropriate to more thoroughly consider these needs.

4. *Preclusion Studies.* Preclusion is not ordinarily considered in the context of a first Class A assignment to a community without an FM channel assignment. However, because a Channel 221A assignment could potentially affect otherwise possible educational FM service, petitioner should furnish data showing the preclusionary effect, if any, of assigning Channel 221A to Adel upon the future assignment of educational stations on Channels 218, 219 and 220.

5. *Comments.* Since there possibly remains a question of where Channel 237A should ultimately be assigned,[4] we believe that the assignment of Channel 221A should be proposed for Adel. Although either channel may be assigned to Adel now without affecting any existing FM assignment, we believe it best to avoid the possible delay which could be caused by considering all the issues of a Channel 237A assignment, and this Notice is directed only to those issues involving a Channel 221A assignment.

PROPOSED AMENDMENT TO THE FM TABLE OF ASSIGNMENTS

6. Accordingly, the Commission proposes to amend the FM Table of Assignments (§ 73.202(b) of the Commission's Rules and Regulations) with regard to the community listed below as follows:

City	Channel No.	
	Present	Proposed
Adel, Ga.		221A

7. *Authority.* The Commission's authority to institute rule making proceedings; showings required, cut-off procedures and filing requirements are contained in the attachment and are incorporated by reference herein.

8. *Comments and Replies.* Interested persons and parties may file comments

[1] The U.S. Court of Appeals, D.C. Circuit, Case No. 75-1926, affirmed the Commission's action on October 29, 1976.

[2] Letter dated June 3, 1976, to the Commission from attorneys for Good Music!

[3] Additionally, an alleged "counterproposal" was filed by a Mr. John W. Davidson proposing Channel 237A to McRae, Georgia. Since the distance between McRae and Adel is 121 kilometers (75 miles) and is beyond the 105 kilometers (65 miles) Class A cochannel separation required, both communities could have Channel 237A assigned (absent other conflicts), and Mr. Davidson's filing will be treated as a separate request for rule making for McRae.

[4] Hawkinsville, Ocilla and McRae, Georgia, all had expressed an interest in Channel 237A.

on or before February 28, 1977, and reply comments on or before March 21, 1977.

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

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the notice of proposed rule making to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc.77-2101 Filed 1-21-77;8:45 am]

[47 CFR Part 89]

PUBLIC LAND MOBILE RADIO SYSTEMS

Interconnection Policies; Order Extending Time for Filing Reply Comments

Adopted: January 13, 1977.

Released: January 17, 1977.

In the matter of amendment of part 89 (Class A only) of the Commission's rules to prescribe policies and regulations to govern "interconnection" of private land mobile radio systems with the public, switched, telephone network,[1] Docket No. 20846.

1. In response to a petition filed by Airsignal International, Inc., and for the reasons set forth therein: *It is ordered*, Pursuant to authority contained in section 4(i) of the Communications Act of 1934, as amended, and in § 0.331 of the Commission's rules, That the time for filing Reply Comments in the above-entitled proceeding is extended to February 1, 1977.

ARLAN K. VAN DOORN,
Acting Chief, Safety and Special Radio Services Bureau.

[FR Doc.77-2102 Filed 1-21-77;8:45 am]

[1] See 41 FR 25840, June 22, 1976 and 41 FR 35863, August 25, 1976.

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.

ACTION

FOSTER GRANDPARENT AND SENIOR COMPANION PROGRAMS

Income Eligibility Level

This notice revises the schedule of income eligibility levels for individuals and families for the Foster Grandparent Program and the Senior Companion Program published in the FEDERAL REGISTER of July 30, 1976 (41 FR 31962). The revised schedule is based on poverty figures effective May 5, 1976, obtained from the Community Services Administration Income Poverty Guidelines dated March 31, 1976, and Department of Labor Consumer Price Index for October 1976, dated November 19, 1976. The amounts include state supplements to the Federal Supplemental Security Income (SSI) Program, effective August 9, 1976.

These ACTION programs are authorized pursuant to section 211 of the Domestic Volunteer Service Act of 1973, Pub. L. 93-113, 87 Stat. 402. Pursuant to section 421(4) of Pub. L. 93-113, 87 Stat. 414, the income eligibility levels are determined by the currently applicable guideline published by the Community Services Administration, pursuant to section 625 of the Economic Opportunity Act of 1974, as amended (42 USC 2971(a)), and increased by the amounts individual states supplement the Federal Supplement Security Income (SSI) Program, permitting ACTION, in accordance with section 421(4) of Pub. L. 93-113, to take into consideration existing poverty guidelines as appropriate to local situations. Section 625 permits the OEO poverty guideline to be adjusted for cost-of-living changes.

The income eligibility levels will be reviewed at least once a year, and similar schedules will be prepared to reflect any changes required as a result of that review.

Pursuant to section 420 of Pub. L. 93-113, this policy will become effective on January 24, 1977.

ACTION schedule of income eligibility levels for foster grandparents or senior companions

State	Individuals	Family of 2	Family of 3
Alabama	$2,885	$3,815	$4,785
Alaska	5,620	7,640	8,795
Arizona	2,885	3,810	4,735
Arkansas	2,885	3,810	4,735
California	4,185	7,050	7,975
Colorado	3,285	5,610	6,535
Connecticut	3,945	4,530	5,455
Delaware	2,885	3,810	4,735
District of Columbia	2,885	3,810	4,735
Florida	2,885	3,810	4,735
Georgia	2,885	3,810	4,735
Hawaii	3,515	4,685	5,735
Idaho	3,645	4,410	5,745
Illinois	3,010	3,810	4,735
Indiana	2,885	3,810	4,735
Iowa	2,885	3,810	4,735
Kansas	2,885	3,810	4,735
Kentucky	2,885	3,810	4,735
Louisiana	2,885	3,810	4,735
Maine	3,005	3,990	4,915
Maryland	2,885	3,830	4,735
Massachusetts	4,260	5,950	6,875
Michigan	3,175	4,245	5,170
Minnesota	3,225	4,255	5,180
Mississippi	2,885	3,810	4,735
Missouri	2,885	3,810	4,735
Montana	2,885	3,810	4,735
Nebraska	3,665	4,700	5,625
Nevada	3,460	4,975	5,875
New Hampshire	2,950	3,810	4,735
New Jersey	3,150	3,930	4,855
New Mexico	2,885	3,810	4,735
New York	3,615	4,720	5,645
North Carolina	2,885	3,810	4,735
North Dakota	2,885	3,810	4,735
Ohio	2,885	3,810	4,735
Oklahoma	3,150	4,395	5,320
Oregon	3,030	3,930	4,855
Pennsylvania	3,275	4,295	5,320
Rhode Island	3,260	4,520	5,445
South Carolina	2,885	3,810	4,735
South Dakota	2,885	3,810	4,735
Tennessee	2,885	3,810	4,735
Texas	2,885	3,810	4,735
Utah	2,885	3,810	4,735
Vermont:			
Area 1	3,275	4,330	5,255
Area 2	3,275	4,570	5,495
Virginia	2,885	3,810	4,735
Washington:			
Area 1	3,295	4,240	5,165
Area 2	3,100	3,885	4,810
West Virginia	2,885	3,810	4,735
Wisconsin	3,715	5,075	5,975
Wyoming	2,885	3,810	4,735
Puerto Rico	2,885	3,180	4,735
Virgin Islands	2,885	3,810	4,735

For families of more than three persons in the household, add the appropriate supplement for each member over three as follows:

	Per person
In the 48 contiguous States	$925
Alaska	1,155
Hawaii	1,060

Revision based on Community Services Administration Income Poverty Guidelines effective May 5, 1976, DHEW Supplemental Security Income Summary dated August 9, 1976, and DOL Consumer Price Index for October 1976.

RONALD E. GEREVAS,
Acting Deputy Director.

[FR Doc.77-1961 Filed 1-21-77;8:45 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Notice of Designation Number A366]

NORTH DAKOTA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following North Dakota Counties as a result of drought during the 1976 crop year.

Dickey	McIntosh
Emmons	Ransom
La Moure	Richland
Logan	Sargent

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 18th day of January 1977.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.77-2070 Filed 1-21-77;8:45 am]

[Notice of Designation Number A367]

SOUTH DAKOTA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following South Dakota Counties as a result of drought during the 1976 crop year.

Aurora	Hyde
Beadle	Jerauld
Brookings	Kingsbury
Brown	Lake
Brule	Lyman
Buffalo	McCook
Campbell	McPherson
Clark	Marshall
Codington	Mellette
Corson	Miner
Davison	Potter
Day	Roberts
Dewey	Sanborn
Deuel	Shannon
Douglas	Spink
Edmunds	Stanley
Faulk	Sully
Grant	Todd
Gregory	Tripp
Hamlin	Walworth
Hand	Washbaugh
Hanson	Ziebach
Hughes	

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Develop-

ment 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 18th day of January 1977.

FRANK B. ELLIOTT,
Administrator
Farmers Home Administration.

[FR Doc.77-2071 Filed 1-21-77;8:45 am]

Forest Service

SOUTH FORK SALMON RIVER PLANNING UNIT

Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the South Fork Salmon River Planning Unit, Boise National Forest and Payette National Forest, Idaho. The Forest Service report number is USDA–FS–DES (Adm) R4–77–2.

The environmental statement identifies and evaluates the probable effects of the land use plan for the South Fork Salmon River Planning Unit on the Boise and Payette National Forests in south-central Idaho. The purpose of the plan is to allocate National Forest lands within the unit to specific resource uses and activities; establish management objectives; document management direction, decisions, and necessary coordination between resource uses and activities; and provide for the protection, use, and development of the various resources within the planning unit. All resource activities will be monitored so that tolerable levels of sedimentation will not be exceeded in the South Fork Salmon River.

This draft environmental statement was transmitted to CEQ on January 13, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3230, 12th St. and Independence Ave., S.W., Washington, D.C. 20250.
Regional Planning Office, USDA, Forest Service, Federal Building, Room 4120, Ogden, Utah 84401.
Forest Supervisor, Boise National Forest, 1075 Park Boulevard, Boise, Idaho 83706.
Forest Supervisor, Payette National Forest, Forest Service Building, P.O. Box 1026, McCall, Idaho 83638.
District Forest Ranger, Krassel Ranger District, McCall, Idaho 83638.
District Forest Ranger, Cascade Ranger District, Cascade, Idaho 83611.

A limited number of single copies are available upon request to Forest Supervisor Edward C. Maw, Boise National Forest, 1075 Park Boulevard, Boise, Idaho 83706 and Forest Supervisor William B. Sendt, Payette National Forest, Forest Service Building, P.O. Box 1026, McCall, Idaho 83638.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ Guidelines.

Comments are invited from the public, and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Forest Supervisor Edward C. Maw, Boise National Forest, 1075 Park Boulevard, Boise, Idaho 83706 and/or Forest Supervisor William B. Sendt, Payette National Forest, Forest Service Building, P.O. Box 1026, McCall, Idaho 83638. Comments must be received by March 15, 1977, in order to be considered in the preparation of the final environmental statement.

VERN HAMPRE,
Regional Forester.

JANUARY 13, 1977.

[FR Doc.77-2059 Filed 1-21-77;8:45 am]

Office of the Secretary

U.S. MEAT ANIMAL RESEARCH CENTER ADVISORY COMMITTEE

Renewal

Pursuant to the provisions of Pub. L. 92–463, the Federal Advisory Committee Act, and OMB Circular A–63, notice is hereby given of the renewal of the U.S. Meat Animal Research Center Advisory Committee (Agricultural Research Service, U.S. Department of Agriculture). The Committee provides advice and counsel concerning matters vital to the interests of the Department of Agriculture and the beef cattle, sheep and swine industries. The Committee reviews the character of research in progress and brings to the attention of the Department researchable problems confronting the beef cattle, sheep and swine industries, which is clearly in the public interest. The Committee provides counsel on the identification of high priority problems for which the resources of the U.S. Meat Animal Research Center are uniquely adapted for gaining solutions.

Membership on the Committee includes representatives of all segments of the beef cattle, sheep and swine industries, including service industries as well as representatives from State agricultural experiment stations.

The effectiveness of the Department's research program at the U.S. Meat Animal Research Center will be enhanced by having this advice and counsel which is not available in any other way.

Further information concerning this Committee may be obtained by contacting the Director, U.S. Meat Animal Research Center, P.O. Box 166, Clay Center, Nebraska 68933.

Done at Washington, D.C., this 18th day of January, 1977.

JOHN A. KNEBEL,
Secretary.

[FR Doc.77-2174 Filed 1-21-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20288; FCC 77-35]

AMERICAN TELEPHONE AND TELEGRAPH CO.

Final Decision and Order re Tariff Investigation

Adopted: January 5, 1977.

Released: January 17, 1977.

In the matter of American Telephone and Telegraph Company Investigation into the lawfulness of Tariff F.C.C. No. 267, offering a Dataphone Digital Service Between Five Cities.

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INTRODUCTION

1. This proceeding is concerned with the lawfulness of American Telephone and Telegraph Company's (AT&T) Tariff F.C.C. No. 267 which enunciates the rates, practices and regulations for Dataphone Digital Service (DDS). This private line service offering of interstate digital data communications within and between specified metropolitan areas in the continental United States utilizes a technique called data under voice (DUV). This method of transmitting digital signals employs a portion of the

radio relay frequency spectrum which allegedly has been otherwise normally unused. DDS provides two-way transmission of digital signals at synchronous speeds at 2.4, 4.8, 9.6 or 56 kilobits per second (Kbps).[1] AT&T is presently authorized to provide DDS over a 24 city network. An application for authority to extend the service to an additional 40 cities (W–P–C–433) has been filed.[2] AT&T plans to eventually operate a nationwide end-to-end DDS network serving 96 cities.

2. The subject tariff became effective, after several postponements, on December 15, 1974. We initiated this investigation into the lawfulness of Tariff 267 by Memorandum Opinion and Order, 50 FCC 2d 501 (1974) (hereinafter "Designation Order"). The following issues were designated for hearing:

(1) Whether the charges, classifications, practices, and regulations published in the aforesaid tariffs are or will be unjust and unreasonable within the meaning of section 201(b) of the Act.

(2) Whether such charges, classifications, practices, and regulations will, or could be applied to, subject any person or class of persons to unjust or unreasonable discrimination or give any undue or unreasonable preference or prejudice to any person, class of persons, or locality, within the meaning of section 202(a) of the Act.

(3) Whether the tariff schedules conform to the requirements of section 203 of the Act and Part 61. (47 CFR Part 61) of our rules implementing that section.

(4) If any such charges, classifications, practices, or regulations are found to be unlawful, whether the Commission, pursuant to Section 205 of the Act, should prescribe charges, classifications, practices and regulations for the service governed by the tariffs, and if so, what should be prescribed.

(5) Whether Dataphone Digital Service, as reflected in the tariff filing described herein, involves rates or practices which may be anticompetitive or otherwise unlawful.

(6) Whether Dataphone Digital Service, as reflected in the tariff filing described herein, represents a just and reasonable discrete classification of service within the meaning of Section 201(b) of the Act.

(7) Whether the rate making principles, including allocations of costs, used by AT&T in deriving its proposed rates for Dataphone Digital Service, are appropriate to the types of competitive services proposed in the tariff filing described herein, and whether the costs derived therefrom justify the charges for the proposed service.

(8) Whether the terms and conditions for resale and shared use, as reflected in the tariff filing described herein, are just and reasonable.

[1] A related service offering at 1.544 megabits per second is at issue in Docket No. 20690.

[2] We partially held that application in abeyance pending improvement in DDS earnings and completion of the present proceeding. See 60 FCC 2d 835 (1976).

3. In the Designation Order, we also instructed AT&T to file at regular intervals reports regarding costs, revenues and operating experience associated with the provision of DDS as a condition to the grant of AT&T's section 214 applications. AT&T did not keep records of actual costs as called for in our Order. However, AT&T did submit several studies of its investment and expenses for DDS. Included was a 1975 year-end study employing three fully distributed cost (FDC) studies. Also submitted were two separate FDC studies incorporating refinements to the data base, one using alleged embedded investments in 24 cities to allocate certain expense accounts and the other using nationwide averages for the allocation.

4. Several parties in addition to AT&T, including the Trial Staff of the Commission's Common Carrier Bureau (Trial Staff), Data Transmission Company (Datran)[3] and the Independent Data Communications Manufacturers Association (IDCMA), participated in the "paper" proceeding[4] specified by the Designation Order. An Initial Decision (ID), FCC 76D–34 (released July 2, 1976), appended hereto, was issued by the Administrative Law Judges on June 22, 1976. The ID found that DDS and AT&T's private line analog data service are not like communications services within the meaning of section 202(a) of the Communications Act, 47 U.S.C. 202(a). This finding was based on the technological differences utilized by the two services to perform the common function of data transmission. The ID concluded that three separate reasons existed for declaring AT&T's DDS rates unlawful. First, the ID found the rates to be unjust and unreasonable, pursuant to section 201(b) of the Communications Act, 47 U.S.C. 201(b), on the basis that AT&T's estimated projected annual revenues for DDS appeared to be overstated and its net investment and expenses understated. Second, the ID concluded that the DDS rates were discriminatory under section 202(a) of the Act. The ID based its conclusions on the following factors: The rates for the higher speeds were disproportionately higher than for the lower speeds; costs of providing the four speeds of service were distributed in a discriminatory manner resulting in unjustified advantage to low speed users; and the resale and shared use restrictions were unjustified and discriminatory. Finally, the ID found AT&T's rates were predatory and anticompetitive based on what the ID considered to be AT&T's deliberate attempt to justify a non-compensatory rate by understating costs using the long run incremental cost (LRIC) study method, its failure to account for research and development costs, and its treatment of the DUV spectrum as a "free economic good."

5. The ID found insufficient material in the record to prescribe rates for DDS. However, the ID did state that AT&T should be required to file a new tariff to continue its DDS offering and set forth the following general prescriptions to be applicable to such a tariff filing (para. 128): (a) Any restructuring of Tariff 267 rates should be reasonably related to the costs of providing that service; (b) under any restructuring, each rate element should be reasonably related to the cost of providing that element of service; (c) the rates for DDS equipment marketed by AT&T in competition with customer-provided equipment must be based on the full cost of that equipment; (d) interconnection of DDS customer-provided equipment is to be made through the same means at a uniform interface or connecting arrangement; and (e) Bell must eliminate the unjust, and unreasonable shared use and resale provisions of Tariff 267. The ID stated that AT&T's tariff should be accompanied by a fully distributed cost study based on one year of reasonably current historical DDS operating experience. Prior to the submission of a new DDS tariff, the ID concluded that AT&T should file interim rates no lower than those for its private line data services offered under its Tariff F.C.C. No. 260.

6. Exceptions to the ID were filed by AT&T, the Trial Staff, Datran, IDCMA, the Department of Defense (DOD), Telenet Communications Corporation (Telenet), Aeronautical Radio, Inc. (ARINC), the Associated Press (AP) and United Press International, Inc. (UPI). In summary, the Trial Staff excepts to the ID finding that DDS and analog data services are not like services. AT&T takes exception to the ID's ruling that revenues are overstated and investments and expenses understated. Further, AT&T maintains that its estimates of demand

[3] On August 19, 1976, Datran filed an application seeking authority for an indefinite emergency discontinuance of all its common carrier services. The Commission conditionally granted Datran's request in its Order and Certificate, 60 FCC 2d 958 (1976). Datran discontinued all service on September 15, 1976. Datran also filed a voluntary petition in bankruptcy with the U.S. District Court for the Eastern District of Virginia. On August 27, 1976, the Court appointed Stanley J. Samorajczyk Receiver in Bankruptcy for Datran. Mr. Samorajczyk was later elected Trustee by Datran's creditors. We will fully consider Datran's position and arguments found in the record of this proceeding, despite what has transpired affecting Datran's status.

[4] The presiding Administrative Law Judges criticized the use of the "paper" hearing in this case (Initial Decision, fn. 13) as not providing satisfactory opportunity for development of testimony and cross-examination of witnesses. We specified the procedures to be followed in this hearing with the explanation that we were continuing to experiment with procedures under which to conduct "paper" proceedings. Designation Order, 50 FCC 2d at 515, fn. 17. It was anticipated that supplemental oral procedures, rather than multiple interrogatories, would be utilized in instances to which the ID refers. See 50 FCC 2d at 515. However, oral procedures involving witnesses were not used, only conferences without witnesses. In the future, we will expect a mixture of written and oral procedures to be used in such cases as appropriate. We are continuing to identify and utilize the most effective methods of conducting hearings so that a full record might be developed with minimal expense to the parties and in order to conduct and complete rate proceedings expeditiously.

and revenues are sound and its cost data is accurate. AT&T also excepts to the ID finding that its DDS rate structure is discriminatory, arguing that the relationship of rates to speed is proper and that the resale and shared use issue has been determined in a separate proceeding. In several specific objections, Datran takes exception to what it considers the ID's failure to adequately adjust AT&T's understated costs and overstated revenues. IDCMA excepts to the ID finding that a 9.5 percent rate of return is sufficient for DDS and claims that such a rate of return will result in cross-subsidization from monopoly services. UPI contends that the DDS rates are neither too low nor unlawful.

7. AT&T takes exception to the determination that its DDS rates are predatory. On the other hand, the Trial Staff and Datran except to the ID finding on the basis that it should be strengthened to find an attempt to monopolize the data market. In support of its contention, AT&T maintains that alternative use of the LRIC method was not precluded by the Designation Order, a position supported by a majority of the other parties to this proceeding. AT&T further contends that both its LRIC and FDC studies support a finding that its rates are compensatory, but Datran argues that AT&T did not conduct any actual FDC studies. AT&T and DOD take exception to the ID's use of FDC Method 1 as being unjustified. The ID's treatment of DUV is excepted to by AT&T on the one hand, claiming that it considered DUV as a free economic good only in the LRIC study, and by Datran on the other to the extent that the ID refers to DUV as "normally unused." Datran and IDCMA take exception to the ID's refusal to prescribe rates and argues that the record is satisfactory for prescription. In regard to the ID's interim rate guidelines, both Datran and IDCMA contend that they should be more specific. ARINC and AP argue that the interim rates should be lower. Finally, Datran and Telenet maintain that AT&T should be required to offer DDS only through a separate subsidiary. Requests for oral argument made by Datran, DOD and IDCMA were denied by the Commission. FCC 76-857 (released September 14, 1976).[5]

[5] On November 24, 1976, AT&T filed a petition to defer the issuance of our decision in this proceeding pending refinement of the proper cost study procedures and forecasting techniques set forth in the "Final Decision" in Docket No. 18128, FCC 76-686 (released October 1, 1976). AT&T maintains that failure to await these procedures and techniques may result in a DDS decision inconsistent with the guidelines. We find no merit in AT&T's contentions and are denying its petition herein. Based on the record in this proceeding, we are able to conclude that AT&T's DDS rates are unjust and unreasonable and otherwise unlawful, independent of any determination reached in Docket 18128. However, we also find that the DDS rates are inconsistent with the requirements set forth in Docket 18128.

DECISION

8. As modified herein, and in consideration of the exceptions thereto, we essentially affirm the findings and conclusions of the Initial Decision.

I. REASONABLENESS OF RATES

9. AT&T has supplied cost and revenue information for DDS as part of its direct case in this proceeding. We are presented with the question of whether this information as well as that adduced elsewhere in the record of this proceeding meets the burden imposed upon AT&T of showing that its DDS tariff (Tariff F.C.C. No. 267) is just and reasonable and free of unlawful discrimination within the meaning of sections 201(b) and 202(a) of the Communications Act.[6] Our determination of the appropriate cost and revenue information is central to the disposition of Issues 1, 2, 3 and 7 of this proceeding, which will be considered herein.[7]

A. AT&T MARKET PROJECTIONS

10. The revenue projections made by AT&T were based on two market studies formulated through the use of a computerized market simulator. The model was designed to quantitatively estimate the market for DDS at various test rates for the years 1974, 1975 and 1976, assuming digital data networks comprising 24 cities by the end of the first year, 60 by the second and 96 by the third. These market quantities were then used as inputs in developing an engineering plan of the network and the corresponding plant configurations required to provide DDS at the various test rates. The requisite investments and associated expenses were then determined for each of these plant quantities. Thus, the reliability of AT&T's simulation model is crucial to the evaluation of both AT&T's revenue forecasts and its cost forecasts.

11. In order to determine the validity of the model, forecasted and actual results must be compared.[8] A comparison can be made between annualized monthly recurring revenues Bell actually received from DDS rates for December, 1975 representing one year of actual operation with annualized monthly recurring DDS revenues as estimated by AT&T's simulator for the first year of operation for 24 cities. To some extent, such a comparison indicates the reasonableness and reliability of the simulator's forecasts.[9] Tabulated below are both the estimated and actual monthly recurring revenues annualized for the initial year for 24 cities. Total annualized revenues and annualized revenues by speed are given. The percent difference between the actual and the forecasted revenues are also shown.

[6] For appropriate burden of proof tests, see Decision in Docket No. 19989 (WATS), 59 FCC 2d 671 (1976), and Interim Decision in Docket No. 19919 (High Density—Low Density), 55 FCC 2d 224 (1975).

[7] See para. 2, supra, for a description of these issues.

[8] The record in this proceeding limits our evaluation of output to this type of comparison. The ID delineated the infirmities of this approach (fn. 33). We recognize such shortcomings, but find that in the instant proceeding that properly made comparisons of projected and actual results can yield valuable information concerning the reliability of AT&T's simulation model.

[9] Insuring that rate levels and rate structure are just and reasonable involves comparing annual data, whether actual or forecasted, and not an annualization of one month of a year. Because AT&T has only forecasted annualized revenues with its simulator, to make any comparisons of actual and forecasted revenues acceptable, we are forced to use annualized data. This, however, should not be construed as general acceptance of this practice. See paragraph 20, infra.

	DDS revenues[1]				In thousands
	Total	2.4 Kbps	4.8 Kbps	9.6 Kbps	56 Kbps
Forecasts	13,839	8,551	1,977	1,601	1,615
Actuals	2,267	133	575	1,290	268
Percent difference	510	6,329	244	31	503

[1] Forecasts were taken from A.T. & T.'s March 1974 simulation run and are for recurring digital revenues only. Actuals were taken from A.T. & T.'s Jan. 22, 1976, filing, transmittal No. 12497, of recurring revenues for DDS at tariff 267 rates.

12. AT&T has alleged that these tremendous differences between actual and forecasted revenues are due to unforeseen factors outside its control, these factors including: (1) Deferral of the effective date of the initial DDS tariff by seven months; (2) delay in the approval of the nineteen city DDS Section 214 application; (3) use of higher Tariff No. 260 rates for the first year for nineteen cities; (4) delay of the still-pending 40 city DDS Section 214 application (W-P-C-433); (5) lowering of Datran's competitive rate and its bulk rate tariff offering.

13. In examining these alleged external influences, it should be noted that in February, 1975, when asked about the effect of the delay in the implementation of DDS on Bell's original plans, Bell stated:

> At the present time, it is not expected that network expansion will be significantly delayed so as to substantially affect the revenues at the end of 1976.

This statement was made after AT&T was aware of all the above external factors except Datran's "bulk rate offering," which became effective October 22, 1975, and delay in grant of the 40 city application.

14. The deferral of the DDS tariff by seven months to December, 1974 has no effect on the revenue comparison since we used December, 1975 revenue data, which follows one year of actual opera-

tion. In regard to alleged delays in the approval of the nineteen city DDS section 214 applications, we note that AT&T received section 214 authority at the same time we designated Tariff No. 267 for hearing in December, 1974. Thus, we authorized the additional nineteen cities at the beginning of the first year of operation for DDS. All 24 cities assumed to be in operation at the end of the first year by AT&T's simulator were in fact in operation by October of the first year. The use of the higher Tariff 260 rates applied only to the additional nineteen cities for the lower speeds (2.4 Kbps and 4.8 Kbps). On the average, these Tariff 260 rates for 2.4 Kbps were approximately 32 percent higher than Tariff 267 rates (and 1 percent higher for 4.8 Kbps).[10] In no case were these rates more than 93 percent higher. For this 32 percent differential to account for the 6,329 percent difference in forecasted over actual 2.4 Kbps use would imply a price elasticity of demand for DDS well in excess of any reasonable estimate, including AT&T's apparent implicit use of 2 to 2.5.[11]

15. The alleged delay of the 40 city DDS application has no bearing on our revenue comparisons since we are comparing actual and forecasted revenues for 24 cities only. Likewise, Datran's lowered rates should have no effect on the forecasts since the rates were only lowered to a level consistent with that assumed by Bell's simulation model. As to Datran's bulk rate offering, we have been unable to detect any decline in the rate of growth in monthly recurring DDS revenues after the introduction of Datran's bulk rate offering.[12] Therefore, we must conclude that the above external factors have had no material effect on actual DDS revenues.[13]

16. Our concern with the accuracy of AT&T's DDS market forecast is based on the fact that such forecasts play a key role in the DDS rate making process. First, forecasted market quantities help to determine facilities requirements and hence investment and expenses of offering the service. See paragraph 10, supra. Second, market forecasts in the form of revenue projections are instrumental along with cost data in determining whether the revenues at the filed rates will meet projected costs.[14] In general, whenever a carrier overstates its investment and expenses accordingly, the filed rate will tend to appear to be compensatory (based on the revenue projections) when in fact it may not be compensatory. We have considered the practical effects of overstating market forecasts on rate making in a hypothetical situation. For an explanation of this example see Appendix II.

17. Based on our analysis, we do not believe that the external factors cited by AT&T (see paragraph 12, supra) could have accounted fully or even materially for the discrepancies found. Because AT&T's simulator represents an abstraction of the actual process which determines the market for DDS, the accuracy and the reasonableness of the simulator's forecasts will be a function of the degree to which it mimics reality. The specific techniques utilized by AT&T in devising its model, as well as our evaluation of the individual objections and criticism of the inputs and outputs of the model are treated more fully in Appendix I, attached hereto. Of the three input variables whose inclusion in the model we question (stimulation effect, buy-up factor, and effect of satellite competition), all tend to overstate DDS demand and hence revenues. Also, the exclusion of a variable indicative of the effect of the national economy leads to the overstatement of DDS demand and revenues. Finally, all the input parameter values we question, with the possible exception of the maturation factor, tend to overstate DDS demand and revenues.

18. In addition, to its modeling techniques, in 1972 AT&T directly and indirectly contacted an estimated 98 percent of the potential customers for a service such as DDS in an effort to verify the market appropriateness of its current Digital Data System. While this market survey, known as "Project A," was never completed, it apparently reached the vast majority of potential customers.

19. *Conclusions.* We find that AT&T's simulation model is not substantiated to our satisfaction and its demand forecasts cannot be considered as accurate or reasonable. Nearly every practice associated with AT&T's simulator led to an overstatement of DDS demand and revenues. Such a finding is reinforced by the fact that in 1972, through "Project A," AT&T contacted the vast majority of potential DDS customers, and presumably was reasonably aware of the demand for DDS. Yet its simulation model overstates this demand.

20. *Guidelines.* Based on the foregoing we will expect AT&T in future submissions of market demand models to fully support the necessity and sufficiency of the input variables used and provide reasonable supporting evidence regarding parameter values. We will also require AT&T to utilize sensitivity analysis tests and internal consistency tests in the manner described in Appendix I for future DDS simulation models. Finally, we will require AT&T to provide actual and annual demand and revenue data in future DDS submissions.

B. COSTS

1. *LRIC Cost Study.* 21. An LRIC analysis was submitted by AT&T in purported justification of its proposed Tariff No. 267 rates. The ID gave no consideration to this study (para. 23 and fn. 12), claiming that the Commission in the Designation Order had limited submissions to FDC studies. Several parties except to this ruling as an incorrect interpretation of the Designation Order. We must reverse the ID's ruling. The Designation Order indicated that LRIC studies would be relevant evidence in this proceeding and that the question of the validity of LRIC or FDC studies in developing rate levels for discrete classes of service would be resolved in Docket Nos. 18128 and 19129. 50 FCC 2d at 509.

22. Although we have reached a decision in Docket 18128, we will consider the validity of AT&T's LRIC study independently of those determinations. We find, inter alia, the following infirmities in using AT&T's LRIC analysis of record as justification for the filed DDS rates: (1) AT&T's treatment of the DUV portion of the spectrum as a free economic good; (2) use of outmoded cost and engineering data;[15] (3) overstatement of demand and revenue projections, resulting in biased contribution and burden tests (see para. 19, supra); and (4) improper use by AT&T of its own ratemaking principles by filing Test Rate 6, instead of the indicated Test Rate 8, which is 20 percent higher than the filed rate (see para. 86, infra). Thus, we find AT&T's use of LRIC analysis as justification for DDS rates to be improper.

23. In its LRIC analysis, AT&T treated the data under voice (DUV) portion of this spectrum as a free economic good. AT&T emphasizes that it did not consider DUV to be a free economic good in

[10] These percentages were calculated on the basis of an average length of haul for 2.4 Kbps of 242 miles and 380 miles for 4.8 Kbps. These average lengths of haul are those reported by AT&T in Transmittal No. 12497, January 22, 1976, Vol. 10, p. 53, and are for year end 1975.

[11] Assuming a price elasticity of demand of 2.5 and an average increase in price of 32 percent, a decrease in demand of 80 percent would result. Thus, annualized recurring 2.4 Kbps revenues would have been about $300,000, still leaving a 2,750 percent difference between actuals and forecasted 2.4 Kbps revenues.

[12] Prior to October, 1975, DDS recurring revenues were growing approximately $21,600 per month and between October, 1975 and July, 1976 at $30,400 per month.

[13] In its Exceptions to the ID, AT&T makes a comparison between actual revenues and what it characterizes as first year on-net revenues to allegedly demonstrate the reliability of its forecasts. AT&T defines on-net services as services wholly contained in the DDS expansion plan and on-net to off-net services as services partially contained in the digital network. These on-net revenue figures do not appear in the record before their introduction in AT&T's Exceptions. Additionally, there is no substantiation of these figures and no indication of whether the model might generate such figures. Assuming, arguendo, that these new revenue figures are accurate, we arrive at a contradiction, as AT&T in its initial filing stated it did not anticipate introduction of on-net to off-net service until early in the second year of operation. This service was not actually introduced until September, 1976. Yet AT&T maintains in its Exceptions that the recurring revenue projections for the first year of operation (1975) contain a substantial amount of on-net to off-net revenues, i.e., the difference between forecasted recurring DDS revenues and the alleged on-net only revenues.

[14] This is especially true for DDS which is a new service with no historical background.

[15] In our discussion concerning AT&T's alleged FDC studies we shall note that AT&T used projected costs for DDS. To the extent that AT&T's LRIC costs are reflected in the FDC projections concerning special plant cost we find that the criticism therein are applicable here. (See paras. 27–52, infra).

its FDC studies. To the extent that the ID indicates AT&T did otherwise (paragraphs 45–46), we reverse such findings.

24. Because of the significant ratemaking principles involved, the question of whether AT&T accorded proper treatment to DUV in its LRIC study for DDS must be considered. In support of its position, AT&T cites economic reasons for considering DUV as a free economic good in its LRIC study. These reasons are based on the assumption of AT&T's Council of Economic Advisors that if the marginal opportunity costs[14] are zero, then the marginal and incremental costs also would be zero. AT&T concedes, however, that non-economic considerations indicate that the use of DUV should not be treated as a free economic good.

25. We find that AT&T should not have treated DUV as a free economic good in its LRIC analysis. We note that an internal AT&T memorandum of record herein (AT&T Response of August 1, 1975 to Datran's Request, at 555) indicates that it was unsure of the proper treatment of DUV on an incremental cost basis. The important question is whether the DUV spectrum incurs any significant opportunity costs. According at AT&T's own technical journals, of which we take official notice, the DUV spectrum can be used for services other than DDS.[15] Based on this fact, the DUV spectrum for DDS presents an opportunity cost. Since the alternative uses of DUV are analog service, AT&T's LRIC study for DDS should have assigned a proper share of the incremental joint and common costs entailed in providing the total network serving the 96 cities to the DUV technology.

26. Based on the foregoing, we conclude that AT&T's revenue forecasts are overstated and its LRIC costs are improper. This overstatement of revenues and improper use of LRIC costs have resulted in the appearance of justified rates which were in fact not justified.

2. *FDC Cost Studies.* 27. In its direct case, AT&T submitted two DDS cost studies which it characterizes as fully distributed cost (FDC) studies. Since DDS was a new service at the time the studies were conducted, no actual or historical costs were available. Instead, AT&T used projected costs for both FDC studies. One study purportedly uses allocation methods similar to FDC Method 1 and the other uses methods similar to FDC Method 7. The ID found that DDS rates should be "solidly premised on a reasonably accurate revenue projection and an acceptable Method 1 Fully Distributed Cost Study." (para. 49). Thus, the ID did not consider AT&T's FDC Method 7 study. Various parties, including AT&T and DOD, take exception to the ID's finding. In addition, many aspects of the ID's evaluation of DDS investment and expense figures are the subject of exceptions by several parties.

28. The AT&T FDC studies are more accurately characterized as hybrid cost studies. They are based, in part, on the following: historical cost information for some investment items, LRIC data for other investment items, estimates for several expense categories derived from existing service classifications other than DDS, and historical cost information where the costs were incurred in several different years. AT&T's FDC data was developed on the assumption that it would serve 96 cities in 1976. This assumption has proven to be incorrect.

29. We will assess the validity of both AT&T's FDC cost studies by first examining the investment data and then the expense data. Our discussion will be limited to the major items of investment and expense disputed by the parties.

a. *Hybrid FDC Method 1—30. Investments.* Several areas concerning AT&T's investment data are in dispute. These include the following: allocation of common plant; assignment of obsolete nonfungible plant; impact of inflation and Western Electric Company price increases; fill factor for interexchange (IX) plant; local loop investment; nine city Digital Serving Area (DSA) sample; and depreciation reserve.

31. AT&T allocated its investment in common plant by relying on TELPAK factors or ratios. The ID rejected the use of TELPAK ratios for DDS on the basis that TELPAK is not representative of DDS (paras. 83–86).[16] Specifically, the ID's determination was founded on the fact that TELPAK is a bulk rate, quantity discount service, that it, until recently, has earned a low rate of return based on FDC–1 analysis, and that its ratios are based on obsolete data and questionable estimating techniques. The Trial Staff and other parties have maintained in this proceeding that AT&T's use of TELPAK ratios bears no reasonable relationship to an appropriate assignment of these investment items to DDS. They also argued for development of allocation factors specifically for DDS. On the other hand, AT&T claimed that the use of TELPAK ratios is reasonable since TELPAK and DDS have fundamentally similar service characteristics in that both are line haul/service terminal (inter-DSA/digital access line (DAL)) type offerings. We conclude that the use of TELPAK ratios in determining the allocation of common plant for DDS is inappropriate. Even if it is assumed that DDS and TELPAK have similar service characteristics, we do not find the relevance to the allocation of plant overhead. DDS and TELPAK employ plant overhead in differing mixes. Since DDS employs a new technology and, according to AT&T, comprises a digital network separate and distinct from the analog system of which TELPAK is a part, it is unlikely that two such distinct networks would employ the same mix of plant overhead. AT&T has not shown that such is the case.

32. The question of the proper treatment for the allocation of obsolete nonfungible plant has been raised. The Trial Staff and Datran argue that such costs should be assigned to the service which caused its obsolescence. AT&T argues that while such a procedure is appropriate in LRIC, it is not in FDC. We affirm the ID finding (fn. 42) that the record contains no convincing evidence that modems and echo suppressors will be made obsolete by DDS. Given the availability of off-net analog extensions and the expected continued growth of analog data communication services, we are skeptical of any claimed obsolescence of modems and echo suppressors. Since we are not convinced that such equipment will become obsolete, it is unnecessary for us at this time to reach, as the ID apparently has, any decision as to how obsolescence costs should be treated.[19]

33. Another area of contention is the adequacy of general inflationary trends and Western Electric price increases of 1975 (averaging 5.1 percent) and 1976 (averaging 4.0 percent). The record demonstrates that AT&T did not take into account inflation in its forecast of expected DDS costs.[20] This failure to account for the severe inflation of the past few years plus the failure to employ current cost information has caused AT&T to substantially understate the investment costs of DDS.

34. AT&T also failed to adequately account for the Western Electric price increases. AT&T suggests that an average 4 percent increase overall in Western Electric prices in January 1976, which allegedly translates into a 2 percent increase in annual costs, is covered by a 3 percent increase in DDS rates. This argument obfuscates the pertinent issue. In this proceeding, our concern is not with the average overall increase in Western Electric prices, but with the increase in specific Western Electric prices for goods and services used for DDS. We are also concerned with why AT&T failed to forecast any increases in DDS equipment prices and installation charges. We affirm the ID finding (paragraph 77) that it was incumbent upon AT&T to fully de-

[14] Various parties of this proceeding have attempted to apply their concept of opportunity costs to support their individual economic arguments. Thus, the meaning of opportunity costs has become somewhat unclear. (See ID, fn. 22). We consider the proper definition to be the standard economic one, which states that the opportunity cost of a productive factor is the maximum value that this factor could produce in an alternative use.

[15] In effect, DUV creates a "T carrier" in an allegedly normally unused portions of the microwave spectrum. This "T carrier" can be used to provide analog, as well as digital service. A.T. & T. has engineered the equipment to carry analog and digital signals over the same facility. V. I. Johannes, "The Evolving Digital Network," 54 "Bell Laboratories Record" (November, 1976) 269, 271. See also N. E. Snow, ed., "Digital Data Systems," 54 "Bell System Technical Journal" (May–June, 1975) 811, 875.

[16] While the ID's discussion of the appropriateness of TELPAK ratios for DDS specifically referred to expenses, the findings are of a general nature and are applicable to investment allocations.

[19] This question is more appropriately addressed in our development of revised FDC–7 and FDC–1 methodologies in the aftermath of our decision in Docket No. 18128.

[20] Concern over the inadequate treatment of inflation is also present throughout the ID's discussion of investment and expense data.

velop such increased costs in formulating its tariff, and that AT&T has not justified its failure to do so.

35. AT&T used a 90 percent fill factor in its allocation of common inter-exchange (IX facility radio relay costs to DUV channels used to transmit DDS intercity. This figure for the ratio of supergroup to mastergroup is unsubstantiated, but AT&T claims that the necessary studies would be time consuming and unwarranted. The Trial Staff and Datran argue that AT&T's figure is overstated and thus understates the amount of common IX plan allocated to DDS. The ID (paragraph 73) found that AT&T has not shown that its allocation of common IX plant for DDS is just and reasonable. We affirm this findnig of the ID. However, while we are skeptical of such a high fill factor, we have no method of determining an appropriate fill from the record in this proceeding. Thus, we reject AT&T's unsupported fill factor assumption. Because of the critical nature of the fill factor in allocation of common IX plant,[21] we will require AT&T in all future DDS tariff filings to provide a detailed justification using appropriate traffic engineering data and techniques for any proferred fill factors.

36. AT&T stated that its cost for local loop equipment is $309.36 for each DDS station and over $13 million for all 43,000 stations. These figures are based on 1969 cost data, which partially relied on 2-wire loops. DDS stations require 4-wire loops. The ID (paragraph 70) found AT&T's loop investment to be understated but did not speculate as to the extent of the understatement. AT&T excepts to this finding on the basis that its use of 1969 cost data to determine the loop investment is proper. Upon consideration of the record, we find that the ID's determination should be affirmed. We cannot accept at face value justification based on data that was five years old at the time of filing, given the well documented recent inflationary trends in equipment prices. Also, we cannot accept the inclusion of cost data for 2-wire loops when 4-wire loops are necessary for the service. Further, we note that AT&T presented 2 and 4 wire loop costs separately in its January 1975 filing, but has given us no documented studies of either 2-wire or 4-wire loop costs. Finally, we do not find the doubling of 2-wire costs to be representative of 4-wire costs. As AT&T's own data demonstrates, this can either lead to an overstatement or an understatement of 4-wire loops costs, but not to the actual costs of 4-wire loops. The above factors in the aggregate result in substantial understatement of local loop investments.

37. AT&T utilized a 9 city sample of the 96 city DDS network for 1976 in costing the Digital Serving Area (DSA) portion of the network. The ID (paragraphs 79–80) found this sample to be unrepresentative and to understate unit costs and hence total costs.[22] AT&T acknowledged its 9 city sample was not randomly generated, but defends it as being representative of the 96 DSAs. AT&T argues that the 9 DSAs selected are representative of the 96 DSAs essentially on the basis of the total stations terminated and the DAL–1/DAL–2 station ratio. AT&T also alludes to a study in which 46 DSAs were analyzed and used to cost the entire 96 cities. On the basis of this 46 city sample, AT&T concludes that with a confidence level of 95 percent the total investment derived by analyzing each of the 96 DSAs would yield a figure which would not be statistically different from the one derived from the 9 city sample. While AT&T's criteria for selecting its 9 city sample may be useful in sizing the cities as to whether or not they are large, medium or small, we agree with the ID (paragraphs 79–80) that this is irrelevant to the representativeness of the sample.

38. The ID (paragraphs 79–80) found that AT&T employed a biased, unrepresentative sample to develop total DSA costs which resulted in a substantial but undetermined understatement of DSA costs. Based on the relevant data available, as discussed below, we affirm the ID's finding that the sample was faulty. AT&T's 9 city sample consists of 3 large DSAs, 3 medium and 3 small. In order to determine the representativeness of the 3 city subsamples submitted, the characteristics on which the DSA portion of the network is costed were analyzed. According to AT&T, data inputs for the DSA investment model include: DSA station and mileage summary; DSA equipment count summary; material pricelist; unit cost file; and capacity cost assignments. Of these data inputs only the DSA station and mileage summary and the DSA equipment count summary would seem to vary between DSAs. Thus, we examined the number of DAL–1 and DAL–2 terminations per DSA, route miles per DSA, and number of DAL–2 end offices to determine whether AT&T's 3 city subsamples are representative of total DDS costs. While the record contains information on the number of DAL–1 and DAL–2 terminations, there is no direct evidence available on the other two factors. Logically, we would expect that as the number of DAL–2 terminations increase so would the number of DAL–2 terminations to total terminations as an indirect test for the number of DAL–2 end offices in 3 city samples versus those in the relevant DSA classifications. We also note that AT&T's only use of total terminations in its classification of DSAs assumes a similar distribution of DALs within a DSA classification and that this assumption is not supported in the record.

39. Using AT&T's classification of DSAs as large, medium, or small and its forecasted number of DAL–1 and DAL–2 terminations by DSA for 1976 at the filed rate, the following table compares the average number of DAL–1 and DAL–2 terminations for the 3 city subsamples with the corresponding averages for all the DSAs by size.

	Average number of terminations				
	Total	DAL–1	DAL–2	Percent DAL–1	Percent DAL–2
Large DSA's:					
3 city sample	2,954	2,228	726	75.4	24.6
7 city total	2,309	1,348	961	58.4	41.6
Percent difference	27.9	65.3	(24.5)		
Medium DSA's:					
3 city sample	1,010	577	433	57.1	42.9
18 city total	755	498	257	66.0	34.0
Percent difference	33.8	15.9	68.5		
Small DSA's:					
3 city sample	240	155	85	64.6	35.4
71 city total	195	151	44	77.4	22.6
Percent difference	23.1	2.6	93.2		

40. It is now evident that AT&T's samples overstated the average number of total DAL and DAL–1 terminations. Since unit costs would be lower the higher the use for cities of similar size (i.e., number of DAL terminations), AT&T's sample tends to understate the unit costs associated with the DAL–1 portion of DSA costs. This leads to an overall understatement of DSA costs because DAL–1 costs comprise the largest portion of total DSA costs. Also, a comparison of the percentage of DAL–2 terminations to total terminations shows wide variations between AT&T's sample and the relevant universe.

41. A number of criticisms have been leveled at the AT&T derived depreciation reserve. Datran points to an apparent inconsistency between claimed depreciation expense and claimed reserve and maintains that AT&T has improperly allocated the common portion of the system depreciation reserve to DDS. IDCMA claims that AT&T failed to recognize competitive pressure and depreciate equipment more rapidly. The question of the appropriate service life and method of depreciation to be applied to equipment used for competitive services is of such fundamental nature that it is best resolved in a separate

[21] Simply changing the fill factor assumption from 90 percent to 80 percent increases the amount of common interexchange plant allocated to DDS by $3.1 million for 96 cities in 1976 using AT&T data from its January 1975 filing.

[22] We note that the ID (paragraph 78) incorrectly characterizes the 9 city sample as being used to project investment and revenue requirements for the entire 96 city DD network. In fact, this sample was used only for the DSA portion of the 96 city DDS network.

proceeding.[23] We find AT&T's use of TELPAK ratios to allocate the common portion of the system depreciation reserve to DDS is inappropriate. See paragraph 47, *supra*.

42. In summary, we find that through AT&T's practices found unsupportable herein, AT&T has substantially understated the costs of providing DDS to 96 cities in 1976 at forecasted demand. Furthermore, the use of a hypothetical network of 96 cities by AT&T for costing and revenue purposes prevents us from making any determination as to the actual costs of providing DDS in the authorized 24 cities for a specific test year on the basis of the record in this proceeding. Because cost and demand characteristics differ between the 96 city hypothetical network and the authorized 24 city network, such data cannot be found to comply with the requirement of our rules that actual costs be filed. We will therefore require AT&T to file actual and future costs on a basis consistent with the geographical coverage of the tariff under consideration to comply with § 61.38 of the Rules.

43. *Expenses.* AT&T's expense data has been challenged on the grounds of the methodology used and the type of information employed. More specifically, exception is taken to the expense methodology on the basis that AT&T failed to properly include research and development (R&D) and start-up expenditures, that it applied its expense factors to inappropriately derived revenue and investment data, and that it failed to take into account inflationary tendencies in forecasting expense data. Exception is taken to AT&T's informational base on the grounds that it contains outmoded data, inappropriate TELPAK ratios for some expense items and that it derives annual expense data in contrast to annualized revenue data derived from the market simulator.

44. AT&T states that DDS R&D and start-up expenditures are included in the allocated general expenses. Thus, it claims that it has allocated a portion of total R&D and start-up expenditures to DDS. Several parties have objected to this procedure on the grounds that it ignores start-up costs and R&D expenditures for DDS that were incurred before the service was authorized, that it does not explicitly account for such expenditures, and that the form of aggregate allocation is inappropriate and R&D expenses and start-up costs should be directly attributed where possible. We recognize that present accounting methods do not adequately address these criticisms. Thus, we reach no finding as to the amount of AT&T's R&D and start-up costs for DDS. However, we note that there is record evidence that AT&T did not fully account for all relevant R&D expenditures in relation to DDS.[24]

45. AT&T derived expense data by applying factors to various revenue and investment items, which we already found to be inappropriately derived and have rejected. See paragraph 31, *supra*. Thus, the expense data must similarly be rejected. Furthermore, because the bulk of expenses were derived from vastly understated investment items, we find that AT&T's expense data is generally understated. Additionally, the failure of AT&T to take into account inflation leads to an understatement of its forecasted DDS expense. See paragraph 33, *supra*.

46. We have already found (paragraphs 34, 36 *supra*) that AT&T employed outmoded information in several instances. Its derivation of DDS expenses is no exception. The use of factors that can in some cases (e.g., service revenue accounting expense) be traced back to the original seven way cost study in 1964 nullifies any claims AT&T could have of using current historical data or being truly forecasting expenses for DDS. Thus, we find that the use of outmoded data taken from a variety of past years is sufficient cause in itself to reject AT&T's claimed expenses for DDS as being unjust and unreasonable.

47. AT&T used historic ratios of the TELPAK service category to forecast certain DDS expenses. AT&T claims that the use of TELPAK ratios is more appropriate than voice private line ratios. Even if this is the case, it ignores the real issue of why AT&T failed to develop specific ratios for DDS.[25] The answer to this question is not found in the record. Since such ratios were not developed for DDS, we must consider the appropriateness of AT&T's use of TELPAK ratios. We affirm the ID's finding that TELPAK ratios are inappropriate. Our decision is based on the fact that TELPAK is a bulk offering while DDS is not, that TELPAK has historically earned a low return and that the particular ratios employed are based on obsolete data and improper estimating techniques.

48. We finally must consider whether the information used to derive AT&T's DDS expenses yields annualized expenses in the same sense that AT&T's simulator yields annualized revenues. AT&T claims that it derived annualized expenses. On the other hand, Datran and others argue that AT&T derives annual expense data.[26] We find that annualized data is inappropriate for use in determining test year cost and revenue data for ratemaking purposes. Therefore, we will require AT&T to provide both revenues and expenses on a consistent *annual* basis in future DDS rate filings. If AT&T also wishes to supply annualized data, it may do so provided it is done on a well documented, consistent basis. The need for annual data becomes readily apparent as one attempts to track forecasted data with actuals. Annual data provide the basis upon which overall revenue requirements are generally calculated. It is essenital that this Commission have such data by service on an annual basis in order to insure that a carrier's overall revenue requirement has a reasonable opportunity of being attained.[27]

49. We have already found that AT&T's costing methodology generally leads to an understatement of DDS investment costs at a given level of demand. In addition, we have found AT&T's forecasted demand for DDS was overstated. It follows that any use of expense to investment or revenue ratios to calculate DDS expenses must be rejected. We have also expressed considerable doubt concerning the appropriateness of the ratios used in this case and their meaning. Consequently, we find that AT&T has understated the costs both investment and expenses, of providing DDS at forecasted demand levels.

b. *Hybrid FDC Method 7.* 50. While none of the parties extensively analyzed AT&T's FDC–7 in terms of investment items, the special plant cost and many common costs of FDC–7 are identical to AT&T's FDC–1. Thus, many of the criticisms of FDC–1 are applicable to FDC–7. The principal differences between FDC–7 and FDC–1 are in the areas of plant under construction, miscellaneous plant (land, buildings, furniture and vehicles), and the 10th FDC–7 category concerning the treatment of non-directly attributable IX plant.

51. Under FDC–7, plant under construction is allocated to DDS on the basis of the expected increases in revenues by service. The basis upon which AT&T has allocated plant under construction is questionable since the forecasted revenue increases are not substantiated. AT&T's assumption for an expected 30 percent growth in revenues for DDS between 1976 and 1977 is without foundation in the record. AT&T has also substantially

[23] The subject of investigation of Docket No. 20188 is A.T. & T.'s proposed Equal Life Group (ELG) approach to depreciation. In addition, we have a consultant contract outstanding to investigate the general question of depreciation rules and policies for the telecommunications industry.

[24] AT&T claimed in rebuttal testimony that $715,000 of R&D expenditures were allocated to DDS. The record discloses that at a minimum of $2.6 million of identifiable R&D expenditures are associated with the provision of DDS. AT&T Response to Datran 1st Interrogatories, Q1(B)(1), p. 151. We are further examining the question of treatment of R&D expenditures in our revisions to the Uniform System of Accounts.

[25] A related question is the appropriateness of the use of ratios at all in forecasting future expenses. The use of fixed ratios by AT&T in forecasting costs entails the implicit assumption that expenses do not vary over time or that they vary exactly in the same manner as the particular revenue or investment item on which an expense item is derived. This implicit assumption seems particularly inappropriate when considering maintenance expenses. To assume that maintenance of a particular capital good does not vary over time flies in the face of common sense and the typical failure rates assumed by practicing engineers.

[26] AT&T annualized DDS revenues by multiplying projected December revenues by 12. For a growing service such a procedure yields a higher revenue estimate than the use of annual data, the sum of 12 consecutive months; hence, the concern over whether or not AT&T has annualized its expenses in a manner consistent with its annualization of DDS revenues.

[27] "F.P.C. v. Hope Natural Gas Company," 320 U.S. 591 (1944).

overstated DDS revenues in 1976, thereby overstating the potential dollar revenue growth of DDS. Therefore, we can accept neither AT&T's FDC–7 estimate of plant under construction allocated to DDS nor the associated interest during construction revenues. Additionally, we find our criticism of AT&T's FDC–1 in paras. 31, 33, 34, 37–41 *supra*, to be equally applicable to AT&T's FDC–7 study. Hence, for the above reasons, we find that AT&T's FDC–7 study is unacceptable and fails to adequately reflect the true costs of DDS.

c. *Conclusions.* 52. AT&T has allegedly performed two fully distributed cost studies using forecasted cost data for both studies. One study purportedly uses allocation methods similar to FDC Method 1, while the other purportedly uses allocation methods similar to FDC Method 7.[28] AT&T's revenue forecasts have been found to be overstated and, as we have found, AT&T's forecasted costs are understated at the forecasted level of demand. This overstatement of revenues and understatement of costs have enabled AT&T to apparently justify rates for DDS which are in fact not justified.

3. *Non-Compensatory Rates.* 53. The record in this proceeding is not adequate to support a finding that the DDS rates are compensatory. However, additional information, of which we take official notice, on file with the Commission is relevant to this issue. This information consists of the various AT&T supplied cost studies filed in connection with its 40 city DDS section 214 application (W–P–C–433). The probative value of the studies[29] in this proceeding is enhanced by the fact that the studies are for the 24 cities in service for test year 1975, the first year of operation. In addition, these studies employ results from a special engineering study of the DSA portion of the existing 24 cities, rather than a biased sample of 9 DSAs, as AT&T did here. See paragraph 40, *supra*. The use of nationwide factor file for FDC–1 also minimizes the problem we found (paragraph 31, *supra*) with the use of TELPAK ratios. Thus, we find these additional Section 214 cost studies to be a significant improvement over the FDC studies provided by AT&T in this proceeding.

54. As we noted in our "Memorandum Opinion and Order," 60 FCC 2d 835 (1976), the FDC studies supplied in connection with the Section 214 applications show a low earnings ratio ranging from −0.75 percent to 4.2 percent. The results are as follows: [30]

[Dollar amounts in thousands]

	FDC-1	FDC-7
Net investments	$42.08	$50.26
Net expenses	$6.64	$6.57
Income	$6.67	$6.82
Net operating income/net investment (percent)	0.07	2.3

Summary of cost of service results for DDS annualized Dec. 31, 1975

[Dollar amounts in thousands]

	FDC-1[1]	FDC-7[2]
Plant in service	$33.5	$35.6
Plant under construction	$1.6	$3.8
Other investments	$0.3	$0.3
Gross investment	$35.4	$39.7
Depreciation reserve	$3.7	$4.0
Net investment	$31.7	$35.7
Operating revenues	$3.9	$3.9
Other income	$0.1	$0.3
Total revenues	$4.0	$4.2
Expenses, income charges and other taxes	$5.7	$4.3
Federal income tax	($1.5)	($1.0)
Net operating earnings	($0.2)	$1.0
Ratio of net operating (percent)	(0.75)	2.80

[1] May 25, 1976, letter to Chief, Common Carrier Bureau from Robert E. Sageman, assistant vice president, A.T. & G., in connection with W–P–C–433.
[2] Mar. 31, 1976, letter to Chief, Common Carrier Bureau from T. W. Scandlyn, assistant vice president, A.T. & T., in connection with W–P–C–433. Adjusted for subsequent reports.

55. It is evident that 1975 DDS rates do not generate sufficient revenues to cover all costs, including cost of capital, regardless of the FDC methodology used. Tentative results provided by AT&T for October 1976 show similar results. Thus, nearly two years of operation have failed to show any improvement in the earnings results of DDS. While we would not necessarily expect a new service to immediately earn a reasonable rate of return, we do expect improvements in earnings ratio over time if rates are to be compensatory. That DDS has failed to exhibit such trends we find to be sufficient reason to reach the finding that present DDS rates are non-compensatory and will continue to be non-compensatory in the foreseeable future.

4. *Rate Structure.* 56. AT&T's rate structure for DDS is delineated in the ID (paras. 27–38). Essentially, the rate structure embodies a four-speed service offering with the rates for the various rate elements increasing as the speed of service increases. While the ID considered the differences in rates for the four speeds of DDS and the justification for these variations in the context of section 202(a) discrimination, we find it is proper to examine the rate structure on the basis of whether it is just and reasonable, pursuant to section 201(b) of the Act.[31] We are concerned whether the rate for each speed of DDS is reasonably related to the cost of providing that speed of service, or whether deviation from such costs is reasonably justified by AT&T.

57. AT&T has alleged that the DDS rate structure was devised with two major objectives in mind. First, individual rate elements should correspond to *identifiable* cost producing elements. Second, the rate structure should be easy to understand and administer. Various other parties to this proceeding contend that AT&T has failed to select rates for the various DDS rate elements that bear a reasonable relationship to cost. The ID upheld this position (paragraph 94). AT&T takes exception and argues that it is inappropriate to consider the rates for DDS by rate elements. Instead, AT&T argues that the correct rates are those of the end-to-end service, which combine a number of rate elements. AT&T further asserts that, taken as a whole, the rates for each speed show a profitable revenue/cost relationship.

58. AT&T has admitted that it departed from a strict cost-relationship in setting DDS rates. In essence, AT&T alleges that rates for 2.4 Kbps rate elements were set at levels fairly close to the estimated corresponding costs [32] and that rates for the higher speeds were then selected primarily to maintain a reasonable progression of rates with increasing speed. AT&T felt that "market forces" would be dominant in determining the specific rate element levels at each of the different speeds. Thus, it opted to maintain a reasonable progression of rates with increasing speed and discounted the fact that its own analysis indicated little increase in cost with increase in speed, particularly for DALs.

59. We uphold the findings of the ID (Paragraph 94) that rates should bear a reasonable relationship to cost.[33] We have recently determined in our Docket 18128 Decision that the relevant costs to be considered should be fully distributed costs rather than incremental costs. The evidence of record indicates that AT&T set DDS rates for 2.4 Kbps rate elements on the basis of incremental costs only and for other speeds on an orderly progression from the 2.4 Kbps rates.

30. We conclude that the rates for the 2.4 Kbps rate elements are not adequately cost justified. We also find that the departures from cost based rates for the other DDS speeds are unsubstantiated. AT&T's position that only end-to-end DDS rates are significant is invalid, since a user may not require all of the rate elements included in the end-to-end rate. AT&T's rates should be based on the costs of providing the individual

[28] These FDC Method 1 and 7 studies utilize the methodology used prior to our Docket 18128 Decision. Pursuant to that Decision, revised methodologies for both are being developed.

[29] While these studies have certain deficiencies as well, see 60 FCC 2d 835 (1976), we find the results to be of sufficient probative value for use in this Decision.

[30] AT&T also recently provided in summary form tentative results of FDC–1 and FDC–7 studies for October 1976. These tentative results are summarized below. November 22, 1976 letter to Chief, Cost Analysis Branch, Common Carrier Bureau, from Gordon R. Evans, AT&T, in connection with W–P–C–433.

[31] We therefore reverse the ID's finding that AT&T's DDS rate structure is discriminatory, in violation of section 202(a) of the Act.

[32] Corresponding costs were determined using LRIC, not FDC, analysis.

[33] Decision in Docket No. 19989 (WATS), 59 FCC 2d 671 (1976), and Interim Decision in Docket No. 19919 (HI-Lo), 55 FCC 2d 224 (1975). We do not, however, totally reject the employment of the "value of service" concept in every instance. Certain circumstances may be appropriate for a deviation from cost of service pricing. However, we are unconvinced that there is any need for an "orderly progression" in rates for this service, or that any other justification exists for departure from cost-based pricing by rate element.

elements of the service. If AT&T elects to establish rates that depart from such costs, it must fully justify its variations. Claims that factors such as "market forces" are predominate and require an alternative to cost related ratemaking cannot be accepted without substantiation. We also find no validity in AT&T's argument that an orderly progression in DDS rates by speed is necessary or warranted, absent cost justification.

5. *Competitive Service Ratemaking Principles*—61. In *Specialized Common Carrier Services*, 29 FCC 2d 870 (1971), we set forth our policy of "full and fair competition" for specialized services. Private Line services, including DDS, fall within this policy. We recognized potential problems associated with the emerging rivalry between established common carriers (ECCs) and the emerging specialized common carriers (SCCs). In such situations, we were and continue to be concerned with avoiding imposing a "protective umbrella" over the SCCs on one hand and preventing anticompetitive pricing practices by the ECCs on the other. These ratemaking concerns not only apply to interservice pricing but intraservice rate structures as well.

62. We must consider whether AT&T employed ratemaking principles in devising its DDS rates that had an anticompetitive effect. We are concerned here with ratemaking principles applicable to subservices within a dedicated private line digital service. This rapid development by AT&T of this new service has raised several novel problems, such as how shall the cost of developing and implementing new services and technologies be allocated among ratepayers and on what basis should rates for a new competitive service be developed. While the former issue is before us in other proceedings,[34] we will consider the question of the appropriate pricing methods for a new service such as DDS herein.

63. In determining proper pricing for a new service, we must consider the basis on which to determine the lawfulness of rate element prices. We are concerned that the DDS network, in terms of information flow, is utilized as efficiently as possible and that any economies of a digital technology should accrue to the public. We are further concerned that, insofar as possible, the service is not priced so as to discriminate unreasonably against or to give an undue preference to any group of users. We affirm the ID finding (paragraph 94) that the best way to achieve the above objectives is for all subservices and rate elements of the DDS tariff to bear a reasonable relationship to costs. We therefore require AT&T to specify and justify the costs of providing each speed of service and each rate element in order that we can determine if these objectives are met [35] and whether or not each rate element is necessarily compensatory.

64. A number of alternatives to solving the question of pricing a new competitive service have been proposed in this proceeding. One involves the use of the economic concept of opportunity costs in setting rates. The ID found (fn. 22) that the hypothetical nature of opportunity cost is an inappropriate method for determining the reasonableness of rates. We affirm this position.[36] Since opportunity cost does not represent an actual expenditure, it is an inappropriate standard to be used in rate determinations. However, this does not mean that the notion of opportunity cost and the consideration of alternative uses of resources may not be considered in facility authorizations and in analysis of the reasonableness of management decisions on selection of service offerings. Consideration of section 214 applications will thus include a determination, where appropriate, of alternative uses of the facilities.

65. Another alternative to the competitive service pricing issue is the establishment of a separate subsidiary or subsidiaries for AT&T's competitive services in order to prevent the possibility of cross-subsidization between monopoly and competitive services. Since the record in this proceeding does not in any material fashion address this issue, we conclude that there is insufficient information to find that the formation of separate subsidiaries for AT&T's competitive services would be in the public interest.

66. In conclusion, we find that reliance on cost of service principles is the appropriate standard in determining the appropriate rate levels and rate structures for competitive searvices like DDS. We reject the use of opportunity costs as relevant in determining the cost of service.

6. *Docket No. 18128 Considerations*. 67. We have now rendered our Final Decision in Docket No. 18128, FCC 76-886 released October 1, 1976) (hereinafter Docket 18128 Decision). That proceeding addressed the issue of the general lawfulness of overall rate levels and interservice rate level relationships of AT&T's major categories of interstate service.

68. We have already considered the validity of AT&T's DDS cost data and rate structure data independently of the outcome of Docket 18128. We will also evaluate the DDS cost data and rate structure in light of our Docket 18128 Decision. In so doing, however, we acknowledge that the parties to the instant proceeding did not have the benefit of the Docket 18128 Decision.

69. We will first consider the utilization of AT&T's LRIC methodology for DDS. In Docket 18128, we rejected the LRIC methodology as inadequate to support rates for AT&T's private line services. In this proceeding, AT&T has acknowledged that the DDS LRIC study is methodologically consistent with the LRIC studies set forth in Docket Nos. 18128 and 18684. Although DDS was not explicitly considered in Docket 18128, we find that the same reasoning employed in rejecting AT&T's LRIC analysis as justification for private line service rate levels is applicable to DDS.[37]

70. We also must consider the question which arises in pricing a new service such as DDS of the relevant revenue requirement and the period in which the service should achieve that rate level. In Docket 18128, we determined that each of AT&T's major classes of service should earn the same rate of return within the range prescribed for the firm as a whole (presently 9.5–10 percent), based on a FDC methodology as provided therein.[38] DDS is a new data communications service offering and it is assumed that its demand will increase over time. Thus, we would not expect DDS to earn a 9.5–10 percent return during its start-up period. However, in accordance with our guidelines in Docket 18128 concerning departures from the authorized return levels, we expect DDS to earn such a rate of return as well as to recover any shortfalls from various years within a reasonable time, such time specified in the rate filing.

71. In view of the above findings and our finding in Docket 18128, we will require AT&T in the future to file rates for DDS on the basis of the revised methodologies and procedures as specified for other services in our Docket 18128 Decision. Additionally, if any future rate filings during the start-up period of the DDS offering show a shortfall in DDS revenues, AT&T must demonstrate that the filed rates will recoup such shortfall

[34] See para. 44, *supra*.

[35] See fn. 36, *supra*.

[36] We do not, however, accept the ID's definition of opportunity costs. As stated in fn. 17, *supra*, we consider opportunity cost to be the maximum value that the productive factor could produce in an alternative use. Other parties propose that since DUV can be used for voice, opportunity costs should be considered here. Although we recognize the alternative uses of DUV (see paragraph 25, *infra*.), we reject the concept of opportunity costs.

[37] In Docket 18128, we stated the following:

We have found above that a strict marginal costing approach to pricing cannot be practically implemented under real-world telecommunications industry conditions. We have also found that Bell's LRIC analysis is neither theoretically acceptable nor commensurate with our statutory mandate to ensure just, reasonable and non-discriminatory rates. We must accordingly conclude that LRIC cannot be used to determine whether the return levels for Bell's major interstate categories of service are just and reasonable within the meaning of section 201(b)." Para. 183. See also paragraphs 112-137 for detailed discussion of LRIC.

Additionally, we rejected DOD's LRAC concept:

"DOD" has proposed the use of long-run average costs (LRAC) as the appropriate reference point for determining compensatory rates which are not a burden on other services * * * We reject LRAC for many of the reasons that led us to reject LRIC." Fn. 77.

[38] IDCMA and others have alleged that DDS is a new competitive service and hence is inherently more risky than MTS or WATS. Our Docket 18128 Decision rejects a so called risk premium for competitive services. We shall continue to follow that policy at this time. Only when it can be demonstrated on the record that the overall riskiness of AT&T has been increased by a particular service to a material degree will we consider the necessity of a "risk premium" for that service.

and become fully compensatory within a reasonable time.

C. CONCLUSIONS

72. Accordingly, we must find that AT&T's Tariff FCC No. 267 rates for DDS are unjust and unreasonable and thus are in violation of section 201(b) of the Act based on the evidence of record as discussed in sections A and B above. AT&T's DDS tariff can also be found at variance with the guidlines set forth in our Docket 18128 Decision.

II. LIKE SERVICES

73. The ID found that DDS is a discrete classification of service within section 201(b) of the Act and that DDS and Tariff 260 private line analog data services are not like communications services within the meaning of section 202(a). This conclusion was based on the finding that while the ultimate function of the two services is the same, the manner of transmitting data is different. Thus, the ID's determination would permit AT&T to continue to have separate rate structures for the two services. The Trial Staff takes exception to this ruling, arguing that the proper test for determining whether two services are like communications services was properly enunciated but improperly applied by the ID. The Trial Staff asserts that a correct determination depends upon whether the customer perceives the two services to be functionally the same, rather than upon the manner of performing the function.

74. We recognize that DDS clearly involves the use of different technology than that employed for analog data transmission, and features some different technical characteristics (e.g., lower error rates, synchronous transmission). Moreover, DDS requires the use of different access equipment from analog systems. Such technological changes, however, are frequently incorporated into the telecommunications network simply as an improvement in and under the same tariff as existing services. For example, existing private line as well as MTS services employ transmission technologies ranging from open wire analog systems through various T-carrier digital systems, microwave radio relay systems, L-type coaxial cable, and satellites—all offered under a single tariff at composite rates.

75. Accordingly, while we agree that DDS might well be considered a new and separate classification of service, we also find some merit in the Trial Staff's position that a major factor in such a determination must be the customer's perception of the service. There is no evidence in this proceeding that the differing technological approaches and performance characteristics of DDS are perceived by the users as a significant basis for preferring this service offering to conventional analog data transmission services. Instead, the primary basis for preference appears to be the substantial cost savings which result from the lower tariff charges for this offering.

75a. This is seen most clearly in AT&T's own studies submitted in this proceeding which projected a high cross-elastic effect between DDS and certain Series 3000 (single voice-grade) and 5000 (Telpak bulk) services in its Tariff FCC No. 260, which offer analog data services over voice-grade channels. In the first year of operation, AT&T projected that over 70 percent of its DDS revenue would represent a loss to these two analog services. By the third year, DDS was expected to develop some additional independent market, but about 60 percent of the DDS revenue was projected to be a loss to Series 3000 and 5000 services (AT&T Ex. 9, p. 3 and Ex. 9, p. 40). The actual first-year losses have proved to be somewhat less, primarily because we required DDS to be offered at voice-grade rates during that period, thus minimizing the cost advantages of DDS. Thus, it appears that the customers' primary attraction to DDS is cost savings, rather than differences in the services offered.

75b. While DDS uses a different transmission technology from analog services, this is insufficient justification to find that the services are unlike. Traditionally, communications carriers have not differentiated between services which offer the customer a similar function using different technologies (in this case, carrying data between two points at discrete speeds). For example, international services using satellites and cables; domestic message telecommunications service calls by satellite or terrestrial; domestic communications using coaxial cable, microwave radio, or other facilities are not offered as "unlike" services at different rates. Similarly, while DDS and analog data services use different transmission technologies, they perform a similar communications function, are perceived by the customer as similar services and their demand appears to be highly crosselastic. Accordingly, we find the services to be like services within the meaning of section 202(a) of the Act.

76. Pursuant to section 202(a), however, AT&T may not classify DDS and like analog services as separate services at different tariff rates unless it can justify this discrimination in rates between like services. Here, we find such justification. While we cannot find support in the record as to the actual costs of providing DDS, we can find that AT&T has shown that the costs of providing DDS are potentially different from analog. Specifically, DDS utilizes 4-wire local distribution facilities, whereas analog services require only 2-wire loops. Also DDS requires utilization of a Data Service Unit (DSU) while analog data services use more expensive data set or "modem" equipment. Thus the technological differences, facilities and equipment needed to provide the services convince us that there are at least potential cost differences in the provision of DDS and analog data services.

77. Based on the potential cost differences acknowledged above, we can tentatively accept the service offered pursuant to AT&T's Tariff 267 as a separate classification of service priced at a different rate from like analog services. However, when AT&T files its new tariff in compliance with this Decision, it must fully justify that DDS and analog data services in fact have significant cost differences. Such a showing must be of sufficient detail and in accordance with the standards set forth above.

III. CHANNEL SERVICE UNIT/DATA SERVICE UNIT

78. The ID considered the functions of the Channel Service Unit (CSU) and the Data Service Unit (DSU) utilized in the DDS network and determined that AT&T should unbundle the CSU charges from the rates for the Digital Access Line in the DDS tariff (paragraphs 102–105). The issues of the actual functions of the CSU and DSU and whether the charge for the CSU should properly be included in the basic DDS rate were not designated as issues in this proceeding.[29] See Designation Order, 50 FCC 2d 501 (1974). Rather, these questions were raised by IDCMA during the course of the proceeding, but we did not enlarge the issues to include them, pursuant to § 1.229 of our rules.

79. Since we had not specifically designated the issue, the burden of proving that the inclusion of CSU charges in the basic DDS rate structure is not discriminatory did not rest with AT&T in this proceeding, and therefore AT&T cannot be held responsible for its failure to supply the information which IDCMA requested in this area. Thus, the evidence of record is not sufficient to reach a determination on the CSU/DSU question and we do not find that it is necessary to do so in this decision. Therefore, we are vacating the ID's finding in this regard (paragraph 105).

80. However, we find that IDCMA has raised a significant question as to the bundling of rates, whether the functions of the CSU can reasonably be provided by customer-supplied equipment and if so, whether such equipment must be certified by the Commission pursuant to Part 68 of our rules. We shall therefore require AT&T to address these issues when it files a new, full, tariff offering for DDS meeting the guidelines specified herein.

[29] IDCMA objects to the absence in the ID of a ruling on the "no-mix" issue which it claims to be discriminatory. This refers to a prohibition in pertinent AT&T tariffs of the use of customer-provided modems on analog extensions of DDS. Although AT&T has removed the prohibitions from its tariffs, IDCMA continues to object because of its concern that AT&T has not given assurances that it will not alter its technical data for the off-net-adaptor (required for such extensions) so as to make customer-provided modems incompatible. We do not share IDCMA's concern. Even while the prohibitions were effective, we declined to designate this as an issue in this proceeding. In addition, we find no provision in AT&T's Tariff No. 267 under which IDCMA could allege discrimination. Finally, the removal of the "no-mix" rule from Tariffs 260 and 267 negates any validity to IDCMA's claim.

IV. ANTICOMPETITIVE PRACTICES

81. Several parties [40] have taken exception to the various aspects of the ID's determination that DDS rates and practices are anticompetitive and otherwise unlawful. See ID, paragraphs 109–118. In light of these exceptions we will thoroughly consider this issue in order to dispel any areas of confusion or uncertainty. At the outset of this discussion, it should be noted that our decision herein is neither seasoned with public interest cliches nor garnished with antitrust platitudes. This decision is restricted to the interpretation and enforcement of policies and rules adopted by this Commission pursuant to the Communications Act of 1934.

82. Essentially, our discussion herein involves an interpretation of what we meant by "full and fair competition." As indicated in the Designation Order, 50 FCC 2d at 507, the principal issue squarely presented before the Commission is the interpretation of language in the *Specialized Common Carrier* decision; which reads in relevant part, 29 FCC 2d at 915:

> Our objective [is] to promote and maintain an environment within which existing and any new carriers shall have an opportunity to compete fairly and fully in the sale of specialized services * * * [t]here should not be any protective umbrella for new entrants or any artificial bolstering of operations that cannot succeed on their own merits.

We intend here to examine the question of anticompetitive practices from the standpoint of our statutory mandate to make available an efficient communications system of reasonable cost, consistent with the public convenience and necessity, rather than within the structures of antitrust regulations and case law. See "U.S. v. Philadelphia National Bank," 379 U.S. 321 (1963). However, to the extent that certain principles are relevant, though not determinative of the issues herein, they are referred to for guidance. See, "Northern Natural Gas Co. v. FPC," 399 F. 2d 953 (1968). In this way, we hope to make the "full and fair competition" obligations of the carriers consistent with similar obligations imposed pursuant to the antitrust laws. See, "Macon Products Corp. v. ATT," 359 F. Supp. 873 (C.D. Calif. 1973); "Carterfone," 13 FCC 2d 420 (1968), 14 FCC 2d 571 (1968); "Carter v. ATT," 250 F. Supp. 188 (N.D. Tex), *aff'd*, 365 F. 2d 486 (5th Cir. 1966), *cert. denied*, 385 U.S. 1008 (1967; "Chastain v. ATT," 351 F. Supp. 1320 (1972), 401 F. Supp. 151 (D.D.C. 1975), 43 FCC 2d 1079 (1973), 49 FCC 2d 749 (1974), *review pending sub. nom. ATT v. FCC*, No. 74–2101, (D.C. Cir.). It is our conclusion that we are obligated pursuant to the express language of section 205 of the Act to enforce those policies adopted by this Commission and affirmed by the courts.

83. The Designation Order and the ID set forth the same jurisdictional basis and factual context within which the anticompetitive issue is to be resolved." In our Designation Order ,we stated, in reference to the particular applicability of the "full and fair competition" standard to the case before us, that:

> * * * We cannot conclude, on the basis of the material now before us, that the DDS tariff proposals are predatory, anticompetitive or otherwise unlawful because of their competitive impact. Rather, we conclude that a substantial question exists as to the appropriateness of the proposed rates, and as to their potential anticompetitive impact. While we have no intention of creating a protective umbrella over the newly emerging competitive carriers, neither can we ignore the enormous market power and influence of AT&T. Particularly, because of its unique position in the provision of communications services, we have a responsibility to assure ourselves that its competitive efforts are legitimate ones, free of predatory or anticompetitive aspects. (50 FCC 2d at 509.)
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> * * * We consider it imperative and in the public interest that the effective competition for data communications services not be eliminated through the institution by AT&T of rates and conditions which may be predatory, anticompetitive or otherwise unlawful. (50 FCC 2d at 511.)

The ID continued in this same vein.

> * * * as early as June 3, 1971, the Commission recognized the danger that an established carrier, such as AT&T, who furnished monopoly services could use its monopoly position to enhance its competitive position in this relatively new and expanding data transmission field. (Para. 8)

84. To the extent indicated herein, we affirm the finding of the ID that the DDS rates, and certain practices associated therewith, are of an anticompetitive nature, in direct contravention of our policies favoring fair competition. We have found, both in the "Specialized Common Carrier" decision, *supra*, and as a result of our economic analysis in our First Report in Docket No. 20003, FCC 76–879 (released September 27, 1976), that significant public benefits result from competition in the provision of private line services. Among these benefits are a wider choice of carriers and services, including innovation in the provision of private line services. Further, innovative delivery systems can produce lower rates for customers of these services. Where the rates of one carrier for a service are so low as to constitute an anticompetitive practice, however, customers of that service may temporarily benefit from lower rates. This, however, is an immediate burden on ratepayers of other services, whose rates must subsidize the anticompetitive rates, and an ultimate detriment to the subsidized service's customers, who will be deprived of the benefits of competition. We find, according to the facts delineated herein, that the unreasonably low price of the DDS service and the methods used in setting that price, could deprive the public of the benefits of competition and are contrary to the public interest.

85. Specifically, we agree with the Trial Staff that even if "[w]e cannot find the market simulations were deliberately deceptive" (ID, paragraph 116), there is sufficient evidence in other internal AT&T documents, which explicitly indicates that AT&T was aware of the fact that DDS, at least initially, would not meet the overall rate of return requirement and moreover, would require a subsidy from monopoly services. In AT&T's response of August 15, 1975 (pp. 382–83), to Datran's Fifth Interrogatories, it stated: "Most importantly, Bell's lower, competitive PL rates will produce shifts from the more profitable MTS service to a less profitable service." A service offering being non-compensatory *per se* does not contravene our rules.[42] In "American Satellite Corp.," 55 FCC 2d 1, 2–3 (1975), we stated that a new service in its early stages may not be compensatory, but we specifically noted that had ASC been a monopoly service supplier, our concern over the possible anticompetitive implications of a non-compensatory service would have been different.

86. In addition, according to AT&T's second market study, it could have minimized the non-compensatory nature of the service. According to its rate filing, AT&T's Test Rate 8 and 9 for DDS would have yielded a greater revenue contribution than Test Rate 6, which was ultimately selected. In this study filed in January, 1975, which corrected the previously misstated Datran prices and geographic coverage, and added the alleged satellite data service "competitive threat," [43] Test Rate 6 yielded incremental revenues of $20.8 million, in contrast with Test Rate 8 and 9 which yielded incremental revenues of $24.1 million and $22.7 million, respectively. In our Docket 18128 Decision (para. 100), we stated: "[F]inally, within the context of fair competition the RD objects to any pricing approach that will not tend to provide maximum amelioration and coverage of revenue shortfalls that necessarily result from full cost pricing departures." We recognize that the question of costing methodology has been resolved in Docket 18128; however, we refer to the aforementioned language because of its objective, which we adopted in our Final Decision in Docket 18128, of reducing revenue shortfalls, which would reduce the amount by which a service offering is non-compensatory.

87. Datran contends that AT&T's possession of Datran's "Preliminary Rate

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[40] AT&T, Datran, the Trial Staff, DOD and Telenet.

[41] Pursuant to our authority in sections 4(i) and 201(b) of the Act, we adopted the rule of "full and fair competition" announced in the Specialized Common Carrier decision, *supra*.

[42] Two competitive necessity criteria have been accepted in justification of rates which are not fully compensatory. See TELPAK, 38 FCC 370 (1964), 37 FCC 1111 (1964), aff'd sub nom. "American Trucking Assn., v. FCC," 377 F.2d 121 (D.C. Cir. 1966), cert. denied, 386 US 943 (1967).

[43] In our Docket 18128 Decision, we noted that even in the more established market of the TELPAK offering, growth in specialized carriers and satellites is not a sufficient competitive threat to Bell. "While growth in specialized carriers and satellites might justify such a competitive response in the future, this uncertain probability is not sufficient to justify the present TELPAK offering.

Schedule" [44] and its simultaneous use of significantly lower Datran rates in its market simulator are further evidence of Bell's disregard of our policy of "full and fair competition." An AT&T memo dated November, 1973, stated that Datran's "Preliminary Rate Schedule" indicated that Datran's end-to-end charges for 2.4 Kbps service would be "almost double" those in AT&T's Test Rate 6. Thus, AT&T had the actual rate schedule in its possession, but chose not to use those rates, but rather lower ones, in its simulation. If AT&T had any question as to whether or not Datran's test rates were subject to change, it could have resolved the issue in a manner that avoided the question of fair competition.

88. Moreover, we have found that Bell's rates were below cost, and were thus effectively anticompetitive. See "Ben-Hur Coal Company v. Wells," 242 F. 2d 481 (1957) and "United States v. National Dairy Corp.," 372 U.S. 29 (1963); 15 U.S.C. 13a, c. 592, 49 Stat. 527, (June 19, 1936). We have already concluded that AT&T priced DDS below costs, using both the LRIC and FDC costing methods.[45] We also found that Bell's pricing below cost is a direct consequence of its understatement of cost and overstatement of demand.[46] See paragraphs 42, 52, *supra*. For example, a comparison of AT&T's forecasts in the record and actual revenues, as given in its Transmittal No. 12497, filed January 22, 1976, indicates that total DDS revenues were overestimated by 510 percent. This overstatement is partially attributable to AT&T's use of annualized revenues instead of actuals. In addition, AT&T's estimation of demand was skewed by its failure to account for the impact of the recent economic recession on demand.

89. According to AT&T, DDS employs a digital network, founded in a new technology, separate and distinct from the analog system of which TELPAK is a part. Consequently, we found the use of TELPAK ratios resulted in an unjustified statement items (paragraph 47). In addition, we concluded that an understatement of costs resulted from AT&T's failure to account for inflationary trends, and its exclusion of most research and development, and start-up costs associated with DDS (paragraph 44). Moreover, we noted that since the fill factor has a critical function in the allocation of common interexchange plant, the use of high and unsubstantiated fill factors contributed to the understatement of costs (paragraph 35). For instance, a change in the fill factor assumption from 90 percent to 80 percent would result in an increase in the amount of common interexchange plant allocated to DDS by $3.1 million for 96 cities in 1976, using AT&T's data from its January, 1975 tariff filing. AT&T provided no reason for its selection of a 90 percent fill factor, and asserted that the necessary studies to find the accurate fill factor would be too time consuming and unwarranted and thus refused to file them.

90. We find that the resolution of the issue herein is consistent with and integrally related to Commission policy enunciated in numerous decisions.[47] The economic ramifications of this policy were examined recently in the "Matter of Economic Implications and Interrelationships Arising From Policies and Practices Relating to Customer Interconnection, Jurisdictional Separations and Rate Structures, Docket No. 20003," FCC 76-879 (released October 1, 1976).[48] In reaching the conclusions adopted in those decisions, we did so under the legal standards established in "FCC v. RCA",[49] 346 U.S. 86 (1953), "U.S. v. RCA", 358 U.S. 334 (1959), as well as in "Hawaiian Telephone v. FCC", 498 F. 2d 771 (1974). Our decisions herein is limited to a factual determination of whether or not certain conduct of AT&T associated with its DDS tariff is of an anticompetitive nature, in contravention of Commission Rules and Regulations.

91. AT&T's actions herein evidence a clear contravention of Commission policies. We find Bell's conduct an impediment to competition in the private line data communications market, in contravention of the competitive policy we adopted in the "Specialized Common Carrier" decision. We make no finding as to predatory or anticompetitive intent in relation to this service offering. A finding on this question is unnecessary for the performance of our regulatory duties which, in this case, are to determine the lawfulness of the subject tariff.

V. Resale and Shared Use

92. The provisions of AT&T's Tariff 267 restrict resale of DDS to Composite Data Service Vendors (CDSVs) (Sec. 2.2.5 (A)) and prohibit shared use by all communications common carriers (Sec. 2.2.5(B)(2)).[50] Based on the record of this proceeding, the ID found these pro-

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[44] This schedule, which was apparently taken from Datran's marketing brochures, was set out in an internal memorandum which, it appears, was written by the official of AT&T whose job it is to determine the competitors' rates.

[45] Below cost sales *per se* are not condemned when made in furtherance of a legitimate commercial objective, such as the liquidation of excess, obsolete, or perishable merchandise, or the need to meet a lawful, equally low price of a competitor, because such below cost sales are neither "unreasonably low" nor made with predatory intent. See "Hershel California Fruit Products Co. v. Hunts Food, Inc.," 111 F. Supp. 732 (1953). We find no such mitigating circumstances in the case before us.

[46] We note that AT&T had, at one time, initiated a 98 percent sample of the potential data communications market to determine the expected demand for DDS. The project, known as "Project A," was apparently abandoned at some stage, and no results have been reported. We have two difficulties with the report of this project. First, it appears to be a preselling of DDS, which in itself is anticompetitive. Second, the study was apparently partly conducted, but we have no way of knowing whether the partial results are consistent with the overstated demand projections submitted in this proceeding.

[47] See Specialized Common Carrier, supra, aff'd Washington Utilities and Transportation Commission v. FCC, 513 F. 2d 1142 (1974); Cf. Bell Telephone of Pennsylvania v. FCC, 503 F. 2d 1250 (1974); cert. denied, 423 U.S. 886; Cf. American Trucking Association v. FCC, 37 F. 2d 121 (1966); compare, Land Mobile Service Between 806 and 960 MHz, Docket No. 18262, 46 FCC 2d 752, 760-61 (1974) (in order to avoid the danger of anticompetitive action on the part of the wireline companies, the Commission required these companies engaging in land mobile services to establish a wholly separate operating company); Cf. Packet Communications, Inc., 43 FCC 2d 922 (1973), Graphnet Systems, Inc., 44 FCC 2d 800 (1974) and Telenet Communications Corp., 46 FCC 2d 860 (1974).

In these cases, we stated our intention to follow a liberal policy of "open-entry" in this area and, "the findings and philosophy reflected in our Specialized Common Carrier decision are relevant and apposite here and support a competitive environment for the development and sales of the type of services proposed. See generally, Kestenbaum, Competition in Communications, 16 Antitrust Bulletin 769, 771-77 (1971). Mewer, Recent Federal Actions Affecting Long Distance Telecommunications: A Survey of Issues Concerning the Microwave Specialized Common Carrier Industry, 43 Geo. Wash. L. Rev. 878 (1975).

[48] As a result of our study in Docket 20003, we concluded that no economic justification existed for a change in our policies regarding private line competition. We found that at the end of 1975, nine specialized common carriers were operational, with operating revenues of $34,944,000, as contrasted with Bell's private line operating revenues of $1,479,473,000. We made mention of the fact that these carriers were concentrating on the market for point-to-point analog transmission channels. However, these analog channels could easily be configured into private line data networks, by the use of terminal and modem equipment currently available from interconnect suppliers. Thus, we found that the telephone industry, including AT&T and the independent telephone companies, have been experiencing a period of record growth in revenues and earnings, even despite the recent inflationary and recessionary trends in the economy. During the second quarter of 1976, operating revenues for these companies representing more than 95 percent of the industry were up 11-18 percent over the same quarter in 1975—an amount typical of the past several years. For the same period, net income was up 12-22 percent over the corresponding 1975 results, while earnings per share were up 15-20 percent. Furthermore, th telephone companies dominate the industry by a wide margin, receiving $35.1 billion, or about 97 percent of total industry revenues, in 1975. Even in the private line and terminal quipmnt markets, (the only areas open to competition) the telephone industry received $4.1 billion or 95.5 percent as compared with $194 million, or 4.5 percent for the competitive industry.

[49] Justice Frankfurter, at page 93, writing for the majority in RCA, states that where the Commission has favored competition, it has relied not upon competition for its own sake but upon specific findings that public interest benefits—such as better service, lower costs and wider consumer choices—would result. Cf. "Domestic Communications Satellite," 35 FCC 2d 844, 38 FCC 2d 665 (1972).

[50] We note that our Designation Order required AT&T to permit resale and shared use of DDS by all communications common carriers. AT&T filed its Tariff F.C.C. No. 268 offering DDS facilities for use by other common carriers. The question presented here is whether the public DDS tariff, F.C.C. No. 267, must permit unlimited resale and sharing.

visions to be unjust and unreasonable. AT&T contends that no need exists to consider the ID's finding on the resale and shared use issue, since the lawfulness of these Tariff 267 provisions has been determined in the Commission's "Report and Order" in Docket No. 20097, 60 FCC 2d 261 (1976). AT&T has filed petitions for stay and reconsideration of that decision.

93. We acknowledge that the lawfulness of the resale and shared use provisions in Tariff 267 was considered as part of our general policy determination in Docket No. 20097. 60 FCC 2d at 295. We found therein that the restrictions in the resale provisions of Tariff 267 are unduly discriminatory and that the tariff should allow unlimited sharing and resale of DDS to be just and reasonable. 60 FCC 2d at 296.[83] As we stated in the Designation Order, the technical and economic aspects of more widespread resale and shared use for DDS would be considered in this investigation independently from the policy determinations in Docket No. 20097. 50 FCC 2d at 512.

94. Since, as we have found in Docket No. 20097, unlimited resale and shared use of all competitive services is generally deemed just and reasonable and in the public interest, a tariff provision restricting such use must be judged on the basis of whether unlimited resale or sharing would result in public detriment. AT&T has provided no information or data in this proceeding to demonstrate any such adverse effect. In addition, AT&T did not allege that it would experience negative economic impact or that technological problems would result from unlimited resale and shared use of DDS.

95. AT&T's Tariff F.C.C. No. 268 contains the rates and conditions of service for digital facilities provided to other common carriers (OCCs). Tariff 268 provides for unlimited resale and shared use of DDS by the OCCs, as required by our facility authorizations, and has been in effect since February 16, 1975. Yet AT&T has alleged neither adverse economic impact nor technological problems resulting from the effectuation of this provision. The difference in the resale and shared use provisions in Tariff Nos. 267 and 268 clearly demonstrates that the customers of the same AT&T provided service are subject to dissimilar resale and shared use policies, pursuant to the two tariffs.

96. We conclude that AT&T has failed to demonstrate that any public benefit results from its restricted resale and shared use provisions. Likewise, AT&T has not shown that any economic or technological problems would result if the limitations were removed. Also, the difference in treatment of Tariff 267 and 268 customers is clearly discriminatory. On the basis of these findings, we are prescribing the resale and shared use provisions of AT&T's Tariff 268 (Sec. 2.2.1 (A)) for AT&T's Tariff 267 to replace the present restricted use provisions (Sec. 2.2.5 (A) and (B)).[84]

VI. Remedies

97. As we have found, the present DDS rates are unjust and unreasonable, in violation of Section 201(b) of the Act. Further, from the cost studies submitted in compliance with our initial grant and filed in support of W-P-C-433, the application to expand the facilities, we have found that the rates are not compensatory under a fully distributed cost analysis. We therefore find that the rates for DDS are unreasonably low and are being cross-subsidized by users of other AT&T services.

98. In other recent rate proceedings in which we have found the rates unreasonable, "Hi-Lo," 58 FCC 2d 362 (1976), and "WATS," 59 FCC 2d 671 (1976), we have permitted AT&T to file new rates and have retained the existing rates until the new filing becomes effective. In these other cases we found the rates unjustified, but the information in the record was insufficient even to find whether rates were to low or too high. In this case, however, we cannot justify retention of rates found to be unlawfully low for the period of time required for AT&T to prepare a full rate filing.

99. Further, we must agree with the ID that we have too little information of any probative value to enable us to prescribe new rates, even for an interim period.[85] However, it is clear that we cannot permit the service to continue to be offered at such an unreasonably low rate that the users of other services are clearly burdened.

100. We further cannot accept the recommendation in the ID that we prescribe the rates for comparable analog services for the interim until AT&T submits a new rate filing. As noted, we have no record on which to determine that those rates would be any more reasonable for this service than the existing rates. Further, the present rates for analog services (at 2.4, 4.8 and 9.6 Kbps) are at issue in our Docket No. 20814, and the overall rate levels of such private line services have themselves been found to be deficient in Docket 18128, *supra*.

101. Therefore, until such time as AT&T can prepare and file a new tariff offering for DDS which meets the criteria established in Docket 18128 and herein,[86] it can offer DDS only at rates which are designed to earn no less than 9.5 percent, the presently authorized rate of return of the Bell System (57 FCC 2d 960 (1976)). In calculating this return, AT&T shall use the Fully Distributed Cost, Method 7, allocations on which it based its FDC-7 special studies filed on March 31, 1976. For the purpose of this filing, since we realize that preparation of a new market study is very time-consuming, we will accept an assumption of the present market and rate of growth during the period in which the interim rates are in effect. We shall also not require AT&T to furnish the extensive cost justification normally required for a tariff filing. The filing may include the use of costs as specified in the special cost studies which have been filed or are presently being prepared, that the rates filed will be compensatory within the interim period.

102. If AT&T does not submit an acceptable replacement filing which becomes effective within sixty days after publication of this Decision in the Federal Register, its Tariff FCC No. 267 will be cancelled. If the carrier wishes to offer an end-to-end digital service after that date, it may do so within the present rate structure of its Tariff FCC No. 260, Series 2000, 3000 and 8000.

103. We believe that the requirement outlined above will permit AT&T to continue to offer DDS while not burdening its customers for other services by a service which is not compensatory. We also find this will accomplish the same result as that sought to be accomplished by the ID while retaining DDS as a separate classification of service.

VII. Procedural Questions

104. Several procedural matters have been raised which require our attention. The Trial Staff, Datran and IDCMA take exception to the ID (para. 26, fn. 15) insofar as it granted AT&T's motions to strike portions of their Proposed Findings and Conclusions. AT&T's motions were initially denied by decision of the Administrative Law Judges, FCC 76M-452 (released April 9, 1976), on the basis that the alleged frailties in the Proposed Findings should properly be treated in AT&T's Reply Findings. AT&T then incorporated its motions into its Reply Findings and the ID denied the motions only to the extent that the material AT&T sought to have stricken was incorporated in the ID.

105. The Trial Staff and IDCMA both argue that the lack of specificity of the ID ruling in question creates uncertainty as to which portions of the Proposed Findings are incorporated or stricken. The Trial Staff also asserts that the lack of reasons for striking given in the ID raises questions of denial of due process. All three parties claim that AT&T's motions are without merit since they do not indicate specific substantive or procedural defects in the Proposed Findings. The parties further maintain that their pleadings did not constitute new evidentiary material, but regardless, they argue that AT&T had the opportunity to respond in its Reply. On the other hand, AT&T maintains that it has demon-

[83] Our decision ordered the subject common carriers to revise their tariffs and to eliminate restriction on the resale and shared use inconsistent with our policies. The deadline for filing such revisions has been deferred.

[84] If AT&T can specifically justify different conditions or rates for OCCs based on costs or other criteria, we will reconsider our prescription.

[85] We note again that AT&T was required as a condition to its section 214 grant to report costs of providing DDS, a condition that was not met for over one year. If AT&T had in fact reported its costs from the first, as required, we may have had a sufficient record from which to determine reasonable rates.

[86] We expect such a filing to be made at the time AT&T submits its other rate filings in compliance with the Docket 18128 Decision.

strated the Proposed Findings in question were not based on evidence of record and should be stricken.

106. The disposition of AT&T's motions to strike has created some confusion. The terminology used by the Administrative Law Judges gives the impression that if a specific finding was not stricken, it was accepted and incorporated in the ID. We do not find that this conclusion necessarily follows. It is not apparent from the ruling in question whether any material whatsover was stricken. However, upon review of the Proposed Findings and AT&T's motion, it is evident that the ID ruling does not result in material being stricken which is considered controlling in the disposition of any issues in this proceeding. Thus, we find nothing to warrant the striking of the Proposed Finding of the Trial Staff, Datran or IDCMA. We will therefore reverse the ID insofar as it granted any portion of AT&T's motions to strike.

107. In addition, IDCMA raises objections to two rulings of the Administrative Law Judges during the course of this proceeding: a September 19, 1975 decision disallowing several of IDCMA's final interrogatories; and a December 8, 1975 ruling not requiring AT&T to supply certain cost data specified by IDCMA. IDCMA neither alleges nor demonstrates any harm or injury resulting from the two rulings. Also IDCMA does not show how the outcome of this proceeding would be changed if the rulings had been reversed. Thus, we will deny as moot IDCMA's exceptions to the rulings in question.

CONCLUSIONS

108. We have set forth above our reasons for finding that AT&T's Tariff FCC No. 267 is unjust and unreasonable. We have found that AT&T substantially overstated the market for DDS and that the resultant revenue projections and demand forecasts were likewise overstated and unsubstantiated. In reaching these results, AT&T employed unjustified market simulation methodology to forecast demand and revenues for DDS. We have also determined that AT&T understated the costs, including both investment and expenses, of providing DDS. This conclusion was based on our evaluation of AT&T's LRIC and FDC–1 and FDC–7 studies, which utilized projected costs. We have found these studies to be methodologically deficient in many important respects. Since these studies were based on overstated revenue forecasts and understated costs, we found that AT&T's DDS rates were inadequately justified and that they were clearly noncompensatory.

109. We further found the DDS rate structure to be unjust and unreasonable. Specifically, we determined that the various rate elements of the service or individual speeds of service were not adequately cost justified. Further, we found that AT&T did not substantiate the lawfulness of its orderly progression in rates by speed, as a departure from cost-based rates. Additionally, we found that reliance on cost of service principles is the appropriate standard for determining the proper DDS rate level and rate structure, and rejected the use of opportunity costs for this purpose.

110. We also independently considered the effect of our Decision in Docket 18128 on the subject DDS tariff. On the basis of our rejection of the use of LRIC studies for determining private line service rate levels in Docket 18128, we have found AT&T's LRIC analysis as a means of justifying the DDS rate level to be inappropriate. In accordance with our Docket 18128 Decision, we also have found that DDS should earn a rate of return within the range prescribed for AT&T as a whole within a reasonable time, as well as recover revenue shortfalls incurred during the developmental stage of service within a specified time.

111. We have also stated our finding that DDS and analog data service are like communication services within the meaning of section 202(a), but that sufficient evidence of record existed to accept tentatively AT&T's service offered pursuant to its Tariff No. 267 as a separate classification of service until AT&T files a new permanent DDS tariff.

112. We have also set forth our reasons for determining that the DDS rates and certain associated practices of AT&T were anticompetitive in effect and in violation of our policies of "full and fair competition."

113. We have found the restricted resale and shared use provisions of AT&T's Tariff 267 are unjustified and discriminatory in relation to the different resale provisions found in AT&T's Tariff 268. We have prescribed the resale and shared use provisions of Tariff 268 for Tariff 267 to replace present restricted use provisions.

114. Finally, we have found that the rates for DDS are unreasonably low and are being cross subsidized by users of other AT&T services. Therefore, we found that AT&T can continue to offer DDS only at rates which are designed to earn a rate of return of no less than 9.5 percent, calculated on present FDC–7 allocations. However, we found that such interim rates can remain in effect only until such time as AT&T files fully justified rates, in accordance with the criteria established herein and in Docket 18128.

115. The Commission will stop short of a legal sanction but is duly noting the fact that AT&T has clearly disregarded its specific order to retain and report on a regular basis its actual costs of providing DDS. The lack of probative cost data is a significant factor in our inability to determine just and reasonable rates for this service.

116. Accordingly, we conclude that the rates and conditions of AT&T's Tariff FCC No. 267, as specified herein, are unjust, unreasonable and unlawful, in violation of section 201(b) of the Communications Act. We further conclude that the public interest would be served only by eliminating the cross-subsidization inherent in the unreasonably low tariff at the earliest practicable time. Accordingly, we require AT&T to file an interim tariff offering Dataphone Digital Service at rates designed to yield a 9.5 percent return, as provided herein, no later than February 22, 1977, effective on thirty days' notice. We also require AT&T to develop a fully justified tariff for the service offering which it must file no later than the time it submits the other private line tariff filings in compliance with our Decision in Docket No. 18128, FCC 76–886 (released October 1, 1976). The DDS filing must meet the requirements of that Decision as well as the following guidelines.

117. In terms of Market and Demand Data, AT&T should provide the following:

(1) Market quantities for DDS by rate element and speed. These should include one year of actual results by month and three years of year-end projections. This information should be on a consistent time frame with cost information as provided below. Tariff No. 268 quantities should be reported separately.

(2) DDS operating revenues by rate element and speed, including one year of actual revenues by month and three years of projected annual revenues. Revenues should indicate recurring and nonrecurring revenues separately. Tariff 268 revenues should be reported separately.

(3) The number of digroups between each pair of DSA's and corresponding fill by speed, including year-end actuals and year-end projections for 3 years reported for a time frame consistent with other requirements herein.[55]

(4) The number of DAL–2 end offices and associated market quantities by DSA, including year-end projections for 3 years reported for a time frame consistent with other requirements herein.

(5) Reports of any unmet demand within existing network because of insufficient facilities.

(6) Projections and results of tests as provided in Appendix I for computerized market simulator, if employed.

(7) Present market quantities for other private line data services in a disaggregated form which shall be comparable to DDS market quantities.

(8) The amount of revenues foregone by existing services due to DDS as well as market quantities, including total annual amounts for actuals and 3 year projections.[56]

118. In terms of cost data, AT&T shall provide the following information:

(1) Investment and expense data by rate element and speed, including annual actuals as well as 3 year annual projections. Directly attributable as well as any non-directly attributable costs shall be provided.

(2) Justification of any proffered facility fills and accompanying engineering support data.

(3) Cost projections should reflect and separately account for:

(i) Increases in market quantities;

(ii) Increases due to inflationary trends;

[55] This will assist us in determining the feasibility of permitting expansion of the service beyond existing points.

[56] Items 7 and 8 may be supplied in a form similar to that in AT&T's initial tariff § 61.38 filing.

(iii) Cross-elastic demand and cost effects of rate changes in DDS and other services;

(iv) Directly attributable and non-directly attributable cost.

(4) Cost and revenue projections for DDS network in-place or to be in-place at time tariff changes are to become effective.

(5) All costs should be annual data.

(6) If cost ratios are employed they should be separately developed for DDS and fully supported. Support shall include source of information used as well as actual figures used to derive cost ratios. Ratios should also reflect annual data. Justification should be provided for the ratios for each year so employed.

119. All of the above requested market and cost information shall be provided at the time AT&T files DDS rates in accordance with revised FDC–7 and revised FDC–1 methodologies and in all subsequent filings.

120. We also require AT&T to fully justify that DDS and analog data services are in fact reasonable separate classifications.

121. *Accordingly, it is ordered,* That, pursuant to section 201(b) of the Communications Act, 47 U.S.C. 201(b), AT&T's Tariff FCC No. 267 is found unlawful as indicated herein, and is null and void.

122. *It is further ordered,* That, pursuant to section 408 of the Communications Act, 47 U.S.C. 408, this Decision shall become effective March 22, 1977, insofar as it relates to cancellation of the existing tariff.

123. *It is further ordered,* That AT&T shall file an interim tariff no later than February 22, 1977, on thirty days' notice, as provided herein.

124. *It is further ordered,* That AT&T shall subsequently file a fully justified tariff, as specified herein.

125. *It is further ordered,* That Docket No. 20288 is terminated.

126. *It is further ordered,* That all outstanding interlocutory motions are dismissed as moot.

FEDERAL COMMUNICATIONS [21] COMMISSION,
VINCENT J. MULLINS,
Secretary.

APPENDIX I—AT&T'S MARKET SIMULATION MODEL

1. AT&T submitted two market simulation studies, one filed in March, 1974 and the other in January, 1975. In order to quantitatively estimate the market for DDS, AT&T first identified that portion of the existing Bell System interstate communications market which it felt could potentially use DDS. The Bell System 1972 Interstate Private Line Inventory was the primary data source used in making this determination. After identifying this potential market for DDS, AT&T estimated the shifts from AT&T's other services to DDS that would occur at each of the proposed test rates. Next, AT&T estimated the market for DDS in the presence of competing carriers.[1] The test rates for 2.4, 4.8, 9.6 and 56 Kbps were simulated independently. The results of these separate runs were then adjusted by market distribution factors combined with factors for estimated growth rates, simulation effects, and maturation lags, in order to size the individual results according to the mix of speeds estimated to exist for the year under study.

2. The second study modified the inputs used for the first and recomputed revenues. Changes included the following:

a. The addition of Test Rate 11 (TR 11), reflecting rate levels generally 30 percent higher than TR 6 (the tariffed rates), to replace TR 10.

b. Use of actual, current rates and geographical locations of service for Datran, MCI, and SPCC as reflected in their respective tariffs.

c. Additional input to reflect alleged competitive impact of domestic satellites.

d. Modem run only for 1976 and 96 cities.

For a detail tabulation of the input variables to Bell's market simulation, see Table I below.

TABLE I—INPUT VARIABLES TO BELL MARKET SIMULATION

I. Identity of Potential Users:
  A. Private Line Customers.
    1. Low Speed (2.4 Kbps) Users.
    2. Medium Speed (4.8 and 9.6 Kbps) Users.
    3. High Speed (56 Kbps) Users.
  B. Common Users.
II. Growth Rates for Industry:
  A. User Base Growth Rates.
    1. Private Line Customers.
      a. Low.
      b. Medium.
      c. High.
    2. Common Users.
  B. Geographic Patterns for Network Expansion.
  C. Speed Mix Characteristics of Demand.
  D. User Adoption Rates (Maturation Factor).
  E. Stimulation Effect.
III. Behavior of Competitors:
  A. Geographical Coverage.
  B. Tariffs for Datran and Other SCC's.
IV. Behavior of Potential Customers:
  A. Total Charges.
  B. Buy-up Factor.
  C. Price Trade-offs Between Dataphone Digital Service and Specialized Common Carrier Services.
  D. Price Trade-offs Between Bell System Analog Users and Datran.
V. Elements of the Tariffs:
  A. DAL's in DSA's.
    1. DAL 1.
    2. DAL 2.
  B. Channels Between Cities.
  C. Miscellaneous Elements.
    1. DSU.
    2. MSA.
    3. Off-Net Extension Adaptor.
    4. Maintenance of Service Charge.

3. *Validation of Bell's Market Simulation.* It is crucial that we examine the structure, assumptions, and limitations of AT&T's model to evaluate whether the simulator is a reasonable approximation of reality.

4. While no single method exists to determine the reasonableness of a simulation model, a variety of tests can be used to evaluate both the inputs and outputs and then reach a determination as to the validiy of the model. The procedures we will use in evaluating these input variables as well as the model's outputs are contained in Table II, below. While these procedures are drawn substantially from the Trial Staff's findings, we note that no conflicting findings on this particular matter were offered by any of the parties involved. The ID also supports this approach. In addition, we note that AT&T has supplied no information in this proceeding indicating the procedures used to validate its simulation model. Hence, we find that AT&T has failed to meet its burden of demonstrating the reliability and reasonableness of its market projection for DDS.

5. *Simulation Input.* We will first examine the necessity and sufficiency of the input variables and then the reasonableness of their parameter values. However, our discussion will be limited to those inputs disputed by the parties involved in this proceeding. The disputed input variables include the stimulation effect, the buy up factor, the behavior of competitors as it relates to satellite communication, and the omission of an explicit variable reflecting the influence of national economic conditions on demand for DDS.

6. The stimulation effect was included in the model because, in Bell's judgment, DDS with its better quality of performance would be certain to stimulate growth above and beyond the "normal" growth rate experienced in the data communications market. The Trial Staff, as well as other parties have argued that no empirical evidence supports the existence of such a factor, let alone its assumed magnitude. While we do not doubt the offering of DDS will generate new customers for that service and siphon off customers from other data communications services, it does not necessarily follow that the existence of DDS will stimulate interest in other data communications services, especially in light of the magnitude of AT&T's assumed shift of present data service customers to DDS.

TABLE II.—PROCEDURES TO EVALUATE SIMULATIONS

I. Validation of Simulation Input Data:
  A. Appropriateness of Input Variables.
    1. Necessity of input variables.
    2. Sufficiency of input variables.
  B. Appropriateness of Assumptions Regarding Parameter Values of Input Variables.
    1. Relevance of supporting data to input variables.
    2. Accuracy of supporting data.
II. Validation of Simulation Output Data:
  A. Comparisons with Real World Process.
  B. Sensitivity Analyses of Output to Systematic Changes in Input Variables.
  C. Stability Tests of Simulation.
  D. Internal consistency of intermediate outputs.
III. Validation of Simulation Model:
  A. Acceptable Results for I and II above.
  B. "Theoretical" Soundness of Model.
  C. Proper Implementation of Model.

7. AT&T included a buy-up factor because it assumed customers would be willing to pay a premium for DDS with its better performance and improved reliability. The Trial Staff and others argue that findings from a Bell study undermine this assumption. Because no details as to how Bell conducted this study are available, we cannot accurately judge the results. However, we do acknowl-

[21] Commissioner Lee absent.

[1] Throughout this analysis, AT&T assumed that end-to-end communications charges are the major determinants in a customer's choice between available alternatives. AT&T also assumed that the services to be provided by DDS would be similar in operation to private line data communication services presently available.

edge the possibility of a buy-up factor for new customers. We would not, however, expect the buy-up factor to have as significant an effect on present data communications users because of potentially costly system reconfigurations in switching from an analog to digital network and capital expenditures for digital terminal equipment by customers having their own equipment. Hence, while a buy-up factor in some form may be necessary, AT&T has neither justified its present form nor provided an acceptable justification for its magnitude.

8. AT&T also included the competitive effect of satellite data communications on DDS as an input. This was justified by evidence that devices are being developed to improve the transmission capabilities of data over satellites and protocols which would support full-duplex operations on satellites would be available prior to 1976. Datran, among others, argues an alleged ½ second delay associated with satellite transmission combined with the current inefficiencies of line protocols presently in use will inhibit the movement of data communications users to satellite facilities until about 1980. We find that the problems raised by Datran with respect to satellite transmission protocols were capable of being resolved in the 1974–1976 time frame. However, we also affirm the ID's finding (paragraph 64) that widespread use of satellites for data communications was not likely during the time frame under consideration.[3] We regard as suspect the inclusion of the satellite effect only in the second model, even though domestic satellites were beginning to offer services by March 1974. Inclusion of this alleged competitive threat would tend to support a lower "optimum" test rate than would otherwise be the case.

9. AT&T has argued that while the simulation model does not explicitly include an input variable reflecting the impact of national economic conditions on the demand for DDS, such a variable was implicitly considered in the formulation of expected growth rates for the various data services. The Trial Staff and others argue that such a factor must be explicitly taken into account, especially considering the recessionary conditions of the past few years. We cannot determine from the record whether AT&T did implicitly account for general economic conditions. Given their importance on the potential demand for DDS, we find that it is incumbent upon AT&T to specifically account for such conditions. We also find that AT&T's simulation model is deficient with respect to the appropriateness of its input variables for the reasons stated above.

10. Disputes among the parties exist concerning the appropriate parameter values of input variables. The parameter values in dispute include: (1) Medium speed user base growth rate; (2) common user base growth rate; (3) speed mix; (4) maturation factor; (5) SCC's tariffs; (6) price trade-offs of customers; (7) SCC's geographical coverage; (8) AT&T's share of DSU market; (9) stimulation effect; (10) buy-up factor; and (11) presence of satellite competition.

11. In order to estimate the rate of growth in demand for the medium speed DDS market, AT&T relied on estimates furnished by several independent research firms. These estimates indicated the growth potential for data communication based on the expected number of data terminals to be in use in the future. AT&T also used the historical rate of growth in the April Bell System Interstate Data Revenues for 1968–1973, as inputs into the selection of a medium speed user base growth rate. Accordingly, AT&T determined that a mid-range growth of 30 percent per year for 1974 through 1976 was appropriate. The Trial Staff and others argue that this growth is significantly overstated and cite April to April growth rates for 1973–74 and 1974–75 of 14 and 17 percent respectively as evidence of this overstatement.

12. A more fundamental criticism of the estimate is Bell's choice of information for estimating this expected growth rate. First, AT&T relies on outside studies whose accuracy and rigor were not evaluated by Bell. Second, AT&T neither adjusted its own revenue data to take into account rate increases nor used 12 month data, which would yield more stable and accurate results than the arbitrary examination of a single month per year. Finally, AT&T ignored 1974 data for interstate Data Revenues which showed a significant difference between its estimated growth for 1974 of 30 percent and actual growth of approximately 14 percent (unadjusted for rate changes). Due to apparently wide year to year fluctuations in the growth of the data communications market, the selection and use of a single figure for the expected future growth rate is inexact. Based on our own analysis, we find the growth rate for 1974 to 1976 to be between 15 and 30 percent, with the most likely value being 25 percent. Therefore, even though AT&T's estimated growth rate of 30 percent is at the upper limit of our zone of reasonableness, AT&T's support for such a figure is unsubstantiated.

13. The common user (Message Toll Telephone Service (MTS) and Wide Area Telecommunications Service (WATS)) base growth rate was also estimated by AT&T to be 30 percent per year from 1974 through 1976. The Trial Staff and others argue that since these common users were expected to switch only to the lower speeds of DDS, a more reasonable estimate of the common user base growth rate would be the growth rate assumed by AT&T for potential private line customers of low speed DDS, which was between 10 and 13 percent. While we have doubts as to the relevance of an assumption which presumes MTS and WATS customers to be potential customers of DDS,[4] WATS as a whole has grown approximately 30 percent per year. Since AT&T assumes that all potential switches will occur from WATS to DDS, we conclude that the assumed base growth rate for common users is reasonable. However, we are stil doubtful of the relevance of considering monopoly service users for an acknowledged private line service.

14. The market distribution factors for 1974 through 1976 were estimated from information initially gathered in a 1970 data study which attempted to inventory the data communications market in 1970 and forecast it for the next five years. See paragraph 1, supra. The Trial Staff objects to the use of these factors and argues that "actual" results should be considered. However, the Trial Staff mistakenly considers the actual results to be the actual speed mix for all of DDS. Therefore, based on this erroneous assumption, comparison between the actual speed mix and AT&T's market distribution factors reflects a substantial difference. We cannot accept this as a valid comparison. AT&T never intended that its market distribution factors be indicative of the ultimate speed mix for DDS. These factors were merely an intermediate input in the determination of the ultimate mix. See paragraph 1, supra. However, Datran's comparison of AT&T's forecasted and actual distribution for 24 cities during the first year of DDS operation is as follows:

[In percent]

	2.4 Kbps	4.8 Kbps	9.6 Kbps	56 Kbps
Forecasted	62.1	14.3	12.2	11.4
Actual	5.8	25.4	56.0	11.9

We recognized the problems of comparing actual and forecasted results.[4] However, in this case, the actual results are at such variance with AT&T's forecasts that they suggest problems with the way in which the forecasted speed mix was derived.[5]

15. AT&T argued that potential users will not necessarily switch to DDS when it first becomes economically attractive. We find that this lagged condition seems likely; however, we find no justification for the reasonableness of the quantification of this maturation factor.

16. AT&T's assumptions concerning Datran's rates have been a point of contention in this proceeding.[6] In its initial simulation run, AT&T assumed lower rates for Datran's competitive services than those actually proposed by Datran. In its second run, AT&T used Datran's filed rates, but introduced a new variable to reflect alleged widespread satellite competition for data services. We have already determined that it was improper to consider potential effect's on DDS within the 1974–1976 time frame. We now find that AT&T's treatment of Datran's rates constitute an improper justification of AT&T's proposed DDS rates.

17. AT&T assumes that customers would pay a 6 percent premium over Bell's analog services for Datran's all digital service. The Trial Staff and others argue that since this premium is similar to the buy-up factor, it too should be eliminated. We reject AT&T's use of a 6 percent premium on Datran's digital services on the basis that the figure was unsubstantiated in the record.

18. AT&T's estimates of the geographical coverage of the SCC's for 1974, 1975 and 1976 relied on filings with the Commission for microwave station construction applications and filed tariffs for those SCCs already in operation. Datran, among others, has argued that AT&T made overly optimistic assump-

[3] The facts to date have substantiated this contention. There is little evidence of widespread use of domestic satellites to transmit data.

[4] First Report in Docket No. 20003, FCC 76-879 (released October 1, 1976).

[4] We have noted and rejected AT&T's assertions as to why the actual revenue distribution differs significantly from forecasted distribution. See Decision, paragraphs 13–15.

[5] The use of outmoded 1970 data and projections and the inclusion of data terminals used at speeds of 200 to 1500 Kpbs as being representative of 2.4 Kbps DDS users are indicative of AT&T's bias in its determination of market distribution factors. The application of these factors, which heavily favored 2.4 Kpbs users, only to Series 3000—Type 3002 service (admitted by Bell to be principally composed of medium speed users) also biased the ultimate results of the model.

[6] AT&T's use of lower rates for its principal competitor, Datran, enables AT&T to justify lower rates for itself. This is a result of AT&T's ratemaking philosophy of setting rates to yield as large a contribution above relevant costs as practical, taking into account market conditions, rate relationships and other ratemaking factors. Thus, AT&T assumptions as to Datran's rates are crucial to AT&T's selection of DDS rates.

tions concerning service to intermediate cities on backbone rates, interconnection among the various SCCs, grant of construction applications, the availability of construction funds to SCCs, and the interval for completion of construction. We find that these assumptions have led AT&T to overestimate potential SCC competition. By overstating potential SCC competition, AT&T could more readily justify a lower "optimum" than would otherwise be the case.

19. AT&T assumed that its share of the market for Data Service Units (DSUs) would be 100 percent in the first year, 90 percent the second, and 80 percent the third. Furthermore, it assumed share of the DSU market would be the same regardless of the test rates. The latter assumption appears reasonable since the price of the DSU was the same for each test rate. However, we find AT&T's assumption as to its market share for DSUs to be without substantiation.

20. Since we have rejected herein AT&T's particular use of a stimulation effect, buy-up factor, and the presence of satellite competition, we need not reach the question of the reasonableness of the parameter values for these inputs.

21. *Simulation—Output.* We will examine how sensitivity analysis, stability tests, and internal consistency tests could have been used to evaluate the appropriateness of AT&T's present input data.[7]

22. If AT&T had conducted sensitivity analyses of the effects of systematic changes in the input data on the stimulator's output, a considerable amount of the controversy surrounding the validation of this input data would have been mooted. In other words, if the results of the simulator were insensitive to certain input data, then these input data would not require close scrutiny, thereby enabling all parties in this proceeding, including AT&T, to concentrate on validating those inputs to which the model was particularly sensitive. Computerized sensitivity analysis is a relatively simple and well established procedure, but AT&T chose not to perform such analyses, thus denying the other parties and the Commission data necessary to review the DDS tariff. The performance of stability tests and the examination of the internal consistence of intermediate outputs would not only have aided the Commission in determining the reasonableness of the simulator, but also could have proven useful to Bell management in its own evaluation of the simulator.

APPENDIX II

The effects of overstating market forecasts on rate making can be aptly illustrated with a hypothetical example. We will utilize a situation where a common carrier is providing the interexchange portion of a service. The carrier's market forecasts indicate that at a price of $10 per circuit-mile demand will be 100 circuit-miles. We assume either that the minimum amount of interexchange plant installed is 100 circuit-miles or that the carrier believes its market forecast and installs 100 circuit-miles. Based on a unit investment cost at $11 per circuit-mile and expenses at $9 per circuit-mile (for a total investment of $1,100 and total expense of $900), an average rate of return (using an 11 year life for plant and straight line depreciation) of 9.53 percent is calculated. If the carrier's market forecast proves to be actually overstated by 15 percent, at a price equal to $10 per circuit-mile, only 85 circuit-miles are demanded. However, the carrier has already installed 100 circuit-miles, hence investment and the majority of investment related expense remain constant. Revenues decline from $1000 to $900 while expenses only declined from $900 to $850, and the average rate of return is now zero percent. Thus, by overstating demand by only 15 percent, the filed rate of $10 per circuit-mile provides the carrier's investors with no return on their capital, and the service is non-compensatory.

The calculations for the examples are as follows:

Assume:
Filed Rate = $P = \$10$/circuit-mile
Forecasted demand = $Q_D = 100$ circuit miles
Quantity supplied = $Q_S = 100$ circuit-miles
Actual demand = $Q_A = 85$ circuit-miles
Unit Investment Costs = $I_1 = \$11$/circuit-mile
Unit Expense for 100 circuit-miles = $E_1 = \$9$/circuit-mile
Unit Expense for 85 circuit-miles = $E_2 = \$8.50$/circuit-mile

(1) Forecasted Demand:
Total Revenue $(TR) = P_1 \times Q_D = (\$10$/cirduit-mile$) \times (100$ circuit-miles$) = \$1{,}000$
Total Expenses $(TE) = E_1 \times Q_S = (\$9$/circuit-mile$) \times (100$ circuit-miles$) = \$900$
Gross Investment $= I_1 \times Q_S = (\$11$/circuit-mile$) \times (100$ circuit-miles$) = \$1{,}100$
Net Investment = Gross Investment − Depreciation Reserve $= 1{,}100 - 100 = 1000$
Average Net Investment $= (1{,}00 + 1000) \div 2 = \$1{,}050$

$$\text{Average Rate of Return} = \frac{TR - TE}{\text{Net}} = \frac{1000 - 900}{1050} = 9.53\%$$

(2) Actual Demand:
Total Revenue $= P_1 \times Q_A = (\$10$/circuit-mile$) \times (85$ circuit-miles$) = \$850$
Total Expenses $= E_2 \times Q_A = \$850$

$$\text{Average Rate of Return} = \frac{850 - 850}{1050} = 0.0\%$$

[FR Doc.77-1925 Filed 1-21-77;8:45 am]

[Report No. 841]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

JANUARY 17, 1977.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's rules and regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (See 309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business one business day preceding the day on which the Commission takes atcion on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. (See §§ 1.227(b)(3) and 21.30(b) of the Commission's rules.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

20560-CD-P-(4)-77, The Pacific Telephone and Telegraph Company (KMD991). C.P. to change antenna system operating on 152.69 and 152.72 MHz and for additional facilities to operate on 152.78. Base and 158.04 MHz. Test located at 516 Third Street, Santa Rosa, Calif.

20561-CD-AL-77, Harrington Broadcasting Co. Consent to Assignment of License from Harrington Broadcasting Co., assignor to Petoskey Mobile Telephone Company, assignee. Station: KWH309, Emmet, Mich.

20562-CD-P-77, Northern Illinois Radio Phone and Paging Systems, Inc. (KSB590). C.P. for additional facilities to operate on 152.06 MHz at a new Loc. No. 5: 1100 ft. West of Martin Road on Southside of Street (Rt. No. 120), McHenry, Ill.

20563-CD-P-77, Messages By Radio, Inc. (new). C.P. for a new station to operate on 152.21 MHz to be located at 248 Tate Avenue, Buchanan, N.Y.

20564-CD-P-(2)-77, Northern Illinois Radio Phone and Paging Systems, Inc. (KTS200). C.P. to change antenna system and replace transmitter operating on 158.70 MHz at Loc. No. 1: 2526 North Harlem Aevenue, Elmwood Park; and to change antenna system operating on 158.70 MHz at Loc. No. 2: 1741 South O'Plane Road, Warren Township, Ill.

20565-CD-P-77, Radio Relay New York Corp. (KEC745). C.P. for additional facilities to operate on 35.22 MHz at a new Loc. No. 13: 20 Exchange Place, New York, N.Y.

20566-CD-P-77, Radio Relay Corp.-Michigan (KGI774). C.P. to relocate facilities and operate on 35.22 MHz at a new Loc. No. 10: 2000 Inkster Road, Inkster, Mich.

20567-CD-P-77, Radio Dispatch Company (KGI774). C.P. to relocate facilities and change antenna system operating at 152.06 MHz to be located at 18th and Walnut Streets, Philadelphia, Pa.

20568-CD-P-77, American Mobile Radio, Inc. (KMD344). C.P. for additional facilities to operate on 35.58 MHz at a new Loc. No. 2: San Pedro Hill, San Pedro, Calif.

20569-CD-P-77, Portable Communications, Inc. (KEK289). C.P. for additional facilities to operate on 454.325 MHz at a new Loc. No. 5: 740 Werner Road, Attica, N.Y.

20570-CD-P-(2)-77, Patterson Anserphone Communication Enterprises, Inc. d/b/a Answerphone (KIG841). C.P. for additional facilities to operate on 454.125 and 454.175 MHz at a new Loc. No. 4: 4812 Six Forks Road, Raleigh, N.C.

20571-CD-P-77, Radio Broadcasting Company (KWU290). C.P. for additional facilities to operate on 158.70 MHz at Loc. No. 5: 11 South Monroe Street, Hammonton, N.J.

[7] We note that AT&T's claim that sensitivity analysis is valid only for stochastic models is without foundation.

20573-CD-TC-77, Phenix Communications Company, Inc. Consent to Transfer of Control from J. Frank Snellings, Jr. and Bertha Mae Snellings, transferor, to Reginald R. Cain, Jr. and Evelyn S. Cain, transferees. Station: KIJ351, Phenix City, Ala.

20574-CD-TC-(2)-77, Phenix Communications Co. of Georgia, Inc. Consent to Transfer of Control from J. Frank Snellings, Jr. and Bertha Mae Snellings, transferors, to Reginald R. Cain, Jr. and Evelyn S. Cain, transferees. Stations: KTS264, Columbus, Ga. and KUO603, Phenix City, and Columbus, Ga.

20575-CD-P-77, S. F. McNeill d/b/a Communication Specialists Co. (new). C.P. for a new station to operate on 152.24 MHz to be located at 3330 Wrightsville Avenue, Wilmington, N.C.

20576-CD-P-(3)-77, Beep Communications Systems, Inc. (new). C.P. for a new station to operate on 454.175, 454.200 and 454.225 MHz to be located at North Beacon Mtn., Beacon, N.Y.

20577-CD-P-77, Beep Communications Systems, Inc. (KEK287). C.P. for additional facilities to operate on 454.225 MHz at a new Loc. No. 3: 1 Strawberry Hill Court, Stamford, Conn.

20578-CD-P-77, Communications Engineering, Inc. (KWU236). C.P. for additional facilities to operate on 158.70 MHz to be located at 3201 C Street, Anchorage, Alaska.

20579-CD-AL-77, Alden Seitz and David K. Seitz d/b/a Mobilfone Exchange of Sandusky Consent to Assignment of License from Alden Seitz and David K. Seitz d/b/a Mobilfone of Sandusky, Assignor to David K. Seitz d/b/a Mobilfone Exchange of Sandusky, assignee. Station: KLF529, Columbus, Ohio.

RURAL RADIO

60133-CR-P/L-77, Pacific Northwest Bell Telephone Company (new). C.P. for a new Rural Subscriber station to operate on 157.86 MHz to be located 12 Miles West of Bend, Elk Lake, Oreg.

60134-CR-P-77, Hawaiian Telephone Company (new). C.P. for a new Central Office station to operate on 454.50 MHz to be located at 3038 Kuhio Highway, Lihue, Hawaii.

60135-CR-P-77, Hawaiian Telephone Company (new). C.P. for a new Rural Subscriber station to operate on 459.5 MHz to be located 2.40 miles NNW of Lihue Post Office, Lihue, Hawaii.

POINT TO POINT MICROWAVE RADIO SERVICE

979-CF-P-77, New York Telephone Company (KEF76). 418 East Fayette Street, Syracuse, N.Y. Lat. 43°02'55" N.—Long. 76°08'51" W. C.P. to add new point communication on frequencies 11605H, 11445V MHz toward Granby, N.Y., on azimuth 322.6 degrees.

980-CF-P-77, same (new), County Line Road, Granby, N.Y. Lat. 43°14'01" N.—Long. 76°20'29" W. C.P. for a new station on frequencies 11155H, 10995V MHz toward Syracuse, N.Y., on azimuth 142.4 degrees and 10955H, 10875V MHz toward Scriba, N.Y., on azimuth 334.1 degrees.

981-CF-P-77, same (new), Bryns Road, Scriba, N.Y. Lat. 43°25'48" N.—Long. 76°28'21" W. C.P. for a new station on frequencies 11405H, 11325V MHz toward Granby on azimuth 154.0 degrees, and 11365H, 11285V MHz toward Oswego, N.Y., on azimuth 306.2 degrees.

982-CF-P-77, same (new), 235 West Third Street, Oswego, N.Y. Lat. 43°27'00" N.—Long. 76°30'36" W. C.P. for a new station on frequencies 10915H, 10835V MHz toward Scriba, N.Y., on azimuth 126.2 degrees.

991-CF-P-77, American Telephone and Telegraph Company (KKN23), 1407 Jefferson Street, Houston, Tex. Lat. 29°44'45" N.—Long. 95°21'56" W. C.P. to add frequency 3890.0V MHz toward Fairbanks, Tex.

992-CF-P-77, same (KGP78), 2.4 miles north of Fairbanks, Tex. Lat. 29°52'03" N.—Long. 95°31'18" W. C.P. to add frequencies 3930.0V MHz toward Houston, Tex., 3930.0H MHz toward Spring, Tex.

993-CF-P-77, same (KGP77), 2.2 miles south-southwest of Spring, Tex. Lat. 30°02'54" N.—Long. 95°25'54" W. C.P. to add frequency 3890.0H MHz toward Fairbanks, Tex.

1001-CF-P-77, Millington Telephone Company, Inc. (new), Woodstock, 6 miles southwest Millington, Tenn. Lat. 35°17'47" N.—Long. 89°58'30" W. C.P. for a new station on frequencies 11345.0V MHz toward Memphis, Tenn., on azimuth 201.9 degrees and 11345.0V MHz toward Kerrville, Tenn., on azimuth 43.5 degrees.

1002-CF-P-77, same (new), 0.8 mile north of Kerrville, Tenn. Lat. 35°23'35" N.—Long. 89°51'47" W C.P. for a new station on frequencies 11135.0V MHz toward Woodstock on azimuth 223.5 degrees, 10975.0V MHz toward Shelby Forest on azimuth 246.4 degrees, 10975.0V MHz toward Munford on azimuth 35.9 degrees, 10775.0V MHz toward Rosemark on azimuth 112.4 degrees and 10775.0V MHz toward Millington on azimuth 211.4 degrees.

1003-CF-P-77, same (new), 4880 Navy Road, Millington, Tenn. Lat. 35°20'31" N.—Long. 89°54'04" W. C.P. for a new station frequency 11665.0V MHz toward Kerrville, Tenn., on azimuth 31.3 degrees.

1004-CF-P-77, Millington Telephone Company, Inc. (new), Shelby Forest, 0.2 miles south of Cuba, Tenn. Lat. 35°20'54" N.—Long. 89°59'16" W. C.P. for a new station on frequency 11385.0V MHz toward Kerrville, Tenn., on azimuth 66.3 degrees.

1005-CF-P-77, same (new), Munford, Tenn. Lat. 35°26'56" N.—Long. 89°48'49" W. C.P. for a new station on frequency 11385.0V MHz toward Kerrville, Tenn., on azimuth 216.0 degrees.

1006-CF-P-77, same (new), Rosemark, Tenn. Lat. 35°21'43" N.—Long. 89°46'16" W. C.P. for a new station on frequency 11665.0V MHz toward Kerrville, Tenn., on azimuth 292.5 degrees.

MAJOR AMENDMENT

4965-CF-P-76, Northwestern Telephone Systems, Inc. (KPG64), Blacktail, Mont. Application amended to decrease emission designator from 33000F9 to 30000F9 for frequencies 11445V, 11685H MHz toward Charlo, Mont.

CORRECTIONS

219-CF-MP-77, American Microwave & Communications, Inc. (KQL 46), 0.5 mile West of Covington, Mich. (Lat. 46°32'02" N.—Long. 88°32'37" W.). This entry appearing in Public Notice of November 8, 1976, is corrected to read as follows: Construction permit to replace transmitters, change polarity and change frequencies to 6278.8H, 6308.4V, 6338.1H and 6397.4H MHz toward Bergland, Mich., on azimuth 281.7 degrees, to change polarity of frequencies to 6278.8H, 6338.1H, 6397.4H and to delete frequency 6308.4V MHz toward Houghton, Mich., on azimuth 356.4 degrees.

580-CF-P-77, Yankee Microwave (KYZ 85), Mt. Washington, Sargents Purchase, N.H. (Lat. 44°16'13" N.—Long. 71°18'13" W.). This entry appearing in Public Notice of December 13, 1976 is revised to read as follows: 6212.1H MHz toward Manchester, N.H. on azimuth 189.0 degrees and to delete 6212.1V MHz toward Saddleback, N.H., on azimuth 176.2 degrees.

508-CF-P/L-77, RCA Alaska Communications, Inc. (new), Tok Cathedral, Alaska. Correct file number to read 509-CF-P/L-77 for this entry. All other particulars remain as reported on Public Notice number 835, dated December 6, 1976.

Add: 508-CF-P/L-77, RCA Alaska Communications, Inc. (new), 794th ACWSQDN, APO Seattle, Cape Newenham, Alaska. Lat. 58°37'39" N.—Long. 162°04'25" W. C.P. for a new station on frequency 810 MHz toward Bethel, Alaska on azimuth 2.0 degrees. (This entry was inadvertently omitted from the December 6, 1976 Public Notice.)

[FR Doc.77-2106 Filed 1-21-77;8:45 am]

[FCC 77-40]

EMERGENCY BROADCAST SYSTEM SCHEDULED

Closed Circuit Test

JANUARY 18, 1977.

A test of the Emergency Broadcast System (EBS) has been scheduled for Thursday, January 27, 1977 between 2:03:30 and 2:09:00 p.m., Washington, D.C. time. Only ABC, CBS, NBC, IMN, MBS, and NPR radio network affiliates and UPI-Audio clients will participate. Television networks are not participating in this test.

Network affiliates will be notified of the test procedures via their network beginning four days in advance of the test. Test messages will also be run by AP and UPI radio press wire services for four days in advance of the test to issue wide dissemination of the test announcement and schedule.

Final evaluation of the January test is scheduled to be made by the end of February 1977.

THIS IS A CLOSED CIRCUIT TEST AND WILL NOT BE BROADCAST OVER THE AIR

Action by the Commission January 12, 1977. Commissioners Wiley (Chairman), Hooks, Quello, Washburn, Fogarty and White.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-2104 Filed 1-21-77;8:45 am]

FM AND TV TRANSLATOR APPLICATION READY AND AVAILABLE FOR PROCESSING

Adopted: January 6, 1977.

Released: January 17, 1977.

Notice is hereby given pursuant to § 1.572(c) and 1.573(d) of the Commission's rules, that on March 2, 1977, the TV and FM translator applications listed below will be considered as ready and available for processing. Pursuant to §§ 1.227(b)(1) and 1.519(b) of the Commission's rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on March 1, 1977, which involves a conflict necessitating a hearing with any application on this list, must

be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on March 1, 1977.

The attention of any party in interest desiring to file pleadings concerning any pending TV and FM translator application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

FM TRANSLATOR APPLICATIONS

BPFT-370 (new), Oshkosh, Omro and Winneconne, Wisconsin, Oshkosh Christian Business Men's Committee Req: Channel 221, 92.1 MHz, 1 watt. Primary: WRVM (FM), Suring, Wis.

BPFT-372 K221AE, Stanford, Mont., Stanford TV Association. Req: Change frequency to Ch-285, 104.9 MHz and change primary station to KLCM-FM, Lewiston, Mont.

BPFT-373 (new), Lead, S. Dak., Great Plains Leasing Corp. Req: Channel 288, 105.5 MHz, 1 watt. Primary: KKLS-FM, Rapid City, S. Dak.

BPFT-374 (new) Deadwood, S. Dak., Great Plains Leasing Corp. Req: Channel 296, 107.1 MHz, 1 watt. Primary: KKLS-FM, Rapid City, S. Dak.

BPFT-375 (new), Grand Marais, Minn., Stereo Broadcasting, Inc. Req: Channel 296, 107.1 MHz, 10 watt. Primary: WAKX, Duluth, Minn.

BPFT-377 (new), Moab, Utah, Mesa Broadcasting Company (KQIX-FM). Req: Channel 296, 107.1 MHz, 10 watt. Primary: KQIX, Grand Junction, Colo.

BPFT-378 (new), West Palm Beach, Fla., Regional Arts Productions, Inc. Req: Channel 272, 107.1 MHz, 1 watt. Primary WTMI, Miami, Fla.

BPFT-379 (new), Leadville, Colo., Lake County TV-FM, Inc. Req: Channel 276, 103.1 MHz, 1 watt. Primary: KRDO, Colorado Springs, Colo.

Application deleted from Public Notice released November 5, 1976 (Mimeo 74188, 41 FR 50690).

BPFT-351 (new), Oshkosh, Omro, Winneconne, Wisconsin, Oshkosh Christian Business Men's Committee. Req: Channel 252A, 98.3 MHz, 1 watt. Primary: WRVM FM), Suring Wis.

(Assigned new file number BPFT-370.)

UHF TV TRANSLATOR APPLICATIONS

BPTT-3134 (new), Baudette, Minn., Lake of the Woods County. Req: Channel 55, 716-722 MHz, 100 watt. Primary: KTHI, Fargo-Grand Forks, N.D.

BPTT-3135 (new), Grygla, Minn., Lake of the Woods County. Req: Channel 57, 728-734 MHz, 100 watt. Primary: WDAZ, Devils Lake, N. Dak.

BPTT-3136 (new), Grygla, Minn., Lake of the Woods County. Req: Channel 59, 740-746 MHz, 100 watt. Primary: KTHI, Fargo-Grand Forks, N. Dak.

BPTT-3137 (new), Williams, Minn., Lake of the Woods County. Req: Channel 61, 752-758 MHz, 100 watt. Primary: WDAZ, Devils Lake, N. Dak.

BPTT-3138 (new), Williams, Minn., Lake of the Woods County. Req: Channel 63, 764-770 MHz, 100 watt. Primary: KTHI, Fargo-Grand Forks, N. Dak.

BPTT-3139 (new), Norris Camp, Minn., Lake of the Woods County. Req: Channel 67, 788-794 MHz, 100 watt. Primary: WDAZ, Devils Lake, N. Dak.

[FR Doc.77-2105 Filed 1-21-77;8:45 am]

VICINITY OF U.S./CANADA BORDER

Interim Criteria for Licensing Land Mobile Radio Systems in 806-890 MHz Band

By exchange of letters between the Commission and the Department of Communications of Canada, an interim arrangement has been agreed to for licensing U.S. land mobile systems in the 806-890 MHz band within 250 miles from the U.S./Canada border.

The interim arrangement had been worked out by a joint group of staff members from Canada's Department of Communications and from the Commission. This Joint FCC/DOC working group has been exploring possible alternatives for sharing the use of the frequencies in the 806-890 MHz band by the two countries along the border.

The 806-890 MHz band is allocated to the land mobile services in the U.S. In Canada, it is allocated for television broadcasting.

The interim arrangement provides for licensing U.S. land mobile radio stations so as to fully protect Canadian television assignments in the band and to preserve the opportunity for possible use of some of this spectrum for land mobile purposes closer to the border in Canada as well as in the United States.

The criteria for authorizing U.S. land mobile stations are as follows: 1. Base stations will not be authorized in areas closer than 100 miles from the U.S./Canadian border.

2. Within a zone 100 miles and 125 miles from the border, base stations will be authorized only after specific arrangements have been made between the Commission and the Department of Communications of Canada for the specific geographic areas.

3. Within the zone 125 miles and 145 miles from the border, base stations may be authorized with the maximum of 500 watts ERP at 500 feet effective antenna height, or the equivalent.

4. Beyond 145 miles from the border, base stations may be authorized with the power and antenna heights permitted by the rules (1000 watts ERP at 1000 feet effective antenna height, for "urban conventional" and "trunked" stations, and 500 watts ERP at 500 feet effective antenna height, or the equivalent, for "suburban conventional" stations).

5. Mobile stations will be authorized to operate at distances of 90 miles or more from the border. The maximum ERP for mobile units operating within the zone between 90 and 145 miles from the border must not exceed 200 watts. Land mobile systems will normally employ a duplex channeling plan so as to prevent mobile-to-mobile operations closer than 90 miles to the border.

6. Mobile units operating further than 145 miles from the border will be authorized to operate with powers prescribed by the rules.

7. All land mobile stations within 250 miles from the border will be authorized on condition that they cause no harmful interference to Canadian television stations operating in the 806-890 MHz band. Land mobile stations will not be afforded protection from interference from Canadian television stations.

8. For information purposes only, the Commission will notify the Department of Communications of land mobile radio assignments in the band within 250 miles from the border.

This is an interim arrangement between the Commission and the Department of Communications, and it is anticipated that discussions will continue looking towards a mutually beneficial, overall solution.

This action was taken by the Commission. Commissioner Lee was absent.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-2103 Filed 1-21-77;8:45 am]

CIVIL AERONAUTICS BOARD

COMMUTER AIRLINE ASSOCIATION OF AMERICA

Meeting

Notice is hereby given that a presentation will be made by Commuter Airline Association of America on Wednesday, February 2, 1977, at 3:00 p.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., regarding the problem facing the commuter airlines.

Dated at Washington, D.C., January 17, 1977.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2050 Filed 1-21-77;8:45 a.m.]

[Docket No. 27557; Order 77-1-101]

SEABOARD WORLD AIRLINES, INC.

Order of Investigation and Suspension Regarding North Atlantic Cargo Charter Transfer Rules

Adopted by the Civil Aeronautics board) proposes a cargo charter transfer on the 6th day of January, 1977.

By tariff revisions filed December 20, 1976 for effectiveness January 19, 1977, Seaboard World Airlines, Inc. (Seaboard) proposes a cargo charter transfer rule which would permit the carrier to transfer U.S./Europe cargo shipments, already contracted to be carried on chartered aircraft, to Seaboard's regular scheduled service at the prevailing mileage-based charter rates.[1] Complaints requesting suspension of the filing pending investigation have been submitted by Pan American World Airways, Inc. (Pan American), Trans World Airlines, Inc. (TWA), The Flying Tiger Line Inc. (Tiger), Trans International Airlines,

[1] Seaboard World Airlines, Inc., Tariff C.A.B. No. 23, 8th Revised Page 3 and Original Page 3-A.

Inc. (TIA), and World Airways, Inc. (World).

In support of its proposal, Seaboard submits that the tariff rule would maintain the basic distinction between charter and scheduled service traffic and rates, while permitting the movement of charter-rated shipments on scheduled flights without impairing scheduled service availability; that Seaboard could operate more efficiently by maximizing productivity and reducing fuel consumption; that the decision whether charter-rated cargo will be carried on a scheduled or charter flight would lie entirely with the carrier, subject only to the prior consent of the charterer; and that neither the rates nor services received by either scheduled or charter shippers will be affected by the transfer facility.[3] Finally, Seaboard has submitted data based on average scheduled and charter flights showing that, on a scheduled B-747F flight with a load factor of 64.2 percent from scheduled freight, the carrier would achieve a revenue improvement of 54 to 68 percent by carrying additional cargo transferred from a DC-8 charter contract; and states that such an improvement on many flights could be of significant help in offsetting the severe cost escalations and depressed traffic experienced in North Atlantic freighter operations.

The complainants generally assert, *inter alia*, that Seaboard's tariff filing merely reflects an illegal practice Seaboard has followed for years and which is the subject of pending enforcement proceedings[4] and Seaboard cannot legitimize practices which violate the Act and the Board's Regulations simply by filing them in a tariff; that the Board has already denied a Seaboard petition for rulemaking and waiver intended to accomplish the same end, and concurrently expanded the issues in Docket 27557, Transatlantic FAK Container and Charter Freight Rates Investigation, to cover the issues raised by Seaboard's proposal which, therefore, are already under investigation;[5] and that in Order 76-9-128, September 14, 1976, the Board suspended a similar charter transfer facility proposed for use in North Atlantic passenger service by Pan American, and accordingly should not permit a "part charter" proposal to become effective in cargo service having just suspended a similar one in passenger operations. TIA contends further that, although Seaboard justifies its proposal on the basis that it will improve earnings, in fact Seaboard's current disappointing economic results reflect yield dilution attributable to its long-standing practice of illegally carrying charter shipments on scheduled service.

Upon consideration of the proposed rule, the complaints and all other relevant matters, the Board concludes that the proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be suspended pending investigation.

As indicated in the complaints, Order 76-9-157 denied a rulemaking petition by Seaboard seeking authority, by waiver or amendment of the Board's Economic Regulations, to accomplish the same result now sought through a tariff rule, i.e., to transport charter-sized shipments in scheduled service at planeload charter rates. Although Seaboard's petition was denied, the central issue it raised, i.e., "the economics of charter-rating very large cargo shipments on scheduled service in North Atlantic markets," was included by Order 76-9-157 as an additional issue in Docket 27557, Transatlantic FAK Container and Charter Freight Rates Investigation.

Although the proposed tariff rule raises issues central to the overall question of the costs attributable to large-volume cargo shipments in transatlantic service and the pricing decisions most appropriate to reflect such costs, Seaboard has provided no estimate in its tariff justification of the overall effect its proposal is expected to have on costs, load factors or revenue.[6] Absent such basic data, and in view of our prior consideration of this issue, the Board concludes that the carrier has not shown that its novel proposal, which represents a fundamental change in the traditional pattern of scheduled and charter operations, should become effective without investigation.

The investigation in Docket 27557 already includes the issues presented by Seaboard's proposed tariff rule. The matter was generally considered at that time and a determination was made that it should be set down for hearing. We reaffirm our prior finding and accordingly the investigation ordered herein will be consolidated with the ongoing one in Docket 27557.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 102, 204(a), 403, 404, 801 and 1002(j) thereof,

It is ordered, That: 1. An investigation be instituted to determine whether the provisions of Rule No. 2(h) on 8th Revised Page 3 to Charter Tariff No. ICH-1, C.A.B. No. 23 issued by Seaboard World Airlines, Inc., and rules, regulations, or practices affecting such provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and, if found to be unlawful, to take appropriate action to prevent the use of such provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board the tariff provisions specified in ordering paragraph one above are suspended and their use deferred to and including January 18, 1978, unless otherwise ordered by the Board; and that no change be made therein during the period of suspension except by order or special permission of the Board;

3. The investigation ordered herein be consolidated with that in Docket 27557;

4. This order shall be submitted to the President[7] and shall become effective on January 19, 1977;

5. The investigation ordered herein be assigned for hearing before an administrative law judge of the Board at a time and place hereafter to be designated;

6. Except to the extent granted herein, the complaints of Pan American World Airways, Inc., Trans World Airlines, Inc., The Flying Tiger Line Inc., Trans International Airlines, Inc., and World Airways, Inc. in Dockets 30274, 30263, 30276, 30272, and 30275 be and hereby are dismissed; and

7. Copies of this order be filed in the aforesaid tariffs and be served upon Seaboard World Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., The Flying Tiger Line Inc., Trans International Airlines, Inc., and World Airways, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2051 Filed 1-21-77;8:45 am]

[Docket No. 30335; Order 77-1-92]

UNITED AIR LINES, INC.

Order Granting Emergency Exemption

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 14th day of January, 1977.

United Air Lines, Inc. (United) by application filed January 12, 1977 in Docket 30335, requests an emergency exemption from the requirements of Order 74-12-109[1] for a period not to exceed 31 days to permit it to file fares tariffs in 42 markets constructed on a fare formula lower than the formula used on the remainder of its system. The application is conditioned on prior Board withdrawal of the suspension imposed by Order 76-12-16[2] of a general fare increase marked to become effective January 15, 1977.

In support of its application United states that if the Board withdraws the suspension imposed by Order 76-12-16 United will have higher fares than its competitors in 42 markets; that the requested exemption is necessary for the

[2] Charges for shipments would be assessed as at present according to the appropriate rate tariffs. Seaboard also asserts that a charter shipper may sometimes receive faster service by having his shipment transferred to scheduled service; and that scheduled shippers will receive no worse service than at present since their consignments would have priority over charter-rated shipments in loading.

[3] Citing the November 22, 1976 Initial Decision of Administrative Law Judge Buckley in Dockets 27036 and 27104, Seaboard World Airlines, Inc. Enforcement Proceeding.

[4] Order 76-9-157, September 29, 1976.

[5] The supporting data submitted by Seaboard in support of its proposal are largely limited to showing that on a per scheduled flight basis, total revenue would be considerably improved if a charter load were also carried in addition to regular scheduled traffic.

[7] This order was submitted to the President on January 7, 1977.

[1] December 27, 1974; Phase 9 of the Domestic Passenger-Fare Investigation (DPFI).

[2] December 3, 1976.

carrier to maintain its "existing competitive posture"; that it requests it be permitted to file the lower fares at the time the suspension order is lifted because some of the competing carriers have on file tariffs which can be amended in no less than 30 days; that the Board has previously granted such relief in Order 76–2–98 when confronted with "substantially similar facts"; and that the Board already has under study a proposal that would permanently implement the form of relief sought herein.[3]

Upon review of the statements contained in the application we find that enforcement of the prohibition [4] against filing individual fares tariffs inconsistent with the formula used to construct fares over the bulk of the carrier's system, insofar as it would prevent United or any other certificated carrier from matching specific fares of competitors who decline to adopt the two-percent general domestic passenger-fare increase marked to become effective on January 15, 1977, would be an undue burden on the carrier by reason of the limited extent of and unusual circumstances affecting its operations and is not in the public interest. Also, in view of the emergency nature of the request, we will act upon the application prior to the expiration of the normal period for filing answers.

A permanent mechanism for resolving the problem of carrier differences in implementing general fare increases is presently under review.[5] Since grant of the temporary relief at issue herein will not prejudice that proceeding, and since the circumstances in this case appear to be substantially similar to those for which we found a similar emergency exemption warranted in February, 1976,[6] we shall grant United's application. We remind the carriers that, as we have previously indicated, for future ratemaking purposes the Board will treat the present increase as though it had been in effect by all carriers in all markets from the date implemented by even a single carrier. Because we expect our findings on the permanent mechanism to issue shortly, we will limit our exemption authorization to the requested period of 31 days from the date of adoption of this order. Although only United has requested exemption relief, we will include all carriers in order to avoid any additional last-minute requests. We shall also require all carriers to file in Docket 30335 a list of all markets, together with the appropriate shortest authorized mileages, in which the carrier elects to file fares constructed on the basis of a fare formula lower than the formula reflecting the January 15, 1975 two percent general fare increase. This filing requirement does not apply to those carriers electing to forego the two percent increase altogether.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly section 416(b) thereof.

It is ordered, That:

1. The U.S. trunkline and local service carriers be and they hereby are exempted from the requirements of Order 74–12–109 for a period of 31 days from the date of adoption hereof to the extent necessary to permit them to file tariffs containing fares in selected markets constructed on a fare formula lower than the formula used on the remainder of their systems where such action is necessary to maintain or return to a previously existing competitive posture; and

2. To the extent not granted herein, the application in Docket 30335 be and it hereby is denied.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77–2052 Filed 1–21–77;8:45 am]

[Docket No. 22859; Order 77–1–82]

UNITED AIR LINES, INC.

Order of Suspension Regarding Domestic Air Freight Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 14th day of January, 1977.

By tariff revisions marked [1] to become effective January 17 and 31, 1977, United Air Lines, Inc. (United) proposes, among other things, to establish L–3 and L–11 regular and daylight general commodity container air freight rates and charges from Salt Lake City, Utah, and Norfolk/Newport News and Richmond, Virginia, to numerous destinations. Part of the movements will be performed through substitute motor carrier service by trucking Salt Lake City shipments to Denver, Colardo, and Norfolk and Richmond shipments to Washington, D.C.

United asserts, inter alia, that the proposal would make the benefits of wide-body aircraft lower-deck container service available at the three origins; that these containers cannot now be accommodated from these origins since the carrier offers no wide-body service from the cities; that the proposed charges are equal to United's current charges from Denver and Washington, respectively, plus an amount to cover the cost of the substitute truck service from the origin to the respective airport city; that the combining of airport-to-airport container charges with substitute truck charges is consistent with the opinion set forth in Order 75–3–37, Substitution of Other Service for Air Transportation Rule Proceeding, Docket 19797; and that the level of the proposed charges are all below the Bureau of Economics' industry-average costs updated for the year ended June 30, 1976.

The proposed rates and charges all come within the scope of the Domestic Air Freight Rate Investigation (DAFRI), Docket 22859, and their lawfulness will be determined in that proceeding. The issue now before the Board is whether to suspend the proposal or to permit it to become effective pending the decision in that investigation.

As indicated by United, none of the proposed rates and charges exceed the industry-average costs of such traffic as developed in DAFRI and updated for the year ended June 30, 1976. However, many of the proposed standard service and daylight time-of-tender charges out of these cities exceed the bulk charges for the same weight. For example, from Norfolk to Los Angeles United proposes $442 for an L–3 with a minimum weight of 1,100 pounds, about 7 percent above the current bulk charge of $414 for shipments of the same size. Container premiums in other markets encompassed by this proposal range between 2 and 15 percent over the bulk charges. We believe that shipper-loaded containers have lower terminal handling costs and represent significant cost reductions as compared with bulk shipments of similar weight, which reductions should be reflected in rates to the shipper. Consequently, charging more for container shipments than bulk shipments in the same market fails to give proper recognition to the cost differences involved, and raises significant questions of undue preference and prejudice.

United states that combining its airport-to-airport container charges with the substitute truck charges is consistent with the decision in the Substitute Service case, Order 75–3–37. However, that decision does not prescribe the combining of air and motor charges or any other formula as required to arrive at the charge for such substitute service transportation. In fact, a central issue in the case was the propriety of charging air rates where service was by substitute service means. The formulation cited by United may be appropriate in the case of a joint truck-air rate but that is not the case here where the service is United's, in part through a trucker agent. In such cases, the acceptable rates are those which would apply were United providing all the service.

Upon consideration of the above and other relevant factors, the Board finds that a considerable number of the proposed minimum charges per container as specified in Appendices A and B, should be suspended.[2] All other rates and charges out of Salt Lake City, Norfolk/Newport News, and Richmond do not exceed those for bulk shipments of similar size and will be permitted.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly Sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That: 1. Pending hearing and decision by the Board, the rates.

[3] Order 76–8–18, August 4, 1976.
[4] Phase 9, DPFI, p. 175.
[5] Order 76–8–18, August 4, 1976.
[6] Order 76–2–98, February 25, 1976.

[1] Revisions to Airline Tariff Publishing Company, Agent, Tariff C.A.B. No. 227.

[2] In addition, while they do not exceed the bulk charges for the same weight, for technical reasons a number of daylight container charges would be suspended where the standard service charges are suspended because they exceed bulk charges.

charges, and provisions described in Appendix A hereto are suspended, and their use deferred to and including April 16, 1977; and the rates, charges, and provisions described in Appendix B[1] hereto are suspended, and their use deferred to and including April 30, 1977, unless otherwise ordered by the Board, and that no change be made therein during the period of suspension, except by order or special permission of the Board; and

2. Copies of this order shall be filed with the tariff and served upon United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2053 Filed 1-21-77;8:45 am]

[Docket Nos. 30356, 27693; Order 77-1-94]

WORLD AIRWAYS

Order Regarding Transcontinental Low-Fare Route Proceeding

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 14th day of January, 1977.

By Order 75-7-2, July 1, 1975, the Board announced that it would set the application of World Airways in Docket 27693 for expedited hearing, if it first found that the Federal Aviation Act does not prohibit supplemental air carriers from acquiring scheduled authority. After briefs and oral argument on this threshold question, the Board in Order 76-1-88, January 23, 1976, determined that it did not have the legal authority to issue a route certificate to a supplemental air carrier without requiring the surrender of the carrier's supplemental authority. Accordingly, World's application was dismissed. The applicant appealed and on December 8, 1976, the United States Court of Appeals for the District of Columbia Circuit reversed Order 76-1-88 and remanded the case for hearing.

With the threshold impediment removed, the application is hereby set for expedited hearing as announced in Order 75-7-2. Like the Chicago Midway Low-Fare Route Proceeding recently set for hearing in Docket 30277,[1] this case is also unique and complex but its implications are somewhat different from those of Chicago Midway. We have, therefore, decided to follow similar procedures by issuing a second order which will (a) define the scope of the proceeding, and (b) designate the route and rate issues to be resolved, including the relationship of World's fare proposal to the requirements of the Domestic Passenger Fare Investigation.[2]

In order to expedite the case and eliminate any unnecessary procedural steps, all other applications, motions to consolidate and comments regarding this order must be filed within 30 days of the service date of this order. Answers to motions filed pursuant to this directive will be due 14 days thereafter. Environmental evaluations pursuant to Part 312 of the Procedural Regulations shall be filed by World and any other applicant for authority within 90 days of the date of service of this order.

Accordingly, it is ordered, That: 1. A proceeding to be known as the Transcontinental Low-Fare Route Proceeding, Docket ——, be and it hereby is instituted and set for hearing before an administrative law judge of the Board at a time and place to be designated hereafter;

2. The application of World Airways, Inc. in Docket 27693 be and it hereby is restored to its place on the Board's docket and consolidated for hearing with the proceeding instituted by paragraph 1 above;

3. Applications, motions to consolidate and comments regarding this order shall be filed within 30 days of the service date of this order;

4. Answers in response to pleadings filed pursuant to paragraph 3 above shall be filed within 14 days thereafter;

5. World Airways and any other applicant for authority shall file an environmental evaluation within 90 days of the service date of this order; and

6. A copy of this order shall be served upon all parties in Docket 27693.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2054 Filed 1-21-77;8:45 am]

[Docket Nos. 30149, 30079, 30197; Order 77-1-93]

VARIOUS CARRIERS

Order Dismissing Complaints Regarding Domestic Passenger Fare Increase

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 14th day of January, 1977.

By tariff revisions[1] marked to become effective January 15, 1977, nine trunkline carriers—American Airlines, Inc. (American), Braniff Airways, Inc., Continental Air Lines, Inc., Eastern Air Lines, Inc. (Eastern), Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc. (TWA), United Air Lines, Inc. (United), and Western Air Lines, Inc.—and five local service carriers—Allegheny Airlines, Inc., Frontier Airlines, Inc., Hughes Air Corp. d/b/a Hughes Airwest, North Central Airlines, Inc., and Piedmont Aviation, Inc.— propose to increase passenger fares in the 48-contiguous states and the District of Columbia by two percent. In support, the carriers assert, inter alia, that cost inflation has continued unabated and must be offset by a fare increase; that a two-percent increase over present fares appears justified even under the Board's ratemaking methodology; and that with various modifications to the Board's overly stringent analysis, an increase in excess of six percent could be justified.

The National Passenger Traffic Association, Inc. (NPTA) has complained against the proposals alleging that a two-percent fare increase over the present level would violate the 12.0-percent rate of return standard and would contribute to overall inflation when the economy has been considered by many to be in a "pause." In addition NPTA alleges that the domestic trunklines have experienced substantially increased net operating revenues and that this favorable trend should continue into the future; and that the Board's evaluation should not be based upon speculative increases in cost beyond the tariff effective date.

In answer the carriers state that NPTA has once again failed to acknowledge that the Board's ratemaking standards adjust for changes in traffic and financial results, and that even with currently improved results, a fare increase is required under the Board's ratemaking methodology.[2] The carriers further contend that NPTA's arguments about the Board's ratemaking standards are not based upon any analysis of their reasonableness, but merely upon a desire to minimize airline fares, regardless of the increase in unit costs.

Upon consideration of the proposals, the complaints and answers thereto, and all relevant matters, the Board finds that the complaints do not set forth sufficient facts to warrant investigation and consequently the request for suspension will be denied and the complaints dismissed.

By Order 76-12-16, December 3, 1976 the Board suspended certain of the proposed increases, those which had a tariff effective date prior to the travel effective date of January 15, 1977, in order to evaluate industry revenue need based upon the most current data available, that for the year ended September 30, 1976. We have now completed this analysis, and the results appear in Appendix A[3a]. Our assessment indicates that the industry ratemaking rate of return as of the tariff effective date of January 15, 1977 equals 10.0 percent. Including the two-percent increase proposed herein raises the return to 11.8 percent. We therefore find that the proposed increase appears warranted after inclusion of all ratemaking standards, the estimated revenue production of present fares, and current unit cost levels.[3]

The carriers have raised several issues which would have the Board alter its

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[1] Appendix A and B filed as a part of the original document.

[1] Order 76-12-149, December 28, 1976.

[2] A staff evidence request will be appended to the order and the parties will be directed to submit comments thereon prior to the prehearing conference. All parties will be free to seek modification or expansion of the request. Because of the need in this case for further expert analysis of the facts and legal issues, no staff component will become a party to the proceeding until the second order has been issued.

[1] Revisions to Airline Tariff Publishing Company, Agents, Tariff C.A.B. 259.

[2] American, Eastern, TWA, and United have submitted answers to NPTA's complaints.

[3a] Appendices A through D are filed as a part of the original document.

[3] Appendix B sets forth the new Phase-9 fare formula.

assesment of general fare increase proposals as set forth below.

DISCOUNT FARE ADJUSTMENT

Several of the carriers argue that the Board should modify its adjustment for discount fare passengers. They contend that since every discount fare now offered must bear an expiry date no longer than 18-months into the future, the Board's policy effectively precludes the carriers from purchasing additional equipment for the purpose of handling discount fare passengers. The carriers allege that the Board's current discount fare policy is therefore short-term in nature and that present discount fares cannot burden the full-fare passengers. American has also asserted that the discount fare adjustment results in a double elimination of investment and interest expense in that any excess capacity is eliminated by the load factor standard.

The rationale for the Board's discount fare policies was explained in great detail in Phase 5 (Discount Fares) of the Domestic Passenger-Fare Investigation, Docket 21866-5, Order 72-12-18 at pages 40-58. The carriers have presented no arguments that would warrant a reconsideration of that decision at this late date. There is nothing new about the requirement that discount fares must be marked to expire 18 months from the effective date of the tariff. This standard was adopted in Phase 5 to allow the Board to monitor the short-run effects of discount fares, and to provide a vehicle for terminating any fare which the carrier concluded has served its short-run objectives. It does not address the problem that discount fares debase the overall yield of the carriers and would inevitably lead to higher normal fares, since the discounts are not cost-based, and indeed the cost of carrying discount traffic is virtually identical to the cost of carrying normal fare traffic. In order to prevent this burden on full fares, the Board in Phase 5 adopted the discount fare adjustment, which removes the impact of discount fares in computing the full fare level. This adjustment is used in conjunction with the 18 month expiration date requirement, not as an alternative.[4] While the carriers are correct in arguing that discount fares have not burdened normal fare traffic, this result has been achieved only because of the Board's insistence on effectuating the Phase 5 adjustment. American's argument that the Board's discount fare methodology results in a double elimination of investment and interest expense is simply incorrect. The carrier fails to consider that the load factor standard represents a standard for full fare traffic, and that the capacity disallowance included in the discount fare adjustment is therefore an integral part of bringing capacity into line with full fare demand.

ELIMINATION OF INTEREST AND INVESTMENT

The carriers again argue that the Board employs inconsistent methodologies for eliminating interest and investment, pointing out that while the Board makes an adjustment equal to 75 percent of the ASM percentage reduction for the standard load factor adjustment,[5] and adjustment equal to 100 percent of the ASM percentage reduction is made for the discount fare adjustment and when annualizing past fare increases. However, the Board has previously stated, Order 76-4-182, April 30, 1976, that the diffeernt treatment of interest and investment reflects the fact that of the various adjustments—utilization, load factor, standard seating, discount fare, and fare annualization—only the latter two involve an adjustment to traffic, whereas the other three adjustments affect only aircraft capacity. Hence, our treatment of interest and investment is limited to that related to flight equipment in the case of the first three adjustments, i.e., 75 percent of a relative proportion of total interest and investment, but includes 100 percent of a relative proportion of interest and investment for the discount fare and fare annualization adjustments since both traffic and capacity are affected by them.

REDUCTION IN NON-CAPACITY COSTS

Both American and Eastern assert that the Board's current methodology of reducing noncapacity costs in conjunction with a fare increase is not consistent with the Board's decision in Phase 7 of of the DPFI. There the Board's methodology reduced only capacity costs related to the reduction on capacity due to the loss in traffic resulting from application of an elasticity factor of —0.7. The Board did not adjust non-capacity costs in that decision, state the carriers, and followed this practice for the first two years following the Phase-7 decision. The carriers point out that presently, the Board's methodology eliminates not only capacity costs but also noncapacity or traffic-related costs. American alleges that the loss of traffic as a result of a fare increase is clearly temporary with traffic ultimately returning to the previous level as a result of normal growth; and that it is impossible for carriers to actually reduce non-capacity expense in proportion to the traffic decrease since many items of expense do not vary with short-term variations in traffic.

The carrier's arguments rest upon a footnote in the Board's decision (Order 71-4-59 and 71-4-60, April 9, 1971, mimeo. p. 52) which stated that "An additional cushion is provided by the recognition of normal non-capacity costs as forecast without any adjustment for cost savings related to loss of traffic resulting from the 'fare increase.'" However, the Board went on to say that this "* * * treatment combined with the use of a lower interim load-factor standard provides sufficient and adequate accommodation of the short and long-term factors and is appropriate for the phase-in period." We are now well beyond that "phase-in period" as we have employed our method of assessing revenue need for years.[6] The methodology now reflects the full cost adjustment associated with a reduction of traffic stemming from a fare increase.[7] While American correctly points out that due to the fixed nature of some portion of this cost element, a carrier cannot fully reduce the noncapacity cost in line with a reduction in traffic over the short-run, the Board's assessment is based upon the long-run unit costs of providing air service and therefore reflects the full, long-run savings in noncapacity costs in its evaluation. We realize that normal growth will bring traffic back to the level prior to the fare increase; nevertheless, traffic demand is lower after an increase than it would have been if no increase had been imposed. In our view, the current methodology correctly adjusts present cost levels for the full, long-range savings due to a reduction in traffic.

UTILIZATION ADJUSTMENT

TWA and other carriers again criticize the Board's use of a utilization adjustment which, the carriers assert, works only to penalize the carriers; which is not economically feasible to implement due to an inability to make the required changes in fleet size to avoid the adjustment; and which creates a dilemma for the carriers between trying to meet the 1972 level by operating more hours, but in so doing, lowering load factors and creating a greater disallowance under the standard load-factor adjustment. American, in addition, argues that the Board's original purpose for the utilization adjustment was the abnormally low utilization rates experienced after the carriers grounded aircraft during the fuel crisis of 1974. American asserts that the fuel crisis is long past and that it is now time for the Board to stop making this adjustment since there is nothing abnormal about current utilization levels.

[4] In any event, the 18-month criterion for setting expiry dates has not altered the tendency of discount fares to become embedded in the fare-structure over the long-term. As the table in Appendix C points out, since the year ended March 31, 1975 when discount fare traffic was at a low of 24 percent of total coach traffic, the discount traffic share has risen to a point that today one of every three passengers travelling in the coach section of the aircraft is paying less than a cost-based fare.

[5] TWA has argued that in calculating the standard load factor adjustment the methodology should be altered to reduce capacity expense at a rate equal to 85 percent of the ASM reduction. The carrier supports this assertion from an alleged finding in the Night Coach Fare Investigation (NCFI) which found that "in the long-run, variable costs are estimated to be approximately 85 percent of total costs." Irrespective of TWA's reference to testimony in the NCFI, a basic principle of economics states that all costs are variable in the long-run. In our opinion, the reduction of capacity costs should be equal to the full reduction in ASM's.

[6] The long-term load factor standard of 55 percent has been utilized by the Board in lieu of the interim standard of 52.5 percent since September 1973.

[7] It should be noted that the final rate of return is unaffected by the elasticity computations as performed. The sole purpose of this computation is to show the impact of price changes on the level of traffic.

The necessity for the adjustment to utilization rates (and for that matter, any other variable which the Board may conclude results from abnormal conditions) stemmed from the significant distortion in then current utilization rates resulting from the carriers' reaction to the fuel embargo. As the Board explained when it first made the adjustment,[1] the prior methodology made no adjustment to account for higher load factors resulting from reduced frequencies and aircraft utilization resulting from the fuel crisis rather than from traffic growth as had been contemplated in the DPFI. The Board deemed such an adjustment in these atypical circumstances wholly consistent with the fundamental DPFI principal to protect the normal-fare level from the burden of excess capacity. While it is true that industry load factors no longer reflect abnormal operations due to the fuel crisis, current utilization rates of various aircraft types have not returned to 1972 levels. The Board has made an adjustment for the difference in utilization rates in our analysis of the instant proposals. As the results in Appendix A indicate, the proposed increase appears warranted regardless of the utilization adjustment, and therefore, the Board will reserve judgment on this question until a later date.

COST-ESCALATION FACTOR

By Order 76-4-182, April 30, 1976, the Board requested comments with respect to the cost-escalation factor used in the Board's fare level evaluation methodology. This was done in response to carrier allegations that the Board's approach, i.e., adjusting base period average unit costs to the estimated level as of the tariff effective date, fails to recognize that costs continue to rise after the tariff becomes effective due to inflationary pressures and, as a result, that revenues lag behind expenses after a fare increase until such time as the carriers can gain a further fare increase. In response to the Board's request, nine carriers and four non-carrier parties submitted comments. In general, the carriers favor an approach which would adjust the cost-escalation factor to a point beyond the tariff effective date, principally because of the revenue lag resulting from the current methodology. Noncarrier parties, on the other hand, generally oppose any such approach, essentially due to the speculation involved in estimating costs beyond the tariff effective date. The comments are summarized in Appendix D.

The Board has now considered these comments and other matters, and has decided against any approach which would adjust the cost-escalation factor beyond the tariff effective date. A number of considerations move the Board to this conclusion. At the outset and in order to place the matter in perspective, we note that the attrition related to inflation beyond the tariff effective date represents only a small portion of the carriers' overall revenue need, less than one-half of one percent based upon the current level of cost inflation. The major cause of the carriers' actual ROI shortfall is a continuing full-fare load factor substantially below 55 percent. This is reflected in the load factor and discount fare adjustments which presently increase the ratemaking ROI by more than five points. Secondly, whatever the magnitude of the inflation problem in the past, the cost factor and hence the revenue shortfall involved has declined significantly. Furthermore, the Board's cost factor methodology, assumes a straight line trend in cost inflation, notwithstanding that in recent periods the trend in fact has been declining.

Opponents of adjusting the cost factor beyond the tariff effective date have presented various arguments, which include the high risk of error which could result in excessive fares, the problem of cross-subsidization since today's passenger would have to pay for tomorrow's inflation, and the effect of such a policy to feed inflation. Without necessarily accepting all or any of these points, the fact of the matter is that embodying future costs into present fares raises a number of such serious questions. In the absence of compelling need, which does not appear to be present here, we do not believe speculative costs should be built into the rate base.

There is, however, an element of revenue lag, and resulting ROI deficiency, which is caused by factors other than inflation, and which we believe can be alleviated without risk of overstating revenue need. For example, during the past year various fare increase proposals were suspended because they would have resulted in an ROI in excess of 12 percent, and other proposals which were permitted did not raise the ROI to 12 percent despite rather determined carrier efforts to increase fares to the maximum permissible under the present methodology. It appears likely that both results stemmed from failure to use the most up-to-date data.

The Board has determined to take steps to minimize this problem. First, we intend to issue press releases promptly each quarter which reflect our computation of actual 48-state results so that the carriers and the public will have the benefit of the most current data available. Secondly, notwithstanding prompt release of industry data via press releases, we recognize that the timing of fare increase proposals might be such, due to the tariff filing notice requirements, that the Board will be able to base its decision on more current data than is available to the carriers. For this reason, once a proposal is deemed to be excessive on the basis of more current data than available to the carriers at the time their proposal was submitted, the Board will consider permitting on short notice fare increases to which the carriers are entitled under established standards. We believe short notice may be justified, under particular circumstances, in view of the substantial adjustments made under the Board's ratemaking methodology in order to protect the travelling public from excessive fares. We would emphasize that we will consider fare increases on short notice only in instances when the carriers have proposed even greater increases on statutory notice with full opportunity for complaints and answers.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That:

1. The complaints in Dockets 30079 and 30197 are hereby dismissed;

2. The investigation ordered in Docket 30149 is hereby vacated for travel commencing on and after January 15, 1977; and

3. Copies of this order be served upon all certificated scheduled carriers operating between points within the 48-contiguous states and the District of Columbia, and the National Passenger Traffic Association, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[2]

PHYLLIS T. KAYLOR,
Secretary.

CHAIRMAN ROBSON AND VICE CHAIRMAN O'MELIA CONCURRING AND DISSENTING IN PART

We concur fully in the Board's actions with the single exception of its determination not to adjust the cost-escalation factor to any point beyond the tariff effective date. We do not dismiss as frivolous the arguments against introducing speculative cost-determining features into our fare level evaluation methodology, and we concede that the other steps which the Board is taking will help to ameliorate the lag problem. Nonetheless, we believe that adjusting the cost-escalation factor to a point somewhat beyond the tariff effective date is the most straightforward way to deal with cost-revenue lag in an inflationary environment, is a faithful execution of our rate-setting formula, may reduce the frequency of carrier requests for fare changes, and can be applied consistently with our public responsibilities.

JOHN E. ROBSON.
RICHARD J. O'MELIA.

[FR Doc.77-2055 Filed 1-21-77;8:45 am]

[Docket 29684]

EPHRATA-MOSES LAKE DELETION CASE

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on February 22, 1977, at 9:30 a.m. (local time), in the Ephrata City Council Chambers, Ephrata City Hall, First and A Streets, S.W., Ephrata, Washington, 98823, before Administrative Law Judge Ronnie A. Yoder.

For information concerning the issues involved and other details in this proceeding, interested persons are referred

[1] Orders 75-6-72, June 13, 1975, and 75-8-99, August 19, 1975.

[2] Robson, chairman, and O'Melia, vice chairman, filed the attached concurrence and partial dissent.

to the prehearing conference report served November 11, 1976, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., January 17, 1977.

RONNIE A. YODER,
Administrative Law Judge.

[FR Doc.77-2159 Filed 1-21-77;8:45 am]

[Docket 29445]

LAS VEGAS-DALLAS/FORT WORTH NONSTOP SERVICE INVESTIGATION

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on March 8, 1977 at 10 a.m. (local time) at the Airport Conference Room, Mezzanine Floor, Terminal Building, McCarran International Airport, Las Vegas, Nevada 89111. At the conclusion of the hearing in Las Vegas, the hearing will be recessed until March 15, 1977 at 10 a.m. (local time) in Room 1003, Hearing Room A, Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D.C.

The civic parties will be heard in alphabetical order in Las Vegas. The remainder of the parties will be heard in Washington, D.C.

For details of the issues involved in this proceeding, interested persons are referred to the Prehearing Conference Report, served November 4, 1976, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., January 17, 1977.

WILLIAM H. DAPPER,
Administrative Law Judge.

[FR Doc.77-2158 Filed 1-21-77;8:45 am]

GENERAL COMMODITY RATES

[Docket 27573; Agreement C.A.B. 26320; Order 77-1-54]

Agreement Adopted by Traffic Conference 3 of the International Air Transport Association

JANUARY 11, 1977.

Issued under delegated authority.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers embodied in the resolutions of Traffic Conference 3 of the International Air Transport Association (IATA). The agreement, adopted by mail vote, has been assigned the above C.A.B. agreement number.

The agreement would establish general commodity rates between Port Moresby and Kagoshima. The rates are combinable with rates to/from U.S. points and thus have indirect application in air transportation as defined by the Act.

Pursuant to authority duly delegated by the Board in the Board's Regulations 14 CFR 385.14, it is not found that resolution 300 (Mail 87) 553, incorporated in Agreement C.A.B. 26320 as indicated, and which has indirect application in air transportation as defined by the Act, is adverse to the public interest or in violation of the Act.

Accordingly, *It is ordered* That:

Agreement C.A.B. 26320 be and hereby is approved.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2160 Filed 1-21-77;8:45 am]

[Docket 27573; Agreement C.A.B. 26353; Order 77-1-52]

SPECIFIC COMMODITY RATES

Agreement Adopted by the Joint Traffic Conferences of the International Air Transport Association; Order

JANUARY 11, 1977.

Issued under delegated authority.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Traffic Conference 3 of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreement names an additional specific commodity rate as set forth below, reflecting a reduction from general cargo rates, and was adopted pursuant to unprotested notices to the carriers and promulgated in IATA letter dated December 30, 1976.

Description and rate:	*Specific commodity item No.*
Dogs, 416 cents per kg.,[1] minimum weight 100 kgs. from Sydney to Guam	1020

[1] Based on the 021b rate 1 U.K. pence equals USD .02605.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions hereinafter ordered.

Accordingly, *It is ordered*, that:

Agreement 26353, is approved, provided that (a) approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2161 Filed 1-21-77;8:45 am]

COMMISSION ON POSTAL SERVICE

PUBLIC SERVICE COSTS OF POSTAL SERVICE

Additional Hearing

Under section 7(c)(1) of the Postal Reorganization Act Amendments of 1976, Pub. L. 94-421, 90 Stat. 1309, the Commission on Postal Service gives notice of its intention to hold a hearing in Portland, Oregon, on February 4, 1977. This notice will supplement earlier notices of December 22, 1976 (41 FR 55738) and January 17, 1977 (42 FR 3191) that announced hearings to be held between January 18 and February 10, 1977, in 20 other cities throughout the nation, including Washington, D.C.

Members of the public are invited to appear before the Commission to address the five issues of postal policy enumerated in the FEDERAL REGISTER notice of (41 FR 51435-51436). Generally, these issues concern the definition and quantification of the public service costs of postal service to the American public, postal rates and classifications, and the impact of new and developing electronic communication systems upon the Postal Service. Persons wishing to testify should notify the Commission as soon as possible at the following address:

Commission on Postal Service, 1750 K Street, N.W., Suite 801, Washington, D.C. 20006.

Individuals testifying for themselves are to bring three copies of their testimony with them to the hearing. Orga-

nizations and businesses will be required to file 15 advance copies of their testimony at least 10 days before the hearing. Those copies should be mailed to the above address.

Each person notifying the Commission of his intent to testify will be informed by the Commission of the time and place of the hearing at which the person intends to testify.

By the Commission.

DAVID MINTON,
Executive Director.

JANUARY 18, 1977.

[FR Doc.77-2173 Filed 1-21-77;8:45 am]

COMMISSION ON CIVIL RIGHTS

DELAWARE 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 Delaware Advisory Committee (SAC) of the Commission will convene at 12:00 noon and end at 2:00 p.m. on February 9, 1977, at the Y.M.C.A., 11th and Washington Streets, Wilmington, Delaware.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, N.W., Room 510, Washington, D.C. 20037.

The purpose of this meeting is review of proposals for committee study.

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.77-2118 Filed 1-21-77;8:45 am]

ILLINOIS 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 Illinois Advisory Committee (SAC) of the Commission will convene at 10:30 a.m. and end at 3:00 p.m. on February 8, 1977, at 230 South Dearborn Street, Room 3280, Chicago, Illinois 60604.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwest Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting is to develop plans for 1977-78 program activities. Report on the program planning and evaluation training program.

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.77-2119 Filed 1-21-77;8:45 am]

INDIANA 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 Indiana Advisory Committee (SAC) of the Commission will convene at 7:00 p.m. and end at 10:00 p.m. on February 13, 1977, and reconvene at 9:00 a.m. and end at 12:00 noon on February 14, 1977, at the Ramada Inn, Conference Room, 1530 North Meridian, Indianapolis, Indiana 46202.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwest Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting is to review status of ERA ratification in Indiana; plan employment study and other business.

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.77-2120 Filed 1-21-77;8:45 am]

IOWA 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 Iowa Advisory Committee (SAC) of the Commission will convene at 10:00 a.m. and end at 3:00 p.m. on February 11, 1977, at the Holiday Inn, Blackhawk Room, 1050 6th Avenue, Des Moines, Iowa.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Central States Regional Office of the Commission, Old Federal Office Bldg., Room 3103, 911 Walnut Street, Kansas City, Missouri 64106.

The purpose of this meeting is to begin planning SAC activities for the year of 1977.

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.77-2121 Filed 1-21-77;8:45 am]

KENTUCKY 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 Kentucky Advisory Committee (SAC) will convene at 5:30 p.m. and end at 9:30 p.m. on February 10, 1977, at the Galt House, Fourth Street at River Road, Commissioner's Room, 2nd Floor, Louisville, Kentucky 40201.

The purpose of this open meeting is to continue plans for the State Police project and to receive report from subcommittee on interviews and statistical data.

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.

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. 77-2122 Filed 1-21-77; 8:45 am]

MINNESOTA 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 Minnesota Advisory Committee (SAC) of the Commission will convene at 7:00 p.m. and end at 9:00 p.m. on February 11, 1977, at the Holiday Inn, 161 St. Anthony, St. Paul, Minnesota 55403.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwest Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting will be American Indian Sub-committee review and prepare for March Hearing.

This meeting will be conducted pursuant to 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. 77-2123 Filed 1-21-77;8:45 am]

MINNESOTA 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 Minnesota Advisory Committee (SAC) of the Commission will convene at 9:30 a.m.

and end at 12:00 noon on February 12, 1977 at the Holiday Inn, 161 St. Anthony, St. Paul, Minnesota 55403.

Persons wishing to attend this open meeting should contact the Committee Chairperson or the Midwest Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting will be for the subcommittee's report on American Indian Study and Police Community Relation Study.

This meeting will be conducted pursuant to 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.77-2124 Filed 1-21-77;8:45 am]

NEW HAMPSHIRE 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 New Hampshire Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and end at 10:00 p.m. on February 15, 1977, at the New Hampshire Highway Hotel, Concord, New Hampshire.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeast Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss status of all subcommittees.

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.77-2125 Filed 1-21-77;8:45 am]

OKLAHOMA 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 factfinding meeting of the Oklahoma Advisory Committee (SAC) of the Commission will convene at 9:00 a.m. and end at 2:00 p.m. on February 10, 1977, and reconvene at 9:00 a.m. and end at 5:00 p.m. on February 11, 1977, at the Sequoyah Underground Auditorium State Capitol, 2401 Lincoln, Oklahoma City, Oklahoma 73105.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwest Regional Office of the Commission, New Moore Building, Room 231, 106 Broadway, San Antonio, Texas 78205.

The purpose of this meeting will be to invite State officials and private citizens to give information on the State's equal employment and affirmative action efforts, State's merit system and its impact on minorities and women.

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.77-2126 Filed 1-21-77;8:45 am]

VERMONT 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 Vermont Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and end at 11:00 p.m. on February 21, 1977, at the Tavern Motor Inn, Montpelier, Vermont.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeast Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss status of subcommittees.

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.77-2127 Filed 1-21-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

LICENSING PROCEDURES SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Open Meeting

Pursuant to Sec. 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, February 8, 1977, at 1:00 p.m. in Room 3817, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974 and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Secretary 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee was initially established on February 4, 1974. On July 8, 1975, the Director, Office of Export Administration, approved the reestablishment of this Subcommittee, pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export license applications within the Office of Export Administration and recommend areas where improvements can be made.

The agenda for the meeting is:

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

(3) Discussion of work program for 1977.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request addressed to the Freedom of Information Officer, Room 3012, Domestic and International Business Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

Dated: January 19, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.77-2252 Filed 1-21-77;8:45 am]

Foreign Trade Zones Board

[Order No. 115]

GEORGIA FOREIGN TRADE ZONE

Resolution and Order Approving Application for a Foreign-Trade Zone in Shenandoah, Coweta County, Georgia

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter hereby orders:

After consideration of the application of the Georgia Foreign Trade Zone, Inc., a Georgia non-profit public corporation, filed with the Foreign-Trade Zones Board (the Board) on July 30, 1976, requesting a grant of authority for establishing, operating and maintaining a foreign-trade zone in the new town of Shenandoah, Coweta County, Georgia, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Since the proposal involves an industrial park type zone that envisages the construction of buildings by parties other than the grantee, this approval includes the authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

TO ESTABLISH, OPERATE, AND MAINTAIN A FOREIGN-TRADE ZONE IN SHENANDOAH, COWETA COUNTY, GEORGIA

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u), (hereinafter referred to as "the Act"), the Foreign-Trade Zones Board (hereinafter referred to as "the Board") is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Georgia Foreign Trade Zone, Inc. (hereinafter referred to as "the Grantee"), has made application (filed July 30, 1976) in due and proper form to the Board requesting the establishment, operation, and maintenance of a foreign-trade zone in Shenandoah, Coweta County, Georgia;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 26, at the location mentioned above and more particularly described on the maps and drawings accompanying the application requesting authority for a foreign-trade zone in Shenandoah, Georgia, marked as Exhibits IX and X, said grant being subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations, to-wit:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer, Elliott L. Richardson, at Washington, D.C., this 17th day of January 1977 pursuant to Order of the Board.

FOREIGN-TRADE ZONES BOARD,
ELLIOTT L. RICHARDSON,
Chairman and Executive Officer.
JOHN J. DA PONTE, JR.,
Executive Secretary.

[FR Doc.77-2177 Filed 1-21-77;8:45 am]

[Order No. 114]

VIRGINIA PORT AUTHORITY

Approval of Application to Relocate Foreign-Trade Zone No. 20 in Portsmouth, Virginia

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), The Foreign-Trade Zones Board (the Board) has adopted the following Order:

Whereas, the Virginia Port Authority, Grantee of Foreign-Trade Zone No. 20, Portsmouth, Virginia, has made application (filed October 18, 1976) for authority to relocate Foreign-Trade Zone No. 20 from its present site at the Portsmouth Marine Terminal to 2400 Wesley Street, Portsmouth;

Whereas, public notice of the application has been given and full opportunity has been afforded all interested parties to be heard (41 FR 46651, October 22, 1976);

Whereas, an Examiners Committee has investigated the proposal and recommends approval of the application; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Foreign-Trade Zones Board Regulations are satisfied and that the proposal is in the public interest;

Now, therefore, the Board hereby approves the relocation of Foreign-Trade Zone No. 20 from its present site at the Portsmouth Marine Terminal to its new site at 2400 Wesley Street, Portsmouth, Virginia.

The Grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone.

Signed at Washington, D.C. this 17th day of January 1977.

ELLIOT L. RICHARDSON,
Secretary of Commerce, Chairman and Executive Officer, Foreign-Trade Zones Board.

JOHN J. DA PONTE, JR.,
Executive Secretary, Foreign-Trade Zones Board.

[FR Doc.77-2176 Filed 1-21-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Army

ARMED FORCES EPIDEMIOLOGICAL BOARD

Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of committee: ad hoc subcommittee on Influenza of the Armed Forces Epidemiological Board.
Date of meeting: February 9, 1977.
Place and time: Room 3092, Walter Reed Army Institute of Research, Washington, D.C. 0900–1630.

Proposed Agenda: The purpose of this meeting is to review the DHEW and DOD epidemiological data regarding the association of influenza immunizations and Guillain-Barré Syndrome and to discuss prospective and retrospective studies needed to investigate this relationship. Immunization of active duty personnel and recruits during 1977 and 1978 will be discussed.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 1B472 Pentagon, Washington, D.C. 20310.

DUANE G. ERICKSON,
LTC, MSC, United States Army,
Executive Secretary.

JANUARY 18, 1977.

[FR Doc.77-2112 Filed 1-21-77;8:45 am]

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON VERIFICATION

Meeting

The Defense Science Board Task Force on Verification will meet in closed session on 11 February 1977, at 1500 Wilson Boulevard, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Director of Defense Research and Engineering on overall research and engineering and to provide long range guidance in these areas to the Department of Defense.

The Task Force will examine trends in verification technology applicable to insuring foreign compliance with arms control agreements.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Task Force meeting concerns matters listed in Section 552(b) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

JANUARY 18, 1977.

[FR Doc.77-2056 Filed 1-21-77;8:45 am]

DEFENSE SCIENCE BOARD

Notice of Advisory Committee Meeting

The Defense Science Board will meet in closed session on 16-17 February 1977 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Director of Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Board has been scheduled for 16-17 February 1977 to discuss interim findings and tentative recommendations resulting from ongoing Task Force activities associated with Strategic, Tactical, Intelligence/Command, Control and Communication, and Technology issues. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Defense Science Board meeting concerns matters listed in Section 552(b) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

JANUARY 18, 1977.

[FR Doc.77-2057 Filed 1-21-77;8:45 am]

DEFENSE SCIENCE BOARD TASK FORCE ON NUCLEAR PROLIFERATION

Meeting

The Defense Science Board Task Force on Nuclear Proliferation will meet in closed session on 14-15 February 1977, at 1500 Wilson Boulevard, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Director of Defense Research and Engineering on overall research and engineering and to provide long range guidance in these areas to the Department of Defense.

The Task Force will examine trends in nuclear proliferation that bear on our national security interests. They will examine estimates of technical capabilities, military/political intentions, and resource available for countries that may acquire nuclear devices in the next decade.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Task Force meeting concerns matters listed in Section 552(b) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

JANUARY 18, 1977.

[FR Doc.77-2058 Filed 1-21-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 671-1; PP5S]

PESTICIDE AND FOOD ADDITIVE PETITIONS

Filing

Correction

In FR Doc. 77-1319 appearing at page 3191 in the issue of Monday, January 17, 1977 the following correction should be made:

On page 3191, third column, first paragraph relating to BASF Wyandotte Corp., insert the following between the fifth and sixth lines, "cide bentazon (3-isopropyl-1H-2, 1, 3-ben-".

[FRL 673-7]

PREVENTION OF SIGNIFICANT DETERIORATION, STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES AND NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Delegation of Authority to State of South Carolina

On December 5, 1974 (39 FR 42510), and June 12, 1975 (40 FR 25004) and September 10, 1975 (40 FR 42011), pursuant to section 110 of the Clean Air Act, as amended, the Administrator promulgated regulations for the prevention of significant air quality deterioration (PSD). On December 23, 1971 (36 FR 24876) and March 8, 1974 (39 FR 9808), and August 6, 1974 (39 FR 33152), and September 23, 1975 (40 FR 43850), and January 15, 1976 (41 FR 2231, 2332), and January 26, 1976 (41 FR 3826), pursuant to section 111 of the Clean Air Act, as amended, the Administrator promulgated regulations establishing standards of performance for five categories, seven categories, one category, five categories, four categories, and one category of new stationary sources (NSPS), respectively. On April 6, 1973 (38 FR 8820) and May 3, 1974 (30 FR 15396), and October 14, 1975 (40 FR 48291), pursuant to section 112 of the Clean Air Act, as amended, the Administrator promulgated national emission standards for three hazardous air pollutants (NESHAPS). Section 301 in conjunction with sections 101 and 110 authorizes the Administrator to delegate his authority to implement and enforce PSD to any State which has submitted adequate implementation and enforcement procedures. Sections 111(c) and 112(d) direct the Administrator to delegate his authority to implement and enforce NSPS and NESHAPS to any State which has submitted adequate procedures. Nevertheless, under sections 111(c)(2) and 112(d)(2), the Administrator is not prohibited from enforcing the standards.

During discussions held in the spring of 1975 with regard to the fiscal year 1976 program plan, EPA furnished to the State of South Carolina information setting forth the requirements for an adequate procedure for implementing and enforcing the standards for PSD, NSPS, and NESHAPS. On April 23, 1976, Mr. John E. Jenkins, Jr., Deputy Commissioner, Office of Environmental Quality Control, South Carolina Department of Health and Environmental Control submitted to the EPA Regional Office a request for delegation of authority. On August 10, 1976, Mr. Jenkins submitted information on his agency's procedures and resources for implementation and enforcement of PSD, NSPS, and NESHAPS. Included in the second submittal were copies of State procedures and legal determinations by the State Attorney General's office which provide the State with the requisite authority to enforce the Federally promulgated PSD, NSPS, and NESHAPS. After a thorough review of the request and information submitted, the Regional Administrator has determined that for the source categories set forth in the following official letters to the Deputy Commissioner the Office of Environmental Quality Control, delegation is appropriate subject to the conditions set forth in detail in this letter:

OCTOBER 19, 1976.

Mr. JOHN E. JENKINS,
P.E., Deputy Commissioner, Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

DEAR MR. JENKINS: This is in response to your letters of April 23, 1976, and August 10, 1976, requesting delegation of Federal authority for implementation and enforcement of the Standards of Performance for New Stationary Sources (NSPS), the National

Emission Standards for Hazardous Air Pollutants (NESHAPS), and the Prevention of Significant Deterioration (PSD) program.

We have reviewed the pertinent laws of the State of South Carolina and the rules and regulations thereof, and have determined that they provide an adequate and effective procedure for implementation and enforcement of the NSPS, NESHAPS and PSD by the State of South Carolina. Therefore, pursuant to section 111 and section 112 of the Clean Air Act (1970), as amended, Pub. L. 91-604, we hereby delegate our authority for implementation and enforcement of the NSPS and NESHAPS to the State of South Carolina as follows:

A. Authority for all sources located in the State of South Carolina subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60 and amendments thereto as published in the FEDERAL REGISTER as of the date of this letter. The categories of new sources covered by this authority are: Fossil fuel-fired steam generators; incinerators; portland cement plants; nitric acid plants; sulfuric acid plants, asphalt concrete plants; petroleum refineries; storage vessels for petroleum liquids; secondary brass and bronze ingot production plants; iron and steel plants; sewage treatment plants; secondary lead smelters; phosphate fertilizer plants; primary aluminum plants; coal preparation plants; electric arc furnaces; and primary copper, zinc and lead smelters.

B. Authority for all sources located in the State of South Carolina subject to the national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 and amendments thereto as published in the FEDERAL REGISTER as of the date of this letter. The three hazardous air pollutants covered by this authority are: Asbestos; beryllium; and mercury.

This delegation is based upon the following conditions:

1. Existing quarterly reports normally submited to EPA through program plan reporting will be expanded to contain pertinent information relating to the status of sources subject to 40 CFR Parts 60 and 61. As a minimum, the following information should be provided to EPA: The names, address, type and size of each facility subject to the standards; the compliance status of each facility with accompanying explanations of noncompliance where applicable; notice of enforcement actions brought against facilities subject to 40 CFR Parts 60 and 61; surveillance actions undertaken for each facility; and the results of all reports relating to emissions data.

2. Enforcement of NSPS and NESHAPS in the State of South Carolina will be the primary responsibility of the Office of Environmental Quality Control. If the State determines that such enforcement is not feasible and so notifies EPA, or where the State acts in a manner inconsistent with the terms of this granted authority, EPA will exercise its concurrent enforcement authority pursuant to section 113 of the Clean Air Act, as amended, with respect to sources within the State of South Carolina subject to the NSPS and NESHAPS.

3. Acceptance of this delegation of presently promulgated NSPS and NESHAPS does not commit the State of South Carolina to request or accept enforcement authority of future standards and requirements. A new request for enforcement authority will be required for any standards not included in Paragraphs A and B above.

4. This enforcement authority to the State of South Carolina does not include the authority to implement and enforce NSPS (40 CFR Part 60) and NESHAPS (40 CFR Part 61) for sources owned or operated by the United States, which are located in the State. This condition in no way relieves any Federal facility from meeting the requirements of 40 CFR Parts 60 and 61.

5. The State of South Carolina will at no time grant a waiver of compliance with NESHAPS (40 CFR Part 61). The State of South Carolina will at no time grant a variance or other temporary or permanent exemption from compliance with NSPS (40 CFR Part 60) and NESHAPS (40 CFR Part 61) regulations. Should the State grant such a variance or other exemption, EPA will consider the source receiving the variance or exemption to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to section 113 of the Clean Air Act. The granting of such variances by the State shall also constitute ground for revocation of the pertinent portion of the delegation by EPA.

6. If at any time there is a conflict between a State regluation and a Federal regulation (40 CFR Parts 60 and 61); the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce a Federal regulation that is more stringent than the applicable State regulation, the pertinent portion of the delegation may be revoked.

7. Performance tests shall be conducted in accordance with the procedures set forth in 40 CFR Parts 60 and 61 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent and alternate test methods as specified in 40 CFR 60.8(b) (2) and (3), and 61.14, the State may approve minor changes in methodology provided these changes are reported to EPA. The Administrator also retains the right to change an opacity standard as specified in 40 CFR 60.11(e).

8. Alternatives to continuous monitoring procedures or reporting requirements, as outlined in 40 CFR 60.13(h)(i), may be approved by the State with the prior concurrence of the EPA Administrator.

9. If the Regional Administrator determines that the State procedure for enforcing or implementing the NSPS or NESHAPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Office of Environmental Quality Control.

10. Information shall be made available to the public in accordance with 40 CFR 60.9 (b) and 61.15(b). Any records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of these Sections shall be made available to the designated representative of EPA upon request.

The State and EPA will develop a system of communication sufficient to guarantee a program that includes the items described below:

a. Each agency is informed of the current compliance status of subject sources in the State of South Carolina;

b. Prior EPA concurrence is obtained on any matter involving interpretaion of 40 CFR Parts 60 and 61 (including unique questions of applicability of the standards); and

c. Enforcement actions (including requests for information and enforcement actions based thereon) already initiated by EPA prior to this delegation, shall be completed by EPA.

Also, pursuant to 40 CFR 52.21 (1975), as amended in the FEDERAL REGISTER as of the date of this letter, we hereby delegate our authority for implementation and enforcement of the Federal PSD program to the State of South Carolina as follows:

A. Authority for all sources located in the State of South Carolina subject to review for the prevention of significant air quality deterioration promulgated in 40 CFR 52.21, as of the date of this letter. The categories of new sources covered by the delegation are: Fossil-fuel fired electric plants of more than 100 million Btu per hour heat input; coal cleaning plants; kraft pulp mills; portland cement plants; primary zinc smelters; iron and steel mills; primary aluminum ore reduction plants; primary copper smelters; municipal incinerators capable of charging more than 250 tons of refuse per 24-hour day; sulfuric acid plants; petroleum refineries; lime plants; phosphate rock processing plants; by-product coke oven batteries; sulfur recovery plants; carbon black plants (furnace process); primary lead smelters; fuel conversion plants; and ferroalloy production facilities.

B. The delegation is based upon the following conditions: 1. Quarterly reports (or other reports as required by the Regional Administrator) will be submitted to EPA by the State of South Carolina as specified in 40 CFR 51.7.

2. Enforcement of PSD in the State of South Carolina will be the primary responsibility of the Office of Environmental Quality Control. If the State determines that such enforcement is not feasible and so notifies EPA, or where the State acts in a manner inconsistent with the terms of this granted authority, EPA will exercise its concurrent enforcement authority pursuant to Section 113 of the Clean Air Act, as amended, with respect to sources within the State of South Carolina subject to PSD requirements.

3. Acceptance of this delegation of presently promulgated PSD regulations does not commit the State of South Carolina to request or accept enforcement authority for future standards and requirements. A new request for enforcement authority will be required for any standards not included in Paragraph A above.

4. This enforcement authority to the State of South Carolina does not include the authority to implement and enforce PSD for sources owned or operated by the United States, which are located in the State. This condition in no way relieves any Federal facility from meeting the requirements of 40 CFR 52.21.

5. If at any time there is a conflict between a State regulation and a Federal regulation (40 CFR 52.21), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce a Federal regulation, the pertinent portion of the delegation may be revoked.

6. If the Regional Administrator determines that the State procedure for enforcing or implementing PSD is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Office of Environmental Quality Control.

7. Any determination of "Best Available Control Technology" for any source category not covered by a New Source Performance Standard must be concurred in by EPA prior to the issuance of the final determination.

The State and EPA will develop a system of communication sufficient to guarantee a program that includes the items described below:

(a) Each agency is informed of the current compliance status of subject sources in the State of South Carolina;

(b) Prior EPA concurrence is obtained on any matter involving interpretation of 40 CFR 52.21 (including unique questions of applicability of the standards);

(c) Immediate notification is provided to the State upon the submittal of completed PSD application by any source owned or

operated by the United States, which is located in the State; and

(d) Enforcement actions (including requests for information and enforcement actions based thereon) already initiated by EPA prior to this delegation, shall be completed by EPA.

A notice announcing this delegation will be published in the FEDERAL REGISTER in the near future. The notice will state, among other things, that, effective immediately, all reports required pursuant to NSPS, NESHAPS, and PSD by sources located in the State of South Carolina should be submitted to the Office of Environmental Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201. Any such reports which have been or may be received by EPA, Region IV will be promptly transmitted to the State agency.

Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objectives within 10 days from the date of receipt of this letter, the State will be deemed to have accepted all of the terms of the delegation.

Sincerely yours,

JACK E. RAVAN,
Regional Administrator.

Therefore, pursuant to the authority delegated to him by the Administrator, the Regional Administrator notified the Deputy Commissioner of the Office of Environmental Quality Control on October 19, 1976, that authority to implement and enforce Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPS) was delegated to the State of South Carolina.

Copies of the request for delegation of authority are available for public inspection at the Environmental Protection Agency, Region IV Office, 345 Courtland Street, NE., Atlanta, Georgia 30308.

Effective immediately, all reports required pursuant to the delegated Prevention of Significant Deterioration (PSD), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPS) should not be submitted to the EPA Region IV Office, but instead should be submitted to the State agency at the following address:

Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

Applications for PSD, NSPS, and NESHAPS review in process at the time of this delegation shall be processed through to completion by the EPA Region IV Office.

(Secs. 101, 110, 111, 112, 301, Clean Air Act, as amended (42 U.S.C. 1857, 1857c-5, 6, 7, g.))

Dated: January 11, 1977.

JOHN A. LITTLE,
Acting Regional Administrator.

[FR Doc.77-1971 Filed 1-21-77;8:45 am]

[FRL 674-5]

ENVIRONMENTAL HEALTH ADVISORY COMMITTEE STUDY GROUP ON MUTAGENICITY TESTING

Meeting

Notice is hereby given that a meeting of the Study Group on Mutagenicity Testing of the Science Advisory Board's Environmental Health Advisory Committee will be held at 9:00 a.m. on February 10, 1977 in Conference Room A (Room 1112), Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

The purpose of the meeting will be (1) to review and comment on the scientific aspects of further revisions of portions of draft EPA Guidelines for the registration of pesticides relating to mutagenicity testing and (2) to discuss approaches presently contemplated by the Agency for the evaluation of test data relating to mutagenicity.

The meeting will be open to the public. Any member of the public wishing to attend or submit a paper should contact the Secretariat, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, DC 20460, by c.o.b. February 7, 1977. Please call Ms. Carol Luszcz on (703) 557-7720.

THOMAS D. BATH,
Staff Director,
Science Advisory Board.

JANUARY 17, 1977.

[FR Doc.77-2178 Filed 1-21-77;8:45 am]

FEDERAL MARITIME COMMISSION

ARMADORES REGINA MAGNA S.A.

Order of Revocation

In the matter of Certificate of financial responsibility for indemnification of passengers for nonperformance of transportation No. P-132, Armadores Regina Magna S.A., trading as Chandris Cruises, c/o Chandris (London) Services Ltd., 5 St. Helen's Place, Bishopsgate, London EC3A 6BJ, England.

Whereas, Armadores Regina Magna S.A. trading as Chandris Cruises has ceased to operate the passenger vessel Regina Magna to and from United States ports.

It is ordered, That Certificate (Performance) No. P-132 issued to Armadores Regina Magna S.A. trading as Chandris Cruises covering the REGINA MAGNA be and is hereby revoked effective January 14, 1977.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served on certificant.

By the Commission, January 14, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2110 Filed 1-21-77;8:45 am]

CHICAGO REGIONAL PORT DISTRICT

Notice of Agreements Filed

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before February 14, 1977. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Maxim M. Cohen, General Manager, Chicago Regional Port District, Butler Drive—Lake Calumet Harbor, Chicago, Illinois 60633

Agreement No. T-3401, between the Chicago Regional Port District (Port) and Transoceanic Terminal Corporation (TOT), provides for the Port's 10-year lease to TOT of certain premises of Lake Calumet, Chicago, Illinois, to be used for the purpose of operating a ship, barge, railroad and truck terminal and warehouse thereon, and handling goods and merchandise in connection therewith.

As compensation, TOT shall pay Port $54,500.00 per annum the first 60 months and thereafter, $57,225.00 per annum. In addition to the fixed rent, TOT shall pay Port an annual volume usage charge equal to 50 percent of the dockage and wharfage collected for tonnage handled at the transit shed located on the leased premises, up to a maximum of $10,000 per annum. All charges are to be those assessed under the Port's tariff.

Agreement No. T-3401-1, between TOT and Calumet Barge Terminal, Inc., (CBT) is an assignment of lease whereby TOT in return for the consideration of $1.00, assigns to CBT those premises

leased to TOT under FMC Agreement No. T-3401.

By Order of the Federal Maritime Commission.

Dated: January 18, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2108 Filed 1-21-77;8:45 am]

HELENIC MEDITERRANEAN LINES CO. LTD.

Order of Revocation

In the matter of certificate of financial responsibility for indemnification of passengers for nonperformance of transportation No. P-111. The Hellenic Mediterranean Lines Co. Ltd., (The Hellenic Mediterranean Lines), Electric Railway Station Building, P.O. Box 57, Piraeus, Greece.

Whereas, The Hellenic Mediterranean Lines Co. Ltd. (The Hellenic Mediterranean Lines) has ceased to operate the passenger vessel *Aquarius* to and from United States ports; and

Whereas, Certificate (Performance) No. P-111 issued to The Hellenic Mediterranean Lines Co. Ltd. (The Hellenic Mediterranean Lines) has been returned for revocation.

It is ordered, That Certificate (Performance) No. P-111 covering the Aquarius be and is hereby revoked effective January 14, 1977.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served on certificant.

By the Commission, January 14, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2111 Filed 1-21-77;8:45 am]

INDEPENDENT OCEAN FREIGHT FORWARDER LICENSE

Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to Section 44(a) of the Shipping Act, 1916, (Stat. 552 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Gerson M. Joseph, 5263 SW 40th Ave., Fort Lauderdale, FL 33314.

GCS Charter and Shipping Agency, 61 Broadway, Suite 3029, New York, NY 10006. Officer: Robert J. McLean, President.

Suddath Van Lines, Inc., P.O. Box 6699, Jacksonville, FL 32205. Officers: A. Q. Bell, President; Richard E. Oehsler, Vice President; Michael C. Richardson, Vice President; Richard H. Suddath, Chairman of the Board; J. B. G. Hill, Vice President; Robert F. Bartlett, Secretary/Treasurer; Robert J. Price, Controller; Julia F. Murray, Assistant Secretary; Barbara S. Suratt, Director.

Trimodal Inc., 1346 Washington Blvd., Stamford, CT 06902. Officers: Basil B. Jones, President/Treasurer; Diane Cuiffo, Secretary; Olive Chalner, Vice President.

W. F. Whelan Company, International Terminal, Detroit Metropolitan Airport, Detroit, MI 48242. Officers: W. F. Whelan, President; K. J. Whelan, Secretary; R. B. Golibart, Vice President; C. Piggot, Director.

Pedro Quiros, 6215 W. 20th Ave., Apt. 221, Hialeah, FL 33012.

Norgen Custom Brokers, Inc., 161-15 Rockaway Blvd., Jamaica, NY 11434. Officers: Jose E. Negron, President; Efrain Negron, Vice President; Carmen McConnon, Secretary/Treasurer; Spiro E. Efstathiadis, Vice President; John Gilligan, Vice President.

Ethel E. Brinson, 1601 West Edgar Road, P.O. Box 653, Linden, NJ 07036.

Herbert Miles Frank, 170 Broadway, #815, New York, NY.

By the Federal Maritime Commission.

Dated: January 17, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-2109 Filed 1-21-77;8:45 am]

FEDERAL POWER COMMISSION

AMERICAN ELECTRIC POWER SERVICE CORP.

[Docket No. ER77-143]

Changes in Rates and Charges

JANUARY 13, 1977.

Take notice that American Electric Power Service Corporation (AEP) on January 11, 1977, tendered for filing on behalf of its affiliate, Indiana & Michigan Electric Company (Indiana Company), Modification No. 7 dated December 15, 1976, to the Operating Agreement dated June 1, 1968, between Indiana & Michigan Electric Company and Central Illinois Public Service Company, designated I & M's Rate Schedule FPC No. 67.

Section 1 of Modification No. 7 provides for an increase in the Demand Charge for Short Term Power from $0.50 to $0.60 per kilowatt per week and Section 4 provides for an increase in the Demand Charge for Limited Term Power from $2.75 to $3.25 per kilowatt per month. Section 2 of Modification No. 7 provides for an increase in the transmission charge for third party Short Term Power transactions from $0.125 per kilowatt per week to $0.15 per kilowatt per week and Section 5 provides for an increase in the transmission charge for third party Limited Term transactions from $0.55 per kilowatt per month to $0.65 per kilowatt per month, both schedules proposed to become effective January 8, 1977.

The Company states that since the use of Short Term and Limited Term Power cannot be accurately estimated, it is impossible to estimate the increase in revenues resulting from the Modification.

The Company states that copies of the filing were served upon Central Illinois Public Service Company, the Public Service Commission of Indiana, the Michigan Public Service Commission and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, DC 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 February 2, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken. 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.77-2011 Filed 1-21-77;8:45 am]

[Docket No. RP76-10, (PGA)]

ARKANSAS LOUISIANA GAS CO.

Pipeline Rates: Settlement

JANUARY 12, 1977.

On July 26, 1976, Arkansas Louisiana (Arkla) filed a revised settlement proposal which would dispose of all issues in the above-referenced proceeding. The revised settlement incorporates certain changes to the previous settlement certified on February 25, 1976, by the Presiding Judge to the Commission. For the reasons set forth below, the Commission shall accept and approve the revised proposed stipulation and agreement.

This proceeding was initiated on September 15, 1975, when Arkla tendered for filing an increase in rates to be effective November 1, 1975, which would add $5,700,000 annually to company revenues for jurisdictional sales and service based on the 12-month period ended June 30, 1975, as adjusted. This filing proposed to increase the price of gas to the one customer served under Rate Schedule X-26, Cities Service Gas Company (Cities). The filing also included a proposed purchased gas adjustment clause in order to permit the pass-on of increases in purchased gas costs to Cities in accordance with Commission regulations. By order issued October 31, 1975, the Commission suspended for one day Arkla's PGA clause applicable to Cities, allowed it to become effective on November 2, 1975, subject to refund, and set the matter for hearing. The Commission also granted Cities' petition to intervene in the proceeding. Subsequently, the Commission instituted an investigation into the operation of Arkla's effective PGA under its G-2 rate schedule and consolidated the investigation with the Docket No. RP76-10 proceeding. Arkla's rate proceeding in Docket No. RP76-10 is still pending for hearing and is not affected by the present settlement, which pertains only to Arkla's PGA clauses under Rate Schedules X-26 and G-2.

Following settlement conferences attended by representatives of Arkla, Cities, and the Commission staff, a proposed Settlement Agreement was submitted to the Presiding Judge, who certified it to

the Commission on February 25, 1976. On March 24, 1976, the staff submitted comments in support of the proposed settlement. However, on July 15, 1976, the staff advised the Commission that upon further review the staff believed certain provisions contained in the settlement were not consistent with the Commission's applicable PGA orders, Nos. 452 and 452–A. In light of its objections, the staff requested the Commission to defer ruling on the settlement agreement pending further agreement discussion among the parties.

Following further discussion, Arkla submitted for filing on July 26, 1976, a revised settlement agreement and related revised and substitute tariff sheets.[1] The modified settlement agreement incorporates certain changes to the previous agreement including an adjustment to Arkla's base cost of gas to reflect the elimination of certain company-owned production. It provides for the inclusion in the base cost of gas for PGA purposes the following: (1) the net of nonconcurrent exchange gas transactions in Account 806; (2) the net of storage gas transactions in Accounts 808 and 809; (3) system wide cost of purchased gas; and (4) production from post October 7, 1969, leases and new wells and old leases priced on area or nationwide rates. The effect of these changes would reduce the base cost of purchased gas from 26.56¢ per Mcf to 26.08¢ per Mcf as of June 30, 1975.

Public notice of the revised settlement agreement filing was issued on October 22, 1976, providing for comments by interested parties to be submitted on or before November 17, 1976. On November 17, 1976, the staff filed comments recommending that the agreement be approved and adopted.

Upon review of the entire record in this proceeding, the Commission finds that the settlement agreement represents a reasonable resolution of all issues in this proceeding. Accordingly, the proposed revised Stipulation and Agreement shall be incorporated herein by reference, and shall be approved and adopted.

The Commission orders:

(A) The revised Stipulation and Agreement filed by Arkla on July 26, 1976, is incorporated herein by reference, and is approved and adopted.

(B) Arkla's previously designated tariff sheets are hereby accepted for filing and made effective as of November 2, 1975.

(C) Within 15 days from the date of this order Arkla shall refund to Cities all amounts collected in excess of the rates determined in accordance with the terms of the settlement agreement herein approved, together with interest at the rate of 9 percent per annum. Arkla shall thereafter submit a report of the refunds and interest together with a release from Cities.

(D) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff or any party or person affected by this order in any proceeding now pending or hereafter instituted by or against Arkla or any person or party.

(E) Upon compliance by Arkla with the terms of this order, this proceeding shall be terminated.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1976 Filed 1-21-77;8:45 am]

[1] First Revised Sheet Nos. 12A, 12B, 12C, 12D and Original Sheet No. 12E to First Revised Volume No. 1; Substitute Third Revised Sheet No. 185, Substitute First Revised Sheet Nos. 186, 187 and 188, and Substitute Original Sheet Nos. 188A, 188B, and 188C to Original Volume No. 3.

[Docket No. CP77-114]

ARKANSAS OKLAHOMA GAS CORP., ET AL.

Application

JANUARY 11, 1977.

Take notice that on January 4, 1977, Arkansas Oklahoma Gas Corporation (Ark-Okla), 115 North 12th Street, Fort Smith, Arkansas 72901, Mississippi River Transmission Corporation (Mississippi), 9900 Clayton Road, St. Louis, Missouri 63124, and Arkansas Louisiana Gas Company (Arkla), P.O. Box 1734, Shreveport, Louisiana 71151, filed a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the tri-party exchange of natural gas among Ark-Okla, Mississippi and Arkla, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Ark-Okla presently serves five communities on its eastern system in Randolph and Clay, Counties, Arkansas, with gas purchased from Mississippi. It is further stated that in 1973, Ark-Okla reached the Contract Demand it has under its Service Agreement with Mississippi, and Mississippi continues to be unable to increase Ark-Okla's Contract Demand. Ark-Okla proposes to alleviate this shortage in its eastern operations by means of a three-company exchange wherein Ark-Okla would deliver up to 1,000 Mcf of gas per day from its U.S.A. No. 1–8 Well in Sebastian County, Arkansas to Arkla, which would deliver equivalent volumes to Mississippi at its Sherrill connection in Jefferson County, Arkansas. Mississippi, it is stated, would deliver equivalent amounts of gas on a best-efforts basis to Ark-Okla at an existing delivery point near Pocahantas, Arkansas.

The Applicants state that they intend the transaction to be a straight gas-for-gas exchange with no monetary compensation being paid by or to any party. It is also stated that Ark-Okla would be responsible for the cost of any additional facilities required to effect the exchange.

It is asserted that the agreement would become effective on the date of first delivery and would continue for an initial period of two years, being extended on a year-to-year basis thereafter.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 1, 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 hearings 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.77-2029 Filed 1-21-77;8:45 am]

ARKANSAS POWER & LIGHT CO.

[Docket Nos. E-8071, E-8142, E-8250, ER76-110]

Filing

JANUARY 13, 1977.

Take notice that on December 28, 1976, Arkansas Power & Light Company (AP&L) tendered for filing sheets revising the compliance report filed pursuant to the Order issued November 15, 1976, approving a Settlement Agreement reached in the above numbered dockets. AP&L states that the revised data sheets reflect corrections to billing for service to April 30, 1976 which was corrected on the Present Rate but not on the Settlement Rate or Prior Rate, causing the billings on each of the two latter rates to be $750.00 less than applicable. AP&L further states that the amount of $777.37 overpaid to Benton, including interest, will be added to their next billing.

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 25, 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.77-1987 Filed 1-21-77;8:45 a.m.]

[Docket No. CP77-117]

BACA GAS GATHERING SYSTEM, INC.

Application

JANUARY 11, 1977.

Take notice that on January 5, 1977, Baca Gas Gathering System, Inc. (Applicant), 1200 Hartford Building, Dallas, Texas 75201, filed in Docket No. CP77-117 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Panhandle Eastern Pipe Line Company (Panhandle) all of its plant, equipment, rights-of-way, franchises, consents and interests in natural gas contracts, 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 engaged in the transportation and sale of natural gas in interstate commerce by means of its gas gathering system in Baca County, Colorado, which gathers and transports gas to Morton County, Kansas, where it is delivered and sold for resale to Panhandle, Applicant's sole customer. It is further stated that Applicant has been relatively ineffective in acquiring new gas supplies and that it is unlikely that Applicant will be able to acquire supplies to be sold and delivered to Panhandle. It is asserted that the abandonment and sale of Applicant's facilities would allow Panhandle to acquire new reserves and to stimulate additional drilling in the vicinity of the pipeline. It is further asserted that no natural gas service would be terminated or interrupted if this abandonment is permitted and Panhandle's application in Docket No. CP77-91 to acquire said facilities is granted.

Applicant seeks permission and approval to abandon by sale to Panhandle the following:

(a) *Equipment.* All of Applicant's plant and equipment consisting of field pipelines, field compressor station equipment, field measuring and regulating equipment, miscellaneous equipment and intangible plant costs.

(b) *Rights-of-way.* Applicant's right, title and interest in and to fee simple interests, easements, rights-of-way and surface leases incidental to the use of the aforementioned equipment.

(c) *Franchises and Consents.* All of Applicant's franchises and consents incidental to that of a gas pipeline business.

(d) *Applicant's Contracts.* All of Applicant's interest in (i) gas purchases contracts with producers with respect to contract acreage, or any contracts with producers hereinafter entered into in the ordinary course of business; (ii) the "Irrigation Gas Contract" dated July 1, 1967, between Applicant and Baca Irrigation Gas Co.; (iii) the Gas Contract between Applicant and Panhandle dated August 6, 1964, as amended; (iv) the "Anadarko Contract," which is a gas processing and conditioning agreement between Applicant and Anadarko Production Company, dated April 1, 1967, as amended.

It is stated that pursuant to a sales agreement dated October 8, 1976, Panhandle would pay Applicant $400,000 for the facilities plus a sum equal to all right-of-way and construction costs paid or incurred from the date of the sales agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 2, 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.77-2027 Filed 1-21-77;8:45 am]

[Docket Nos. ER76-496 and ER76-396]

BANGOR HYDRO ELECTRIC CO.

Certification of Settlement Agreement

JANUARY 12, 1977.

Take notice that on January 4, 1976, the Presiding Administrative Law Judge certified to the Commission for its disposition a proposed settlement agreement between Bangor Hydro Electric Company and Eastern Maine Electric Cooperative, Inc., the only intervenor in these proceedings. The proposed settlement agreement would resolve all matters between the parties in these proceedings. The proposed settlement rates would reduce the originally requested annual rate increase of $175,838 (24 percent) to approximately $101,000 (14 percent) for service to the affected wholesale customers.

Any person desiring to be heard as to said settlement agreement should file comments with the Federal Power Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, on or before January 27, 1976. Copies of the settlement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2028 Filed 1-21-77;8:45 am]

[Docket No. CP77-96]

BLUE DOLPHIN PIPE LINE CO.

Application

JANUARY 11, 1977.

Take notice that on December 17, 1976, Blue Dolphin Pipe Line Company (Applicant), P.O. Box 2099, Houston, Texas 77001, filed in Docket No. CP77-96 an application pursuant to Section 7(c) of the Natural Gas Act and § 157.7(c) of the Regulations thereunder (18 CFR 157.7 (c)), for a certificate of public convenience and necessity authorizing the construction, for a 12-month period commencing January 1, 1977, and operation of facilities to make miscellaneous rearrangements on its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the service presently rendered by Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $10,000.

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.77-1991 Filed 1-21-77;8:45 am]

[Docket No. ER76-445]

BOSTON EDISON CO.

Electric Rates: Acceptance Subject to Refund

JANUARY 12, 1977.

On September 1, 1976, Boston Edison Company (Edison) tendered for filing Supplements to Third Revised Sheet No. 11 to Rate Schedule FPC Nos. 47, 48, 49 and 51 (Revised Rate S-3A) for service to the Towns of Concord, Norwood, Reading and Wellesley (Concord et al.). Edison states that the purpose of the filing is to reflect revisions in the base energy charge and the fuel adjustment factor contained in Edison's fuel adjustment clause filed on January 2, 1976 (as completed on January 30, 1976), in response to Commission Order No. 517. The tariff sheets which Edison here proposes to supplement were accepted for filing and suspended until March 1, 1976, subject to refund by Commission order issued February 27, 1976. The tariff was effective for the locked-in period March 1, 1976, through July 23, 1976.

Edison requests that the supplements be made effective retroactively, subject to refund, for the entire locked-in period. Edison states that it will refund the difference between the revenues collected under the original Order No. 517 filing and the revised filing upon issuance of the Commission order accepting this filing, offset by amounts Edison claims are owed by Concord et al. due to an inadvertent underbilling of November 1975 fuel adjustment revenues.

Edison advises that the base cost of fuel has been changed to reflect actual rather than estimated 1975 experience. The base cost of fuel has been increased from 15.4640 mills/kWh to 16.1490 mills/kWh. In addition to increasing the base cost of fuel, Edison has decreased the energy charges in the present rate to reflect the lower fuel costs.

The proposed revisions result in a reduction in charges of $275,537 for the locked-in period. If coupled with the offsetting underbilling in fuel adjustment revenues of $65,735, the net refund to the four customers would amount to $209.802.

Edison states that the changes effected by its filing are consistent with certain recommendations contained in intervenor (Reading) testimony in Docket No. ER76-445. Edison indicated that the proposed changes will simplify the issues in that docket, and are, within the context of an Order 517 filing, fair and reasonable.

Notice of Applicant's tendered filing was issued on September 23, 1976, with protests or petitions to intervene due on or before October 13, 1976. On October 13, 1976, the Towns of Norwood, Conford, and Wellesley (Towns) filed a "Response" opposing Edison's filing to the extent it uses underbillings as an offset to overcharges. On November 3, 1976, Edison filed an answer to the "Response."

In their "Response," the Towns assert that Ediston's remedy for the undercollection is with the S-3 proceeding, Docket No. E-8855, rather than the instant docket. Edison submits that the present proceeding is the appropriate one for the issue of underbilling for November 1975, that the matter is an integral part of the September 1, 1976, filing and should be heard and decided as part of that filing.

By the offset of $65,735, Edison proposes to recover from the customers the amount by which fuel clause collections for November 1975 were below the level of the filed, effective rate.

The record shows that Edison's Revised Rate S-3A together with explanatory testimony with respect to the November 1975 underbilling, was received in evidence in Docket No. ER76-445. Any questions with respect to Edison's entitlement to the amount sought to be recovered by the offset should be addressed in the ongoing proceeding. Edison offers to make further refunds if the offset is ultimately found to be wholly or partially unauthorized.

Accordingly, we shall accept for filing, subject to refund, the revised Rate S-3A in Docket No. ER76-445, effective for the locked-in period and order refunds. of the difference between the amounts collected under the original Order No. 517 filing and the amounts that would have been collected under revised Rate S-3A, plus interest at 9 percent per annum computed on the gross amount of the refund, less the offset proposed by Edison.

The Commission finds: Good cause exists to accept Edison's revised Rate S-3A as described above, subject to refund, with an effective date of March 1, 1976. Any questions with respect to Edison's entitlement to the proposed offset for November 1975 underbillings should be addressed in the ongoing proceeding.

The Commission orders:

(A) The proposed revised Rate S-3A is hereby accepted for filing subject to refund in the ongoing proceedings effective as of March 1, 1976.

(B) Edison shall refund the difference between the amounts collected under the original Order No. 517 filing and the amounts that would have been collected under revised Rate S-3A, plus interest at 9 percent per annum computed on the gross amount of the refund, less the offset proposed by Edison.

(C) Within 30 days of the date of this Order, Edison shall report to the Commission the dates and amounts of refunds paid to each customer affected by the revised rate. A copy of such report shall also be furnished to each State Commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 77-2034 Filed 1-21-77;8:45 am]

[Docket Nos. E-9548 and E-9549]

CITY OF MISHAWAKA, INDIANA, ET AL. V. AMERICAN ELECTRIC POWER CO., ET AL.

Offer of Settlement

JANUARY 13, 1977.

Please take notice that in a letter dated January 6, 1977, addressed to Staff Counsel in the captioned Dockets, counsel for Indiana & Michigan Electric Company (I&M) proposed an Offer of Settlement of the captioned Dockets pursuant to § 1.18 of the Commission's Rules of Practice and Procedure. According to I&M, its Offer of Settlement disposes of all of the issues in the captioned Dockets. Copies of I&M's letter of January 6, 1977 and the attachments thereto are available for inspection in the offices of the Commission.

Any party desiring to file comments with respect to the Offer of Settlement may do so and all such comments, if any, shall be filed on or before January 26, 1977. Comments so filed, if any, will be considered by the Commission in determining what action it should take on the Offer of Settlement, but will not serve to make the party filing such comments an intervenor herein. Persons wishing to become parties shall, unless they have already done so, file a petition to intervene.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 77-2015 Filed 1-21-77;8:45 am]

[Docket No. ER77-73]

THE CLEVELAND ELECTRIC ILLUMINATING CO., ET AL.

Supplements to Interconnection Agreement

JANUARY 13, 1977.

Take notice that on November 22, 1976, the CAPCO Group filed Appendices 3

and 4 as supplements to Schedule E of the CAPCO Basic Operating Agreement dated as of January 1, 1975 which is filed with the Commission under the following Rate Schedule designations:

Company:	Rate schedule
The Cleveland Electric Illuminating Co	FPC No. 13
Duquesne Light Co	FPC No. 14
Ohio Edison Co	FPC No. 120
Pennsylvania Power Co	FPC No. 29
The Toledo Edison Co	FPC No. 26

Appendix 3 and Appendix 4 to Schedule E of the CAPCO Basic Operating Agreement provide the basis for the determination of charges applicable to Unit Capacity and Energy transactions by the CAPCO member companies from Bruce Mansfield Unit No. 1 and Beaver Valley Unit No. 1, respectively. The services and compensation for Unit Capacity and Energy transactions from base load CAPCO Units are set forth generally in Schedule E, with specific charges from particular CAPCO Units being set forth in Appendices to Schedule E as the particular Unit comes into commercial operation. It is requested that Appendix 3 become effective on April 5, 1976 and Appendix 4 become effective on October 1, 1976.

Any person desiring to be heard or to make any protest with reference to the subject matter of this Notice should, on or before February 4, 1977, file with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The documents referred to herein are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2007 Filed 1-21-77;8:45 am]

[Docket No. RP73-65 (PGA77-2)]

COLUMBIA GAS TRANSMISSION CORP.

Proposed Changes in FPC Gas Tariff

JANUARY 13, 1977.

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 29, 1976, tendered for filing proposed changes in its FPC Gas Tariff, Original Volume No. 1. The proposed changes to be effective February 1, 1977, provide for a purchased gas adjustment to reflect increased costs of gas purchased from pipeline suppliers of $48,211,562.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 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 and 1.10). All such petitions or protests should be filed on or before January 28, 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 Commisison and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1986 Filed 1-21-77;8:45 am]

[Docket Nos. RI76-35, CI76-804; RI76-51, CI76-805; RI76-42, CI76-802]

CONTINENTAL OIL CO. ET AL.

Special Relief Proceeding

JANUARY 13, 1977.

Background. By motion of November 15, 1976, as amended November 23, 1976, Getty Oil Company (Getty) requests permission to reinstate its petition for special relief filed in Docket No. RI76-42, which was previously consolidated by Commission order of April 28, 1976, with applications for certificates of public convenience and necessity and special relief of Continental Oil Company (Continental), Docket No. RI76-35, and Cities Service Oil Company (Cities Service), Docket No. RI76-51. By Commssion order of October 15, 1976, Getty's petition for special relief was permitted to be withdrawn at its request and its Docket No. RI76-42 was severed from the consolidation. Such order also issued Getty a temporary certificate, subsequently rejected by Getty, to sell the gas involved at the national rate. By its motion, as amended, Getty also seeks to reconsolidate its special relief petition with Docket No. RI76-35, et al. Getty bases its request on the ground that the national rate applicable to its gas was substantially reduced by Commission Opinion No. 770-A[1] issued shortly after it withdrew its petition.[2] Getty asks that its petition be deemed a petition for special relief at the rates sought by Continental and Cities Service. It further states that if readmitted to Docket No. RI76-35 et al., it would take the record as it finds it and rely on the evidence presented by Continental and Cities Service. It does not request further hearing, reopening of the record, or opportunity to file briefs. It adopts the position and arguments contained in the briefs of Continental and Cities Service.

In a response to Getty's motion, as amended, filed by the Commission Staff on December 8, 1976, Staff stated it had no objection to the granting of Getty's motion provided that the record could be reopened for the limited purpose of receiving into evidence a discounted cash flow analysis, attached to Staff's motion as an appendix, along with the motion itself, which explains that analysis. The motion and analysis present Staff's rate recommendation for Getty's gas, 129.72 cents per Mcf, as opposed to a 160.0 cents per Mcf rate which it recommends for gas from Continental and Cities Service. Staff states that this difference relates entirely to the fact that Getty received a larger advance payment than Continental and Cities Service, which makes a difference under its theory of the case, and that Staff's analysis does nothing more than restate its discounted cash flow analysis applicable to Continental and Cities Service (Staff Exhibit No. 17), with the different advance payment put in. Staff further states that it is informed that Getty, Continental, Cities Service, Tennessee Gas Pipeline Company (the purchaser), and Public Service Commission of the State of New York have no objection to this procedure.

On another matter, Staff moves that the certificate dockets involved in this proceeding be formally consolidated herein. In this connection Staff states:

> These dockets were created for administrative purposes after the other dockets were consolidated and set for hearing. This is a matter of administrative convenience only and does not affect this proceeding in any substantive way.

Discussion and Conclusions. We are in general agreement with Getty's and Staff's motions. We also believe the certificate dockets should be consolidated herewith to reflect more clearly that all aspects, certificate as well as rate, of the applications of Continental, Cities Service, and Getty are before the Presiding Administrative Law Judge for decision and disposition.

Upon full consideration of this matter, and it appearing that there be no objection, the Commission finds that Staff's and Getty's motions should be granted.

The Commission orders:

(A) Getty's certificate and special relief application filed in Docket No. RI76-42 is hereby reconsolidated with Continental Oil Company, et al, Docket No. RI76-35, et al. Its petition for special relief is reinstituted and deemed to be a petition for special relief at the rates sought, and on the evidence presented by

[1] Opinion And Order On Rehearing Modifying In Part Opinion No. 770 And Granting Petitions For Intervention, Docket No. RM75-14, issued November 5, 1976, which modified Opinion No. 770, Opinion And Order Prescribing Uniform National Rate For Sales Of Natural Gas Dedicated To Interstate Commerce On Or After January 1, 1973, For The Period January 1, 1975, To December 31, 1976, issued July 27, 1976.

[2] Getty states that if its motion is granted, it will withdraw its rejection of a temporary certificate of public convenience and necessity issued it by the Commission on October 15, 1976, and accept such certificate pending disposition of its petition for special relief. Getty states that deliveries have not been initiated under this certificate.

Continental and Cities Service in RI76–35, et al. The Presiding Administrative Law Judge is directed to consider and determine Getty's certificate and special relief application concurrently with those of Continental and Cities Service in Docket No. RI76–35, et al.

(B) The Presiding Administrative Law Judge is hereby directed to reopen the record in Docket No. RI76–35, et al., for the limited purpose of receiving into evidence the response and motion filed herein by the Commission Staff on December 8, 1976, along with the appendix thereto.

(C) The following certificate dockets are hereby consolidated with this proceeding:

CI76–804 (Continental Oil Company)
CI76–805 (Cities Service Oil Company)
CI76–802 (Getty Oil Company)

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–2043 Filed 1–21–77;8:45 am]

[Docket No. ER77–133]

CONNECTICUT LIGHT & POWER CO.

Purchase Agreement

JANUARY 13, 1977.

Take notice that on January 3, 1977, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed Purchase Agreement with Respect to Various Gas Turbine Units, dated November 30, 1976 between (1) CL&P and The Hartford Electric Light Company (HELCO), and (2) Littleton Electric Light and Water Department (LEL&WD).

CL&P states that the Purchase Agreement provides for a sale to LEL&WD of a specified percentage of capacity and energy from five gas turbine generating units (Norwalk Harbor, Devon, South Meadow 10, Middletown and Torrington Terminal) during the period from December 1, 1976 to December 31, 1976 together with related transmission service.

CL&P states that questions as to LEL&WD's Capability Responsibility Obligation, under the terms of the New England Power Pool (NEPOOL) Agreement, during the Term of this Purchase Agreement affected the amounts of gas turbine capacity that could be purchased by LEL&WD and thus delayed execution of the agreement until a date which prevented the filing of such rate schedule more than thirty days prior to the proposed effective date.

CL&P therefore requests waiver of the notice requirement pursuant to § 35.11 and requests that the rate schedule filed herein be permitted to become effective on December 1, 1976.

CL&P states that the capacity charge for the proposed service was a negotiated rate, the monthly transmission charge is equal to one-twelfth of the annual average unit cost of transmission service on the Northeast Utilities (NU) system determined in accordance with § 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee, multiplied by the number of kilowatts of winter capability which LEL&WD is entitled to receive, reduced to give due recognition of the payments made by LEL&WD for transmission services on intervening systems, and the variable maintenance charge was arrived at through negotiations.

CL&P requests an effective date of December 1, 1976 for the LEL&WD agreement.

HELCO has filed a certificate of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut; HELCO, Hartford, Connecticut; and LEL&WD, Littleton, Massachusetts.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 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 24, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for pulic inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–2010 Filed 1–21–77;8:45 am]

[Docket No. ER77–134]

CONNECTICUT LIGHT & POWER CO.

Amendment to Purchase Agreement

JANUARY 13, 1977.

Take notice that on January 3, 1977, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed Amendment to Purchase Agreement with respect to Various Gas Turbine Units (II) (Amendment), dated October 1, 1976 between (1) CL&P, the Hartford Electric Light Company (HELCO) and Western Massachusetts Electric Company (WMECO), and (2) Vermont Electric Cooperative, Inc. (VEC).

CL&P states that the Amendment provides for a change in the Percentages of Capability to be purchased by VEC for the period from April 1, 1976 to November 30, 1976 and extends the terms of the First and Second Capability Periods.

CL&P states that although the parties agreed to the principals of the First Capability Period at an early date, the details of the Second Capability Period were not decided until a date which prevented the execution and filing of the Amendment with the Commission until this date.

CL&P requests waiver of the notice requirement pursuant to § 35.11 and requests that the Amendment be permitted to become effective on November 1, 1976.

HELCO and WMECO have filed certificates of concurrence in this docket.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut; HELCO, Hartford, Connecticut; WMECO, West Springfield, Massachusetts; and VEC, Johnson, Vermont.

CL&P also states that no facilities are to be installed or modified in order to supply the service to be furnished under the Amendment.

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 24, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–2008 Filed 1–21–77;8:45 am]

[Docket No. RP72–157 (PGA77–4)]

CONSOLIDATED GAS SUPPLY CORP.

Proposed Changes in FPC Gas Tariff

JANUARY 13, 1977.

Take notice that Consolidated Gas Supply Corporation (Consolidated) on December 30, 1976 tendered for filing proposed changes in its FPC Gas Tariff, Second Revised Volume No. 1, pursuant to its PGA clause for rates to be effective February 1, 1977. The proposed rate increase would generate $30.5 million annually in additional jurisdictional revenues.

Consolidated states that the PGA filing was triggered by rate increases filed by Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, Transcontinental Gas Pipeline Corporation, and Texas Gas Transmission Corporation, all for effectiveness February 1, 1977.

Consolidated is requesting a waiver of any of the Commission's Rules and Regulations in order to permit the proposed rates shown on Nineteenth Revised Sheet Nos. 8 and 9 to become effective February 1, 1977.

Copies of this filing were served upon Consolidated's jurisdictional customers, as well as interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such peti-

tions or protests should be filed on or before January 28, 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.77-2013 Filed 1-21-77;8:45 am]

[Docket No. RI77-20]

DORFMAN PRODUCTION CO.

Petition for Special Relief

JANUARY 13, 1977.

Take notice that on December 27, 1976, Dorfman Production Company, Operator, 1848 Mercantile Dallas Building, Dallas, Texas 75201, filed a petition for special relief in Docket No. RI77-20 pursuant to § 2.76 of the Commission's General Policy and Interpretations (18 CFR 2.76).

Petitioner seeks authorization to charge 65.94 cents per Mcf for the sale of gas to United Gas Pipe Line Company from 16 wells located in the Willow Springs Field, Gregg County, Texas. Petitioner also seeks authorization to charge 72.6842 cents per Mcf for the sale of gas to Texas Eastern Transmission Corporation from 3 wells located in the same field. In consideration for the increased rates, petitioner proposes to perform substantial workovers of the wells. Petitioner is currently receiving an average rate of 40 cents per Mcf for the subject gas.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2009 Filed 1-21-77;8:45 am]

[Docket No. ES77-9]

EL PASO ELECTRIC CO.

Application

JANUARY 12, 1977.

Take notice that on January 3, 1977, El Paso Electric Company (Company) filed a petition with the Federal Power Commission seeking an order declaring that the Company, as a result of the transaction described below, will not involve the issue of any security, or assumption of any obligation or liability as a guarantor, endorser, surety, or otherwise in respect of any security of another person, within the meaning of Section 204 of the Federal Power Act, or alternatively, that the Commission authorize the Company to enter into the transaction if the Commission concludes that approval under Section 204 is warranted.

The Company is incorporated under the laws of the State of Texas with its principal business office at El Paso, Texas, and is engaged in the electric utility business in the States of Texas and New Mexico in an area in the Rio Grande Valley extending approximately 110 miles northwesterly from El Paso to the Caballo Dam in New Mexico and 120 miles southeasterly from El Paso to Van Horn, Texas, with a population of approximately 480,000 of whom 356,000 reside in metropolitan El Paso.

The Company proposes to discontinue the direct purchase and storage of fuel oil inventory, which ties up substantial amounts of the Company's capital. Instead, the following arrangement is proposed:

(a) An independent trust (the "Trust") to be known as Big Bend Resources Trust will be established by Bradford Trust Company, a New York corporation, for the purpose of making payments to the supplier, Southern Union Oil Products Company, taking title to the fuel oil on delivery, paying the cost of transportating the fuel oil, holding the fuel oil in storage and selling it to the Company upon request. Bradford is to be creator of the Trust.

(b) The Company and the Trust will enter into a ten-year Fuel Supply Agreement under which the Trust will agree to make payments of the purchase price for fuel oil delivered and to pay the expenses related to the transportation thereof from point of delivery to the storage facilities.

(c) Under the Fuel Supply Agreement the Trust will agree to sell fuel oil to the Company upon request, and the Company will agree to purchase all of the fuel oil owned by the Trust at or prior to the termination of the Agreement on December 31, 1986. The Company will agree to pay a purchase price for the fuel oil equivalent to the Trust's costs related thereto. The Trust's costs will include the purchase price paid to the supplier, payments made in respect to transportation, administration expenses, taxes, fees of the Trustees and costs and expenses incurred under the credit arrangements between the Trust and the lenders. The purchase price to the Company will be calculated in terms of a price per barrel of fuel oil.

(d) The Trust will issue a ten-year note or notes to institutional investors in the amount of approximately $7,000,000 which will be placed by an investment banker. These funds, plus additional funds borrowed by the Trust from commercial banks, if needed, will be used to purchase the Company's present inventory currently valued at approximately $7,000,000. The Trust will purchase the Company's existing inventory at the Company's present book value. The Trust will obtain additional funds as required to finance future oil purchases by issuing time drafts which may be "accepted" by bank or group of banks (bankers acceptances). The Company will not guarantee the debt securities issued by the Trust.

(e) At the termination of the transaction on December 31, 1986, the Company will purchase the remainnig fuel oil held by the Trust at a price equal to the Trust's cost of such fuel oil plus any unamortized transaction costs.

(f) The Company and the Trust will also enter into an agreement pursuant to which the Company will grant to the Trust the irrevocable right to use the storage facilities of the Company cost free for the purpose of storing fuel oil delivered for the account of the Trust until such time as it is sold to the Company under the Fuel Supply Agreement.

(g) The Trust will appoint the Company as its Agent for the performance of all obligations required to be performed under the Fuel Supply Agreement other than paying the purchase price for the fuel oil, paying for its transportation, and holding the accompanying title thereto.

The Company states that the proposed arrangement is advantageous to it for the following reasons:

(1) It immediately frees up approximately $7 million for use by the Company;

(2) It provides a relatively inexpensive source of funds (possibly less than normal bank borrowings over a ten-year period) which is supplemental to other financings and need not impose upon existing lines of credit;

(3) It diminishes, by the amount of this financing, the necessity for the Company's line banks to provide funds under existing credit lines, which is attractive to both the Company and its banks; and

(4) It provides the Company with the flexibility to adjust fuel oil reserves upward or downward as required.

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, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2039 Filed 1-21-77;8:45 am]

[Docket No. RI77-15]

FRED W. SHIELD

Petition for Special Relief

JANUARY 11, 1977.

Take notice that on December 7, 1976, Fred W. Shield (Petitioner), Milam Building, San Antonio, Texas 78205, filed a petition for special relief in Docket No. RI77-15, seeking a rate increase from 37.6323 cents per Mcf to 51.72 under Order No. 481. The price increase is in consideration for the installation of compression facilities to serve the Heard Ranch Field, Bee County, Texas.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2026 Filed 1-21-77;8:45 am]

[Docket No. CP77-107]

GAS GATHERING CORP.

Application

JANUARY 11, 1977.

Take notice that on December 13, 1976,[1] Gas Gathering Corporation (Applicant), P.O. Box 519, Hammond, Louisiana 70401, filed in Docket No. CP77-107 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 5,000 Mcf of natural gas per day to Transcontinental Gas Pipe Line Corporation (Transco) for the account of Southern Natural Gas Company (Southern), for a period of one year from date of first delivery, 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 Southern pursuant to an agreement dated November 17, 1976, a maximum of 5,000 Mcf of gas per day, less shrinkage, purchased by Southern from American Quasar Petroleum Company of New Mexico and Southland Royalty Company. It is stated that such gas would be exclusively from American Quasar Petroleum Company's (Quasar) Grief Brothers' No. 1 Well, located in St. Martin Parish, Louisiana. Applicant asserts that it would transport such gas from the outlet of Southern's American Quasar meter to Transco's Sherbourne Meter Station located in Pointe Coupee Parish, Louisiana, on a pressure base of 15.025 psia and for a transportation charge of 4.0 cents per Mcf. It is further stated that for any shrinkage resulting from Applicant's processing exceeding 5.5 percent, Applicant would reimburse Southern for all shrinkage in excess of 5.5 percent at the rate at which Southern pays the producers for such gas.

Applicant states that Quasar has installed approximately one mile of two-inch pipeline to deliver such gas to Applicant's meter station, and the cost to Applicant of tieing in Quasar's delivery line would be less than $1,000.00.

It is asserted that in the event Southern commences deliveries of gas produced from the Quasar Well into its own pipeline facilities prior to the end of the 12-month term of said agreement, Southern would continue to pay Applicant the 4.0 cents per Mcf transportation charge based on actual daily volumes delivered from the Quasar Well as measured by Southern's Quasar meter, until the expiration of said 12-month term.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 4, 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.77-2001 Filed 1-21-77;8:45 am]

[1] The application was initially tendered for filing on December 13, 1976, however, the fee required by § 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until January 6, 1977; thus, filing was not completed until the latter date.

[Docket No. RP72-140 (PGA77-2)]

GREAT LAKES GAS TRANSMISSION CO.

Proposed Changes in PGA Gas Tariff

JANUARY 13, 1977.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on December 30, 1976, tendered for filing Twenty-Second Revised Sheet No. 57, to its FPC Gas Tariff, First Revised Volume No. 1, proposed to be effective February 15, 1977.

Great Lakes states that the cost of gas purchased from TransCanada Pipelines Limited, its sole supplier of natural gas, is reduced as a result of the recent decrease in the conversion rate between United States and Canadian currency.

Great Lakes also states that copies of this filing have been served upon its customers and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

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 28, 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. 77-2012 Filed 1-21-77;8:45 am]

[Docket No. ES77-8]

INTERSTATE POWER CO.

Application

JANUARY 11, 1977.

Take notice that on December 29, 1976, an application was filed with the Federal Power Commission pursuant to Section 204(a) of the Federal Power Act by Interstate Power Company (Applicant), seeking an order authorizing the issuance of not exceeding 200,000 additional shares of its presently authorized Common Stock, par value $3.50 per share, pursuant to its Employee and Stockholder Automatic Dividend Reinvestment and Stock Purchase Plan ("Plan").

Applicant is incorporated under the laws of the State of Delaware, with its principal business office in Dubuque, Iowa, and is engaged principally in the electric utility business in northern and northeastern Iowa, in southern Minnesota and a few small communities in Illinois.

Applicant proposes to issue and sell to its employees and stockholders a sufficient number of additional shares of its Common Stock to satisfy its obligations under the Plan.

The purpose of the Employee and Stockholder Dividend Reinvestment and Stock Purchase Plan is to provide employees and registered holders of shares of Common Stock with a convenient method of investing case dividends and/or optional payments of not less than $25 nor more than $3,000 per quarter in additional shares of Common Stock at a price equal to market value, without payment of any brokerage commission or service charge.

According to the application, the net proceeds to be received by the Applicant from the issuance and sale of the shares of the additional Common Stock will be used by the Applicant to discharge a portion of the indebtedness on short-term borrowings made by the Applicant which were used to pay for a portion of its construction program and for other corporate purposes.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 27, 1977, file with the Federal Power Commission, Washington, D.C., 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1998 Filed 1-21-77;8:45 am]

[Docket No. ES77-6]

IOWA POWER & LIGHT CO.

Application

JANUARY 11, 1977.

Take notice that on December 30, 1976, Iowa Power and Light Company (Applicant) filed an application with the Federal Power Commission for an order pursuant to Section 204(a) of the Federal Power Act authorizing the Applicant to enter into Loan Agreements to borrow the proceeds from the sale of, to provide for the payment of, Pollution Control Revenue Bonds to be issued by the City of Council Bluffs, Iowa; authorizing the proposed issuance of Additional First Mortgage Bonds and unsecured promissory notes by the Applicant to provide for the payment of such Pollution Control Revenue Bonds; authorizing the Applicant to execute and deliver letters to said City and underwriters to induce the issuance and sale of said Pollution Control Bonds; and exempting the transaction from the competitive bidding requirements of § 34.1(a) of the Commission's Regulations under the Federal Power Act.

The Applicant is an operating electric and gas utility, primarily engaged in the generation, transmission, distribution and sale at retail of electric energy and in purchase, distribution and sale at retail of natural gas in central and southwestern Iowa.

Applicant states that the First Mortgage Bonds and Notes are to be issued, and Loan Agreements are to be entered into and Inducement Letters are to be executed and delivered, in connection with the sales by the City of Council Bluffs, Iowa, of $18 million aggregate principal amount of its Series 1977–A and $1 million aggregate principal amount of its Series 1977–B Bonds. Pursuant to the Loan Agreements, the proceeds from the sale of the Series 1977–A and Series 1977–B Bonds will be borrowed by the Applicant to finance part of the cost of Applicant's undivided interest in certain pollution control facilities at Unit No. 3 of the Council Bluffs Power Station in Council Bluffs, Iowa.

Any person desiring to be heard or to make any protest with reference to the application should on or before January 28, 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 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 protestants parties to the proceedings. Persons wishing to become parties to a proceeding or to participate as a party in any hearing herein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1995 Filed 1-21-77;8:45 am]

[Docket No. E-9130]

IOWA PUBLIC SERVICE CO.

Application

JANUARY 13, 1977.

Take notice that on January 10, 1977, Iowa Public Service Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act seeking authority to issue $50 million of short-term unsecured promissory notes to commercial banks and commercial paper dealers. All proposed notes are to be issued on or before March 31, 1978 and will bear final maturity dates not later than March 31, 1979.

The application states that the bank notes will bear interest at the prime rate in effect at the lending bank at the date of each borrowing. The commercial paper, having maturities not to exceed nine months, will be sold directly to commercial paper dealers and will bear interest rates determined by the market conditions at the time of each borrowing. The aggregate amount of commercial paper outstanding at any one time will not exceed 25% of the Applicant's gross operating revenues for the twelve months ending December 31, 1976.

Applicant proposes to use the funds for construction or acquisition of permanent improvements, extensions and additions to Applicant's property and/or to pay off maturing short-term loans. Its estimated construction expenditures for the year 1977 are $96,600,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2005 Filed 1-21-77;8:45 am]

[Project No. 2640]

KANSAS CITY STAR CO.

Application for Use of Project Property

JANUARY 12, 1977.

Public notice is hereby given that application for approval of use of project property was filed on October 14, 1976, and supplemented on November 4, November 11, and November 16, 1976, under the Federal Power Act (16 U.S.C. 791a–825r) by The Kansas City Star Company, Flambeau Paper Division (correspondence to: Mr. Norman G. Hoefferle, President, The Flambeau Paper Company, Park Falls, Wisconsin 54552) for its constructed Upper Hydro-Electric Project, FPC No. 2640, located on the North Fork of the Flambeau River in the City of Park Falls, Price County, Wisconsin. The Licensee seeks permission to construct a fire access road, bridge, and blow tank along the west bank of the powerplant headrace, within the project boundary.

The access road would extend 230 feet along the canal and would require riprapping of that section of the canal bank. The bridge, 15 feet in width and 90 feet in length, would be supported over the water on bearing piles and would connect the access road with the blow tank. The blow tank would be built partly on shore and partly on sand and/or gravel fill placed behind sheet piling in the headrace. Maximum dimensions of the blow tank foundation and necessary working area would be 47 feet by 27 feet. The blow tank and access road would be integral portions of Licensee's proposed counter-current, pulp-washing installation, which is necessary in order to comply with the pollution abatement program ordered by the Wisconsin Department of Natural Resources (Permit No. 0003212) to meet the prescribed pol-

lution limits set by the United States Environmental Protection Agency by June 30, 1977. The effluent from the treatment plant will be discharged into the powerhouse intake just above the No. 1 water wheel by a pipeline about 388 feet long which will be located within the project boundary.

Applicant has requested the shortened procedures pursuant to § 1.32(b) of the Commission's Regulations under the Federal Power Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 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). 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. The application is on file with the Commission and is available for public inspection.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by Sections 308 and 309 of the Federal Power Act (16 U.S.C. 825g and 825h) and the Commission's Rules of Practice and procedure, specifically § 1.32(b), as amended by Order No. 518, a hearing may be held without further notice before the Commission on this application if no issue of substance is raised by any request to be heard, protest or petition filed subsequent to this notice within the time required herein. If an issue of substance is so raised, further notice of hearing will be given.

Under the shortened procedure herein provided for unless otherwise advised, it will be unnecessary for applicant or initial pleader to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2033 Filed 1-21-77;8:45 am]

[Docket No. E-9557]

LAC VIEUX DESERT RIPARIAN OWNERS ASSOCIATION, INC. v. WISCONSIN VALLEY IMPROVEMENT CO.

Public Hearing Session

JANUARY 13, 1977.

By letter issued December 17, 1976, the Federal Power Commission directed that a public hearing session be held in the vicinity of Lac Vieux Desert Reservoir of FPC Project No. 2113 for the purpose of receiving statements of position from interested members of the public regarding matters raised in the April 23, 1976 complaint filed by the Lac Vieux Desert Riparian Owners Association, Inc. against the Wisconsin Valley Improvement Company, Licensee for the Lac Vieux Desert Reservoir, said reservoir being located in Vilas County, Wisconsin and Gogebic County, Michigan and constituting the headwaters of the Wisconsin River.

In accordance with such direction, Commission staff counsel will convene a public session in the vicinity of the project at the Court House in Eagle River, Wisconsin beginning at 10:00 a.m., on March 24, 1977, and continuing thereafter until concluded so that members of the public, including parties to this proceeding, may be afforded an opportunity to state their views orally and in writing and to have their positions and statements considered along with the pleadings filed in this proceeding.

This proceeding was initiated when Complainant alleged (1) that Licensee's failure to draw down the water level of the reservoir in accordance with provisions of the license has caused riparian lands to be eroded, damaged, destroyed, or submerged by ice and waters of the reservoir; (2) that excessively high and fluctuating water levels maintained by Licensee have prevented the reproduction of wild rice, thus depriving the reservoir of nutrients and permitting an abnormal weed-growth; (3) that Licensee's operation of the lift-gate type dam of Lac Vieux Desert Reservoir annually causes a substantial kill-off of the fish population by trapping fish in the water escaping under high pressure from the gate at the foot of the dam; and (4) that Licensee has at times completely closed the lift-gate at the dam, thus permitting no water to pass into the Wisconsin River in violation of the rights of riparain owners below the dam.

By way of relief, Complainant requested that (1) Licensee be required to remove the existing lift-gate type dam and, in lieu thereof, construct a spill-way type dam and fish ladder; (2) that Licensee be required to maintain a constant, stabilized water level of 16.5 inches above 0.0 gage; (3) that future operation and maintenance of the dam be conducted under the direct supervision of a Federal officer for the protection of wildlife and riparian property; and (4) that, in the alternative, future operation and maintenance of the dam be conducted by the Federal Government.

In order to avoid possible confusion and to insure that all parties desiring to be heard are afforded the opportunity to state their positions, it is necessary that the following procedures be observed at the public session:

All those desiring to be heard, or wishing to submit written statements, should, prior to the convening of the session at 10:00 a.m., fill out cards or slips with their names, addresses, and organization, if any, and give such cards to the Commission staff counsel. Blank cards will be made available for that purpose at the entrance of the court room. Parties will be called in the order in which their cards are received.

When a party's name is called, he will please come forward, identify himself and give the reporter a copy of the written statement, if any. If an oral statement is to be given, kindly state your name, address, and organization, if any. In order to conserve time, it would be desirable in cases where a written statement is to be submitted, to confine oral remarks to substantive matters since the entire remarks will be reported in the transcript by the transcription of the written statements. The reporter is being directed to copy all written statements into the record as though read. The statements made at the public session will have the same effect and the same weight as if they were copied into the record. They do not constitute evidence and the parties giving statements will not be subject to cross-examination.

In the event that any party desiring to make a statement is unable to be present at the time his name is called, he may leave a copy of his statement with the reporter and such statement will be copied into the record as though read or presented orally. If for any reason any party desiring to be heard is unable to attend this public session in person, he may submit a written statement to be received no later than April 4, 1977, by the Secretary, Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 and such statement will be made a part of the record of the public session.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1985 Filed 1-21-77;8:45 am]

[Docket No. CP77-106]

MISSISSIPPI RIVER TRANSMISSION CORP.

Application

JANUARY 11, 1977.

Take notice that on December 22, 1976, Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP77-106 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 natural gas pipeline facilities and the sale of natural gas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Applicant requests authorization to construct and operate approximately 12.3 miles of 6-inch trunk pipeline running from a point in the Little Washita Area, Grady County, Oklahoma, to a point of connection with an existing 8-inch pipeline of Natural Gas Pipeline Company of America (Natural) in Grady County, Oklahoma. Applicant also requests authorization to sell natural gas to Natural in accordance with the provisions of a November 18, 1976, Gas Transportation and Sales Agreement between Natural and Applicant.

It is stated that Applicant would deliver gas from the Little Washita Area to Natural at a side tap to be installed by Natural on its 8-inch Chitwood pipeline in Grady County, Oklahoma. It is

further stated that the maximum volume of gas which Natural is obligated to receive at the point of receipt is 15,000 Mcf per day. Natural would redeliver to Applicant at an existing gas sales point in Clinton County, Illinois, or at Applicant's option, at an existing point of interconnection in Randolph County, Arkansas, seventy-five percent of the volumes of gas delivered by Applicant to Natural at the point of receipt in Grady County, Oklahoma, and the remaining twenty-five percent of the volumes would be sold to Natural. Applicant states that for the transportation service to be performed by Natural Applicant would pay Natural 15 cents per Mcf of gas redelivered. It is further stated that Applicant would sell to Natural twenty-five percent of the volumes delivered at the point of receipt of Grady County, Oklahoma, at a price equal to the product of the volume of such gas times the volume-weighted average purchase price per Mcf paid by Applicant for such gas. The estimated initial price which Applicant would charge for gas sold to Natural would be $1.54 per Mcf, it is said.

It is stated that the total estimated cost of the 6-inch trunkline and appurtenant facilities is $645,000. Applicant indicates that this cost would be financed initially from available funds and/or shortterm borrowings. Any gathering facilities required to be installed by Applicant in order to effectuate this proposal would be constructed under Applicant's budget-type authorization for gas purchase facilities, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 1, 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.77-2028 Filed 1-21-77;8:45 am]

[Docket No. RP72-149 (PGA77-4)]

MISSISSIPPI RIVER TRANSMISSION CORP.

Proposed Change in Rates

JANUARY 13, 1977.

Take notice that Mississippi River Transmission Corporation ("Mississippi") on December 27, 1976, submitted for filing Fifty-Third Revised Sheet No. 3A to its FPC Gas Tariff, First Revised Volume No. 1, to become effective February 1, 1977.

The instant filing is being made pursuant to the provisions of Mississippi's purchased gas cost adjustment clause to track a rate change filing of Trunkline Gas Company made pursuant to the terms of the PGA provisions of its tariff and the Advance Payment and Transportation Tracking provisions of its Agreement as to Rates and Related Matter at Docket No. RP74-89.

Mississippi submitted schedules containing computations supporting the rate changes to be effective February 1, 1977. Mississippi states that copies of its filing were served on Mississippi's jurisdictional customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission 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 28, 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 unless such petition has previously been filed. Copies of the filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1988 Filed 1-21-77;8:45 am]

[Docket No. CP75-154]

MONTANA-DAKOTA UTILITIES CO.

Amendment to Application

JANUARY 13, 1977.

Take notice that on December 27, 1976, Montana-Dakota Utilities Co. (Applicant), 400 North Fourth St., Bismarck, North Dakota 58501, filed in Docket No. CP75-154 an amendment to its pending application for a certificate of public convenience and necessity filed pursuant to Section 7(c) of the Natural Gas Act on November 20, 1974. The amendment requests a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in the state of Montana, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that in its application filed November 20, 1974, in the instant docket, it sought authorization to construct and modify certain facilities in Fallon, Wilbaux, Valley, Dawson, and McCone Counties, Montana, at an estimated cost of $6,830,000. Further, Applicants requested authorization to transport natural gas, by exchange, for Kansas-Nebraska Gas Company, Inc. (K-N). On July 3, 1975, the Commission granted Applicant temporary authorization for the transportation and exchange of natural with K-N. Applicant was not authorized to construct facilities nor were facilities required for receipt of initial, temporary volumes.

Applicant proposes in its amendment a revised construction program to be carried out in lieu of its original proposal in its application filed November 20, 1974. Applicant now proposes the following:

1. Construction and operation of two gas engine driven compressors (900 HP total) and related facilities at a new compressor station to be located in Sec. 22, T.25 N., R. 49 E., near Vida in McCone County, Montana.

2. Construction and operation of two additional gas engine driven compressors (1,080 HP total) and related facilities at the new Vida compressor station.

3. Construction and operation of two gas engine driven compressors (900 HP total) and related facilities at the existing Saco compressor station located in Valley County, Montana.

4. Uprating of three existing compressors including headers, piping and valves for 400 psig operation at the Saco compressor plant.

5. Uprating of the existing 8-inch transmission line from the Fort Peck compressor plant in Valley County, Montana, to Morgan Creek Junction in Dawson County, Montana, for 800 psig operation.

6. Uprating of the existing 10-inch and 8-inch parallel transmission lines between the Saco compressor plant and the Fort Peck compressor plant for 400 psig operation.

Applicant states that the new Vida compressor station would be constructed and the first two compressors (900 HP total) would be installed in 1977 and the remaining construction and improvements would be carried out in 1978. Applicant estimates that total cost its proposal would be $1,854,000 to be financed by funds generated internally and/or short-term bank notes.

Applicant states that the facilities proposed in the instant amendment would permit it to take an average of 10,000 Mcf of natural gas from K-N in the summer of 1977 and 12,000 Mcf in the winter of 1977 with the proposed Vida sta-

tion in operation. With all the facilities in operation in 1978 the capacity would be increased so as to allow for the receipt of an estimated average of 14,000 Mcf of gas from K–N in the summer and 17,000 Mcf of gas in a winter month. It is indicated that the gas purchased from and transported by exchange for K–N under the Commission's temporary authorization granted July 3, 1975, was from production developed by K–N in fields located in the Bowdoin area of Phillips and Valley Counties, Montana. Applicant states that the temporary authorization permitted and K–N to evaluate well production data so as to design better the facilities required for implementation of Applicant's commitment under a sale, transportation and exchange agreement entered into by it and K–N. It is indicated that the facilities proposed in the instant amendment would allow Applicant to conform to the intent of the agreement and at the same time be less expensive than those originally proposed.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 4, 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 persons 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. Persons who already have filed in the subject docket need not do so again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2004 Filed 1-21-77;8:45 am]

[Docket No. CP76-517]

NATURAL GAS PIPE LINE CO. OF AMERICA

Additional Storage Service

JANUARY 13, 1977.

On September 9, 1976, Natural Gas Pipe Line Company of America (Natural) filed an application in Docket No. CP76-517, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of transmission and storage facilities to enable Natural to provide an additional storage service to its customers under proposed new Rate Schedule LS–2. In order to provide its customers with additional flexibility in the operation of their systems and to enhance reliability of service to the ultimate consumer, Natural proposes to expand its storage fields in Iowa and Illinois to increase daily withdrawal capacity by 124,000 Mcf in order to provide the proposed new LS–2 service to its customers. A total of 100 days' top storage withdrawal will be available for the period beginning December 1 of each year and continuing through March 31, of the next year with the maximum available to each customer being a hundred times its contracted daily withdrawal quantity. To enable Natural to provide this lease storage service, Natural proposes to allocate from the existing entitlements of participating customers the following:

(1) 12,400,000 Mcf of top storage gas each year;
(2) 3,100 Mcf of fuel gas each year; and
(3) 24,000,800 Mcf of cushion gas for the first year of LS–2 service only.

The service agreements covering the LS–2 service would be for a period of 10 years commencing April 1, 1977, but would be cancellable on one year's notice by Natural if, in its judgment, the severity of curtailment on its system required it. Upon termination of the LS–2 service, cushion gas would be returned to Natural's customers. It is proposed that the LS–2 service would be offered to all customers, allocating the 124,000 Mcf per day among them prorata to their existing daily contract quantities under Rate Schedules DMQ–1 and G–1 and that the volumes not accepted would then be re-offered to those customers who did not elect to participate in the LS–2 storage service until the total volume is contracted.

In addition, Natural requested that the inventory limitations of the storage fields, imposed as conditions to certificate authorization, heretofore issued, be increased to designated levels set forth in the application. Natural also proposes to construct and operate several additional small gathering lines in order to connect injection-withdrawal wells and other miscellaneous facilities—all such construction and operation as outlined in the application.

The estimated cost of these facilities, excluding cushion gas which will be provided by the participating customers, is approximately $23,575,000. Pursuant to § 2.55(a) of the Commission's General Policy and Interpretations, Natural also proposes to construct and operate six observation wells, dehydration units and other miscellaneous facilities at a cost of approximately $1,609,000. It is indicated that these costs would be financed with funds obtained from interim and permanent financing.

This application was noticed on September 22, 1976, (41 FR 43,464 (October 1, 1976)). General Motors Corporation (GM) filed a protest, petition to intervene and request for hearing on October 15, 1976. Petitions for leave to intervene in support of Natural's application were filed by several of Natural's customers planning to participate in the proposed new storage service, Peoples Gas Light and Coke Company (Peoples), North Shore Gas Company (North Shore), Iowa-Illinois Gas and Electric Company, and Iowa Power and Light Company (Iowa). Petitions to intervene out-of-time were filed by Iowa Electric Light and Power Company, Interstate Power Company, and the City of Chicago. On November 1, Peoples and North Shore jointly and Natural filed answers in opposition to GM's petition to intervene.

In order to reflect a minor modification in the facilities and provide additional information, Natural filed an amendment to its initial application on November 18, 1976. Subsequently on December 9, 1976, Natural filed a request for a temporary certificate to commence construction and operation of the facilities to provide the LS–2 service prior to March 15, 1977. Natural alleged that an emergency exists in that if temporary authorization is not granted, the currently available supply from Peoples' SNG plant may be diverted to a lower priority summer interruptible market. Information subsequently received by our staff indicates that this supply may not be available. We therefore find that it would be more appropriate to review the question of whether temporary authorization should be granted, in March, 1977 when the amount of available supply is ascertainable.

We find these proceedings should be set for hearing. GM's pleadings raise the issue of whether a pipeline, which is presently curtailing its firm customers, should be permitted to increase its storage capacity from storage to meet the additional demands of its distributor customers resulting from their attachment of new high-priority customers. We believe that this question should be explored at a hearing. While the Commission has consistently required pipelines to husband existing supplies of gas through the use of storage and has favored the development of new storage projects to assist pipelines in meeting existing peak day requirements, the question of whether pipelines should be permitted to increase storage to meet the demands of new high-priority customers has not been resolved. If gas supplies continue to decline, then all increased storage capability will ultimately be needed to meet the demands of existing customers. However, if growth occurs in the interim, the new customers will be assigned to the appropriate curtailment priorities with existing customers and curtailed proportionately. This could lead to a situation where other existing high-priority users, such as industrial feedstock consumers, are curtailed significantly in advance of the date that they would otherwise be curtailed because a pipeline has used its expanded storage capability to permit its distributors to add new residential and small commercial customers.

Because growth is a factor in these proceedings, we believe the hearing established below should address the question of whether Natural should be permitted to increase its storage capability to satisfy additional demands represented by growth and, if the question is answered negatively, what conditions should be attached to any permanent certificates issued in these proceedings to prohibit such use. Thus, the hearing prescribed in these consolidated proceedings is to develop a record regarding the following issues:

i. How is the public convenience and necessity advanced by the construction and operation of these proposed facilities?

ii. What customers and which markets will be served if the proposed facilities are constructed?

iii. What effect would the construction and operation of the proposed facilities have on existing customers?

iv. Who should pay the cost of the proposed facilities and service?

v. Describe the impact of diverting additional gas supplies to storage during the summer period on existing customers.

vi. Will any existing customers of Natural receive less gas on an annual and peak day basis as a result of the proposed facilities?

vii. If new customers are proposed to be served, identify these customers and their peak day and annual requirements according to the priorities prescribed in 18 C.F.R. § 2.78(a)(1).

viii. Does the continued addition of new customers advance the public interest?

ix. What conditions, if any, should be attached to the permanent certificates, if any, issued in these proceedings?

The responses to these issues should give consideration to the Commission's determination in Northern Natural Gas Company, Opinion No. 773, — F.P.C. — (August 13, 1976), wherein we stated (id. at 2–3):

> In general, we agree with the conclusion of the Administrative Law Judge, that a pipeline presently curtailing existing customers should not be authorized to attach new customers regardless of the priority of use to which the new customers would put any natural gas which they receive. In the absence of some compelling public interest consideration, existing customers should not be cut off in order that new customers may receive service who had never previously received natural gas deliveries. In addition we agree with the Judge that the de minimis nature of the proposed new service cannot be controlling since one de minimis approval after another can accumulate to the point where there is a substantial effect on the other customers of the pipeline. We further agree with the Judge that the availability of alternate fuels is not controlling where the customers' facilities for using gas or other fuels have not yet even been installed and no determination on either an absolute or economic basis can be made.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that a public hearing be held on the matters involved and the issues presented in these proceedings as hereinbefore described.

(2) Participation in these proceedings by aforementioned intervenors may be in the public interest. Permitting the filing of the late petitions to intervene will not delay the proceedings and may be in the public interest.

The Commission orders:

(A) The proceedings in Docket No. CP76–517 are hereby set for hearing and disposition.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5 and 15 thereof, the Commission's Rules of Practice and Procedure (18 CFR Part 1, and the Regulations under the Natural Gas Act (18 CFR Chapter I, Subchapter E), a prehearing conference shall be held on March 7, 1977, commencing at 10:00 a.m. in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, to discuss procedural issues and the clarification of issues.

(C) An 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 preside at the prehearing conference in this proceeding, with authority to establish and change all procedural dates, and to rule on all motions (with the sole exception of petitions to intervene, motions to consolidate and sever, and motions to dismiss), as provided for in the Rules of Practice and Procedure.

(D) The direct case of Natural, including testimony on the issues raised by this order, shall be filed and served on all parties, the Presiding Administrative Law Judge, and the Commission Staff on or before February 4, 1977. All supporting intervenors shall file testimony and exhibits comprising their cases in chief on or before February 18, 1977.

(E) The above-mentioned intervenors are permitted to intervene in the instant consolidated proceeding subject to the rules and regulations of the Commission: *Provided, however,* That participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions to intervene; and *Provided, further,* That the admission of such intervenors shal not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in the proceeding.

(F) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1984 Filed 1-21-77;8:45 am]

[Docket No. CP74-134]

NATURAL GAS PIPELINE CO. OF AMERICA

Petition to Amend

JANUARY 11, 1977.

Take notice that on December 27, 1976, Natural Gas Pipeline Company of America (Petitioner), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP74–134 a petition to amend the Commission's order issued pursuant to Section 7(c) of the Natural Gas Act on May 29, 1975 (53 FPC——), in the instant docket so as to authorize the operation of three additional exchange points and an increase in maximum daily exchange volumes in accordance with the gas exchange agreement dated June 29, 1973, as amended, between Petitioner and Northern Natural Gas Company (Northern), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that on May 29, 1975, the Commission authorized the exchange of up to 2,000 Mcf of natural gas per day between Petitioner and Northern at two exchange points, one in Wheeler County, Texas, and one in Carson County, Texas. It is also stated that the Commission in a temporary certificate issued April 8, 1976, permitted the exchange of gas at additional exchange points in Hansford County, Texas, and Beaver County, Oklahoma.

Petitioner proposes, pursuant to a further amendment dated September 9, 1976, to the subject Gas Exchange Agreement, to:

(1) Add a new exchange point (Kirtley Exchange Point) in Beckham County, Oklahoma, for deliveries to Petitioner from Northern from the Kirtley Well.

(2) Add a new exchange point for deliveries from Northern to Petitioner, if required to eliminate an imbalance of exchange volumes owed to Petitioner, at a mutually agreeable point in Carson County, Texas (Carson Exchange Point No. 2).

(3) Add a new exchange point in Woodward County, Oklahoma (Stricker Exchange Point), for deliveries to Northern from Petitioner from the Stricker Well.

(4) Increase maximum daily volumes for exchange from 2,000 Mcf per day to 5,000 Mcf per day.

Petitioner states that it has requested authorization in Docket No. CP76–528 to construct a tap connection on its pipeline in Beckham County, Oklahoma, to effectuate a transportation service for Panhandle Eastern Pipe Line Company, which point would be utilized as an exchange point with Northern (Kirtley Exchange Point). It further states that any facilities required at the proposed Stricker and Carson No. 2 Exchange Points would be constructed under Petitioner's currently effective Gas Purchase Facilities Budget Authorization.

It is asserted that the amended agreement between Petitioner and Northern is mutually beneficial in that it continues to provide a means for each party to connect remote sources of gas supply into their respective systems while obviating the necessity to construct and operate extensive and/or duplicate facilities otherwise required if they were to proceed independently. Petitioner further states that the exchange would have no effect on any of the other sales or services it now renders nor would there by any change in its operation.

Any person desiring to be heard or to make any protest with reference to said petition to amend 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1990 Filed 1-21-77;8:45 am]

[Docket No. CP77-111]

NATURAL GAS PIPELINE CO. OF AMERICA

Application

JANUARY 12, 1977.

Take notice that on December 28, 1976, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP77-111 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of a new delivery point to take natural gas from Colorado Interstate Gas Company (CIG) and the construction and operation of facilities necessary therefor, 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 and CIG have entered into a letter agreement, dated November 22, 1976, whereby a new delivery point for gas from CIG to Applicant, to be designated CIG's Willis Meter Station, would be established in Sec. 3, Camp County School Survey, Wheeler County, Texas. CIG would deliver up to 20,000 Mcf of natural gas per day to Applicant at the new point. Applicant states that deliveries would be made under CIG's effective Rate Schedule F-1 and that, therefore, Applicant would receive no additional volumes of gas from CIG than presently are authorized and contracted for.

Applicant proposes to construct and operate a 6-inch tap connection on its existing 12-inch pipeline in Wheeler County. The estimated cost of construction is $11,600 which would be reimbursed to Applicant by CIG. Applicant indicates that the new delivery point is required to allow CIG to deliver gas purchased by CIG from production in the Lott Area of Wheeler County.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 1, 1977, filed 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 reveiw of the matter finds that a grant of the certficate 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.77-1982 Filed 1-21-77;8:45 am]

[Project No. 2266]

NEVADA IRRIGATION DISTRICT

Application for Amendment of License

JANUARY 12, 1977.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Nevada Irrigation District (correspondence to: Albert W. Scurr, General Manager, Nevada Irrigation District, P.O. Box 1019, Grass Valley, California 95945; and David Minasian, Esq., Minasian, Minasian, Minasian, Spruance and Baber, Attorneys at Law, P.O. Box 1679, Oroville, California 95965) for amendment of license for Project No. 2266, known as the Yuba-Bear Hydroelectric Project located on the Middle and South Yuba and Bear Rivers and their tributaries in Sierra, Nevada and Placer Counties, California.

By its application, Nevada Irrigation District proposes to construct a powerhouse adjacent to its existing Rollins Reservoir dam licensed as part of the Yuba-Bear Hydroelectric Project. The 50-foot by 44.5-foot outdoor type powerhouse would contain one generating unit with an installed capacity of 11,000 kW. A 9-foot diameter penstock approximately 500 feet long would be constructed in an existing tunnel beneath the dam. A substation would be constructed adjacent to the powerhouse to provide power to Pacific Gas and Electric Company's transmission system.

Any person desiring to be heard or to make any protest with reference to said application, should on or before February 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). 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. The application is on file with the Commission and is available for public inspection.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by Sections 308 and 309 of the Federal Power Act (16 U.S.C. 825g, 825h) and the Commission's Rules of Practice and Procedure, specifically § 1.32(b) (18 CFR 1.32(b)) as amended by Order No. 518, a hearing may be held without further notice before the Commission on this application if no issue of substance is raised by any request to be heard, protest or petition filed subsequent to this notice within the time required herein and if the applicant or initial pleader requests that the shortened procedure of 1.32(b) be used. If an issue of substance is raised or applicant or initial pleader fails to request the shortened procedure further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant or initial pleader to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2035 Filed 1-21-77;8:45 am]

[Docket No. ER77-130]

NEW ENGLAND POWER CO.

Filing

JANUARY 12, 1977.

Take notice that on January 3, 1977, New England Power Company (NEPCO) tendered for filing a proposed rate schedule for 11 Transmission Contracts between NEPCO and Montaup Electric Company, Newport Electric Corporation, Town of Danvers, Mass., Town of Marblehead, Mass., Town of Middleborough, Mass., Town of Middleton, Mass., City of Peabody, Mass., Town of Shrewsbury, Mass., Town of Wakefield, Mass., Inhabitants of the Town of Boylston, Mass., and Town of West Boylston, Mass. (Receivers), respectively.

The Transmission Contracts provide for transmission by NEPCO across its system of Receivers' purchases from Maine Electric Power Company (MEPCO) of various entitlements to the power MEPCO receives under a Unit Participation Agreement dated November 15, 1971, between New Brunswick Electric Power Commission and MEPCO.

NEPCO requests waiver of the notice requirements so as to permit the Transmission Contracts to become effective as of May 24, 1976, in accordance with their terms. NEPCO states that a copy of this

filing was mailed to the parties to the Transmission Contracts.

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, DC 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 24, 1977. Protest 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.77-1977 Filed 1-21-77;8:45 am]

[Docket No. ER77-135]

NIAGARA MOHAWK POWER CORP.

Cancellation

JANUARY 12, 1977.

Take notice that Niagara Mohawk Power Corporation, on January 5, 1977, tendered for filing proposed changes in its FPC Electric Service Tariff, No. 94. The proposed change is the cancellation of the transmission agreement between Niagara Mohawk Power Corporation and Consolidated Edison Company of New York, Inc. for the transmission of up to 150 Mw of power from Niagara Mohawk Power Corporation's transmission connections with Rochester Gas and Electric Corporation and Niagara Mohawk Power Corporation's transmission interconnections with Consolidated Edison Company of New York, Inc.'s Pleasant Valley Substation.

The transmission agreement between Niagara Mohawk Power Corporation and Consolidated Edison Company of New York, Inc. was effective October 26, 1975 and terminated October 30, 1976.

Copies of the filing were served upon Consolidated Edison Company of New York, Inc.

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 31, 1977. Protests will be considered 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.77-1978 Filed 1-21-77;8:45 am]

[Docket No. CP77-99]

NORTHERN NATURAL GAS CO.

Application

JANUARY 11, 1977.

Take notice that on December 17, 1976, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska, filed in Docket No. CP77-99 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 a new 2,100 horsepower compressor station (Stevens County No. 5) and 6.1 miles of 16-inch pipeline to connect such station to Applicant's existing Stevens County No. 1 gathering system in Stevens County, Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that the proposed compressor station would compress gas produced from 39 wells in Applicant's Hugoton System, which are presently connected via Applicant's 14-inch and 16-inch gathering lines to the suction side of Stevens County No. 1 compressor where recent declines in the flowing wellhead pressure require the lowering of the gathering line pressure to enable Applicant to maintain production volumes from these wells. Applicant states that the proposed Stevens County No. 5 gathering compressor station would permit a subsystem delivery capability of 32,000 Mcf per day and would result in a total delivery of 1,069,000 Mcf per day at the discharge of existing field service compressor facilities located at Stevens County No. 1.

Applicant proposes to construct and operate two 1,050 horsepower compressor units and 6.1 miles of 16-inch pipeline at an estimated cost of $2,740,000. Applicant states that if the additional horsepower is not available during the 1977-78 heating season, its wintertime deliverability would be reduced approximately 17,000 Mcf per day, which volumes cannot be made up from other sources of supply, and there would be an even greater reduction in deliverability during the 1978-79 heating season.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 31, 1977, filed 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.77-1997 Filed 1-21-77;8:45 am]

[Docket No. ER77-96]

NORTHERN STATES POWER CO. (WISCONSIN)

Tariff Change

JANUARY 12, 1977.

Take notice that Northern States Power Company (Wisconsin) on December 6, 1976, tendered for filing proposed changes in its FPC Electric Service Tariff FPC Rate Schedule No. 42, Supplement No. 5. The proposed changes are requested to alter its agreement with the Village of Cadott, Wisconsin, and are proposed to be effective as of January 1, 1977.

This Agreement was renegotiated at this time to recognize the change in delivery voltage from 2,400 volts to 4,160 volts at the request of the Village of Cadott.

Copies of the filing were served upon the Village of Cadott.

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 31, 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.77-2031 Filed 1-21-77;8:45 am]

[Docket No. CP73-332]

NORTHWEST PIPELINE CORP.

Petition To Amend

JANUARY 11, 1977.

Take notice that on December 23, 1976, Northwest Pipeline Corporation (Peti-

tioner), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP73-332 a petition to amend the Commission's orders issued pursuant to Section 7(c) of the Natural Gas Act on September 9, 1976 (56 FPC ——), December 17, 1976 (56 FPC ——), and February 26, 1975 (54 FPC ——), in the instant docket so as to 1) excise Docket No. CP73-332 from the orders issued September 9, 1976, and December 17, 1976, and 2) amend the pricing conditions of the order issued February 26, 1975, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that the Commission affirmed an Initial Decision, with modification, approving the short-term import from Canada of additional natural gas volumes from Westcoast Transmission Company Limited (Westcoast), up to 55,000 Mcf per day, in Docket No. CP73-332, at an average border price ranging from $1.61 to $1.91 per Mcf over the life of the contract, subject to certain carrying costs and currency exchange rates. It is further stated that Westcoast's Export License GL-41 was amended October 8, 1974, to permit the exemption of these short-term, emergency gas purchases from the general pricing provisions affecting Canadian natural gas exports, continuing even with the increase of the Canadian border price from $1.00 per Mcf to $1.40 and $1.60 per Mcf. Petitioner asserts that the National Energy Board (NEB), by Order No. AO-11-GL-41, revoked the previous pricing exemption and made Petitioner's subject gas volumes subject to the general border prices of $1.80 per Mcf effective September 10, 1976, and $1.94 per Mcf effective January 1, 1977, and the Commission by its orders of September 9, 1976, and December 17, 1976, approved such increases.

Petitioner further states that the border price exemption was reinstated by NEB in its Order of October 21, 1976, for gas authorized to be imported by Petitioner under the 1974 Temporary Agreement. It is indicated that said order required that the amount paid Pan-Alberta Gas Ltd. (Pan-Alberta) would be the amount provided in the Temporary Agreement adjusted by an additional amount of 14.07 cents and 23.109 cents per million Btu's, effective October 1, 1976, and January 1, 1977, respectively. It is stated that Pan-Alberta has agreed that in view of this provision, and the fact that it was unable to deliver full contract quantities during the 1975-76 heating season, that it would reduce its other charges to Westcoast, which are passed on to Petitioner, to the extent required so that the total amount due Pan-Alberta and Westcoast over the term of the 1974 Temporary Agreement would not exceed $1.91 per Mcf, assuming that the full volumes are delivered for the period October 1, 1976, through April 1, 1977.

Petitioner states that although Pan-Alberta has agreed to limit Petitioner's costs to $1.91 per Mcf based on full contract deliveries from October 1, 1976, through the term of the Agreement, Petitioner was unable to take full contract volumes during October 1976, which resulted from the fact that gas may be imported under the 1974 Temporary Agreement only to the extent that Westcoast cannot deliver, from its own gas supply sources in British Columbia, the full contract volumes at Sumas, Washington, under its GL-41 export authorization. It is stated that Westcoast had a gas supply available in excess of Petitioner's requirements at the Sumas import point during certain days in October and, therefore, Petitioner was unable to import the full volumes available under the 1974 Temporary Agreement, and as a result Petitioner estimates the average cost of all volumes of gas actually imported for the term of the 1974 Temporary Agreement would be $1.96 per Mcf if full deliveries can be taken during the remaining months of the term. The Petitioner states that if it was unable to take gas for an additional 15 days, the unit cost would increase to $2.05 per Mcf, and since it is impossible to predict with certainty the volumes that will be imported, Petitioner requests an order from the Commission allowing it to pay up to $2.05 per Mcf in lieu of the previously authorized $1.91 per Mcf of gas.

Accordingly, Petitioner requests the aforementioned orders be amended and that Petitioner be authorized to continue to import gas under the 1974 Temporary Agreement at an average culminative price of up to $2.05 per Mcf. Further, Petitioner requests that said authorization be effective September 10, 1976.

Any person desiring to be heard or to make any protest with reference to said petition to amend 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1996 Filed 1-21-77;8:45 am]

[Docket Nos. E-8999 and E-9000, E-9001]

ORANGE & ROCKLAND UTILITIES, INC. AND ROCKLAND ELECTRIC CO.

Electric Rates: Settlement

JANUARY 10, 1977.

On November 24, 1976, Orange and Rockland Utilities, Inc. (Orange and Rockland) and Rockland Electric Company (Rockland Electric) filed a Settlement Agreement (Agreement). For the reason set forth below, the Commission approves the Agreement which effectively terminates this proceeding.

Proceedings were initiated on August 30, 1974, when Orange and Rockland tendered for filing proposed amendments to its contract with its wholly-owned subsidiary, Pike County Light and Power Company (Pike County) in Docket No. E-8999 and amendments to its contract with its other wholly-owned subsidiary Rockland Electric in Docket No. E-9000. Orange and Rockland's contracts with Pike County and Rockland Electric cover its wholesale sales to those subsidiaries and are filed with the Commission as rate schedules. The proposals included a request to change the return on equity to 14 percent, a request that the rate of return be automatically adjusted as of the end of the preceding year to reflect changes in embedded cost of debt and preferred stock capital, and a request to change the method of computing working capital.

On the same date, Rockland Electric filed a fuel adjustment clause and an increase in its rates to its wholesale customer, the Board of Public Works in the Borough of Park Ridge (Park Ridge) in Docket No. E-9001. The requested effective date in all cases was November 1, 1974, except in Docket No. E-9001 for which an effective date of October 1, 1974, was requested subsequent to the August 30 filing.

By order issued on September 27, 1974, the Commission accepted and suspended the proposed rates in Docket Nos. E-8999 and E-9000 for one day, permitted them to go into effect on November 2, 1974, subject to refund, ordered a hearing, and consolidated the two dockets for the purpose of hearing and decision. By order issued in Docket No. E-9001 on the same date, the Commission permitted the intervention of Park Ridge and the Public Advocate of the State of New Jersey, Division of Rate Counsel (the Public Advocate), accepted and suspended the proposed rates, permitting them to become effective on November 15, 1974, but refused to permit the proposed fuel adjustment clause to become effective because it reflected the total cost of economy purchases, rather than merely the fuel component thereof, and ordered a hearing.

By order issued on October 25, 1974, the Commission denied a Rockland Electric request in E-9001 for a shortened suspension period and accepted for filing Rockland Electric's revised fuel adjustment clause which was permitted to become effective on November 1, 1974, without suspension and not subject to refund. By order issued on December 2, 1974, the Commission granted a request filed by Park Ridge that a limited examination of the lawfulness of the proposed fuel adjustment clause be included at the hearing.

On February 7, 1975, the Commission ordered consolidation of the three proceedings, permitting Park Ridge and the Public Advocate to intervene in Docket Nos. E-8999 and E-9000. By order of October 14, 1975, the Commission ordered Rockland Electric to refund to

Park Ridge the amounts attributable to inclusion of construction work in progress in the rate base.

Hearings before an Administrative Law Judge were held on August 26 and October 8, 1975. On July 19, 1976, an Initial Decision in the combined proceeding was issued.

Public notice of the filing on November 24, 1976, of the proposed Settlement Agreement was issued on November 30, 1976, with comments due by December 14, 1976. On December 14, 1976, the Commission Staff filed comments supporting the Agreement. No other comments were received.

Based on our review of the Settlement Agreement and record in these proceedings, we conclude that the Agreement represents a reasonable resolution of the issues in the proceedings in the public interest, and that the settlement should be approved accordingly.

The Commission finds: The Settlement Agreement filed in this docket on November 24, 1976, should be approved and made effective, as hereinafter ordered.

The Commission orders: (A) the Settlement Agreement filed with the Commission in this proceeding on November 24, 1976 is incorporated herein by reference, accepted and approved.

(B) Within 30 days of the date of issuance of this order, Orange and Rockland and Rockland Electric shall file revised tariff sheets to effectuate the provisions of the Agreement and upon acceptance by the Commisison of the filing of the revised tariff sheets, Orange and Rockland and Rockland Electric shall make refunds to Park Ridge, as a lump sum payment, of all amounts collected in excess of the settlement rates provided for in the Agreement and approved herein. Said refunds shall be made in accordance with the terms of the Agreement and shall bear interest at the rate of 9 percent per annum.

(C) Within 15 days after refunds are made, Orange and Rockland and Rockland Electric shall file a refund report with the Commission, shall serve a copy thereof upon all affected customers, and shall furnish a copy to each State Commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

Such report shall show monthly billing determinants and revenues under prior, present and settlement rates; the monthly settlement rate increase; the monthly refund; and the monthly interest computation together with a summary of such information for the total refund period.

(D) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, or any party or person affected by this order in any proceeding now pending or hereafter instituted by or against Orange and Rockland and Rockland Electric or any other person or party.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1992 Filed 1-21-77;8:45 am]

[Docket No. CP74-160, etc.]

PACIFIC INDONESIA LNG CO.

Amendment

JANUARY 12, 1977.

Take notice that on December 21, 1976, Pacific Indonesia LNG Company (Applicant), 720 West Eight Street, Los Angeles, California 90017, filed in Docket No. CP74-160, et al., an amendment to its pending applications in Docket Nos. CP 74-160 and CP74-207 pursuant to sections 3 and 7(c) of the Natural Gas Act so as to authorize the sale of regassified LNG to Pacific Gas and Electric Company (PG&E) and Southern California Gas Company (SoCal), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is stated that on September 30, 1973, Applicant filed an application in Docket No. CP74-160 requesting authorization pursuant to section 3 of the Natural Gas Act to import LNG from the Republic of Indonesia. It is further stated that on February 15, 1974, Applicant filed an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate facilities necessary to receive, store and regasify the LNG and to sell the resultant natural gas to SoCal for resale. It is stated that on March 31, 1975, Applicant in Docket Nos. CP74-160 and CP74-207, filed amendments to its pending applications which reflected: (1) A change in the purchase price of the LNG; and (2) The fact that Applicant no longer would construct or operate facilities for the receipt, storage and regasification of LNG or for its delivery to SoCal. On September 17, 1974, as supplemented on March 31, 1975, Western LNG Terminal Company (Western Terminal), an affiliate of Applicant, filed an application in Docket No. CP75-83 pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate facilities at Oxnard, California, for the receipt, storage, and regasification of the LNG to be imported by Applicant and for the delivery of the resultant natural gas to SoCal for Applicant's account, it is said.

By the subject amendment Applicant seeks authorization to sell 50 percent of its available resultant natural gas to SoCal and 50 percent to PG&E pursuant to the Agreement among Applicant, PG&E and SoCal dated January 27, 1976. It is stated that SoCal and PG&E would purchase such gas totaling approximately 190,000,000 Mcf per year for a term equivalent to that of Applicant's contracted term of LNG purchase. It is further stated that no additional facilities are required as a result of the January 27, 1976, agreement and that existing interconnections are sufficient to move PG&E's share of the gas to PG&E's system either through delivery or exchange of equivalent volumes.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 1, 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. Persons who have heretofore filed need not do so again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1979 Filed 1-21-77;8:45 am]

[Docket No. CP77-113]

PANHANDLE EASTERN PIPE LINE CO.

Application

JANUARY 12, 1977.

Take notice that on December 30, 1976, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP77-113 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 35 Mcf of natural gas per day on an interruptible basis for Cabot Corporation (Cabot), and the exchange and transportation of up to 30 Mcf of gas with Cities Service Gas Company (Cities) for the account of Cabot, for a period of two years from the date of first delivery, 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 Cabot, pursuant to an agreement dated May 11, 1976, up to 35 Mcf per day from Cabot's No. 2-34 Barby Ranch Unit Well in Beaver County, Oklahoma, and up to 30 Mcf of gas per day from Cities, for the account of Cabot, from an existing point of interconnection of the facilities of Applicant and Cities located in Grant County, Kansas.

It is asserted that Applicant would redeliver such gas to Cabot's Satellite Division plant located in Kokomo, Indiana, an existing direct industrial customer of Kokomo Gas and Fuel Company (Kokomo), who in turn is an existing resale customer of Applicant, at an existing point of delivery between Kokomo and Applicant, and to Cabot's Cab-O-Sil plant an existing direct industrial cus-

tomer of Applicant located near Tuscola, Illinois, at an existing point of delivery to Cabot in Douglas County, Illinois.

Applicant, it is stated, would redeliver the stated volumes less 10 percent reduction for fuel usage, and Cabot would pay Applicant a monthly charge of $442.00, subject to an upward or downward adjustment of 22.36 cents per Mcf to be applied to any deficiency or excess in volumes transported.

Applicant states that the exchange of gas with Cities is pursuant to an exchange agreement dated July 20, 1976, which agreement provides no reimbursement other than the exchange of gas volumes between parties.

It is stated that Cabot's Cab-O-Sil plant anticipates an approximate curtailment of 26 percent over the next twelve months, and Cabot has advised Applicant that the gas to be transported is to be used as Category 2 process gas for the manufacturing of a water repellent compound manufactured through silicone dioxide combustion. It is further stated that Applicant's deliveries to Kokomo are being curtailed by 30 percent because of a gas supply deficiency, and short-term emergency supplementary supplies can no longer be relied upon by Kokomo. Said gas, it is stated, is required for use as a Category 2 process gas for the manufacturing of high performance alloys.

Applicant states that its facilities are adequate to handle the volumes to be transported for Cabot, and that no new facilities are required to perform this transportation and exchange service.

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.77-1981 Filed 1-21-77;8:45 am]

[Docket No. ER77-131]

PORTLAND GENERAL ELECTRIC CO.

Rate Filing

JANUARY 12, 1977.

Take notice that Portland General Electric Company (PGE) on January 3, 1977, tendered for filing in accordance with section 35 of the Commission's regulations a Rate Schedule designated ICP Service Rate Schedule PGE-1 which provides for sale of non-firm energy to utilities that are parties to the Intercompany Pool Agreement (Revised), dated September 1, 1973, or to other utilities.

This Tariff applies to deliveries of non-firm energy at such time and in such amounts as PGE, in its sole discretion, makes available. PGE states that the Tariff is intended to achieve fuel-saving and cost benefits between PGE and any interested purchasers.

Copies of this filing were served upon the Public Utility Commissioner of Oregon and the following potential purchasers: Pacific Power & Light Company, Puget Sound Power & Light Company, The Washington Water Power Company, The Montana Power Company, Idaho Power Company, Utah Power Company, Pacific Gas and Electric Company, and Southern California Edison Company.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 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 25, 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.77-2037 Filed 1-21-77;8:45 am]

[Docket No. ER76-505]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

Settlement Agreement

JANUARY 13, 1977.

Take notice that on January 6, 1977, Public Service Company of New Hampshire (PSNH) filed a Revised Settlement Agreement in the referenced proceeding. PSNH states that the Revised Settlement Agreement resolves all issues in this docket. PSNH filed also a motion to withdraw a proposed partial settlement agreement certified to the Commission on November 3, 1976. The Revised Settlement Agreement, according PSNH, produces a revenue increase of $3,861,474 on a 1976 test year basis.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before February 4, 1977. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2003 Filed 1-21-77;8:45 am]

[Docket No. RP75-84]

SOUTHERN NATURAL GAS CO.

Order Approving Rate Settlement

JANUARY 11, 1977.

On November 9, 1976, the Presiding Administrative Law Judge certified to the Commission a proposed settlement agreement in the above-entitled proceeding together with the entire record relating thereto. The settlement, if approved, would resolve all issues in the proceeding except those pertaining to advance payments, which are reserved for hearing and formal decision. For the reasons stated below, the settlement agreement shall be approved.

This proceeding was initiated on March 31, 1975, when Southern Natural Gas Company (Southern) tendered for filing a proposed general rate increase amounting to approximately $91.1 million annually based on costs and sales volumes for calendar year 1974, as adjusted. On May 15, 1975, the Commission by order suspended Southern's proposed increase for five months, following which it became effective, subject to refund, on October 16, 1975. In accordance with conditions contained in the suspension order, Southern submitted revised rates purporting to reflect the "United"[1] method of cost classification for purposes of rate design, and reducing the amount of the proposed rate increase from $91.1 to $65.2 million annually. The settlement agreement would allow an increase in Southern's of $32.7 million, representing a further reduction of $32.5 million from the restated rates claimed by Southern.

Notice of the settlement agreement was issued on November 16, 1976, providing for comments by interested parties to be submitted on or before November 30, 1976. No comments opposing the settlement have been received.

The settlement rates and refunds are predicated upon the settlement cost of

[1] United Gas Pipe Line Company, Opinion No. 671, (50-FPC 1348).

service set forth on Appendix C of the settlement agreement. The settlement cost of service includes a rate of return of 10.08 percent on Southern's net investment rate base and a return of 12.75 percent on common equity. The settlement cost of service and rate of return appear reasonable and are approved.

The settlement provides for two sets of rates, as shown on Appendices A and B of the settlement. The Appendix B rates are to be effective from October 16, 1975, through July 15, 1976. The Appendix A rates are to be effective commencing July 16, 1976. The differences between the appendix A and B rates are due to changes in Southern's cost of gas, the elimination of the depletion allowance, and the surcharge to recover demand charge credits.

Other important provisions of the settlement agreement are as follows:

Article IV provides for functional depreciation rates to be utilized by Southern of 3.85 percent for onshore transmission plant, 4.25 percent for underground storage, and 7.35 percent for gas supply transmission and gathering facilities. The settlement depreciation rates cannot be changed prior to October 16, 1977.

Article V provides for additional refunds if Southern's total sales for the 12 month period ending September 30, 1977, exceed the test period sales or if sales to Southern's direct customers and rate schedule "AO" customers exceed the test period sum of sales to these customers.

Article VI prescribes the procedures for hearing and decision on the reserved advance payments issues. These issues shall be disposed of as a result of the hearings held before the Presiding Judge on October 28, 1976.

Article VII provides that for the period November 28, 1975, through December 31, 1977, Southern shall give demand charge credits to its rate schedule "OCD" and "OCDL" customers to the extent requirements within contract demand are curtailed. In addition, Southern shall recover the credits given through a surcharge to its commodity rate under its "OCD", "OCDL", "AO", and "AOL" rate schedules. The surcharge will be computed by dividing the credits given by the sum of the sales under the "CD" and "AO" rate schedules and Southern's direct sales. Southern's small general service customers will not be liable for any recovery of demand charge credits. The computations will be made every six months to coincide with Southern's PGA rate adjustments.

Article VIII of the settlement permits Southern to recover carrying charges of 9 percent per annum on unrecovered purchased gas costs, and requires interest of 9 percent on credit balances in the deferred purchased gas cost account. Southern is limited to semi-annual PGA filings to be effective January 1 and July 1 of each year. The carrying charge provision is subject to the Commission's final determination of this issue in Docket No. R-406 and is proposed to be effective on the date of the Commission's order approving the settlement or December 1, 1976, whichever is sooner.

Based upon a review of the entire record of this proceeding, including the settlement agreement, and the evidence, pleadings, and other materials submitted by the parties, the Commission finds the settlement agreement represents a reasonable resolution of the issues in this proceeding in the public interest, and that the agreement should accordingly be approve and adopted.

The Commission finds. It is in the public interest and in carying out the provisions of the Natural Gas Act that the proposed settlement agreement be approved and adopted as hereinafter ordered.

The Commisison orders: (A) the settlement agreement certified to the Commission on November 9, 1976, in this proceeding, is incorporated herein by reference and is approved and adopted.

(B) Proposed § 17.4(3) of Southern's tariff is approved to be effective as of December 1, 1976.

(C) Within 15 days of the issuance of this order, Southern shall file revised tariff sheets in accordance with the terms of the settlement agreement and of this order.

(D) Within 30 days from the date of this order, Southern shall make refunds to its customers pursuant to the settlement, and shall submit a report thereof to the Commission.

(E) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, the staff or any other party or person affected by this order in any proceeding now pending or hereinafter instituted by or against Southern or any other person or party.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1989 Filed 1-21-77;8:45 am]

[Docket No. CP76-16]

TENNECO LNG, INC.

Extension of Time

JANUARY 11, 1977.

On December 29, 1976, Tenneco LNG, Inc., filed a motion to extend the time for filing comments on Staff's Draft Environmental Impact Statement, in the above-designated proceeding. The motion states that Staff has no objection to the requested extension.

Upon consideration, notice is hereby given that the time for filing comments is extended to and including February 14, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2030 Filed 1-21-77;8:45 am]

[Docket No. CI76-753]

TENNECO OIL CO.

Application for Ontional Procedural Certification

JANUARY 13, 1977.

Take notice that on November 18, 1976, Tenneco Oil Company (Tenneco Oil) filed an amendment to its September 3, 1976 application for a certificate of public convenience and necessity filed pursuant to § 2.56a of the Commission's General Policy and Interpretations. Tenneco Oil requests certification under § 2.75 for natural gas from Eugene Island Block 367, offshore Louisiana, at an initial rate of $2.8037 per Mcf with escalations of 5 cents per Mcf at the end of each contract year.

The subject gas will be produced by Tenneco Exploration, Ltd. and Tenneco Exploration II, Ltd. and sold to Tenneco Oil for resale to Tennessee Gas Pipeline Company, less one-fourth (¼), which amount Tenneco Oil proposes to transport onshore for its own uses.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 7, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2002 Filed 1-21-77;8:45 a.m.]

[Docket No. E-9578]

TEXAS POWER & LIGHT CO.

Petition to Institute Investigation to Determine Jurisdiction

JANUARY 11, 1977.

Take notice that on December 22, 1976, Tex-La Electric Cooperative, Inc. (Tex-La) tendered for filing a petition requesting the Commission to investigate to determine whether rates for electric power sales for resale of Texas Power and Light Company are subject to the jurisdiction of the Commission.

The cooperative states that a copy of this petition was hand-delivered to the Vice-President of Texas Power and Light Company.

Any person desiring to be heard or to protest said petition 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 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1994 Filed 1-21-77;8:45 am]

[Docket No. CP76-107]

TRANSWESTERN PIPELINE CO.

Petition to Amend

JANUARY 12, 1977.

Take notice that on December 27, 1976, Transwestern Pipeline Company (Petitioner), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP76-107 a petition to amend the Commission's order issued pursuant to section 7(c) of the Natural Gas Act on April 2, 1976 (55 FPC), as amended on November 3, 1976 (56 FPC), in the instant docket so as to authorize the transportation of gas for Pacific Interstate Transmission Company (Pacific Interstate) from three additional wells, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it was authorized by the Commission's order issued April 2, 1976, to transport natural gas in interstate commerce for the account of Pacific Interstate, which gas Pacific Interstate is purchasing from Pacific Lighting Gas Development Company (PLGD) and is selling to its sole customer, Pacific Lighting Service Company (Service Company). It is stated that the Commission in its order issued November 3, 1976, authorized the transportation of gas by Petitioner to Service Company for the account of Pacific Interstate from four additional wells in Petitioner's supply area.

Petitioner states that it has entered into an agreement with Pacific Interstate to further amend the Transportation Agreement between them dated September 29, 1975, so as to include the transportation of gas from three additional wells to Service Company for the account of Pacific Interstate, and requests authorization for this transportation service. It is stated that Pacific Interstate would purchase such natural gas from PLGD from the following wells:

(1) The Nash No. 3 Well, Eddy County, New Mexico;

(2) The O. R. Tipps No. 1 Well, Roberts County, Texas;

(3) The University "21-2" No. 1 Well, Winkler County, Texas.

It is stated that Petitioner would transport the gas described herein through its existing main line system and would deliver it to Service Company at an existing interconnection between the two companies' systems at the Arizona-California border near Needles, California; hence, no new facilities are required. It is further stated that the proposed transportation service would be rendered in accordance with Petitioner's Rate Schedule TP-1, and Petitioner is still obligated to transport on a best-efforts basis no more than 25,000 Dth of gas per day as stated in the Transportation Agreement dated September 29, 1975.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 1, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1980 Filed 1-21-77;8:45 am]

[Docket No. ER77-132]

UNION ELECTRIC CO.

Filing of Boundary Line Agreement

JANUARY 12, 1977.

Take notice that on January 3, 1977, Union Electric Company (Union) tendered for filing a new Boundary Line Agreement dated December 20, 1976, between the City of Farmington, Mo. and Union. Said Agreement modifies rate and termination provisions under the existing agreement dated December 5, 1960. It raises the rate for energy delivered from 1.25¢ to 2.12¢ per kilowatt hour.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 31, 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 available for public inspection at the Federal Power Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2036 Filed 1-21-77;8:45 am]

[Docket No. ER77-137]

UNION ELECTRIC CO.

Filing of Revisions to Interchange Agreement

JANUARY 13, 1977.

Take notice that on January 7, 1977, Union Electric Company (Union) tendered for filing an Amendment and revised Schedule II to the Interchange Agreement dated November 1, 1967 between Kansas City Power & Light Company and Union. Said changes add "Excess Energy" to the Interchange Agreement and revise certain rates under such agreement.

The rates provided for in revised Schedule II are identical to rates accepted for filing by the Commission as supplement No. 10 to Union's Rate Schedule FPC No. 67 (Docket No. ER76-667).

Copies of the Amendment and revised Schedule II have been sent to Kansas City Power & Light Company, Kansas City, Missouri, and to the Missouri Public Service Commission, Jefferson City, Missouri.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.3 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 28, 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 available for public inspection at the Federal Power Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2006 Filed 1-21-77;8:45 am]

[Docket No. CP77-95]

UNITED GAS PIPE LINE CO. AND MID LOUISIANA GAS CO.

Application

JANUARY 11, 1977.

Take notice that on December 17, 1976, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, and Mid Louisiana Gas Company (Mid Louisiana), 300 Poydras Street, New Orleans, Louisiana 70130, filed a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the relocation of an existing exchange point of United's Baton Rouge-New Orleans pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that United and Mid Louisiana presently exchange gas in accord-

ance with an Exchange Agreement between them dated March 26, 1968, as amended, filed as United's Rate Schedule X-24 and Mid Louisiana's Rate Schedule X-3. United and Mid Louisiana propose, by letter agreement dated September 22, 1976, to amend further the Exchange Agreement to provide for relocation of the Inniswold Plantation exchange point from its present location at Mile Post 10.84 on United's Baton Rouge-New Orleans 18-inch Main Line to Mile Post 15.42 on the same line. United states that it is willing to relocate this exchange point and to maintain the maximum daily delivery obligation of 1,000 Mcf.

It is asserted that relocation of such delivery point would involve the movement of a meter station owned by Mid Louisiana from Mile Post 10.84 to Mile Post 15.42. United, it is further stated, would relocate said facilities and Mid Louisiana would reimburse United for its costs incurred in such relocation.

Relocation of the exchange point, it is stated, would assist Mid Louisiana in the maintenance of pressures required to serve the distributor in the area, Gulf Station Utilities Company, by placing the exchange point approximately 4.6 miles nearer the center of the Inniswold Plantation system load.

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.77-1999 Filed 1-21-77;8:45 am]

[Docket No. CP77-110]

UNITED GAS PIPE LINE CO.

Application

JANUARY 11, 1977.

Take notice that on December 27, 1976, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP77-110 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon approximately 2.0 miles of 6-inch pipeline located in Angelina County, Texas, by sale to Entex, Inc. (Entex), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to abandon 2.0 miles of pipeline connecting the Lufkin Town Border Station No. 1 with Applicant's Waskom-Goodrich 22-inch main line. It is indicated that Applicant owns a parallel 8-inch line which is adequate to maintain service between its main line and the town border station. Applicant would sell subject facilities to Entex for $14,000. It is further indicated that as partial consideration for the purchase of the pipeline, Entex would operate and maintain, on behalf of and at no cost to Applicant, an odorizing unit to be installed by Applicant on Applicant's 8-inch line which runs parallel to the subject pipeline. It is stated that Entex would be able to utilize the subject pipeline as part of its gas distribution system.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 1, 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.77-2000 Filed 1-21-77;8:45 am]

[Docket No. ER77-129]

VIRGINIA ELECTRIC AND POWER CO.

Tendered Revised Contract Supplements

JANUARY 12, 1977.

Take notice that on December 30, 1976, Virginia Electric and Power Company (VEPCO), tendered for filing revised supplements to contracts between VEPCO and Community Electric Cooperative. VEPCO states that the revised contract supplements correct certain items to reflect changes made in the past at various delivery points as set forth below:

Delivery point	Present FPC No.	Proposed FPC No.	Item corrected
Blackcreek	77-12	77-29	5(2), 5(3)
Capron	77-16	77-30	5(2), 5(3)
Courtland	77-15	77-31	5(3)
Lummis	77-11	77-32	5(3)
Pagan	77-20	77-33	5(3)
Sadlers	77-21	77-34	5(3)
Windsor	77-14	77-35	4, 5(2), 5(3)

VEPCO states that the revised contract supplements are intended to supersede the listed FPC Rate Schedules and requests that the revised supplements be allowed to become effective on December 1, 1976, the requested effective date.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 26, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8, 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 to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2032 Filed 1-21-77;8:45 am]

[Docket No. ER76-150]

WISCONSIN PUBLIC SERVICE CORP.

Order Approving Settlement

JANUARY 10, 1977.

On September 25, 1975, Wisconsin Public Service Corporation (WPS) submitted for filing changes in its FPC Electric Tariff Rate for electric service to eight municipal customers. WPS subse-

quently completed its filing on November 21, 1975. The proposed rates would increase revenues from jurisdictional sales by $1,186,277 based on a twelve month test period ending August 31, 1976.

By order issued December 19, 1975, the Commission accepted WPS's filing and suspended the proposed rates until February 22, 1976, subject to refund. As a result of settlement negotiations between WPS and its wholesale customers, an uncontested agreement was reached, which was submitted to the Commission on October 1, 1976, with revised rate schedules intended to reflect the terms of the proposed agreement.

Based on our review of the record in these proceedings, including the settlement agreement itself, we conclude that the settlement agreement represents a reasonable resolution of the issues in the proceeding in the public interest, and that accordingly the settlement should be approved.

The Commission finds: The settlement agreement submitted to the Commission in this docket should be approved and made effective, as hereinafter ordered.

The Commission orders: (A) The settlement agreement submitted to the Commission in this docket on October 1, 1976, is incorporated herein by reference, accepted and approved.

(B) The revised tariff sheets submitted to the Commission in this docket on October 1, 1976, concurrently with the settlement agreement, are hereby accepted for filing to become effective in conformity with the terms of the agreement approved herein.

(C) Within 30 days from the date of issuance of this order, WPS shall refund all amounts collected in excess of the settlement rates with interest at 9 percent per annum.

(D) Within 15 days after refunds are made, WPS shall file a refund report with the Commission, shall serve a copy thereof upon all affected customers, and shall furnish a copy to each State Commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail. Such report shall show monthly billing determinants and revenues under prior, present and settlement rates; the monthly settlement rate increase; the monthly refund; and the monthly interest computation together with a summary of such information for the total refund period.

(E) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, or any party or person affected by this order in any proceeding now pending or hereafter instituted by or against WPC or any other person or party.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-1993 Filed 1-21-77;8:45 am]

[Project No. 2113]

WISCONSIN VALLEY IMPROVEMENT CO.

Application for Change in Land Rights

JANUARY 13, 1977.

Public notice is hereby given that an application for change in land rights was filed on September 27, 1976, under the Federal Power Act (16 U.S.C. 791a–825r) by the Wisconsin Valley Improvement Company (Correspondence to: Mr. L. L. Sheerar, Secretary, Wisconsin Valley Improvement Company, 501 Jefferson Street, Box 988, Wausau, Wisconsin 54401) for the Big Eau Pleine Reservoir of Project No. 2113, said reservoir being located in Marathon County, Wisconsin on the Wisconsin River, a navigable waterway of the United States.

Wisconsin Valley Improvement Company, Licensee for Project No. 2113, proposes to convey a 60-foot strip of land (approximately 0.80 acre) in Bergen Township to Marathon County so that the County Highway Department may realign the approaches to the existing Moon Bridge, thereby improving a site where numerous traffic accidents have occurred.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 23, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

Take further notice, that, pursuant to the authority contained in and conferred upon the Federal Power Commission by sections 308 and 309 of the Federal Power Act (16 U.S.C. 825g, 825h) and the Commission's rules of practice and procedure, specifically § 1.32(b) (18 CFR 1.32(b)), as amended by Order No. 518, a hearing may be held without further notice before the Commission on this application if no issue of substance is raised by any request to be heard, protest or petition filed subsequent to this notice within the time required herein, and if the applicant requests that the shortened procedure of § 1.32(b) be used. If an issue of substance is so raised or applicant fails to request the shortened procedure, further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2014 Filed 1-21-77;8:45 am]

[Docket No. CP76-138]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Petition to Amend

JANUARY 19, 1977.

Take notice that on January 14, 1977, Transcontinental Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP76-138 a petition to amend the Commission's order of December 22, 1975, issued in the instant docket 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) so as to authorize the addition of one Cannon Mills Company (Cannon) facility in Maiden, North Carolina, to the existing transportation arrangement, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it is presently authorized to transport up to 1,500 Mcf of natural gas per day on an interruptible basis for Cannon to Public Service Company of North Carolina, Inc. (Public Service), a resale customer of Petitioner, for use in two Cannon facilities in North Carolina. It stated that Petitioner collects as initial charge of 22.0 cents per Mcf for all quantities transported and delivered to Public Service for Cannon's account and retains 3.8 percent of the volumes received for transportation to Public Service as makeup for compressor fuel and line loss.

Petitioner by its petition to amend requests authorization to add an additional Cannon facility in Maiden, North Carolina, to be served under the transportation arrangement authorized by the Commission order of December 22, 1975, pursuant to Petitioner's Rate Schedule X-81. It is stated that the Maiden, North Carolina, facility would be served from the same 1,500 Mcf of gas per day presently authorized to be transported. Deliveries would be made by Petitioner to Piedmont Natural Gas Company (Piedmont), an existing customer of Petitioner under Rate Schedule CD-2. It is

indicated that a transportation agreement among Petitioner, Piedmont, and Cannon would be entered into in the near future and the deliveries by Petitioner to Piedmont would be made at existing delivery points to Piedmont.

The petition to amend indicates that Cannon requires at its Maiden facility 73 Mcf of gas on an average day and 135 Mcf of gas on a peak day. The gas would be used to resin treat fabric and in bulking operations. These are said to be process applications which require precise temperature control and a clean burning fuel.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 3, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2319 Filed 1-19-77;3:53 pm]

FEDERAL RESERVE SYSTEM

BANCORPORATION OF WISCONSIN

Formation of Bank Holding Company

Bancorporation of Wisconsin, West Allis, Wisconsin, 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 West Allis State Bank, West Allis, Wisconsin and Southwest Bank, New Berlin, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 10, 1977.

Board of Governors of the Federal Reserve System, January 17 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2094 Filed 1-21-77;8:45 a.m.]

MOUNTAIN FINANCIAL SERVICES, INC.

Order Approving Acquisition of Bank and Engaging in Insurance Agency Activities

Mountain Financial Services, Inc., Denver, Colorado, 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. Section 1842(a)(3)) to acquire 98 per cent or more of the voting shares of Southeast State Bank, Denver, Colorado ("Bank"). Applicant has also applied, pursuant to Section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. Section 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to engage de novo in the sale as agent of credit life, credit accident and health insurance directly related to extensions of credit by Bank. Such activities have been determined by the Board to be closely related to banking (12 CFR 225.4(a)(9)).

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with Sections 3 and 4 of the Act. The time for filing comments and views has expired, and the Board has considered the applications together with all comments received, in light of the factors set forth in Section 3(c) of the Act, and the considerations specified in Section 4(c)(8) of the Act.

Applicant presently controls only one bank subsidiary, located in the Denver banking market[1] (the relevant market), with aggregate deposits of approximately $5.1 million.[2] Applicant is among the smaller banking organizations in Colorado. Acquisition of Bank (deposits of $3.8 million) would result in Applicant's controlling 0.11 per cent of total commercial bank deposits in the State. Accordingly, acquisition of Bank would not have a significant effect upon the concentration of banking resources in Colorado.

Bank ranks 51st out of the 54 banking organizations competing in the Denver market, with 0.1 per cent of total deposits in commercial banks in the market. As indicated above, Applicant is represented in the Denver banking market; however, upon consummation of the subject proposal Applicant will rank only 42nd in the Denver market, and will control only 0.2 per cent of market deposits. It is the Board's view that consummation of the proposal would not have any significant adverse effect on existing competition in view of the relevant sizes of these organizations and their small market shares; furthermore, no significant future competition would be eliminated by approval of this application. Accordingly, on the basis of the facts of record, the Board concludes that competitive considerations are consistent with approval.

The financial and managerial resources and future prospects of Applicant, its subsidiary bank, and Bank are satisfactory. As a result of consummation of this proposal, Bank's financial and managerial resources and future prospects will be somewhat strengthened. Accordingly, considerations relating to banking factors are consistent with approval of the application. Considerations relating to convenience and needs are also regarded as being consistent with approval of the application to acquire Bank. Accordingly, it is the Board's judgment that the proposed acquisition of Bank would be in the public interest and the application should be approved.

In connection with the application to acquire Bank, Applicant has also applied, pursuant to § 225.4(a)(9)(ii)(a) of Regulation Y, to engage de novo in the sale as agent of credit life and credit accident and health insurance directly related to extensions of credit by Bank. Approval of the application to engage in such activities would insure a convenient source of credit related insurance services to Bank's customers. It does not appear that Applicant's engaging in such activities would have any significant adverse effect on existing or potential competition. Furthermore, there is no evidence in the record indicating that consummation of the approval would result in any undue concentration of resources, unfair competition, conflicts of interests, unsound banking practices, or other adverse effects on the public interest.

Based upon the foregoing and other considerations reflected in the record, the Board has determined, in accordance with the provisions of section 4(c)(8), that consummation of this proposal can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, and the application to engage in the above-described insurance activities should be approved.

Accordingly, the applications are approved for the reasons summarized above. The acquisition of Bank shall not be made before the thirtieth calendar day following the effective date of this Order. The acquisition of Bank and commencement of credit related insurance activities shall be made not later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Kansas City pursuant to delegated authority. The determination as to Applicant's insurance activities is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require reports by, and make examinations of, holding companies and their subsidiaries and to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

By order of the Board of Governors,[3] effective January 14, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[1] The Denver market is approximated by Adams, Arapahoe, Denver, and Jefferson Counties and the Broomfield portion of Boulder County.

[2] All banking data are as of December 31, 1975.

[3] Voting for this action: Vice Chairman Gardner and Governors Wallich, Coldwell, Partee and Lilly. Absent and not voting: Chairman Burns and Governor Jackson.

[FR Doc. 77-2095 Filed 1-21-77;8:45 am]

SEILON, INC.

Order Denying Retention of Additional Shares of Bank Holding Company

Seilon, Inc., Toledo, Ohio, 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 5509 voting shares (approximately .42 per cent) of Nevada National Bancorporation, Reno, Nevada ("NNB"), a one-bank holding company that controls Nevada National Bank, Reno, Nevada ("Bank").[1]

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 submitted by 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)).

Seilon currently owns 39.4 per cent of the voting shares of NNB, a one-bank holding company that owns 100 per cent of the voting shares (less directors' qualifying shares) of Bank.[2] Bank (deposits of $192.6 million) is the fourth largest of eight commercial banking organizations in Nevada and through its 24 banking offices, controls approximately 10.2 per cent of the total deposits held by commercial banks in that State.[3] Inasmuch as Seilon's proposal involves the retention of voting shares of a bank holding company that it already controls, the proposed retention would eliminate neither existing nor potential competition, and would not increase the concentration of banking resources in any relevant area. Therefore, competitive considerations are consistent with approval of the application.

The Board has indicated on previous occasions that it believes a bank holding company should constitute a source of both financial and managerial strength to its subsidiary bank(s). Accordingly, in acting upon any application under the Act, the Board will closely examine the financial condition, managerial resources, and future prospects of an applicant and its subsidiary bank(s) with these factors in mind. Based upon an evaluation of such factors with respect to this application the Board has determined that denial of this application is warranted.

With respect to the financial resources and future prospects associated with this application, the Board notes the continued existence of some of the same concerns that it expressed in its Order of July 20, 1972, denying Seilon's application to acquire up to an additional 63.5 per cent of NNB.[4] In this regard, Seilon's overall financial condition still does not permit it to be a source of financial strength to Bank. Rather, based upon an examination of all the facts of record, the Board concludes that Seilon, through NNB, has sought to improve its overall financial condition at the expense of Bank through liberal dividends drawn from Bank. It appears that such a continued program could hinder Bank's financial condition. Therefore, the Board concludes that banking factors weigh against approval of this application.

With respect to the managerial resources associated with this application, the Board is concerned, as it was in its denial Order in 1972, with absentee management of the nature involved in Seilon's structure. Furthermore, as the Board has previously indicated, the reference to "managerial resources" does not refer solely to the business abilities of management or to its past financial success or failure but also to management's disposition to conduct the affairs of the bank holding company in accordance with the requirements of law.[5]

Section 3(a)(3) of the Act states that it shall be unlawful, except with the prior approval of the Board "for any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than 5 per centum of the voting shares of such bank. * * *"

It appears from the facts of record in this case that Seilon, without prior Board approval, acquired 5,509 voting shares of NNB that are the subject of this retention application in settlement of a lawsuit threatened by two shareholders of NNB. These voting shares were acquired, at a cost of $52,500, in three installments over a one-year period.[6] It appears that at the time of the acquisition in question, Seilon was fully aware of the Act's requirement of prior Board approval. Despite this knowledge, and without any obligation to do so, Seilon acquired the 5,509 voting shares of NNB. In its application, Seilon has stated that:

> We were familiar as our application in 1971 [to acquire an additional 63.5 per cent of the voting shares of NNB] indicates that tender offers or market purchases of First Bancorporation [now known as NNB] common stock by Seilon required the prior approval of the Federal Reserve System. We were not aware that the . . . Act went so far as to prohibit management from exercising its responsibilities in the resolution of litigation by requiring the prior approval of the Federal Reserve where the acquisition of a miniscule number of shares is a part of a larger settlement of litigation problem.

In assessing the managerial resources of an applicant the Board must consider all the factors that bear upon the management's competence, quality, and disposition to conduct in accordance with the requirements of law the affairs of any bank holding company seeking to acquire, or to retain, control of a bank or of any other bank holding company. The Board previously has stated that when it comes to the Board's attention that an acquisition has been made, or activities have been commenced, without the requisite prior approval of the Board, whether or not such violation of the law appears to have been "willful," such conduct may reflect so adversely upon the managerial factors in connection with an application for permission to retain the illegally acquired shares or activity that the conduct, in and of itself, constitutes grounds for denial of such an application.

Section 3(a) of the Act is explicit that prior Board approval is required for *any* acquisition by a company of voting shares of a bank in which it owns less than a majority interest if, thereafter, that company will own or control more than 5 per cent of the bank's voting shares. While the Board recognizes that Seilon was desirous of avoiding potential legal expenses in the defense of a threatened lawsuit, the Board notes that the two shareholders involved were shareholders of NNB and not of Seilon and that Seilon was not obligated to acquire the shares in question. In view of the fact that Seilon was fully aware of the Act's requirement of prior Board approval in 1972 when it sought to acquire 63.5 per cent of NNB's voting shares; that

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[1] Formerly known as First Bancorporation.

[2] Seilon became a bank holding company on December 31, 1970, by virtue of its ownership of 36.5 per cent of the voting shares of NNB and the 1970 Amendments to the Act. Seilon engages, through its subsidiaries, in various activities including banking and personal property leasing. In addition, it engages in manufacturing, selling, and distributing agricultural machinery in the United States and abroad, which activities are impermissible for bank holding companies and must be divested by December 31, 1980 pursuant to § 4(a)(2) of the Act.

[3] All banking data are as of December 31, 1975, unless otherwise indicated.

[4] 37 F.R. 15052 (1972); 58 Federal Reserve *Bulletin* 729 (August 1972).

[5] See the Board's order dated July 29, 1976, denying the application by Florida National Banks of Florida, Inc., Jacksonville, Florida, to acquire Citizens Bank of Bunnell, Bunnell, Florida. 41 F.R. 33334 (1976); 1976 Federal Reserve Bulletin 696. As originally enacted, section 3(c)(3) of the Bank Holding Company Act provided that among the factors to be considered by the Board is the "character of [the] management." Also see Senate Report No. 1095, 84th Cong., 1st Sess., at page 10, accompanying the 1956 Act. The present § 3(c) of the Act includes the same standard without any substantive change in its meaning having been made by the 1966 Amendments to the Act that brought this section into harmony with the Bank Merger Act. The Federal Home Loan Bank Board has had occasion in a similar context to consider the scope of the "managerial resources" standard as contained in that section of the National Housing Act dealing with savings and loan holding companies. (12 U.S.C. § 1730a(e)(2)). The Bank Board concluded that its standard was adopted from the Bank Holding Company Act and that the phrase "managerial resources" encompasses considerations relating to the integrity of management. Opinion and Order of the Federal Home Loan Bank Board in the matter of the Joint Applications of Fidelity Financial Corporation and Fidelity Savings and Loan Association, Sacramento, California, and Six Rivers Savings and Loan Association, Eureka, California (Resolution No. 73-1772, December 7, 1973), at page 20.

[6] The shares were purchased as follows: 2,369 shares on November 1, 1973; 1,570 shares on May 1, 1974; and 1,570 shares on November 1, 1974.

the Board had issued an order in 1972 denying Seilon's previous application because of less than satisfactory financial and managerial considerations at that time; and that Seilon was unable to substantiate its position that acquisitions of small amounts of shares in settlement of threatened lawsuits were exempt from the Act's prior approval requirements; the Board concludes that insofar as this application is concerned the management of Seilon has not demonstrated a disposition to conform the conduct of Seilon's affairs to the requirements of the Act. As was mentioned earlier, section 3(a) of the Act is explicit as to acquisitions of voting shares for which prior Board approval is required. When an acquisition of voting shares is made without obtaining such prior Board approval, under circumstances such as those presented here, the Board believes that it should not approve an application to retain the illegally acquired shares and, thereby, allow the offending party to reap the fruits of its violation.

There is evidence in the record that the convenience and needs of the community are currently being adequately served by Bank. Therefore, within the context of this application, these considerations are not sufficient to outweigh the adverse managerial and banking factors associated with this proposal. Accordingly, it is the Board's judgment that approval of the application would not be in the public interest and that the application should be denied.

On the basis of the record, and in light of the factors set forth in § 3(c) of the Act, the application is denied for the reasons summarized above. Seilon is hereby ordered to take all necessary steps to divest the 5,509 voting shares of NNB that were illegally acquired by Seilon no later than thirty days after the effective date of this order.

By order of the Board of Governors,[1] effective January 14, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2096 Filed 1-21-77;8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on January 13, 1977. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FEA request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before February 11, 1977, and should be addressed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5033, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL ENERGY ADMINISTRATION

FEA is requesting clearance of Form U516-S-1, State Energy Conservation Plan Report. Form U516-S-1 is a revision of Form U516-S-0, Application Form for Financial Assistance to States for Development of a State Energy Conservation Plan. The Energy Policy and Conservation Act, Title III, Part C (Pub. L. 94-163) signed into law on December 22, 1975, requires in part, for the creation of the State Energy Conservation Program and authorizes financial and technical assistance to participating States. Form U516-S-1 is required for States to receive Federal financial assistance in implementing a State energy conservation plan report. Section 362(b) of EPCA requires that within six months after its enactment, FEA establish State energy conservation plan guidelines for the preparation of a State energy conservation plan report. The application form (U516-S-1) for providing financial assistance to the States is a necessary part of the State plan report as the States will use this form to provide FEA with a detailed State energy conservation plan report. The State Energy Conservation Plan Report guidelines must be completed within five months after the guidelines are printed. Form U516-S-1, State Energy Conservation Plan Report (adapted from Standard Form 424, Federal Assistance, consisting of four parts) has been revised in that Part IV has been modified to satisfy FEA's requirements for more definitive information and unnecessary information has been blocked out in Part III, Budget Information. Potential respondents to Form U516-S-1 are estimated by FEA to be approximately 56 (United States and Territories) and reporting burden is estimated to be 120 hours per response.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc.77-2088 Filed 1-21-77;8:45 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs.; Temporary Reg. F-410]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in an electric and gas rulemaking proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d)(40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Hawaii Public Utilities Commission (Docket No. 2793) in proceedings involving an investigation of rate schedules of electric and gas utilities in the State of Hawaii.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

WALLACE H. ROBINSON, Jr.,
Acting Administrator of General Services.

JANUARY 11, 1977.

[FR Doc.77-2062 Filed 1-21-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Services Administration

CALIFORNIA PSRO AREA XXIII: RESULTS OF NOTIFICATION

Notice to Physicians Regarding Agreement To Designate Professional Standards Review Organizaiton

On November 23, 1976, the Secretary of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with the California PSRO Area XXIII designating it as the Professional Standards Review Organization for PSRO Area XXIII of the State of California, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.7.

Such notice was also published in three consecutive issues of the *Los Angeles Times* on November 23, 24, and 25, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area XXIII of the State of California of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area

[1] Voting for this action: Vice Chairman Gardner and Governors Wallich, Coldwell, Jackson, and Partee. Absent and not voting: Chairman Burns and Governor Lilly.

XXIII of the State of California who objects to the Secretary entering into an agreement with the California PSRO Area XXIII on the grounds that such organization is not representative of doctors in PSRO Area XXIII of the State of California, mail such objection in writing to the Secretary, Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022 on or before December 23, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area XXIII of the State of California, the Secretary has determined, pursuant to 42 CFR 101.105, that not more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area XXIII of the State of California have expressed timely objection to the Secretary entering into an agreement with the California PSRO Area XXIII. Therefore, the Secretary will proceed to enter into an agreement with the California PSRO Area XXIII designating it as the Professional Standards Review Organization for PSRO Area XXIII of the State of California.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2246 Filed 1-21-77;8:45 am]

NEW YORK PSRO AREA XIV: RESULTS OF NOTIFICATION

Notice to Physicians Regarding Agreement To Designate Professional Standards Review Organization

On November 23, 1976, the Secretary of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with The PSRO of Queens County, Inc., designating it as the Professional Standards Review Organization for PSRO Area XIV of the State of New York, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.36.

Such notice was also published in three consecutive issues of *The New York Times* and the *New York Post* on November 23, 24, and 25, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area XIV of the State of New York of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area XIV of the State of New York who objects to the Secretary entering into an agreement with the PSRO of Queens County, Inc., on the grounds that such organization is not representative of doctors in PSRO Area XIV of the State of New York, mail such objection in writing to the Secretary, Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022 on or before December 23, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area XIV of the State of New York, the Secretary has determined, pursuant to 42 CFR 101.105, that not more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area XIV of the State of New York have expressed timely objection to the Secretary entering into an agreement with the PSRO of Queens County, Inc. Therefore, the Secretary will proceed to enter into an agreement with the PSRO of Queens County, Inc., designating it as the Professional Standards Review Organization for PSRO Area XIV of the State of New York.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2248 Filed 1-21-77;8:45 am]

NORTH CAROLINA PSRO AREA II: RESULTS OF NOTIFICATION

Notice to Physicians Regarding Agreement to Designate Professional Standards Review Organization

On November 23, 1976, the Secretary of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with the Piedmont Medical Foundation, Inc., designating it as the Professional Standards Review Organization for PSRO Area II of the State of North Carolina, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.37.

Such notice was also published in three consecutive issues of the *Winston-Salem Journal, Winston-Salem Sentinel,* and the *Statesville Record and Landmark* on November 23, 24, and 25, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area II of the State of North Carolina of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area II of the State of North Carolina who objects to the Secretary entering into an agreement with the Piedmont Medical Foundation, Inc., on the grounds that such organization is not representative of doctors in PSRO Area II of the State of North Carolina, mail such objection in writing to the Secretary, Department of Health, Education, and Welfare, P.O. Box 1583, FDR Station, New York, New York 10022 on or before December 23, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area II of the State of North Carolina, the Secretary has determined, pursuant to 42 CFR 101.105, that not more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area II of the State of North Carolina have expressed timely objection to the Secretary entering into an agreement with the Piedmont Medical Foundation, Inc. Therefore, the Secretary will proceed to enter into an agreement with the Piedmont Medical Foundation, Inc., designating it as the Professional Standards Review Organization for PSRO Area II of the State of North Carolina.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2249 Filed 1-21-77;8:45 am]

VIRGINIA PSRO AREA II: RESULTS OF NOTIFICATION

Notice to Physicians Regarding Agreement To Designate Professional Standards Review Organization

On November 23, 1976, the Secretary of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with the Northern Virginia Foundation for Medical Care designating it as the Professional Standards Review Organization for PSRO Area II of the State of Virginia, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.52.

Such notice was also published in three consecutive issues of the Northern Virginia Sun, Washington Star, Alexandria Gazette, and the Washington Post on November 23, 24, and 25, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area II of the State of Virginia of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area II of the State of Virginia who objects to the Secretary entering into an agreement with the Northern Virginia Foundation for Medical Care on the grounds that such organization is not representative of doctors in PSRO Area II of the State of Virginia, mail such objection in writing to the Secretary, Department of Health, Education, and Welfare, P.O.

Box 1588, FDR Station, New York, New York 10022 on or before December 23, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area II of the State of Virginia, the Secretary has determined, pursuant to 42 CFR 101.105, that not more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area II of the State of Virginia have expressed timely objection to the Secretary entering into an agreement with the Northern Virginia Foundation for Medical Care. Therefore, the Secretary will proceed to enter into an agreement with the Northern Virginia Foundation for Medical Care designating it as the Professional Standards Review Organization for PSRO Area II of the State of Virginia.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2250 Filed 1-21-77;8:45 am]

VIRGINIA PSRO AREA V: RESULTS OF NOTIFICATION

Notice to Physicians Regarding Agreement To Designate Professional Standards Review Organization

On November 23, 1976, the Secretary of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with the Colonial Virginia Foundation for Medical Care designating it as the Professional Standards Review Organization for PSRO Area V of the State of Virginia, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.52.

Such notice was also published in three consecutive issues of the Newport News Press, Newport News Times-Herald, and the Norfolk Virginian-Pilot on November 23, 24, and 25, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area V of the State of Virginia of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area V of the State of Virginia who objects to the Secretary entering into an agreement with the Colonial Virginia Foundation for Medical Care on the grounds that such organization is not representative of doctors in PSRO Area V of the State of Virginia, mail such objection in writing to the Secretary, Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022 on or before December 23, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area V of the State of Virginia, the Secretary has determined, pursuant to 42 CFR 101.105, that not more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area V of the State of Virginia have expressed timely objection to the Secretary entering into an agreement with the Colonial Virginia Foundation for Medical Care. Therefore, the Secretary will proceed to enter into an agreement with the Colonial Virginia Foundation for Medical Care designating it as the Professional Standards Review Organization for PSRO Area V of the State of Virginia.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2251 Filed 1-21-77;8:45 am]

Health Services Administration

POLL OF PHYSICIANS IN PSRO AREA VII OF THE STATE OF NEW JERSEY

Announcement of Results to Physicians

On July 30, 1976, the Secretary of the Department of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with the Central New Jersey Professional Standards Review Organization, Inc., designating it as the Professional Standards Review Organization for PSRO Area VII located in the State of New Jersey, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.34.

Such notice was also published in three consecutive issues of the Newark Star Ledger and the Trentonian on July 30, 31, and August 2, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area VII of the State of New Jersey of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area VII of the State of New Jersey who objected to the Secretary entering into an agreement with the Central New Jersey Professional Standards Review Organization, Inc., on the grounds that such organization is not representative of doctors in PSRO Area VII of the State of New Jersey, mail such objection in writing to the Secretary of the Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022, on or before August 30, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area VII of the State of New Jersey, the Secretary determined, pursuant to 42 CFR 101.105, that more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area VII of the State of New Jersey had expressed timely objection to entering into an agreement with the Central New Jersey Professional Standards Review Organization, Inc.

Therefore, on November 1, 1976, in accordance with 42 CFR 101.106, the Secretary of the Department of Health, Education, and Welfare published in the FEDERAL REGISTER a notice announcing a poll to be conducted of all doctors of medicine or osteopathy engaged in active practice in PSRO Area VII of the State of New Jersey to determine whether the Central New Jersey Professional Standards Review Organization, Inc., was representative of such doctors in the area.

Such notice was also published in the Newark Star Ledger and the Trentonian on November 1, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area VII of the State of New Jersey of the contents of the notice.

The notice stated that a ballot was to be mailed to each such doctor on which he was to indicate whether in his opinion the Central New Jersey Professional Standards Review Organiaztion, Inc., was or was not representative of the doctors of medicine or osteopathy engaged in active practice in PSRO Area VII of the State of New Jersey. The notice also requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area VII of the State of New Jersey who had not received a ballot by November 6, 1976, might request in writing a ballot from the Secretary of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022. According to the notice, only those ballots postmarked no later than December 1, 1976, and returned in the stamped self-addressed envelope provided to each individual doctor would be considered valid.

A ballot and envelope together with a letter of explanation was mailed to each individual doctor of medicine or osteopathy who the Secretary determined, pursuant to 42 CFR 101.103, to be engaged in the active practice of medicine or osteopathy in the PSRO area.

The counting of the ballots took place in a proceeding open to the public at the City Council Chambers, Trenton City Hall, 319 East State Street, Trenton, New Jersey 08608, on December 9, 1976.

After reviewing the final tabulation of valid ballots received from doctors of medicine or osteopathy in PSRO Area VII of the State of New Jersey, the Secretary has determined, pursuant to 42 CFR

101.107, that more than 50% of the doctors responding to the poll indicated that the Central New Jersey Professional Standards Review Organization, Inc., was not representative of the medical and osteopathic communities. Therefore, the Secretary will not designate the Central New Jersey Professional Standards Review Organization, Inc., as a conditional Professional Standards Review Organization for PSRO Area VII of the State of New Jersey.

Any doctor in the area who files a written request for a recount for purposes of challenging the eligibility of a physician to participate in the poll shall identify the particular physician and state the reasons that form the basis for the challenge. If the total number of ballots challenged and/or the total number of ballots found to be invalid do not exceed the difference between the number of tabulated ballots which indicate that the organization is representative of the doctors in the area and the number of tabulated ballots which indicate that the organization is not representative of the doctors in the area, the Secretary will so state in a notice in the FEDERAL REGISTER and the results of the polling will be final. If the total number of ballots challenged and/or the total number of ballots found to be invalid do exceed the difference between the number of tabulated ballots which indicate that the organization is representative of the doctors in the area and the number of tabulated ballots which indicate that the organization is not representative of the doctors in the area, a recount will be conducted.

If five doctors file written requests for a recount on or before February 3, 1977 for purposes of obtaining a second tabulation of the ballots, a recount shall be conducted without a reverification of the ballots.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2247 Filed 1-21-77;8:45 am]

POLL OF PHYSICIANS IN PSRO AREA XVI OF THE STATE OF CALIFORNIA

Announcement of Results to Physicians

On August 16, 1976, the Secretary of the Department of Health, Education, and Welfare published in the FEDERAL REGISTER a notice in which he announced his intention to enter into an agreement with the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties, designating it as the Professional Standards Review Organization for PSRO Area XVI of the State of California, which area is designated a Professional Standards Review Organization Area in 42 CFR 101.7.

Such notice was also published in three consecutive issues of the San Barbara News-Press and the San Luis Obispo Telegram-Tribune on August 16, 17, and 18, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area XVI of the State of California of the contents of the notice.

The notice requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area XVI of the State of California who objected to the Secretary entering into an agreement with the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties, on the grounds that such organization is not representative of doctors in PSRO Area XVI of the State of California, mail such objection in writing to the Secretary of the Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022, on or before September 15, 1976.

After reviewing the final tabulation of objections from doctors of medicine or osteopathy in PSRO Area XVI of the State of California, the Secretary determined, pursuant to 42 CFR 101.105, that more than 10 percentum of the doctors engaged in the active practice of medicine or osteopathy in PSRO Area XVI of the State of California had expressed timely objection to entering into an agreement with the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties.

Therefore, on November 1, 1976, in accordance with 42 CFR 101.106, the Secretary of the Department of Health, Education, and Welfare published in the FEDERAL REGISTER a notice announcing a poll to be conducted of all doctors of medicine or osteopathy engaged in active practice in PSRO Area XVI of the State of California to determine whether the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties, was representative of such doctors in the area.

Such notice was also published in the Santa Barbara News-Press and the San Luis Obispo County Telegram-Tribune on November 1, 1976. In addition, copies of the notice were mailed to organizations of practicing doctors of medicine or osteopathy, including the appropriate State and County medical and specialty societies, and hospitals and other health care facilities in the area, with a request that each such society or facility inform those doctors in its membership or on its staff who are engaged in active practice in PSRO Area XVI of the State of California of the contents of the notice.

The notice stated that a ballot was to be mailed to each such doctor on which he was to indicate whether in his opinion the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties, was or was not representative of the doctors of medicine or osteopathy engaged in active practice in PSRO Area XVI of the State of California. The notice also requested that any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area XVI of the State of California who had not received a ballot by November 6, 1976, might request in writing a ballot from the Secretary of Health, Education, and Welfare, P.O. Box 1588, FDR station, New York, New York 10022. According to the notice, only those ballots postmarked no later than December 1, 1976, and returned in the stamped self-addressed envelope provided to each individual doctor would be considered valid.

A ballot and envelope together with a letter of explanation was mailed to each individual doctor of medicine or osteopathy whom the Secretary determined, pursuant to 42 CFR 101.103, to be engaged in the active practice of medicine or osteopathy in the PSRO area.

The counting of the ballots took place in a proceeding open to the public at the City Council Chambers, Santa Barbara City Hall, Santa Barbara, California on December 13, 1976.

After reviewing the final tabulation of valid ballots received from doctors of medicine or osteopathy in PSRO Area XVI of the State of California, the Secretary has determined, pursuant to 42 CFR 101.107, that more than 50 percent of the doctors responding to the poll indicated that the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties, was representative of the doctors in the area. Therefore, the Secretary intends to enter into an agreement designating the Organization for Professional Standards Review of Santa Barbara and San Luis Obispo Counties as a conditional Professional Standards Review Organization for PSRO Area XVI of the State of California.

Any doctor in the area who files a written request for a recount for purposes of challenging the eligibility of a physician to participate in the poll shall identify the particular physician and state the reasons that form the basis for the challenge. If the total number of ballots challenged and/or the total number of ballots found to be invalid do not exceed the difference between the number of tabulated ballots which indicate that the organization is representative of the doctors in the area and the number of tabulated ballots which indicate that the organization is not representative of the doctors in the area, the Secretary will so state in a notice in the FEDERAL REGISTER and the result of the polling will be final. If the total number of ballots challenged and/or the total number of ballots found to be invalid do exceed the difference between the number of tabulated ballots which indicate that the organization is representative of the doctors in the area and the number of tabulated ballots which indicate that the organization is not representative of the doctors in the area, a recount will be conducted.

If five doctors file written requests for a recount on or before February 3, 1977 for purposes of obtaining a second tabulation of the ballots, a recount shall be

conducted without a reverification of the ballots.

Dated: January 18, 1977.

JOHN H. KELSO,
Acting Administrator,
Health Services Administration.

[FR Doc.77-2245 Filed 1-21-77;8:45 am]

National Institutes of Health

SICKLE CELL DISEASE ADVISORY COMMITTEE

Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, February 8 and 9, 1977. The meeting will be held in Conference Room 9, C-Wing, on February 8, and Conference Room 10, C-Wing, on February 9. The entire meeting will be open to the public from 8:30 a.m. to 5:00 p.m. on both days, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, Building 31, Room 5A03, (301) 496-4236, will provide summaries of the meeting and rosters of committee members.

Mr. Howard F. Manly, Executive Secretary, Sickle Cell Disease Advisory Committee, NHLBI, NIH, Building 31, Room 4A29, (301) 496-6931, will furnish substantive program information.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

JANUARY 18, 1977.

[FR Doc.77-2302 Filed 1-21-77;8:45 am]

Assistant Secretary for Education

NATIONAL CENTER FOR EDUCATION STATISTICS

Comments on Collection of Information and Data Acquisition Activity

Pursuant to Section 406(g)(2)(B), General Education Provisions Act, notice is hereby given as follows:

The U.S. Office of Education has proposed collections of information and data acquisition activities which will request information from educational agencies or institutions.

The purpose of publishing this notice in the FEDERAL REGISTER is to afford each educational agency or institution subject to a request under the proposed collection of information and data acquisition activities and their representative organizations an opportunity, during a 30-day period before transmittal to the Director of the Office of Management and Budget, to comment to the Administrator of the National Center for Education Statistics on the collections of information and data acquisition activities.

Descriptions of the proposed collections of information and data acquisition activites follow below.

Written comments on the proposed activity are invited. Comments must be received on or before February 23, 1977 and should be addressed to Administrator, National Center for Education Statistics, Attn.: Manager, Information Acquisition, Planning, and Utilization, Room 3001, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Further information may be obtained from Elizabeth M. Proctor of the National Center for Education Statistics, 202-245-1022.

Dated: January 17, 1977.

MARIE D. ELDRIDGE,
Administrator, National Center
for Education Statistics.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity:

Career Education Evaluation: Collection of Input and Process Data.

2. Agency/bureau/office:

U.S. Office of Education/Office of Career Education.

3). Agency form numbers:

OE541-1; OE541-2; OE541-3; and OE541-4.

4. Legislative authority for this activity:

(b) It is the purpose of this section to assist in achieving the policies set forth in subsection (a) by—

(3) Assessing the status of career education programs and practices * * *

(4) Providing for the demonstration of the best career education programs and practices by the development and testing of exemplary programs and practices * * * " (Pub. L. 93-380, 20 U.S.C. 1865, Section 406).

Each application * * * must set forth a detailed plan which includes:

* * * * *

(d) A specific plan to be utilized in evaluating the accomplishment of each of the process and learner outcome objectives listed pursuant to § 160d.6(b)(1), including

(1) The criteria of success for evaluating each objective;

(2) The evaluation design to be used for each objective;

(3) The data collection instruments or other techniques to be used for each objective;

(4) The data analysis to be conducted for each objective;

(5) The dates by which data on the various objectives will be available; and

(6) The evaluation resources of personnel and budget that will be utilized; * * *"

(45 CFR Part 160d.6)

5. Voluntary/obligatory nature of response:

Voluntary.

6. How information to be collected will be used:

Evaluation: the data will be used to evaluate the effectiveness of each of the 15 exemplary career education projects participating in the study as well as to test evaluation methods and techniques for future use in other career education projects funded by the Office of Career Education. Data will be used to determine the extent to which project learner outcome objectives have been achieved and the extent to which various process and input factors in each project contribute to the attainment of learner outcomes.

7. Data acquisition plan:

a. Method of collection: Group administration to students; individual administration to teachers, counselors, and building administrators.

b. Time of collection: Spring, 1977.

c. Frequency: One-time data collection.

8. Respondents:

a. Type: Students, public elementary/secondary schools.

b. Number: Sample—15,000.

c. Estimated average man-hours per respondent: 0.5.

a. Type: Teachers, elementary/secondary.

b. Number: Sample—1,931.

c. Estimated average man-hours per respondent: 0.5.

a. Type: Counselors, elementary/secondary.

b. Number: Sample—262.

c. Estimated average man-hours per respondent: 0.5.

a. Type: School administrators and supervisors.

b. Number: Sample—106.

c. Estimated average man-hours per respondent: 0.5.

9. Information to be collected:

a. Students: information will be collected on student background characteristics (e.g. age, sex, ethnicity, and socioeconomic status), in-school and out-of-school experiences related to career education (e.g. curriculum activities, work experience, etc), and student career aspirations and expectations.

b. Teachers: information will be collected on teacher background characteristics, educational and related work experiences, career education activities conducted for students, and attitudes towards career education.

c. Counselors: information will be collected on counselor background characteristics, educational and related work experiences, career education activities conducted for students, and attitudes toward career education.

d. School administrators and supervisors: information will be collected on administrator background characteristics, characteristics of school and school programs, educational and related work experience, career education activities engaged in, and attitudes toward career education.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity:

The Status of Physical Education in the Public Schools in the Coterminous United States (A survey of certain practices and conditions in local school districts).

2. Agency/bureau/office:

U.S. Office of Education, Bureau of Elementary and Secondary Education.

3. Agency form number:

OE 548.

4. Legislative authority for this activity:

The Commissioner shall:

(1) Prepare and disseminate to State and local educational agencies and institutions information concerning applicable programs. * * *

(3) Collect data and information on applicable programs for the purpose of obtaining objective measurements on the effectiveness of such programs in achieving their purposes; and (4) prepare and publish an annual report * * * on (a) the condition of education in the nation, (b) developments in the administration, utilization and impact of applicable programs, (c) results of investigations and activities by the Office of Education. * * *" (General Education, Provisions Act, Sec. 422(a), 20 U.S.C. 1231a.)

5. Voluntary/obligatory nature of response:

Voluntary.

6. How information to be collected will be used:

The study will provide descriptive data that will establish a baseline for determining the present status of physical education programs and will provide analytical potential for program improvement and for future trends. It will, also, provide a screening and ranking of basic problems in the field as seen by the educators who are most directly involved in administering and supervising local programs of physical education, the directors of physical education in local school districts.

The information to be derived will be used by the U.S. Office of Education, the American Alliance for Health, Physical Education and Recreation, the Society of State Directors, HPER, the President's Council on Physical Fitness and Sports, the National Council of City and County Directors of HPER and other sponsors of a national conference.

This conference is designed to implement recommendations stemming from the 1st International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport in the Education of Youth, sponsored by UNESCO, 5–10 April 1976. The national implementation conference will be held in late Spring 1977. An international symposium will be held in conjunction with this meeting.

The above mentioned organizations will also use the study results to sharpen their efforts to improve school programs of physical education and to promote innovative and exemplary programs throughout the nation. The President's Council on Physical Fitness and Sports is particularly interested in having up-to-date information. Certain basic questions on physical education programs for handicapped children will engender baseline information that will be useful in implementing the new Education Of All Handicapped Children Act, Pub. L. 94–142 and in making comparisons in later years.

7. Data acquisition plan:

A. Method of collection: Mail and personal interview.

B. Time of collection: Spring, 1977.

C. Frequency: One-time study.

8. Respondents:

A. Type: Local Educational Agencies (directors of physical education).

B. Number: 689.

C. Estimated average man-hours per respondent: 1.5 man-hours.

9. Information to be collected:

a. The characteristics of local directors of physical education—age, sex, title, educational and professional experience.

b. The nature and scope of the directors' responsibilities, i.e., subject fields (physical education, health education, athletics, safety, etc.) and the percent of time devoted to administrative supervisory, coaching, and/or teaching duties, as well as the percent of time the directors would prefer to spend in such duties.

c. Number and percent of boys and girls enrolled in physical education classes by grade level in both required and elective programs.

d. Identification by grade level of type of teacher, i.e., certified specialist, non-specialist or combination.

e. Indication of the increase or decrease of time allotted for required and elective programs of physical education since 1970.

f. Reasons, if any, for exemption from the physical education requirement by grade level.

g. Identification by grade level of special programs designed for students who are physically underdeveloped or who have handicap or learning disability.

h. Identification of districts, by grade level, which evaluate the physical fitness level of students, type of test(s) used and availability of districts norms.

i. Expression of respondent opinion about results of two previous national surveys of youth fitness.

j. A description of impending changes or other aspects of school district physical education programs not covered in the survey questionnaire.

k. How directors of physical education perceive the status of their programs as viewed by various groups. These groups are administrators, parents, students, other teachers and physical education teachers.

l. How directors of physical education view public or "consumer demands" for programs.

m. How directors of physical education perceive different groups, such as administrators, parents and students, as potential supporters of or obstacles to the maintenance and/or improvement of current programs.

n. A paired comparison technique which ranks and scales ten major problem areas. These problem areas are (1) discipline/student conduct, (2) adequacy of equipment/supplies, (3) adequacy of facilities, (4) status of physical education in total school program, (5) staff/teachers, (6) legal liability, (7) relationships with athletics, (8) accountability/evaluation, (9) Title IX regulations, and, (10) provision for needs of special students such as handicapped or physically underdeveloped.

[FR Doc.77-2049 Filed 1-21-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. I-7435]

IDAHO

Partial Termination of Proposed Withdrawal and Reservation of Lands

JANUARY 14, 1977.

Notice of an application, Serial No. I-7435, for withdrawal and reservation of lands was published as FR Doc. No. 74-2518 on page 3977 of the issue for January 31, 1974. The Energy Research and Development Administration, formerly the Atomic Energy Commission, has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be at 10:00 a.m. on February 18, 1977 relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

BOISE MERIDIAN, IDAHO

T. 13 S., R. 26 E.,
Sec. 35, all.
T. 14 S., R. 23 E.
Sec. 1, S½;
Sec. 2, all;
Secs. 11 to 14 inclusive, 23–26 inclusive and 35.
T. 14 S., R. 27 E.,
Sec. 18, W½SE¼, SE¼SW¼;
Sec. 19, all;
Sec. 30, lots 1 to 4 inclusive, E½W½, W½E½, E½NE¼, NE¼SE¼;
Sec. 31, lots 1 to 4 inclusive, E½W½, NW¼NE¼.
T. 15 S., R. 25 E.,
Sec. 34, E½, NW¼, N½SW¼, SE¼SW¼;
Sec. 34, all.
T. 15 S., R. 26 E.,
Secs. 1, 2 and 11;
Sec. 12, N½NW¼, SW¼NW¼;
Sec. 14, NW¼NE¼, NW¼, NW¼SW¼;
Secs. 15 and 21;
Sec. 22, NW¼NE¼, NW¼, NW¼SW¼;
Sec. 28, NW¼NE¼, NW¼;
Sec. 29, lots 1 to 6 inclusive, W½NE¼, NW¼, N½SW¼, NW¼SE¼;
Sec. 31, all;
Sec. 32, N½NW¼, SW¼NW¼;
Sec. 33, S½SE¼;
Sec. 34, S½S½;
Sec. 35, S½S½.
T. 15 S., R. 27 E.,
Sec. 6, lots 3 to 7 inclusive, SE¼NW¼, NE¼SW¼;
Sec. 7, lots 1, 2, and 3;
Sec. 30, SE¼NE¼, E½SE¼;
Sec. 31, lots 1 and 2, E½NW¼, W½NE¼.
T. 16 S., R. 25 E.,
Sec. 1, lots 1 to 4 inclusive;
Sec. 2, lots 1 to 4 inclusive;
Sec. 3, lots 1 to 4 inclusive;
Sec. 10, S½, S½N½, N½NW¼;
Sec. 11, S½, SW¼NW¼;
Sec. 12, S½.
T. 16 S., R. 26 E.,
Secs. 3 and 4;
Sec. 5, SE¼NE¼, SW¼NW¼, S½;
Sec. 6, lots 6 and 7, SE¼NE¼, E½SW¼, SE¼.

The area described aggregates 26,559.17 acres.

VINCENT S. STROBEL,
Chief, Branch of L&M Operations.

[FR Doc.77-2063 Filed 1-21-77;8:45 am]

Bureau of Reclamation

CORONADO PROJECT

Public Hearing on Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the Coronado Project. This statement (INT DES 77-2), filed with the Council on Environmental Quality on January 14, 1977, is available to the public as specified in the notice of availability.

Public hearings will be held at the following locations to receive views and comments from interested organizations or individuals relating to the environmental impact of the project.

Place	Address	Date	Time
St. John's, Ariz.	Community Building	Feb. 23, 1977	2 to 5 p.m. and 6:30 p.m.
Kearny, Ariz.	Cafeteria, Ray Unified School District	Feb. 24, 1977	2 to 5 p.m. and 6:30 p.m.
Phoenix, Ariz.	Auditorium, Maricopa County Board of Supervisors, 205 West Jefferson.	Feb. 25, 1977	2 to 5 p.m. and 6:30 p.m.

Oral statements at the hearings will be limited to periods of 10 minutes. Speakers will not trade their time to obtain a longer oral presentation: however, the person authorized to conduct the hearings may allow any speaker to provide additional comment after all persons wishing to comment have been heard. Speakers will be scheduled according to the time preferences mentioned in their letters or telephone requests whenever possible. Any scheduled speaker not present when called will lose his or her position in the scheduled order and will not be called again until the end of the order. Requests for scheduled presentations will be accepted up to 4:00 p.m. on February 18, 1977; any subsequent requests will be handled on a first-come-first-served basis following the scheduled presentations.

Organizations or individuals desiring to present statements at the hearings should contact Regional Director Manuel Lopez, Jr., Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, telephone (702) 293-8464, and announce their intentions to participate. Written comments from those wishing to supplement their oral presentations at the hearings should be received by March 7, 1977, for inclusion in the hearing record.

Dated: January 18, 1977.

E. F. SULLIVAN,
Acting Commissioner of Reclamation.

[FR Doc.77-2201 Filed 1-21-77;8:45 am]

Bureau of Land Management

OUTER CONTINENTAL SHELF; ALASKA

Oil and Gas Lease Sale No. CI, February 23, 1977

On January 19, 1977, a notice appeared in the FEDERAL REGISTER 42 FR 3804, announcing the above outer continental shelf oil and gas lease sale in the lower Cook Inlet.

In order to clarify any confusion that might have been caused by the presentation of paragraph 12, Tract Descriptions, beginning on page 3804, interested parties are advised that the tract descriptions appearing on page 3807 under the heading OCS OFFICIAL PROTRACTION DIAGRAM, AFOGNAK NO 5-4 should appear as part of paragraph 12 in sequence immediately following Tract No. CI-145 on page 3806. The affected tracts are CI-146 through CI-152.

It should also be noted that the sentence beginning on the 25th line of the middle column on page 3804 should read as follows: "The form for this statement appears in paragraph 17."

Dated: January 21, 1977.

CURT BERKLUND,
Director, Bureau of Land Management.

[FR Doc.77-2388 Filed 1-21-77;10:50 am]

[USITC SE-77-4]

INTERNATIONAL TRADE COMMISSION

MEETING

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on January 24, 1977, beginning at 9:30 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436. The Commission plans to consider the following agenda items in open session:

1. Agenda for meetings during the week of February 7, 1977;
2. Minutes;
3. Reorganization—discussion of items the Commission needs to act on before February 4, 1977, such as the filling of positions which are vacant or about which there is a question as to their status—e.g., the selection procedure for the positions of Investigator, GS-14 and below, and additional vacant positions such as the Deputy General Counsel;
4. Status report on self-initiated studies;
5. Review of position descriptions in the Office of the General Counsel;
6. Sugar (Inv. TA-201-16)—briefing by the staff (to be held after 3 p.m., EST);
7. Appeal, pursuant to the Freedom of Information Act, filed by Mr. James M. Goldberg of the law firm of London and Goldberg;
8. Footwear (Inv. TA-201-18)—further consideration of the Commission's determination if necessary;
9. Further consideration of revisions to the Commission Policy Manual;
10. Any items left over from previous agenda.

If you have any questions concerning the agenda for the January 24, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c)(2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with proposed 19 CFR 201.37(b)(2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the January 24, 1977, meeting with respect to item No. 3 on reorganization 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: (1) the discussion would only concern internal personnel practice and procedures; and (2) the information discussed in such portion would be likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons 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; E. Bernice Morris, Staff Assistant; Russell N. Shewmaker, General Counsel; Rhond Roth, Attorney-Adviser (if the General Counsel is not available); Charles R. Ramsdale, Acting Director, Personnel; Norma H. Warbis, Personnel Management Specialist (If Mr. Ramsdale is not available); and Bruce N. Hatton, Assistant to Commissioner Leonard.

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 24, 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)(2) and (6) and proposed 19 CFR 201.37(b)(2) and (6).

By order of the Commission.

Issued: January 17, 1977.

RUSSELL N. SHEWMAKER,
General Counsel.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2098 Filed 1-21-77;8:45 am]

[USITC SE-77-5]

MEETING

Interested members of the public are invited to attend and to observe the

meeting of the United States International Trade Commission to be held on February 1, 1977, beginning at 9:30 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436. The Commission plans to consider the following agenda items in open session:

1. Agenda for future meetings;
2. Minutes;
3. Reorganization;
4. Vote on Sugar (Inv. TA-201-16)—after 3 p.m.;
5. Stainless steel pipes—vote on whether to institute an investigation pursuant to section 337;
6. Items left over from previous agenda.

If you have any questions concerning the agenda for the February 1, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

By order of the Commission.

Issued: January 17, 1977.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2099 Filed 1-21-77;8:45 am]

[USITC SE-77-6]

MEETING

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on February 3, 1977, beginning at 9:30 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436. The Commission plans to consider the following agenda items in open session:

1. Reorganization.

If you have any questions concerning the agenda for the February 3, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 CFR 201.-17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Issued: January 17, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-2100 Filed 1-21-77;8:45 am]

[337-TA-22]

RECLOSABLE PLASTIC BAGS

Commission Determination and Order

On the basis of the record in investigation No. 337-TA-22, Reclosable Plastic Bags, the United States International Trade Commission,[1] under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and the Administrative Procedure Act (5 U.S.C. 551 et seq.)—

1. Determines that there are violations of section 337 in the unlicensed importation into the United States of reclosable plastic bags by reason of their having been made in accordance with claims 1 and/or 2 of the U.S. Patent No. 3,198,228 (which reissued as U.S. Patent Re. 28,969 on September 21, 1976) and in their unlicensed sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;

2. Determines that there is no violation of section 337 in the importation of reclosable plastic bags into the United States which allegedly infringe U.S. Trademark Reg. No. 946,120, since the effect or tendency of such alleged infringement is not to substantially injure or destroy an industry, efficiently and economically operated, in the United States, to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States;

3. Finds as a result of the determination of violation, and after considering the effect of an exclusion upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers, that the articles concerned, reclosable plastic bags made in accordance with claims 1 and/or 2 of U.S. Patent No. 3,298,228 (Re. 28,969) should be excluded from entry into the United States for the term of this patent;

4. Determines that the bond provided for in subsection 337(g)(3) is to be as prescribed by the Secretary of the Treasury in the amount of 100 percent of the value of the articles concerned, f.o.b. foreign port.

Accordingly, it is ordered—

1. Articles made in accordance with claims 1 and/or 2 of U.S. Patent No. 3,198,228 (Re. 28,969) shall upon the publication of this notice in the FEDERAL REGISTER and until the expiration of such patent be excluded from entry into the United States except (1) as provided in paragraph 2 below of this order or (2) as such importation is under sublicense of the exclusive U.S. licensee of said patent.

2. Notwithstanding the foregoing, from the day after the day this order is received by the President pursuant to section 337(g) of the Tariff Act of 1930, as amended, until such time as the President approves or disapproves this Commission action (but in any event, no later than sixty (60) days after such day of receipt), the articles concerned shall be entitled to entry under bond in the amount of one hundred per centum (100%) of the value, f.o.b. foreign port, of the articles concerned.

3. This order will be published in the FEDERAL REGISTER and served upon each party of record in this investigation and upon the U.S. Department of Health, Education, and Welfare, the U.S. Department of Justice, the Federal Trade Commission, and the Secretary of the Treasury.

Issued: January 17, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary

[FR Doc.77-2066 Filed 1-21-77;8:45 am]

[1] Commissioner Ablondi dissents from this determination and order except as to par. 2 of the determination.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

ADVISORY COMMITTEE EDUCATION PROGRAMS PANEL

Meeting

JANUARY 12, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act. (Pub. L. 92-463) notice is hereby given that a meeting of the Education Programs Panel will convene at 9:00 a.m. in Room 1023 at 806 Fifteenth Street, NW., Washington, D.C. on February 14, 1977.

The purpose of the meeting is to review Humanities Institutes applications submitted to the National Endowment for the Humanities for grants to educational instittuions ad nnon-profit organizations.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr.

John W. Jordan, 806 Fifteenth Street, NW., Washington, D.C. 20506, or call area code 202–382–2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.77-2093 Filed 1-21-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

SCIENCE EDUCATION DIRECTORATE

Program Review

Dr. Harvey Averch, Assistant Director for Science Education at NSF, will present the Science Education Directorate's Program Review at 2 p.m. on February 1, 1977, in Room 540 at 1800 G Street, N.W., Washington, D.C.

The Review discusses different strategies of Federal assistance used in science education over the last 17 years, and examines the performance of the present strategy in relation to expected conditions in the science education system. The Review concludes with an analysis of issues and options for science education.

The presentation is open to all interested parties, but due to space limitations, persons wishing to attend should call Myrna Wright, 282–7922, for a reservation.

HARVEY AVERCH,
Assistant Director, for Science Education.

JANUARY 14, 1977.

[FR Doc.77-2152 Filed 1-21-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

ARKANSAS POWER AND LIGHT CO., ET AL.

All Nuclear Power Reactors Having an Operating License Request for Action

Notice is hereby given that by petition dated January 3, 1977, Robert D. Pollard filed a request for action regarding all nuclear power reactors having an operating license. The requested action would affect:

ARKANSAS POWER & LIGHT CO.

Arkansas Unit 1 (License No. DPR–51), Pope County, Arkansas. PDR—Arkansas Polytechnic College, Russellville, Arkansas 72801.

BALTIMORE GAS & ELECTRIC CO.

Calvert Cliffs Units 1 and 2 (License Nos. DPR–53 and DPR–69), Calvert County, Maryland. PDR—Calvert County Library, Prince Frederick, Maryland 20678.

BOSTON EDISON CO.

Pilgrim 1 (License No. DPR–35), Plymouth County, Massachusetts. PDR—Plymouth Public Library, North Street, Plymouth, Massachusetts.

CAROLINA POWER & LIGHT CO.

Brunswick 1 and 2 (License Nos. DPR–71 and DPR–62), Brunswick County, North Carolina. DPR—Southport—Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

H. B. Robinson (Licensed No. DPR–23), Darlington County, South Carolina. PDR—Hartsville Memorial Library, Home & Fifth Avenues, Hartsville, South Carolina 29550.

COMMONWEALTH EDISON CO.

Dresden 1, 2 and 3 (License Nos. DPR–2, DPR–19 and DPR–25), Grundy County, Illinois. PDR—Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Quad-Cities 1 and 2 (License Nos. DPR–29 and DPR–30), Rock Island County, Illinois. PDR—Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Zion Units 1 and 2 (License Nos. DPR–39 and DPR–48), Lake County, Illinois. PDR—Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

CONNECTICUT YANKEE ATOMIC POWER CO.

Haddam Neck (License No. DPR–61), Middlesex County, Connecticut. PDR—Russell Library, 119 Broad Street, Middletown, Connecticut 06457.

CONSOLIDATED EDISON CO. OF NEW YORK

Indian Point Units 1, 2 and 3 (License Nos. DPR–5, DPR–26 and DPR–64), Westchester County, New York. PDR—Hendrick Hudson Free Library, 31 Albany Post Road, Montrose, New York 10548.

CONSUMERS POWER CO.

Big Rock Point (License No. DPR–6), Charlevoix County, Michigan. Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720.

Palisades (License No. DPR–20), Van Buren County, Michigan. PDR—Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006.

DAIRYLAND POWER COOPERATIVE

LaCrosse (License No. DPR–45), Monroe County, Wisconsin. PDR—LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

DUKE POWER CO.

Oconee Units 1, 2, and 3 (License Nos. DPR–38, DPR–47 and DPR–55), Oconee County, South Carolina. PDR—Oconee County Library, 201 S. Spring Street, Walhalla, South Carolina 29691.

DUQUESNE LIGHT CO.

Beaver Valley 1 (License No. DPR–66), Beaver County, Pennsylvania. PDR—Beaver Area Memorial Library, 100 College Avenue, Beaver, Pennsylvania 15009.

FLORIDA POWER CORP.

Crystal River 3 (License No. DPR–72), Citrus County, Florida. PDR—Crystal River Public Library, Crystal River, Florida 32629.

FLORIDA POWER & LIGHT CO.

St. Lucie 1 (License No. DPR–67), St. Lucie County, Florida. PDR—Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

Turkey Point 3 and 4 (License Nos. DPR–31 and DPR–41), Dade County, Florida. PDR—Environmental & Urban Affairs Library, Florida International University, Miami, Florida 33199.

GEORGIA POWER CO.

Edwin I. Hatch 1 (License No. DPR–57), Appling County, Georgia. PDR—Appling County Public Library, Parker Street, Baxley, Georgia 31513.

INDIANA AND MICHIGAN ELECTRIC CO.

D. C. Cook 1 (License No. DPR–58), Berrien County, Michigan. PDR—Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

IOWA ELECTRIC LIGHT & POWER CO.

Duane Arnold (License No. DPR–49), Linn County, Iowa. PDR—Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.

JERSEY CENTRAL POWER & LIGHT CO.

Oyster Creek 1 (License No. DPR–16), Ocean County, New Jersey. PDR—Ocean County Library, 15 Hooper Avenue, Toms River, New Jersey 08753.

MAINE YANKEE ATOMIC POWER CO.

Maine Yankee (License No. DPR–36), Lincoln County, Maine. PDR—Wiscasset Public Library Association, High Street, Wiscasset, Maine 04578.

METROPOLITAN EDISON CO.

Three Mile Island 1 (License No. DPR–50), Dauphin County, Pennsylvania. PDR—Government Publications Section, State Library of Pennsylvania, Box 1601 (Education Building), Harrisburg, Pennsylvania 17126.

NEBRASKA PUBLIC POWER DISTRICT

Cooper Station (License No. DPR–46), Nemaha County, Nebraska. PDR—Auburn Public Library, 118–15th Street, Auburn, Nebraska 68305.

NIAGARA MOHAWK POWER CORP.

Nine Mile Point 1 (License No. DPR–63), Oswego County, New York. PDR—Oswego City Library, 120 E. Second Street, Oswego, New York 13126.

NORTHEAST NUCLEAR ENERGY CO.

Millstone 1 and 2 (License Nos. DPR–21 and DPR–65), New London County, Connecticut. PDR—Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385.

NORTHERN STATES POWER CO.

Monticello (License No. DPR–22), Wright County, Minnesota. PDR—Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Prairie Island 1 and 2 (License Nos. DPR–42 and DPR–60), Goodhue County, Minnesota. PDR—Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

OMAHA PUBLIC POWER DISTRICT

Fort Calhoun (License No. DPR–40), Washington County, Nebraska. PDR—Blair Public Library, 1665 Lincoln Street, Blair, Nebraska 68008.

PACIFIC GAS & ELECTRIC CO.

Humboldt Bay (License No. DPR–7), Humboldt County, California. PDR—Humboldt County Library, 636 F Street, Eureka, California 95501.

PHILADELPHIA ELECTRIC CO.

Peach Bottom 2 and 3 (License Nos. DPR–44 and DPR–56), York County, Pennsylvania. PDR—Martin Memorial Library, 159 East Market Street, York, Pennsylvania 17401.

PORTLAND GENERAL ELECTRIC CO.

Trojan (License No. NPF–1), Columbia County, Oregon. PDR—Columbia County Courthouse, Law Library, Circuit Court Room, St. Helens, Oregon 97051.

POWER AUTHORITY OF THE STATE OF NEW YORK

Fitzpatrick (License No. DPR–59), Oswego County, New York. PDR—Oswego City Library, 120 East Second Street, Oswego, New York 13126.

PUBLIC SERVICE CO. OF COLORADO

Fort St. Vrain (License No. DPR-34), Weld County, Colorado. Greeley Public Library, City Complex Building, Greeley, Colorado 80631.

PUBLIC SERVICE ELECTRIC & GAS CO.

Salem (License No. DPR-70), Salem County, New Jersey. PDR—Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

ROCHESTER GAS & ELECTRIC CORP.

R. E. Ginna 1 (License No. DPR-18), Wayne County, New York. PDR—Lyons Public Library, 67 Canal Street, Lyons, New York 14489 and Rochester Public Library, 115 South Avenue, Rochester, New York 14627.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

Rancho Seco (License No. DPR-54), Sacramento County, California. PDR—Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

SOUTHERN CALIFORNIA EDISON CO.

San Onofre 1 (License No. DPR-13): San Diego County, California. DPR—Mission Viejo Branch Library, 24851 Christanta Drive, Mission Viejo, California.

TENNESSEE VALLEY AUTHORITY

Browns Ferry, 1, 2 and 3 (License Nos. DPR-33, DPR-52, DPR-68), Limestone County, Alabama. DPR—Athens Public Library, South and Forrest, Athens, Alabama 35611.

VERMONT YANKEE NUCLEAR POWER CORP.

Vermont Yankee (License No. DPR-28), Windham County, Vermont. PDR—Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

VIRGINIA ELECTRIC & POWER CO.

Surry Units 1 and 2 (License Nos. DPR-32 and DPR-37), Surry County, Virginia. DPR—Swem Library, College of William & Mary, Williamsburg, Virginia 23185.

WISCONSIN MICHIGAN POWER CO.

Point Beach Units 1 and 2 (License Nos. DPR-24 and DPR-27), Manitowoc County, Wisconsin. PDR—Document Department, University of Wisconsin—Stevens Point Library, Stevens Point, Wisconsin 54481.

WISCONSIN PUBLIC SERVICE CORP.

Kewaunee (License No. DPR-43), Kewaunee County, Wisconsin. PDR—Kewaunee Public Library, 314 Milwaukee Street, Kewaunee, Wisconsin 54216.

YANKEE ATOMIC ELECTRIC CO.

Yankee Rowe (License No. DPR-3), Franklin County, Massachusetts. PDR—Greenfield Public Library, 402 Main Street, Greenfield, Massachusetts 05181.

In accordance with the procedures specified in 10 CFR 2.206 appropriate action will be taken on this request within a reasonable time.

Preliminary evaluation by Staff shows that no immediate action is necessary.

A copy of the request is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the above mentioned Local Public Document Rooms.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 14th day of January, 1977.

BEN C. RUSCHE,
Director, Office of Nuclear Reactor Regulation.

[FR Doc.77-2047 Filed 1-21-77;8:45 am]

[Docket Nos. 50-329 and 50-330]

CONSUMERS POWER CO. MIDLAND PLANT, UNIT NOS. 1 AND 2

Availability of Draft Supplement to Final Environmental Statement for Midland Plant, Unit Nos. 1 and 2

Notice is hereby given that a Draft Supplement to the Final Environmental Statement prepared by the Commission's Office of Nuclear Reactor Regulation related to the continuance of construction of the Midland Plant, Unit Nos. 1 and 2, in Midland County, Michigan, by the Consumers Power Company, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C., and in the Grace Dow Memorial Library, 1710 West St. Andrews Road, Midland, Michigan. The draft supplemental statement is also being made available at the Office of Intergovernmental Relations, Department of Management and Budget, 2nd Floor, Lewis Cass Building, Lansing, Michigan 48909. Requests for copies of the Draft Supplement to the Final Environmental Statement should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

In March 1972 the Atomic Energy Commission (now the Nuclear Regulatory Commission) issued a Final Environmental Statement for the Midland Plant, Unit Nos. 1 and 2 (37 FR 7012) (copies of the FES (NUREG-0149) may be purchased from the National Technical Information Service, Springfield, Virginia 22161, at a cost of $10.75 for printed copy or $3.00 for microfiche). The purpose of this supplement to the Final Environmental Statement is to respond to the July 21, 1976 rulings of the U.S. Court of Appeals for the District of Columbia remanding to the NRC for further proceedings the Commission's orders granting construction permits for the Midland Plant, Unit Nos. 1 and 2. This supplement to the FES was prepared to assess energy conservation as an alternative to plant construction, to reevaluate the need for power in light of any changed circumstances concerning Dow Chemical Company's need for process steam, and to restrike the cost/benefit balance in light of these matters and the incremental environmental effects of nuclear waste disposal and waste reprocessing attributable to Midland. In addition, the staff considered whether any unanticipated significant adverse effects have occurred to date as a result of construction activities thus far.

Interested persons may submit comments on the Draft Supplement to the Final Environmental Statement for the Commission's consideration. Federal and State agencies are being provided with copies of the draft supplemental statement (local agencies may obtain these documents upon request). Comments are due by March 7, 1977. Comments by Federal, State and local officials or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C., and the Grace Dow Memorial Library, Midland, Michigan. Upon consideration of comments submitted with respect to the draft supplemental statement, the Commission's staff will prepare a final supplemental statement, the availability of which will be published in the FEDERAL REGISTER.

Comments on the Draft Supplement to the Final Environmental Statement from interested persons or the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Rockville, Maryland this 13th day of January 1977.

For the Nuclear Regulatory Commission.

WM. H. REGAN, JR.,
Chief, Environmental Projects Branch 2, Division of Site Safety and Environmental Analysis.

[FR Doc.77-2018 Filed 1-21-77;8:45 am]

[Docket No. 50-335]

FLORIDA POWER & LIGHT CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 11 to Facility Operating License No. DPR-67, issued to Florida Power & Light Company (the licensee), which revised the Technical Specifications for operation of the St. Lucie Plant Unit No. 1 (the facility) located in St. Lucie County, Florida. The amendment is effective as of its date of issuance.

The amendment revises the Control Element Assembly (CEA) Block Circuit surveillance requirements.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR

51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 9, 1976, (2) Amendment No. 11 to License No. DPR–67, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 10th day of January 1977.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.77-2023 Filed 1-21-77;8:45 am]

[Docket Nos. 50-498A, 50-499A]

HOUSTON LIGHTING AND POWER CO. ET AL.

Order Regarding Oral Argument

JANUARY 13, 1977.

In the matter of Houston Lighting and Power Company, the City of San Antonio, the City of Austin, and Central Power and Light Company (South Texas Project, Unit Nos. 1 and 2).

Oral argument on the staff's appeal from the Licensing Board's September 9, 1976 order, as clarified in a November 15, 1976 order, is hereby calendared for 10 a.m. on Wednesday, February 2, 1977, in the Commission's Hearing Room, 5th floor, East-West Towers, 4350 East West Highway, Bethesda, Maryland. A total of one hour is allotted to each side for the presentation of argument. The Secretary to this Board is to be notified, by letter mailed no later than January 25, 1977, of the names of counsel intending to participate in the argument.

It is so ordered.

For the Atomic Safety and Licensing Appeal Board.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc.77-2025 Filed 1-21-77;8:45 am]

[Docket No. 50-247]

INDIAN POINT NUCLEAR GENERATING UNIT NO. 2

Availabilty of Supplemental Partial Initial Decision and Issuance of Amendment to Facility Operating License No. DPR–26

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's Regulations in 10 CFR Part 51, notice is hereby given that a Supplemental Partial Initial Decision dated December 27, 1976, has been issued by the Atomic Safety and Licensing Board in the above captioned proceeding authorizing issuance of a license amendment to the Consolidated Edison Company of New York, Inc., for operation of Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

The Supplemental Partial Initial Decision is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C., and in the Hendrick Hudson Free Library, 31 Albany Post Road, Montrose, New York 10548. The Supplemental Partial Initial Decision is also being made available at the New York State Division of the Budget, State Capital, Albany, New York 12224, and the Tri-State Regional Planning Commission, 1 World Trade Center, 56 South Street, New York, New York 10048.

Any decision or action taken by the Atomic Safety and Licensing Board in connection with the Supplemental Partial Initial Decision may be reviewed by the Atomic Safety and Licensing Appeal Board.

Pursuant to the above mentioned Supplemental Partial Initial Decision, the Nuclear Regulatory Commission (the Commission) has issued Amendment No. 27 to Facility Operating License DPR–26 to Consolidated Edison Company of New York, Inc., for operation of a pressurized water nuclear reactor known as the Indian Point Nuclear Generating Unit No. 2. The license is amended by a change which states that the final termination date of one-through cooling is May 1, 1980.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment. The application for the license amendment complies with the standards and requirements of the Act and the Commission's rules and regulations.

The license amendment is effective as of its date of issuance.

Copies of the (1) Supplemental Partial Initial Decision dated December 27, 1976 and (2) Amendment No. 27 to Facility Operating License DPR–26 are available for public inspection at the above designated locations in Washington, D.C., and New York. Single copies of both items may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Bethesda, Maryland, this 12th day of January 1977.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.77-2020 Filed 1-21-77;8:45 am]

[Docket No. 50-315]

INDIANA AND MICHIGAN ELECTRIC CO. AND INDIANA AND MICHIGAN POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 17 to Facility Operating License No. DPR–58, issued to Indiana and Michigan Electric Company and Indiana and Michigan Power Company (the licensees), which revised the Technical Specifications for operation of the Donald C. Cook Nuclear Plant Unit No. I (the facility), located in Berrien County, Michigan. The amendment is effective as of the date of its issuance.

The amendment changed the Appendix B Technical Specifications to substitute an annual Environmental Operating Report for the presently required semiannual report and to eliminate certain beach erosion monitoring requirements at the D.C. Cook plant site.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate finding as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the August 2, 1976 letters of application for amendment, and (2) Amendment No. 17 to License No. DPR–58. Both of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Maude Preston Palinske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A single copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 6th day of January 1977.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.77-2022 Filed 1-21-77;8:45 am]

[Docket Nos. STN 50-546, STN 50-547]

PUBLIC SERVICE COMPANY OF INDIANA, INC.

Notice of Evidentiary Hearing on Environmental Issues

In the matter of Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2).

An evidentiary hearing on environmental issues will be held at the Madison-Jefferson County Public Library, 420 West Main Street, Madison, Indiana. The hearing will begin at 9:30 a.m. (local time) on February 15, 1977. It is anticipated that it will continue for two weeks.

The public is invited to attend. Limited appearance statements will be called for at the commencement of the proceeding. Oral statements will be limited to five (5) minutes each but a written statement without limitation on length may be submitted to the Board.

It is so ordered.

Dated at Bethesda, Maryland, this 12th day of January 1977.

For the Atomic Safety and Licensing Board.

ELIZABETH S. BOWERS,
Chairman.

[FR Doc.77-2024 Filed 1-21-77;8:45 am]

[Dockets Nos. 50-280 and 50-281]

VIRGINIA ELECTRIC & POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments No. 27 to Facility Operating Licenses Nos. DPR-32 and DPR-37, issued to Virginia Electric & Power Company (the licensee), which revised Technical Specifications for operation of the Surry Power Station Units Nos. 1 and 2 (the facilities) located in Surry County, Virginia. The amendments are effective as of the date of issuance.

The amendments revise the Technical Specifications to remove temporary restrictions, imposed by the Commission's Amendments No. 7 dated June 16, 1975, on power operation of certain valve motor operators in emergency core cooling system pipe lines.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated June 30, 1976, as supplemented October 28, 1976, (2) Amendments No. 27 to Licenses Nos. DPR-32 and DPR-37, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Swem Library, College of William & Mary, Williamsburg, Virginia.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 6th day of January 1977.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc.77-2021 Filed 1-21-77;8:45 am]

[Docket No. 50-576]

WESTINGHOUSE ELECTRIC CORP.

Application for and Consideration of Issuance of Facility Export License

Please take notice that Westinghouse Electric Corporation, Pittsburgh, Pennsylvania, has submitted to the Nuclear Regulatory Commission an application for a license to authorize the export of a pressurized water reactor with a thermal power level of 2,785 megawatts to Spain and that the issuance of such license is under consideration by the Nuclear Regulatory Commission.

No license authorizing the proposed reactor export will be issued until the Nuclear Regulatory Commission determines that such export is within the scope of and consistent with the terms of an applicable agreement for cooperation arranged pursuant to Section 123 of the Atomic Energy Act of 1954, as amended (Act), nor until the Nuclear Regulatory Commission has found that:

(a) The application compiles with the requirements of the Act, and the Commission's regulations set forth in 10 CFR, Chapter 1, and

(b) The reactor proposed to be exported is a utilization facility as defined in said Act and regulations.

In its review of applications solely to authorize the export of production or utilization facilities, the Nuclear Regulatory Commission does not evaluate the health and safety characteristics of the facility to be exported. Consequently, there are no safety analysis or Advisory Committee on Reactor Safeguards reports.

Unless on or before February 23, 1977, a request for a hearing is filed with the Nuclear Regulatory Commission by the applicant, or a petition for leave to intervene is filed by any person whose interest may be affected by the proceeding, the Director of the Office of International Programs may, upon the determinations and findings noted above, cause to be issued to Westinghouse Electric Corporation a facility export license and may cause to be published in the FEDERAL REGISTER a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Nuclear Regulatory Commission will issue a notice of hearing or an appropriate order.

A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Maryland, this 10th day of January 1977.

For the Nuclear Regulatory Commission.

MICHAEL A. GUHIN,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

[FR Doc.77-2019 Filed 1-21-77;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON REGULATORY ACTIVITIES

Meeting

In accordance with the purposes of Sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Activities will hold a meeting on February 9, 1977 in Room 1046, 1717 H Street, N.W., Washington, D.C. 20555.

The agenda for the above meeting will be as follows:

Wednesday, February 9, 1977

(A) *8:45 a.m. until about 11:00 a.m.* (Open).

The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following items:

(1) Regulatory Guide 1.118, "Periodic Testing of Electric Power and Protection Systems."

(2) Regulatory Guide 1.119, Revision 1, "Surveillance Program for New Fuel Assembly Designs."

(3) A Working Paper, Regulatory Guide 1.XX, "Site Investigations for Foundations of Nuclear Power Facilities."

(B) *11:00 a.m. until the close of business.* (Open).

The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to activities which affect the current licensing process or reactor operations, including those relating to the following:

(1) Practices and Procedures for Correction of ECCS Errors for Operating Power Plants.

Other matters which may be of a predecisional nature relevant to reactor operation or licensing activities may be discussed during this session.

Portions of this session may be closed if required to discuss proprietary material related to the design, construction, or operation of specific equipment.

I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that it may be necessary to close portions of the meeting as noted above to protect proprietary data under 5 U.S.C. 552(b)(4).

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 records. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(A) Persons wishing to submit written statements regarding Regulatory Guides 1.118 and 1.119 may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than February 2, 1977 to Mr. G. R. Quittschreiber, ACRS, NRC, Washington, DC 20555 will normally be received in time to be considered at this meeting.

(B) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(C) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-1374, Attn: Mr. G. R. Quittschreiber) between 8:15 a.m. and 5:00 p.m., EST.

(D) Questions may be propounded only by members of the Subcommittee and its consultants.

(E) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(F) Persons with agreements or orders permitting access to proprietary information may attend portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to Mr. G. R. Quittschreiber of the ACRS Office, prior to the beginning of the meeting.

(G) A copy of the transcript of the open portion(s) of the meeting where factual information is presented and a copy of the minutes of the meeting will be available for inspection at the NRC Public Document Room, 1717 H St., NW., Washington, D.C. 20555 on or after February 16, 1977, and May 9, 1977, respectively.

Copies may be obtained upon payment of appropriate charges.

JOHN C. HOYLE,
Advisory Committee Management Officer.

JANUARY 19, 1977.

[FR Doc.77-2289 Filed 1-21-77;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON SEISMIC ACTIVITY

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 Seismic Activities will meet on February 8 and 9, 1977 at the Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland 20014. The purpose of this meeting is 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.

The agenda for this meeting shall be as follows:

Tuesday, February 8, and Wednesday, February 9, 1977 from 8:30 a.m. until approximately 9:00 p.m. each day, or until conclusion of business on February 9. (Open)

The two-day meeting will include presentations by invited speakers. Topics will concern recent seismic related developments, ground motion for seismic design, and soil-structure interaction. In addition, the Subcommittee will review seismic related matters referred to the ACRS by the NRC.

The Subcommittee may caucus to determine whether matters have been adequately covered and whether they are ready for review by the full Committee. During the session Subcommittee members and consultants will discuss their opinions and recommendations on these matters.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than February 1, 1977 to Mr. Thomas G. McCreless, ACRS, NRC, Washington, DC 20555, will normally be received in time to be considered at this meeting.

(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 February 7, 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 presense 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 portion(s) 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 15, and May 2, 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.

JOHN C. HOYLE,
Advisory Committee Management Officer.

JANUARY 18, 1977.

[FR Doc.77-2290 Filed 1-21-77;8:45 am]

POSTAL SERVICE

PREPARATION REQUIREMENTS FOR BULK RATE THIRD-CLASS MAIL

Erroneous Interpretation of Packaging Requirements; Delayed Compliance Date

In the Postal Bulletin of December 30, 1976, the Postal Service published a notice on preparation of bulk third-class mail, which stated, among other things, that in order to be eligible for acceptance, bulk third-class mail must be presorted by ZIP Codes in packages and sacks in accordance with 134.43, Postal Service Manual. The pieces in a bulk third-class mailing must be faced, correctly oriented for reading of the addresses, and secured in ZIP Coded packages in a manner which will preserve the facing and ZIP Coded sortation during handling.

Placing non-packageable items loose in sacks or other containers is not sufficient to meet prescribed bulk rate preparation requirements. Such mailings are properly chargeable with postage at the single third-class rate.

Managers of bulk mail acceptance units must give this matter close supervision to protect postal revenues.

The above Postal Bulletin notice merely served as a reminder to postal managers of the long-standing presorting, ZIP Coding, and packaging requirements of 134.43 of the Postal Service Manual, requirements that were put into effect on January 1, 1967, after a public rulemaking proceeding, see 30 FR 8477 (July 2, 1965). It appears now that some postal customers and post offices interpreted these requirements erroneously and accepted improperly prepared and packaged pieces at the bulk third-class rate for many years. In addition, we have now determined it is possible to prepare cylindrical packages and mailing tubes in accordance with § 134.43, Postal Service Manual, and if such items are correctly packaged they may be accepted at the bulk rates. Therefore, in view of these circumstances, and to mitigate the effect of an otherwise sudden insistence on following Postal Service packaging requirements, the Postal Service will permit mailers who have been operating under such erroneous interpretations to continue to do so until April 14, 1977, at which time all post offices will enforce all third-class bulk rate mail preparation requirements fully in accordance with 134.43 of the Postal Service Manual.

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc.77-1663 Filed 1-21-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Waiver Petition No. HS-77-1]

SIERRA RAILROAD CO.

Petition for Exemption from Hours of Service Act

The Sierra Railroad Company has petitioned the Federal Railroad Administration pursuant to 45 U.S.C. 64a(e) for an exemption, with respect to certain employees, from the Hours of Service Act, as amended, 45 U.S.C. 61-64(b).

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Attention: FRA Waiver Petition No. HS-77-1, Room 5101, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before March 10, 1977, will be considered before final action is taken on this petition. All comments received will be available for examination by interested persons during business hours in Room 5101, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C., on January 13, 1977.

DONALD W. BENNETT,
Chairman, Railroad Safety Board.

[FR Doc.77-2668 Filed 1-21-77;8:45 am]

Federal Aviation Administration

RNAV POLICY STATEMENT

Correction

In FR Doc. 77-841 appearing on page 2738 in the issue of Thursday, January 13, 1977 on page 2739, the first full paragraph should be corrected to read as follows:

To be responsive to current and near-term RNAV users, the FAA will determine RNAV user needs and take positive steps to facilitate RNAV use within the existing air traffic control environment. This will include:

Eliminating existing RNAV routes which do not respond to user requirements.
Establishing, on a case-by-case basis, RNAV routes with the accompanying RNAV transition segments, SIDs and STARs.
Promoting the establishment of RNAV approaches at noninstrumented airports.
Establishing a continuing program to educate pilots, air traffic controllers, flight service specialists and flight standards specialists about RNAV and its capabilities.
Developing a national waypoint system to facilitate pilot selection of direct routes.
Development and promulgation of RNAV avionics minimum performance standards.

DEPARTMENT OF THE TREASURY

Office of the Secretary

ADVISORY COMMITTEE ON PRIVATE PHILANTHROPY AND PUBLIC NEEDS

Appointment of Members

Secretary of the Treasury William E. Simon announced on January 6, 1977 the appointment of members of the Advisory Committee on Private Philanthropy and Public Needs. Appointments are subject to tax and security checks. Members will serve two-year terms without pay.

The Committee will advise the Treasury Department on tax aspects of private philanthropy, standards for philanthropic institutions, and needed information and data on private giving and philanthropic activities. Establishment of the Committee was announced in the FEDERAL REGISTER of November 29, 1976 (41 FR 52352).

C. Douglas Dillon, former Treasury Secretary and Chairman of the Metropolitan Museum of Art in New York is Chairman of the Committee. Committee Sponsor is Treasury Deputy Secretary George Dixon. Committee Coordinator is Gabriel Rudney of the Treasury Department.

The Committee is expected to meet quarterly. Meetings will be open to the public. Public notice of pending meetings will be published in the FEDERAL REGISTER.

Members of the Advisory Committee, in addition to Mr. Dillon, are:

William Aramony (National Executive, United Way, Washington, D.C.).
Robert Blendon (Vice President, Robert Wood Johnson Foundation, Princeton, New Jersey).
Kingman Brewster (President, Yale University, New Haven, Connecticut).

David Cohen (Executive Director, Common Cause, Washington, D.C.).
Leonard Conway (President, Youth Project, Washington, D.C.).
Bruce Dayton (Chairman, Executive Committee and Chief Financial Officer, Dayton Hudson Corporation, Minneapolis, Minnesota).
Pablo Eisenberg (President, Center for Community Change, Washington, D.C.).
John Filer (Chairman, Aetna Life and Casualty Company, Hartford, Connecticut).
Marion Fremont-Smith (Partner, Choate, Hall and Stewart, Boston, Massachusetts).
Mary Gardiner Jones (President, National Consumers League, Washington, D.C.).
James Joseph (President, Cummins Engine Foundation, Columbus, Indiana).
Vilma Martinez (President, Mexican-American Legal Defense and Education Fund, San Francisco, California).
Walter McNerney (President, Blue Cross Association, Chicago, Illinois).
John Nolan (Partner, Miller and Chevalier, Washington, D.C.).
Ernest Osborne (President, Sachem Fund, New Haven, Connecticut).
Alan Pifer (President, Carnegie Corporation, New York, New York).
George Romney (President, National Center for Voluntary Action, Washington, D.C.).
William Matson Roth, (President, San Francisco Museum of Art, San Francisco, California).
Eleanor Sheldon (President, Social Science Research Council, New York, New York).
Leonard Silverstein (Partner, Silverstein and Mullens, Washington, D.C.).
Thomas Troyer (Partner, Caplin and Drysdale, Washington, D.C.).
Wes Uhlman (Mayor, City of Seattle, Washington).
Paul Ylvisaker (Dean, Harvard Graduate School of Education, Boston, Massachusetts).
H. J. Zoffer (Dean, Graduate School of Business, University of Pittsburgh, Pittsburgh, Pennsylvania).

GEORGE H. DIXON,
Deputy Secretary of the Treasury.

[FR Doc.77-2128 Filed 1-21-77;8:45 am]

U.S.A. AND ITALY TO NEGOTIATE REVISED INCOME TAX TREATY

Announcement

The Treasury Department today announced that representatives of the United States and Italy will meet in Rome during the week of February 14, 1977 to renegotiate the income tax treaty between the two countries.

The existing income tax treaty was signed in 1955 and has been in effect since 1956. During the past 20 years, many tax treaty concepts have been modified, particularly as a result of the work of the Fiscal Committee of the Organization for Economic Cooperation and Development (OECD). Consequently, the 1955 U.S.A.-Italy treaty is now outmoded in a number of respects. Moreover, the extensive changes in Italian income tax law, effective in January 1947, raised doubts about the continued applicability of the treaty, which has continued in effect under the terms of an interim agreement negotiated in December 1974 pending renegotiation of the treaty.

The new treaty will be based on the draft U.S.A. model income tax treaty published by the Treasury Department on May 18, 1976 it will also take into account the OECD Model Draft as well as other recent treaties concluded by the United States and Italy.

Interested persons are invited to submit comments in writing by February 11, 1977 to the Assistant Secretary for Tax Policy, U.S. Treasury Department, Room 3108, Washington, D.C. 20220.

CHARLES I. KINGSON,
Acting International Tax Counsel.

[FR Doc.77-2069 Filed 1-21-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 309]

ASSIGNMENT OF HEARINGS

JANUARY 18, 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 141663, Robert E. Moore, d/b/a Moore Trucking Company, now assigned February 15, 1977 at Greensboro, N.C., will be held in Court No. 1, 3rd Floor, U.S. Post Office & Courthouse Building.
MC 138627 (Sub-No. 11), Smithway Motor Xpress, Inc., now assigned February 1, 1977, at Kansas City, Mo. is canceled and application dismissed.
MC 142066 (Sub-No. 1), Theophane Lawrence Schlegal and Diana Gayle Schlegal d/b/a Central Pacific Freight Lines, now being assigned March 8, 1977 (1 day) at Port Orford, Oregon, in the City Hall Council Chambers 555 West 20th Street and continued to March 9, 1977 (2 days) at Brookings, Oregon, in the City Hall Council Chambers, 898 Elk Drive.
MC 142134, Donald J. Bryden, dba Bryden Trucking now being assigned March 8, 1977 (1 day) at Seattle, Washington in a hearing room to be later designated.
MC 124004 Sub 34, Richard Dahn, Inc., now being assigned March 15, 1977, at the Office of Interstate Commerce Commission, Washington, D.C.
MC 124896 Sub 15, Williamson Truck Lines, Inc., now being assigned March 16, 1977, at the Office of Interstate Commerce Commission, Washington, D.C.
MC 103066 Sub 46 Stone Trucking Company, now being assigned April 6, 1977, at the Office of Interstate Commerce Commission, Washington, D.C.
MC 140563 Sub 7, W. T. Myles Transportation Co., now being assigned March 8, 1977, at the Office of the Interstate Commerce Commission, Washington, D.C.
MC 115311 Sub 195, J & M Transportation Co., Inc., now being assigned February 22, 1977, at the Office of the Interstate Commerce Commission, Washington, D.C.
MC 124939 (Sub-No. 9), Food Haul, Inc., now being assigned for continued hearing on February 7, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.
MC 544 (Sub-No. 1), Vancouver Portland Bus, Co., now assigned February 14, 1977, at Portland, Oreg., is canceled and application dismissed.
MC 74321 (Sub-No. 123), B. F. Walker, Inc., now assigned March 8, 1977, at Seattle, Washington, is canceled and application dismissed.
MC 115860 (Sub 10), Dalby Transfer and Storage, Inc. now being assigned April 25, 1977 (1 week) at Denver, Colorado in a hearing room to be later designated.
MC 113658 Sub 11, Scott Truck Line, Inc. now being assigned April 20, 1977 (3 days) at Denver, Colorado in a hearing room to be later designated.
MC 142162, Bralen Trucking Co., Inc. now being assigned April 18, 1977 (2 days) at Denver, Colorado in a hearing room to be later designated.
No. 36451, Colorado Intrastate Freight Rates and Charges—1976, now being assigned April 12, 1977 (4 days) at Denver, Colorado in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2151 Filed 1-21-77;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 18, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before February 8, 1977.

FSA No. 43304—*Beet or Cane Sugar from Points in Washington.* Filed by Trans-Continental Freight Bureau, Agent, (No. 514), for interested rail carriers. Rates on sugar, beet or cane, in carloads, as described in the application, from Scalley, Sugar Spur, and Toppenish, Washington, to points in Illinois, Indiana, Iowa, Kentucky, Missouri and Wisconsin. Grounds for relief—Returned shipments and rate relationship. Tariff—Supplement 44 to Trans-Continental Freight Bureau, Agent, tariff 2-N, I.C.C. No. 1935. Rates are published to become effective on February 15, 1977.

FSA No. 43305—*Soybeans and Related Articles to Snowflake, Arizona.* Filed by Trans-Continental Freight Bureau, Agent, (No. 515), for interested rail carriers. Rates on soybeans and soybean cake or meal, in bulk, in covered hopper cars, as described in the application, from points in Colorado, Kansas, Louisiana, Nebraska, Oklahoma and Texas, to Snowflake, Arizona. Grounds for relief—Motor carrier competition. Tariff—Supplement 238 to Trans-Continental Freight Bureau, Agent, tariff 45-N, I.C.C. No. 1850. Rates are published to become effective on February 17, 1977.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2150 Filed 1-21-77;8:45 am]

federal register

MONDAY, JANUARY 24, 1977

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 101]

CONDITIONAL PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Assumption of Review Responsibility

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to add a new Subpart D to Part 101 of Title 42, Code of Federal Regulations.

Sections 1152(a) and 1154 of the Social Security Act authorize the Secretary to designate qualified organizations as Professional Standards Review Organizations (PSROs) for a conditional period not to exceed two years. Section 1154(b) of the Act authorizes the Secretary to require a conditional PSRO to perform such duties and functions during the conditional period of that PSRO, as he determines the organization is capable of performing. The purpose of the proposed Subpart D is to implement section 1154(b) of the Act by requiring all conditional PSROs to assume review responsibility on a gradually increasing basis during the conditional period. Such review responsibility will include the authority to make review determinations which, with respect to the provision of health care services subject to PSRO review, will be conditions for the payment or denial of claims under Medicare and Medicaid, as specified in new Subpart E of Part 101. However, pursuant to section 1158(a) of the Act, PSRO determinations will be advisory for the purposes of payment for Title V Maternal and Child Health and Crippled Children's programs) funds.

Conditional PSROs will assume review responsibility only with regard to the issues of medical necessity, quality and level of care which are specified in clauses (A), (B) and (C) of section 1155(a)(1) of the Act and only in those health care institutions where they have assumed review responsibility in accord with a timetable for phasing-in review responsibility which will be approved by the Secretary. These regulations will apply to assumption of PSRO review in all such health care institutions. Each PSRO's formal plan and the comments of Medicare and Medicaid fiscal agents, as well as other relevant factors concerning the PSRO, will be evaluated by the Secretary to determine if the PSRO is capable of performing these functions prior to approving its assumption of such responsibilities.

The Secretary's decision to have conditional PSROs assume review responsibility is consistent with section 1154(b) of the Act and with the legislative history of the PSRO statute which states:

> Medicare and Medicaid claims paying agencies would be expected to abide by final decisions of the PSRO during this trial period. Placing reliance on the PSRO decision during the trial period is necessary to permit accurate appraisal of the effectiveness with which the conditionally approved PSRO could be expected to exercise the review function in the absence of concurrent review by others (Sen. Rpt. 92-1230, 92 Cong., 2d Sess., p. 261 (1972))

Sections 101.402 and 101.406 of the proposed Subpart D provide for a determination of capability by the Secretary at the time of conditional designation, approval of the PSRO's phase-in timetable, and certain notification requirements designed to inform health care institutions, appropriate administrative agencies and the public of the schedule for assumption of review responsibility by PSROs. The PSRO is to develop administrative procedures under section 101.405 necessary for coordinating PSRO activities with those of Medicaid and Title V State agencies, Medicare fiscal agents and health care institutions. Such administrative procedures may be incorporated in memoranda of understanding or agreements, at the option of the fiscal agents and institutions, within the time period specified in § 101.405. However, in the case of review functions which are to be delegated to health care institutions pursuant to section 1155(e) of the Social Security Act, the institution is required to enter into an agreement with the PSRO regarding the delegated review functions and procedures before the institution may begin review under the authority of the PSRO. If no agreement is reached in this case, the PSRO is required to begin review in accordance with applicable regulations of this Part. Regulations which set forth in detail the delegation of review process will be issued in proposed form in the near future.

The proposed regulations also provide for monitoring of PSRO activities (§ 101.409), and for reevaluation of the PSRO's capability to exercise review responsibility (§ 101.410). Medicare intermediaries will be routinely assisting the Secretary, at the request of the Secretary, by monitoring PSRO review and through the performance of other related functions. However, because of the strong financial interest which the States have in assuring that an effective review system exists because of the expenditure of State funds under Title XIX of the Social Security Act, provision is made under § 101.409 for a temporary suspension of PSRO authority by the Secretary, pending a full reevaluation of PSRO capability, where the State provides reasonable documentation that PSRO determinations, and not other factors, have had a detrimental impact either on State Medicaid expenditures or on the quality of care received by Medicaid patients. If such a temporary suspension of PSRO authority is in effect, the PSRO's determinations will be only advisory to Medicaid State agencies and Medicare fiscal agents for purposes of claims payment. However, in order to prevent the need for reestablishing utilization review committees, which would be an unnecessary and costly duplication of review during a period of only temporary suspension of PSRO authority, the provisions of Title XIX and Title XVIII relating to utilization review and control, physician certifications, and State agency surveys and certifications, will be deemed to be satisfied by such advisory review by the PSRO during the period of suspension.

Interested persons are invited to submit written comments, suggestions or objections concerning Subpart D to the Director, Bureau of Quality Assurance, Health Services Administration, Room 16A-55, 5600 Fishers Lane, Rockville, Maryland 20852, on or before March 25, 1977. All comments received in timely response to this Notice will be considered and will be available for public inspection in the above-named office during regular business hours.

It is proposed to make Subpart D effective upon republication in the FEDERAL REGISTER.

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: November 18, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

Subpart D—Assumption of Review Responsibility by Conditional PSROs

Sec.

101.401 Definitions.
101.402 Evaluation of capability.
101.403 Notification of determination of capability.
101.404 Assumption of review responsibility according to timetable.
101.405 Establishment of administrative procedures.
101.406 Notification prior to assumption of review responsibility.
101.407 Revision of phase-in timetable.
101.408 Public inspection of timetable.
101.409 Monitoring.
101.410 Reevaluation of capability.

AUTHORITY: Secs. 1152(a), 1154(b), 1155(a)(1), (2), 1164, 1165, Social Security Act, 86 Stat. 1430, 1432, 1433, 1442, 1443, (42 U.S.C. 1320c-1(a), 3(b), 4(a)(1), (2), 13, and 14); sec. 1102 of the Social Security Act, 49 Stat. 647 as amended (42 U.S.C. 1302)

Subpart D—Assumption of Review Responsibility by Conditional PSROs

§ 101.401 Definitions.

As used in this subpart: (a) "Act" means the Social Security Act, as amended (42 U.S.C. Chapter 7).

(b) "Conditional PSRO" means a Professional Standards Review Organization designated on a conditional basis pursuant to sections 1152(a) and 1154 of the Act.

(c) "Formal plan" means the plan submitted to the Secretary prior to designation of a conditional PSRO, detailing the tasks necessary for the orderly assumption and implementation of the responsibilities of such conditional PSRO, including a phase-in timetable.

(d) "Review responsibility" means (1) the responsibility of a PSRO to perform

duties and functions prescribed under Title XI, Part B of the Act and the regulations of this part in accord with the phase-in timetable approved by the Secretary and (2) the authority of a PSRO to make determinations in specified health care institutions under sections 1155(a) (1) and (2) of the Act which, with respect to issues arising under sections 1155(a) (1) and (2) of the Act, are conclusive under the Act, pursuant to section 1158 of the Act and Subpart E of this Part.

(e) "Health care institution" means an organization involved in the delivery of health care services or items for which reimbursement may be made in whole or in part under the Act.

(f) "Medicaid State agency" means an agency which is established or designated under section 1902(a)(5) of the Act to administer a State plan to provide medical assistance under Title XIX of the Act.

(g) "Medicare fiscal agents" means intermediaries which are parties to agreements entered into by the Secretary pursuant to section 1816 of the Act and carriers which are parties to contracts entered into by the Secretary pursuant to section 1842 of the Act.

(h) "Phase-in timetable" means a schedule, contained in the PSRO's formal plan and updated as necessary, specifying the estimated times when a conditional PSRO will assume review responsibilities in particular health care institutions, whether such review is to be performed by the conditional PSRO or by a health care institution under delegation from the PSRO pursuant to section 1155(e) of the Act.

(i) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(j) "State survey agency" means an agency performing provider surveys under section 1864(a) of the Act.

(k) "Title V State agency" means an agency which is established or designated pursuant to section 505(a)(2) of the Act to administer the State plan under Title V of the Act.

§ 101.402 Evaluation of capability.

At that time that the Secretary reviews each formal plan to determine whether to designate an organization as a conditional PSRO, the Secretary will evaluate the capability of such organization to exercise review responsibility. Such evaluation will be based upon the following criteria:

(a) The formal plan submitted by the organization to the Secretary;

(b) Comments and recommendations submitted by the appropriate Medicaid and Title V State agencies and Medicare fiscal agents pursuant to the request of the Secretary which will be made at the time he receives a formal plan for conditional designation; and

(c) Other relevant factors, as determined by the Secretary.

§ 101.403 Notification of designation and capability.

Notification to an organization of the determination of the Secretary as to whether it is designated as a conditional PSRO will be made in writing and will include notification of the Secretary's determination of its capability to exercise review responsibility pursuant to its approved formal plan.

§ 101.404 Assumption of review responsibility according to timetable.

A conditional PSRO which has been found by the Secretary to be capable of exercising review responsibility and has been so notified pursuant to § 101.403, shall assume review responsibility in particular health care institutions in accordance with such notification (whether review is to be performed by the PSRO or under delegation from the PSRO by a review committee pursuant to section 1155(e)), in accordance with its approved phase-in timetable and the requirements of this subpart.

§ 101.405 Establishment of administrative procedures.

(a) *Procedures for State Medicaid and Title V State agencies and Medicare fiscal agents*—(1) *Development.* Each conditional PSRO, at least 90 days prior to the earliest date in the conditional PSRO's phase-in timetable for assumption of review functions in any health care institution, shall (i) develop proposed administrative procedures for correlation of PSRO activities with those of Medicaid and Title V State agencies and Medicare fiscal agents, and (ii) provide copies of such administrative procedures to the Secretary for review and comment and to the appropriate Medicaid and Title V State agencies, Medicare fiscal agents and State survey agency for review and comment.

(2) *Content.* The administrative procedures developed by a PSRO under paragraph (a)(1) of this section shall include:

(i) Procedures for informing such agencies and agents of PSRO approval or disapproval of health care services and items;

(ii) Other matters, consistent with Title XI, Part B of the Act, which the PSRO deems necessary for correlation of PSRO activities with those of such agencies and agents.

(3) *Procedures for comment and Memoranda of Understanding.* (i) A Medicaid or Title V State agency or Medicare fiscal agent may comment upon the administrative procedures developed by a conditional PSRO under paragraph (a)(1) of this section within 30 days after receipt of such procedures. The PSRO shall consider any such timely comments and make such modifications to its administrative procedures as the conditional PSRO deems appropriate and shall forward a copy of such revised procedures to the appropriate State agencies and fiscal agents.

(ii) If a Medicaid or Title V State agency or Medicare fiscal agent wishes to incorporate the PSRO's administrative procedures into the form of a written memorandum of understanding with the conditional PSRO, the agency or agent shall so notify the PSRO. In such case, the PSRO and the agency or agent shall negotiate in good faith in an effort to reach written agreement on the PSRO's administrative procedures.

(4) *Approval of Secretary.* Each conditional PSRO, at least 30 days prior to the date in its phase-in timetable for its first assumption of review functions shall submit copies of its administrative procedures (modified as appropriate) or a written memorandum of understanding to the Secretary for approval. The appropriate Medicaid and Title V State agencies and Medicare fiscal agents may submit comments on the administrative procedures to the Secretary for his consideration, not less than 10 days prior to the date scheduled for the first assumption of review functions. If the Secretary does not disapprove the administrative procedures or the memorandum of understanding prior to the date in such phase-in timetable for the first assumption of review functions, then the PSRO shall utilize such administrative procedures or memorandum of understanding. If the Secretary disapproves the administrative procedures or the memorandum of understanding either prior to or after such date, the Secretary shall so notify the PSRO, and the appropriate Medicaid and Title V State agencies and Medicare fiscal agents, stating the reasons therefor, and will require the conditional PSRO to revise its administrative procedures or modify its phase-in timetable or both in accordance with a timetable specified by the Secretary.

(5) *Modification.* The administrative procedures developed under paragraphs (a)(1) through (a)(4) of this section may be modified, with the approval of the Secretary, either: (i) By a revised memorandum of understanding between the conditional PSRO and the appropriate Medicaid or Title V State agencies or Medicare fiscal agents; or (ii) by the conditional PSRO after providing such agencies or agents the opportunity for comment.

(6) *Previously approved procedures.* Paragraphs (a)(1) through (a)(4) of this section shall not apply in the event that, prior to the adoption of this regulation, a conditional PSRO (i) has already assumed review responsibility in accordance with a phase-in timetable approved by the Secretary in a health care institution and (ii) is utilizing administrative procedures (including memoranda of understanding) between the conditional PSRO and the appropriate Medicaid and Title V State agencies and Medicare fiscal agents which have been approved by the Secretary. However, such previously adopted procedures may be revised by the PSRO at any time in accord with paragraphs (a)(1) through (a)(5) of this section.

(7) *Current procedures available.* A copy of each set of current administrative procedures (including memoranda of understanding) utilized by the conditional PSRO under this section shall be

maintained by the conditional PSRO on file and be available for public inspection in its principal business office.

(b) *Procedures for health care institutions.*—(1) *Development of procedures and other requirements prior to initiation of PSRO review.* Prior to the initiation of review in any health care institution, each PSRO shall, in accordance with applicable regulations of this part:

(i) Notify such institution in a timely manner of the procedures and requirements for delegation of review functions pursuant to section 1155(e) of the Act and the factors and process which the PSRO will utilize for evaluating the capability of the institutional review committee to perform review functions. An example of the notification letter, including the written evaluation factors, shall be submitted to the Secretary for his approval prior to use;

(ii) Evaluate the capability of a health care institution which seeks to obtain a delegation of PSRO review functions; and

(iii) Develop models of procedures for the coordination of PSRO and institutional administrative and review activities in (A) institutions to which all review functions have been delegated, (B) institutions in which review activities are apportioned between the PSRO and the institutions, and (C) institutions in which the PSRO performs all the review functions. Copies of the models of procedures shall be submitted to the Secretary for his approval at least 90 days prior to the earliest date in the PSRO's phase-in timetable for the first assumption of review functions. Each PSRO shall provide copies of its approved administrative and review procedures to all area health care institutions at least 60 days prior to the earliest date when the PSRO is to assume review activities in any institution under the approved phase-in timetable.

(2) *Consultation with nondelegated institutions.* At least 45 days before the conditional PSRO assumes review responsibility in any institution to which it does not propose to delegate any of its review functions, the conditional PSRO shall provide such institution an opportunity for consultation regarding the approved administrative and review procedures. After consideration of any comments made during consultation, the PSRO shall make such modifications in the administrative and review procedures as the PSRO deems appropriate for that institution, and may incorporate such procedures in a written agreement with the institution. However, such modifications or agreements shall not be inconsistent with the model approved by the Secretary pursuant to paragraph (b)(1) of this section and shall include provisions for administrative resolution of disputes and such other provisions as are required in the applicable regulations of this part.

(3) *Agreements with delegated institutions.* Where a conditional PSRO proposes to delegate all or part of its review functions to a health care institution, the PSRO and the institution, prior to such delegation, shall enter into an agreement incorporating procedures for coordination of conditional PSRO and institutional administrative and review activities which are not inconsistent with the procedures in the model approved by the Secretary. Such agreement shall include provisions for administrative resolution of disputes and such other provisions as are required in the applicable regulations of this Part. Where such agreement cannot be accomplished, the PSRO shall initiate review in the institution by the date for the assumption of review functions in the institution by the PSRO.

(4) *Modification.* The administrative procedures developed under paragraphs (b)(1) through (b)(3) of this section may be modified, with the approval of the Secretary, either by a revised agreement between the conditional PSRO and the institution, or by the PSRO after providing the institution with an opportunity for comment.

(5) *Previously approved procedures.* Paragraphs (b)(1) through (b)(4) of this section shall not apply to administrative and review procedures (including agreements) utilized by conditional PSROs in health care institutions which were approved by the Secretary prior to the effective date of this subpart. However, such previously adopted procedures may be revised by the PSRO at any time in accord with subparagraphs (b)(1) through (b)(4) of this section.

§ 101.406 Notification prior to assumption of review responsibility.

(a) *Notice to health care institutions and public of designation and timetable.* Each conditional PSRO which has been approved under § 101.403 shall, within 30 days of such notification, provide a copy of its approved phase-in timetable to each health care institution listed in its phase-in timetable and publish a notice in at least one local newspaper of general circulation in the PSRO area indicating (1) that the conditional PSRO has been found capable by the Secretary to exercise review responsibility, as defined in this subpart, in designated health care institutions in the PSRO area, (2) that the conditional PSRO will assume review responsibility according to a phase-in timetable approved by the Secretary, which is available for public inspection in the principal business office of the conditional PSRO, and (3) that the conditional PSRO will publish the exact dates upon which it will assume review responsibility in particular institutions pursuant to paragraph (c) of this section.

(b) *Fiscal and survey agency notices.* The Secretary will notify the appropriate Medicaid, State survey and Title V State agencies, and the Medicare fiscal agents of (1) the PSRO's approved phase-in timetable at the time of designation of such PSRO and (2) any revision in the approved timetable at the time the PSRO notifies the Secretary of such revisions in accordance with § 101.407.

(c) *Notices of exact date of assumption of resonsibility.* At least 30 days prior to assumption of review responsibility in any health care institution, whether such review is to be performed by the PSRO or by an institutional review committee, each conditional PSRO shall (1) publish a notice in at least one local newspaper of general circulation in the PSRO area of the date on which the conditional PSRO will assume review responsibility and (2) notify the health care institution and the Secretary of such date. The Secretary will in turn notify the appropriate Medicaid and Title V State agencies and Medicare fiscal agents when it receives notification from each PSRO pursuant to this paragraph.

(d) *Notice required for previously designated PSROs.* Conditional PSROs designated prior to the effective date of this subpart shall, to the extent they have not already complied with the requirements of paragraph (a) of this section, within 30 days after the effective date of this Subpart, notify health care institutions and the public in accordance with paragraph (a)(1) of this section that they have been found capable by the Secretary. Such notices shall also state that the conditional PSRO has assumed review responsibility in accordance with a phase-in timetable approved by the Secretary, which is available for public inspection in the principal business office of the PSRO.

(e) *Notice of delay in assumption of responsibility.* (1) If a conditional PSRO does not assure review responsibility in accord with the notice given in paragraph (c) of this section, it shall, prior to the date prescribed therein, notify the health care institution involved, the appropriate Medicaid and Title V State agencies and Medicare fiscal agents and the Secretary that it is unable to assume responsibility at such time and state the reasons for its inability to do so. The provisions of Titles XVIII and XIX of the Act specified in Subpart F of this part shall continue to be applicable with respect to such institution until such time as the PSRO assumes review responsibility in the institution.

(2) Where the Secretary has been notified pursuant to paragraph (e)(1) of this section, he will take such action as he deems necessary, which may include, but is not limited to, revision of the phase-in timetable pursuant to § 101.407, monitoring arrangements under § 101.409, or, reevaluation of the capability of the PSRO under § 101.410.

§ 101.407 Revision of phase-in timetable.

(a) Where a conditional PSRO anticipates a delay of more than 90 days in meeting the estimated date for the assumption of review responsibility in any health care institution, the conditional PSRO shall, prior to such estimated date, notify the Secretary of such anticipated delay and request a revision in the approved phase-in timetable for such conditional PSRO.

(b) The Secretary may, at any time after designation, revise the approved phase-in timetable of any conditional PSRO, in accordance with a request

under paragraph (a) of this section or on the basis of his reevaluation of the capability of the conditional PSRO in accordance with § 101.410.

§ 101.408 Public inspection of timetable.

Each conditional PSRO shall maintain its current approved phase-in timetable on file for public inspection at the principal business office of the conditional PSRO during regular business hours.

§ 101.409 Monitoring.

(a) The Secretary may arrange to have Medicare fiscal agents or Medicaid or Title V State agencies assist him in monitoring the activities of a conditional PSRO. Where such arrangements are made, the conditional PSRO shall take all necessary and appropriate actions to facilitate such monitoring activities.

(b) Where a Medicare fiscal agent or a Medicaid or Title V State agency finds, in the course of monitoring a conditional PSRO, that problems appear to exist in the effectiveness of conditional PSRO review, the fiscal agent or agency shall so notify the conditional PSRO and meet with the conditional PSRO to discuss methods for improving the effectiveness of conditional PSRO review. The Medicare fiscal agent or Medicaid or Title V State agency shall promptly notify the Secretary of any serious problems regarding the effectiveness of conditional PSRO review, and shall further notify the Secretary of the results of its meeting with the conditional PSRO to resolve such problems. The Secretary will consider such information in evaluating the need for a reevaluation of the conditional PSRO's capability pursuant to § 101.410, or other appropriate action.

(c) Where, pursuant to paragraph (b) of this section, a Medicaid State agency and conditional PSRO have not been successful in resolving any problems regarding the appropriateness of PSRO review, the State may file a written complaint with the Secretary requesting either corrective action by the Secretary or, where the State believes the problems have a serious impact upon the administration of the State Medicaid program, a temporary suspension of the conditional PSRO's authority to make determinations which are conclusive for purposes of payment under the Act. Pending a reevaluation of the conditional PSRO's capability pursuant to § 101.410, the Secretary will temporarily suspend such PSRO authority in full or in part as he deems appropriate when the Secretary determines that the State has provided reasonable documentation that the PSRO's review determinations, and not other factors, have caused either of the following:

(1) A detrimental impact on State Medicaid expenditures; or

(2) A detrimental impact on the quality of care received by Medicaid patients. Where a conditional PSRO's authority is temporarily suspended by the Secretary, the PSRO shall continue its review activities. During such period of suspension, the PSRO's determinations shall not be conclusive for purposes of payment under the Act but shall be only advisory to Medicaid State agencies and Medicare fiscal agents, and the provisions of Titles XVIII and XIX of the Act, relating to utilization review and control, physician certifications, and State agency surveys and certifications, shall be deemed to be satisfied.

§ 101.410 Reevaluation of capability.

(a) *Reevaluation factors.* The Secretary may at any time, pursuant to section 1154(b) of the Act, reevaluate the capability of a conditional PSRO to exercise review responsibility. Such reevaluation will be based upon:

(1) The progress of the PSRO in carrying out its formal plan;

(2) Any comments or recommendations submitted by Medicaid or Title V State agencies or Medicare fiscal agents; and

(3) Other relevant factors as determined by the Secretary.

(b) *Notice of tentative determination and intended action.* If, after such reevaluation, the Secretary has reason to believe that the conditional PSRO is not performing in a satisfactory manner the duties and functions which it was found capable of performing, then the Secretary shall notify the conditional PSRO of the grounds for such belief and of the action which the Secretary proposes to take regarding the conditional PSRO. Such action may include:

(1) Placing restrictions upon the exercise of review responsibility or the performance of certain duties and functions by the conditional PSRO, including revision of the conditional PSRO's phase-in timetable;

(2) Requiring the conditional PSRO to take corrective action, including the acceptance of technical assistance to improve its performance;

(3) Suspending the authority of the PSRO to make conclusive determinations pursuant to Subpart E of this part for a period of time. During such period of suspension, the PSRO shall continue its review activities, the PSRO's determinations shall not be conclusive for purposes of payament under the Act but shall be only advisory to Medicaid State agencies and Medicare fiscal agents, and the provisions of Titles XVIII and XIX of the Act, relating to utilization review and control, physician certifications and State agency surveys and certifications, shall be deemed to be satisfied.

(4) Terminating the agreement with the conditional PRSO upon 90 days notice to the PSRO, pursuant to section 1154(c) of the Act;

(5) Such other action as the Secretary may deem appropriate.

(c) *Notice to fiscal agencies.* The Secretary will, as soon as practicable, notify the appropriate Medicaid and Title V State agencies and Medicare fiscal agents, and affected health care institutions, of his belief under paragraph (b) of this section and any action he intends to take pursuant thereto, and solicit their comments on the action he proposes to take.

(d) *Informal meeting and decision.* The notice to the conditional PRSO under paragraph (b) of this section shall offer the conditional PSRO an opportunity to submit written material and to meet informally with an official designated by the Secretary to show cause why the action proposed by the Secretary should not be taken. If the conditional PSRO does not submit written material or request an informal meeting within 14 days after receipt of the Secretary's notice, the Secretary's tentative decision shall become final and he will so notify the PSRO, Medicaid and Title V agencies, and Medicare fiscal agent(s), and state the basis for his decision. If the conditional PSRO submits written material within 14 days, the Secretary will consider this material prior to making a final decision. If the conditional PSRO requests an informal meeting within 14 days after receipt of the Secretary's notice, such a meeting will be scheduled as soon as practicable. After such meeting, the official designated by the Secretary will render promptly a recommended decision to the Secretary. The Secretary will adopt, revise or set aside the recommended decision and will notify the PSRO, appropriate Medicaid and Title V agencies and Medicare fiscal agent(s) of such decision and the basis for such decision.

[FR Doc.77-1948 Filed 1-21-77;8:45 am]

[42 CFR Part 101]

PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Conclusive Effect of Determinations on Claims Payment

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to add a new Subpart E to Part 101 of Title 42, Code of Federal Regulations.

The proposed Subpart E would require Medicare fiscal agents and State Medicaid agencies, within their respective areas of responsibility, to accept as conclusive in institutions in which the PSRO has assumed review responsibility, disapprovals by a PSRO of health services as being medically unnecessary, of inadequate quality or provided at an inappropriate level of care. Those PSRO determinations, in accordance with sections 1155 and 1158 of the Social Security Act (42 U.S.C. 1320c–4 and 7) will, except as provided in section 1159 (42 U.S.C. 1320c–8), constitute the conclusive determination on those medical issues in connection with items or services for which payment of Federal funds may be made under the Act.

As a corollary, the claims for payment must be accompanied or supported by evidence of PSRO review and approval, routine certification, or other appropriate actions by the PSRO indicating that the services have not been disap-

proved and the payment agencies will accept the PSRO determinations on those medical issues. However, PSROs will not review services where the Secretary has made a determination under section 1862(d) of the Act to exclude services rendered by a provider or health care practitioner from coverage under Title XVIII of the Act or to terminate a provider's agreement.

The State Medicaid agencies are also bound by PSRO decisions under section 1164 of the Act, which makes the provisions of Title XI, Part B, directly applicable to the State Medicaid plans.

Subpart E thus represents a change in the general status of utilization review decisions under the Social Security Act, since unlike the findings of utilization review committees under both the present utilization review regulations of Titles XVIII and XIX (20 CFR 405.1035; 45 CFR 250.20) and the proposed utilization review regulations (41 FR 13452, 13457, March 30, 1976), the findings of the PSROs will always be conclusive upon Medicare fiscal agents and Medicaid State agencies.

Separate regulations implementing the provisions of section 1158(a) of the Act, which authorizes payment of Federal funds for services which have been disapproved by a PSRO when the Secretary has determined that the claimant is without fault, are under development and will be published for public comment in the FEDERAL REGISTER.

Interested persons are invited to submit written comments, suggestions or objections concerning Subpart E to the Director, Bureau of Quality Assurance, Health Services Administration, Room 16-A-55, 5600 Fishers Lane, Rockville, Maryland 20852, on or before March 25, 1977. All comments received in timely response to this Notice will be considered and will be available for public inspection in the above-named office during regular business hours.

It is proposed to make Subpart E effective upon republication in the FEDERAL REGISTER.

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: November 18, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

Subpart E—Conclusive Effect of PSRO Deerminations on Claims Payment

Sec.
101.501 Definitions.
101.502 PSRO action as condition of payment of claims.
101.503 Effect of PSRO disapproval of services.
101.504 Effect of affirmative PSRO determinations.
101.505 Coverage determinations.

AUTHORITY: Sec. 1154(b), 1155(a)(1), 1158, 1164, Social Security Act, 86 Stat. 1432, 1433, 1437, 1442; (42 U.S.C. 1320c 3(b), 4, 7, 13); sec. 1102, Social Security Act, 49 Stat. 647, as amended (42 U.S.C. 1302)

Subpart E—Conclusive Effect of PSRO Determinations on Claims Payment

§ 101.501 Definitions.

As used in this subpart:

(a) "Act" means the Social Security Act, as amended (42 U.S.C. Chapter 7).

(b) "Review responsibility" means (1) the responsibility of a PSRO to perform duties and functions prescribed under Title XI, Part B of the Act and the regulations of this part in accord with the phase-in timetable approved by the Secretary; and (2) the authority of a PSRO to make determinations in specified health care institutions under sections 1155(a) (1) and (2) of the Act which, with respect to issues arising under sections 1155(a) (1) and (2) of the Act, are conclusive under the Act, pursuant to section 1158 of the Act and this subpart.

(c) "Medicare fiscal agents" means intermediaries which are parties to agreements entered into by the Secretary pursuant to section 1816 of the Act and carriers which are parties to contracts entered into by the Secretary pursuant to section 1842 of the Act.

(d) "Medicaid State Agency" means an agency which is established or designated under section 1902(a)(5) of the Act to administer a State plan to provide medical asistance under Title XIX of the Act.

(e) "PSRO" means a Professional Standards Review Organization which is conditionally or unconditionally designated.

(f) "Title V State agency" means an agency which is established or designated pursuant to section 505(a)(2) of the Act to administer the State plan under Title V of the Act.

§ 101.502 PSRO action as condition of payment.

No Federal funds appropriated under Title XVIII or XIX of the Act shall be used (directly or indirectly) for the payment of any claim for services or items provided in a health care institution where a PSRO is exercising review responsibility for such institution unless (a) the claim for payment is accompanied or supported by evidence of PSRO review and approval, routine certification, or other appropriate action indicating that the services or items have not been disapproved; or (b) such services or items have been approved pursuant to section 1159 and the applicable regulations of this part.

§ 101.503 Effect of PSRO disapproval of services.

(a) Except as provided in section 1159 of the Act and the applicable regulations of this part, no Federal funds appropriated under Title XVIII or XIX of the Act for the provision of health care services or items shall be used (directly or indirectly) for the payment, under such titles or any program established pursuant thereto, of any claim for the provision of health care services or items (unless the Secretary, pursuant to applicable regulations of this part, determines that the claimant is without fault), if:

(1) The provision of such services or items is subject to review by a PSRO under Title XI, Part B of the Act;

(2) The PSRO has disapproved of the services or items giving rise to such claim; and

(3) The PSRO has notified the practitioner or provider who provided, or proposed to provide, such services or items, and the individual who received, or was proposed to receive, such services or items, of its disapproval of the provision of such services or items.

(b) Wherever any PSRO disapproves of any health care services or items, the PSRO shall, after giving the notifications required under paragraph (a) of this section, promptly notify the Medicaid or Title V State agency or Medicare fiscal agent having responsibility for acting upon claims for payment for or on account of such services or items in accordance with the regulations of this Part.

§ 101.504 Effect of affirmative PSRO determinations.

Where a PSRO is exercising review responsibility, no Medicare fiscal agent or Medicaid State agency shall deny the payment of Federal funds for a claim for the provision of health care services or items under Title XVIII or XIX of the Act which are subject to such review, on the grounds that such services were not medically necessary, or were not of a quality which meets professionally recognized standards of health care, or were provided inappropriately on an inpatient basis, or could have been provided more economically in an inpatient health care facility of a different type, unless such services or items have been disapproved by the PSRO or disapproved under section 1159 of the Act.

§ 101.505 Coverage determinations.

Nothing in this subpart shall be construed as precluding the Secretary, a Medicare fiscal agent, or a Medicaid State agency, in the proper exercise of its duties and functions, from reviewing claims for benefits under Titles XVIII and XIX of the Act, or from determining whether they meet the coverage requirements of such Titles XVIII and XIX, in accordance with the implementing regulations of Titles XVIII and XIX and the applicable regulations of this Part providing for the correlation of these functions with those functions of the PSRO under Title XI, Part B of the Act.

[FR Doc.77-1949 Filed 1-21-77;8:45 am]

[42 CFR Part 101]

PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Correlation of Functions Under Title XI, Part B of the Social Security Act With Other Provisions of the Act

Notice is given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to add a new Subpart F, entitled "Correlation of Functions Under Title XI, Part B of the Social Security Act with Other Provisions of the Act."

The purpose of the present proposal is to correlate, under section 1165 of the Social Security Act (the Act), the various activities of professional Standards Review Organizations (PSROs) with those of the Medicare, Medicaid and Title V agencies and other organizations having review-related functions. In some cases this correlation will require that the PSRO's activities replace those of other agencies. For example, since section 1155(a)(1) of the Act provides that each PSRO will assume exclusive "responsibility" in its area for the review of the medical necessity, quality and appropriate level of care of health services and items which may be paid for under the Act "notwithstanding any other provisions of law," the PSRO's review activities will replace the present utilization review activities of Title XVIII and XIX agencies in those institutions for which a PSRO has assumed responsibility.

On the other hand, in accord with section 1158 of the Act, PSRO activities will replace the present claims payment functions of Medicare and Medicaid agencies only insofar as a PSRO's determinations of medical necessity, quality and level of care will be conclusive with regard to these issues. Pertinent coverage regulations and guidelines, such as relate to the number of hospital days covered or the reasonableness of charges, will continue to apply to payment determinations, and claims payment agencies will not be precluded from rendering coverage and reimbursement determinations with regard to issues which are not the subject of the PSRO determinations.

Similarly, physician certifications required under Title XI will be performed in lieu of similar requirements under Titles XVIII and XIX of the Act, but pertinent coverage regulations and guidelines authorized under those provisions of the Act will continue to apply to payment determinations.

Regulations are under development regarding the relationship of PSRO review and physician certifications to physician certifications made pursuant to section 1814(h) of the Act (relating to "presumed coverage" of a Medicare beneficiary in a skilled nursing facility). In the interim, Subpart F clarifies that, as is the case with an adverse finding by a skilled nursing facility's utilization review committee when the care is not subject to PRSO review, the beneficiary is not eligible for a period of "presumed coverage" in a skilled nursing facility when a PSRO determines that the skilled nursing care to which the physician certifies is not medically necessary.

Survey and monitoring responsibilities of State survey agencies and claims payment agencies, to assure that utilization review functions are being conducted in health care institutions in accordance with section 1861(k) of the Act will no longer be applicable under the law where PSROs are exercising review responsibilities in such institutions.

Finally, since section 1159(c) of the Act provides for an exclusive hearing procedure on PSRO issues, other hearing procedures provided under the Act on the issues of medical necessity, quality and appropriate level of care will be superseded by the procedures of section 1159 of the Act.

It should be noted that, since section 1158 of the Act makes clear that PSRO determinations are to be advisory for purposes of services provided under Title V of the Act, none of the provisions of Title V will be superseded in health care institutions where PSROs perform review and both the PSRO and Title V review systems may operate simultaneously.

It should also be noted that the correlation of PSRO activities with activities of other agencies with respect to particular institutions will only take place at the time PSROs assume review responsibility with regard to those institutions. With respect to institutions where PSROs have not yet begun to function, the Medicare and Medicaid claims payment agencies will continue to exercise all those functions required of them under the Act.

Interested persons are invited to submit written comments, suggestions or objections concerning Subpart F to the Director, Bureau of Quality Assurance, Health Services Administration, Room 16A55, 5600 Fishers Lane, Rockville, Maryland 20852, on or before March 25, 1977. All comments received in timely response will be considered and will be available for public inspection in the above-named office during regular business hours.

It is proposed to make Subpart F effective upon republication in the FEDERAL REGISTER.

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: November 18, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

Subpart F—Correlation of Functions Under Title XI, Part B of the Social Security Act With Other Provisions of the Act

Sec.

101.601 Definitions.
101.602 Applicability.
101.603 Correlation of Title XI functions with Title XVIII functions.
101.604 Correlation of Title XI functions with Title XIX functions.
101.605 Continuation of functions not assumed by PSROs.

AUTHORITY: Sections 1154(b), 1155(a)(1), 1158, 1164 and 1165 of the Social Security Act, 86 Stat. 1432, 1433, 1437, 1442, and 1443, (42 U.S.C. 1320c-3(b), 4, 7, 13, 14); Section 1102 of the Social Security Act, 49 Stat. 647, as amended (42 U.S.C. 1302).

Subpart F—Correlation of Functions Under Title XI, Part B of the Social Security Act With Other Provisions of the Act

§ 101.601 Definitions.

As used in this subpart:

(a) "Act" means the Social Security Act, as amended (42 U.S.C. Chapter 7).

(b) "PSRO" means a Professional Standards Review Organization which is conditionally or unconditionally designated.

(c) "Review responsibility" means (1) the responsibility of a PSRO to perform duties and functions prescribed under Title XI, Part B of the Act and the regulations of this Part in accord with the phase-in timetable approved by the Secretary and (2) the authority of a PSRO to make determinations in specified health care institutions under sections 1155(a) (1) and (2) of the Act which, with respect to issues arising under sections 1155(a) (1) and (2) of the Act, are conclusive under the Act, pursuant to section 1158 of the Act and Subpart E of this Part.

(d) "Health care institution" means an organization involved in the delivery of health care services or items for which reimbursement may be made in whole or in part under the Act.

§ 101.602 Applicability.

The provisions of this Subpart shall be applicable only to health care services and items provided by or in those health care institutions in which a PSRO has assumed review responsibility in accordance with the applicable provisions of this Part.

§ 101.603 Correlation of Title XI functions with Title XVIII functions.

(a) *Utilization review activities.* The review activities of PSROs under section 1155(a) of the Act shall be in lieu of the utilization review and evaluation activities required of health care institutions under sections 1861(e)(6), 1861(j)(8), 1861(j)(12), 1861(k) and 1865 of the Act.

(b) *Certifications.* (1) The certifications made by attending physicians under section 1156(d) of the Act with regard to the issue of medical necessity of health care services, shall be in lieu of the physician certifications required under sections 1814(a)(2)(A), (B), (C), and (E), 1814(a)(3), and 1835(a)(2)(B) of the Act. However, pertinent coverage regulations and guidelines authorized and established pursuant to the provisions of title XVIII of the Act cited above shall continue to apply to payment determinations.

(2) A Medicare beneficiary is not eligible for a period of presumed coverage under section 1814(h) of the Act when a PSRO determines that the care specified in section 1814(a)(2)(C) of the Act is not medically necessary or appropriate.

(c) *Payment determinations by Medicare intermediaries and carriers.* Determinations of PSROs under section 1155 (a) of the Act with regard to the medical necessity, quality and appropriate level of care of health care services, shall be conclusive with regard to these issues on decisions of Medicare intermediaries and carriers under sections 1814(a)(4), 1814 (a)(5), 1814(a)(6), 1862(a)(1) and 1862 (a)(9) of the Act. However, pertinent coverage regulations and guidelines authorized and established pursuant to the provisions of title XVIII of the Act cited above shall continue to apply to payment determinations, and claims payment agencies shall not be precluded from rendering coverage and reimbursement determinations with regard to issues which are not the subject of such PSRO determinations.

(d) *Survey, compliance and assistance activities.* The activities of PSROs in performing review directly in health care institutions under section 1155(a) of the Act and the monitoring activities of PSROs in assuring compliance with requirements of Title XI, Part B of the Act in health care institutions which are delegated review responsibilities under section 1155(e)(1) of the Act shall be in lieu of the survey, compliance and assistance activities required of State survey agencies under section 1864(a) with respect to sections 1861(e)(6), 1861(j)(8), 1861(j)(12), and 1861(k) of the Act, and intermediaries and carriers under sections 1816(b)(1)(B), and 1842(a)(2)(A) and (B) of the Act. The Secretary will notify appropriate State survey agencies, intermediaries, and carriers of all health care institutions for which a PSRO has assumed review responsibility.

(e) *Review and appeals activities.* Pursuant to section 1159(c) of the Act, any reviews or appeals of PSRO determinations provided under section 1159 (a) and (b) of the Act shall be in lieu of appeals provided under sections 1842 (b)(3)(C) and 1869(b) of the Act with respect to the issues of medical necessity, quality and level of care of health care services as determined by such PSRO.

§ 101.604 Correlation of Title XI functions with Title XIX functions.

(a) *Review activities.* The review activities of PSROs under section 1155(a) of the Act shall be in lieu of the medical, utilization and independent professional review activities required under sections 1902(a)(26), 1902(a)(30), 1902(a)(31), 1903(g)(1) and 1903(i)(4) of the Act.

(b) *Certifications.* Certifications made by attending physicians under section 1156(d) of the Act shall be in lieu of physician certifications required under section 1903(g)(1)(A) of the Act.

(c) *Payment determinations.* Determinations of PSROs under section 1155 (a) of the Act, with regard to the medical necessity, quality and appropriate level of care of health care services, shall be conclusive with regard to these issues on decisions of State Medicaid agencies under section 1903(g) and 1903(i)(4) of the Act. However, such PSRO determinations shall not preclude appropriate coverage determinations under the provisions of Title XIX of the Act with regard to issues which are not the subject of such PSRO determinations.

(d) *Survey and compliance activities.* The activities of PSROs in performing review directly in health care institutions under section 1155(a) of the Act, and the monitoring activities of PSROs in assuring compliance with the requirements of Title XI, Part B of the Act in health care institutions which are delegated review responsibilities under section 1155(e)(1) of the Act, shall be in lieu of the validation procedures performed by the Secretary under section 1903(g)(2) of the Act and the survey procedures required of State survey agencies under section 1902(a)(33) of the Act.

(e) *Review and appeals activities.* Pursuant to section 1159(c) of the Act, any reviews or appeals of PSRO determinations provided under sections 1159 (a) and (b) of the Act shall be in lieu of fair hearings before State agencies provided under section 1902(a)(3) of the Act with respect to the issues of medical necessity, quality and level of care of health care services as determined by such PSRO.

§ 101.605 Continuation of functions not assumed by PSROs.

Any of the duties and functions of a PSRO under Title XI, Part B of the Act for which responsibility has not been assumed by a PSRO shall be performed in the manner and to the extent otherwise provided for under the law.

[FR Doc.77-1950 Filed 1-21-77;8:45 am]

federal register

MONDAY, JANUARY 24, 1977

PART III



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

■

NATIONAL FLOOD INSURANCE PROGRAM

Communities Eligible for Sale of Insurance and Final and Proposed Flood Elevation Determinations

Title 24—Housing and Urban Development

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-2642]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

• *Purpose.* The purpose of this notice is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128). •

Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at § 1912.5, 24 CFR Part 1912).

The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified for at least one year by the Secretary of Housing and Urban Development. The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by section 202(b) of the Act, as amended, unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. 551. The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
•	•	•	•	•	•
Georgia	Cherokee and Pickens	Nelson, city of	Jan. 1, 1977, emergency	Apr. 11, 1975	130236
Maine	Washington	Harrington, town of	do	Feb. 21, 1975	230314
Michigan	Macomb	Utica, city of	do	Oct. 17, 1975	260098
Pennsylvania	Lehigh	Coopersburg, borough of	do	Nov. 19, 1976	420357
Do.	Jefferson	Perry, township of	do	Jan. 10, 1975	422444
Do.	Crawford	Venango, township of	do	May 31, 1974 June 11, 1976	421574A
•	•	•	•	•	•
Alabama	Cullman	Cullman, city of	Feb. 19, 1974, emergency; Jan. 14, 1977, regular.	Aug. 9, 1974	010200B
Connecticut	New Haven	Prospect, town of	July 1, 1975, emergency; Feb. 4, 1977, regular.	June 21, 1974	090151A
Delaware	New Castle	Delaware City, city of	Dec. 17, 1973, emergency; Feb. 16, 1977, regular.	Apr. 5, 1974 Dec. 19, 1975	100022B
Georgia	Columbia	Grovetown, city of	June 1, 1976, emergency; Jan. 28, 1977, regular.	Aug. 1, 1975	130265A
Do.	do	Harlem, city of	Mar. 1, 1976, emergency; Jan. 28, 1977, regular.	July 18, 1975	130266A
North Carolina	New Brunswick	Yaupon Beach, town of	Dec. 19, 1973, emergency; Feb. 16, 1977, regular.	June 28, 1974 June 25, 1976	370036B
Pennsylvania	Clinton	Lockhaven, city of	Nov. 17, 1972, emergency; Feb. 2, 1977, regular.	Apr. 12, 1974	420328A
Do.	Northumberland	Rush, township of	Nov. 11, 1974, emergency; Jan. 28, 1977, regular.	Sept. 6, 1974 June 18, 1976	421942B
•	•	•	•	•	•
Indiana	Floyd	New Albany, city of	Dec. 28, 1976, suspended; withdrawn	Feb. 15, 1974 Jan. 30, 1976	180062A
Iowa	do	Charles City, city of	Dec. 29, 1976, suspended; withdrawn	Feb. 2, 1977	190128
Louisiana	Jefferson	Westwego, city of	Dec. 28, 1976, suspended; withdrawn	July 16, 1976	220094
Missouri	Calloway	Cedar City, city of	Dec. 29, 1976, suspended; withdrawn	Oct. 18, 1974	290050
New Jersey	Morris	Randolph, township of	Dec. 28, 1976, suspended; withdrawn	Feb. 15, 1974	340358
North Carolina	Beaufort	Washington, city of	Dec. 29, 1976, suspended; withdrawn	Feb. 20, 1973 June 18, 1976	370017A
Ohio	Cuyahoga	Mayfield, village of	Dec. 28, 1976, suspended; withdrawn	Nov. 23, 1973 June 18, 1976	390116A
South Carolina	Horry	Surfside Beach, town of	do	June 14, 1974 June 25, 1976	450111A
Texas	Atascosa and Bexar	Lytle, city of	Dec. 29, 1976, suspended; withdrawn	Aug. 2, 1974 July 18, 1975	480002A

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

Issued: January 10, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1770 Filed 1-21-77;8:45 am]

[Docket No. FI-2134]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Final Flood Elevation Determinations for Borough of Highlands, New Jersey

On August 4, 1976, at 41 FR 32585, the Federal Insurance Administrator published a notification of modification of the base (100-year) flood elevations in the Borough of Highlands, New Jersey. Since that date, ninety days have elapsed; and the Federal Insurance Administrator has evaluated requests for changes in the base flood elevations, and after consultation with the Chief Executive Officer of the community, has determined no changes are necessary. Therefore, the modified flood elevations are effective as of June 30, 1976 and amend the Flood Insurance Rate Map which was in effect prior to that date.

The modifications are pursuant to section 206 of the Flood Disaster Protection

Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448) 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 345297A and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the final flood elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The numerous changes made in the base flood elevations on the Highlands Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the Highlands map.

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1766 Filed 1-21-77;8:45 am]

[Docket No. FI-2134]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Final Flood Elevation Determinations for City of Winston-Salem, North Carolina

On August 4, 1976, at 41 FR 32585, the Federal Insurance Administrator published a notification of modification of the base (100-year) flood elevations in the City of Winston-Salem, North Carolina. Since that date, ninety days have elapsed; and the Federal Insurance Administrator has evaluated requests for changes in the base flood elevations, and after consultation with the Chief Executive Officer of the community, has determined no changes are necessary. Therefore, the modified flood elevations are effective as of June 30, 1976 and amend the Flood Insurance Rate Map which was in effect prior to that date.

The modifications are pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448) 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 375360D and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the final flood elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The numerous changes made in the base flood elevations on the Winston-Salem Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the Winston-Salem map.

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1767 Filed 1-21-77;8:45 am]

[Docket No. FI-2145]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Final Flood Elevation Determinations for the City of Tulsa, Oklahoma

On August 4, 1976, at 41 FR 32585, the Federal Insurance Administrator published a notification of modification of the base (100-year) flood elevations in the City of Tulsa, Oklahoma. Since that date, ninety days have elapsed; and the Federal Insurance Administrator has evaluated requests for changes in the base flood elevations, and after consultation with the Chief Executive Officer of the community, has determined no changes are necessary. Therefore, the modified flood elevations are effective as of July 30, 1976 and amend the Flood Insurance Rate Map which was in effect prior to that date.

The modifications are pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448) 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 405381C and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the final flood elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The numerous changes made in the base flood elevations on the Tulsa Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the Tulsa map.

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

Issued: January 7, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc. 77-1768 Filed 1-21-77;8:45 am]

[Docket No. FI-947]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Correction of Final Flood Elevation for the Township of Lower Macungie, Lehigh County, Pennsylvania

The final notice published on August 12, 1976, at 41 FR 34023 in the FEDERAL REGISTER, showing a Base Flood Elevation of 311 feet at Weidas Mill Bridge, 319 feet at Riverdale Farm Bridge and 333 feet at the Pennsylvania Turnpike (extended), should have been 310 feet, 318 feet and 332 feet respectively. The width of the 100-year flood boundary remains unchanged.

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1760 Filed 1-21-77;8:45 am]

[Docket No. FI-2277]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Correction of the Final Flood Elevation for the City of Leon Valley, Bexar County, Texas

The final notice published on December 16, 1976, at 41 FR 55088 in the FEDERAL REGISTER, only showed elevations in

feet above Mean Sea Level along Huebner Creek. Elevations (msl) at various locations along additional sources of flooding are shown in the table below:

Source of flooding	Location	Elevation in feet above mean sea level
Drain 1	William Rancher Rd.	836
	Grass Hill Dr.	828
	Aids Dr.	805
Drain 1A	Seneca Dr.	813
	Kinman Dr.	823
	Mary Jamison Dr.	853
Drain 2	Evening Sun Dr.	829
	Seneca Dr.	851
Drain 3	Stirrup Lane	834
	Forest Meadow Dr.	854
	Forest Mont Dr.	865
	Forest Ridge Dr.	887
Zarzamora Creek	I-410 (service road)	818
	Bandera Rd.	816
Drain 4	I-410	826
	Wurzback Rd.	854

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1761 Filed 1-21-77;8:45 am]

[Docket No. FI-2277]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Correction of the Final Flood Elevation for City of Conroe, Montgomery County, Texas

The final notice published on December 1, 1976, at 41 FR 42668 in the FEDERAL REGISTER shows the Base Flood Elevations at various locations, column I. These Base Flood Elevations should be corrected to reflect changes as shown in column II.

Source of flooding	Location	Elevation in feet above mean sea level	
		Col. I	Col. II (should be)
West Fork, West Branch of Alligator Creek.	Upstream side of I-45	206	203
	Upstream side of Wilson	190	199
West Branch of Alligator Creek.	Centerline of I-45 (north crossing)	185	185
Live Oak Branch	Centerline of State Highway 105	185	187
	Greenway Dr.	182	182
North Fork of Stewarts Creek.	Hilbig Rd.	216	218
Stewarts Creek	East Semands St. (extended)	188	188
	Upstream side of East Davis St.	179	179
	F Ave.	175	174
	Silverdale Dr. (extended)	168	167
Possum Branch	Airport Rd.	181	193
	East Phillips St.	188	188
Alligator Creek	Centerline of Cartwright Rd.	235	235
	Pacific St.	211	212
	North Thompson St.	203	203
	Cable St. (extended)	180	180
	I-45 centerline	174	174
	Santa Fe R.R.	169	179

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1762 Filed 1-21-77;8:45 am]

[Docket No. FI-2296]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Livermore, California

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

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

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to

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

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 2550 First Street, Livermore, California 94550.

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

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Arroyo Mocho	Southern Pacific RR	450	40	40
	South edge of Stanley Blvd	452	1,670	50
	West edge of Holmes St	472	60	0
Arroyo Las Positas	West side of Airway Blvd	381	50	800
	West edge of Bluebell Dr	501	30	35
	West edge of Heather Lane	512	190	30
	Along north edge of Frontage Rd	535	70	580
Altamont Creek	Along north edge of Bluebell Dr	500	880	150
	West edge of Vasco Rd	526	910	40
Arroyo Seco	South side Highway 50	506	90	90
	Lucille St	551	0	0

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

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1763 Filed 1-21-77;8:45 am]

[Docket No. FI-2322]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Fullerton, California

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

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

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

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 303 West Commonwealth, Fullerton, California 92632.

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

Source of flooding	Location	Depth in feet above mean sea level
Sheet flooding	Numerous small areas throughout the city.	Up to 3 ft.

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

Issued: December 16, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1764 Filed 1-21-77;8:45 am]

[Docket No. FI-2296]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Eureka, Missouri

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

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

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

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 106 South Central Avenue, Eureka, Missouri 63025.

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

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Cliffe Creek	Forby Rd, M 1.862 (extended)	473	120	60
	State Route 109	442	250	(1)
Meramec River	North Pacific RR. bridge (downstream side).	444	(1)	3,180
Flat Creek	Stonebridge Dr. (extended across South Pacific RR. tracks).	452	(1)	750
	Bald Hill Rd	452	1,450	800

[1] Outside corporate limits.

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

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal
Insurance Administrator.

[FR Doc.77-1765 Filed 1-21-77;8:45 am]

[Docket No. FI-2301]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for County of Waupaca, Wisconsin

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

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

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

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Waupaca County, 109 South Main Street, Waupaca, Wisconsin 54981.

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

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Little Wolf River	CTH P	1,058	500	50
	Culvert Bridge	923	150	150
	CTH C	867	50	200
	Kretchmer Rd	855	200	100
	STH 22	839	25	50
	STH 54	782	50	100
	Ostrander Rd	771	20	50
South Branch Little Wolf River.	CTH Q	906	50	100
	STH 49	899	200	80
Crystal River	STH 22 Bridge	973	20	10
	Sanders Rd	860	50	10
	Rural Rd	856	50	10
	Parfreyville Rd	851	100	50
	Shadow Rd	835	100	50
Waupaca River	Weyauwega corporate limits (downstream).	759	50	20
Wolf River	500 line railroad bridge	707	6,200	10,300
Pigeon River	A centerline extended west from Stenbrook Rd.	812	100	600
	Section line between land secs. 21 and 22	809	50	50

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

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal
Insurance Administrator.

[FR Doc.77-1769 Filed 1-21-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-2656]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the City of Ferguson, Missouri

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Ferguson, Missouri.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Ferguson must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 110 Church Street, Ferguson, Missouri 63135.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Charles H. Grimm, 110 Church Street, Ferguson, Missouri 63135. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Maline Creek	Glen Owen Ave	462
	West Florissant Rd	469
	Wabash R R	477
	Bermuda Dr	485
	Wabash R R	486
	Florissant Rd	489
Ferguson Park Branch.	Highmont Dr	480
	Forestwood Dr	484
	Chambers Rd	511
	Averill Rd	513
	Roberts Rd	526
Ball Creek	Elkan Dr	493
	Woodstock Rd	497
Ferguson Branch	Paul St	489
	Adams St	491
	Wabash R R	500
	Church St	503
	Darst Rd	511
	Chambers Rd	517
	Royal Rd	520
	Thoroughman Rd	521
	Robert Dr	528
	Scott Dr	537

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

Issued: November 1, 1976.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1744 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2657]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Itasca, Du Page County, Illinois

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Itasca, Du Page County, Illinois.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Village Hall, 100 North Walnut Street, Itasca.

Any person having knowledge, information, or wishing to make a comment on these deteminations should immediately notify Mr. William F. Everham, President of the Board of Trustees, 100 North Walnut Street, Itasca. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Spring Brook	Rohlwing Rd	689
	Valley Rd	688
	Walnut Ave	686
	Prospect Ave	681
Salt Creek	Thorndale Ave	682
	Industrial Rd. (extended).	681
Meacham Creek	Medinah Rd	716
	Corporate limits	716
Devon Ave. tributary.	North corporate limit (Devon Ave.)	685
	Pierce Rd	687

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1745 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2578]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Brighton, Colorado; Correction

The name and address of the Mayor of the City of Brighton, Colorado in the notice published on December 30, 1976 at 41 FR 56960 in the FEDERAL REGISTER should be corrected as follows: Mayor Guy R. Sanders, Municipal Building, 365 Main Street, Brighton, Colorado 80601.

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

Issued: December 27, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1746 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2651]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Gorham, Ontario County, New York

The Federal Insurance Administrator, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), (42 U.S.C. 4001-4128), and 24 CFR Part 1917 (§ 1917.4 (a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Gorham, Ontario County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information show-

ing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the entrance to Town Hall on the bulletin board, South Street, Gorham, New York.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Robert Watkins, Town Supervisor of Gorham, R.D. 1, P.O. Box 108, D. Stanley, New York 14561. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Flint Creek	Tile Yard Rd.	861
	Lake to Lake Rd.	867
	Con Rail	872
	East Swamp Rd.	879
Canandaigua Lake.	Fisher Gully	697
	Jones Rd. (extended)	695
	Gage Gully	697
	Deep Run	703
	Turner Rd. (extended).	695

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 30 FR 2787, January 24, 1974)

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1747 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2652]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Lloyd Harbor, Suffolk County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Lloyd Harbor, Suffolk County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Village Hall, 32 Middle Hollow Road, Huntingdon, New York.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor William H. Miller, 32 Middle Hollow Road, Huntingdon, New York 11743. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Long Island Sound.		[1] 12

[1] Uniform.

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1748 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2653]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Riverhead, Suffolk County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Riverhead, Suffolk County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Town Clerk's office on the bulletin board, 200 Howell Avenue, Riverhead, New York.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Allen M. Smith, Town Supervisor of Riverhead, 200 Howell Avenue, Riverhead, New York 11901. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Long Island Sound.	Entire coastline	11
Peconic River estuary.	Grangabel Park to Indian Island County Park.	9
Great Peconic Bay (Flanders Bay).	Entire coastline	8

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1749 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2654]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Sag Harbor, Suffolk County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Sag Harbor, Suffolk County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Village Clerk's Office on the Bulletin Board, Main Street, Sag Harbor, New York.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Honorable Harry Fick, Mayor of Sag Harbor, PO Box 660, Sag Harbor, New York 11963. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Gardiner's Bay	Entire coastline	+9.0

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1750 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2655]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Sodus Point, Wayne County, New York

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4 (a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Sodus Point, Wayne County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the entrance of the Village Clerk's office, Lake Road, Sodus Point, New York.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable Raymond Zeitler, Mayor of Sodus Point, 4th Street, Sodus Point, New York 14555. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Lake Ontario	West of North Ontario St.	253
	East of 7th St.	251
Sodus Bay	Wickham Blvd.	250
	Margaretta Rd. (extended).	250
	Central Ave. (extended).	251
	South corporate limits.	250

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1751 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2650]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Bemus Point, Chautauqua County, New York

The Federal Insurance Admministrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Bemus Point, Chautauqua County, New York.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Village Hall on the Bulletin Board, 13 Alburtus Avenue, Bemus Point, New York 14712.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Honorable Thom E. Shagla, Mayor of Bemus Point, Bemus Point, New York 14712. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Chautauqua Lake.	Lincoln Rd.	1,310.5
	Springbrook Ave.	1,310.5
	Liberty St. (extended).	1,310.5
	Grove Ave. (extended).	1,310.5
	Bemus St. (extended).	1,310.5
	North corporate limits.	1,310.5

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1752 Filed 1-21-77;8:45 a.m.]

[24 CFR Part 1917]

[Docket No. FI-2649]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Township of Whitemarsh, Montgomery County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4 (a)) hereby gives notice of his proposed determinations of flood elevations for the Township of Whitemarsh, Montgomery County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Township Building, Whitemarsh Township, Joshua Road, La Fayette Hill, Pennsylvania.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. John Plonski, Township Manager, Whitemarsh Township, Joshua Road, La Fayette Hill, Pennsylvania 19444. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Schuylkill River	Downstream corporate limits.	56.7
	Harts Lane (extended).	58.0
	Andorra Creek (confluence).	61.6
	Upstream corporate limits.	64.0
Wissahickon Creek.	Downstream corporate limits.	141.1
	Stenton Ave.	142.8
	Reading RR (Con-Rail bridge).	148.7
	Skippack Pike.	155.8
	Pennsylvania Turnpike (Route 276).	158.0
	Morris Rd.	164.8
	Upstream corporate limits.	165.3

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1753 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2648]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Borough of Scottdale, Westmoreland County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Borough of Scottdale, Westmoreland County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Borough Hall, 10 Mount Pleasant Road, Scottdale.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Frederick L. Eberharter, PO Box 67, Scottdale, Pennsylvania 15683. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Jacobs Creek	Upstream corporate limits (upper reach).	1,050
	Downstream corporate limits (upper reach).	1,050
	U.S. Highway 119.	1,043
	Downstream corporate limits (lower reach).	1,041
Stauffer Run	Upstream corporate limits.	1,052
	Stauffer Ave./ Orchard Ave.	1,052
	Scottdale Ave.	1,051

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1754 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2647]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Borough of New Britain, Bucks County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Borough of New Britain, Bucks County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Borough Hall, 76 Keeley Avenue, New Britain.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor John A. Mueller, 76 Keeley Avenue, New Britain, Pennsylvania 18901. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Neshaminy Creek.	Downstream corporate limits.	232
	South Landis Mill Rd. (extended).	232
	Upstream corporate limits.	233
Cooks Run	Confluence with Neshaminy Creek.	232
	Tamenend Ave. and corporate limits.	244
	Corporate limits and Con Rail.	249
	Wooden Bridge.	259
	Stone Bridge.	265
	U.S. Route 202 Bridge.	270
	Corporate limits.	277

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc. 77-1755 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2646]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Township of Nether Providence, Delaware County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4 (a)) hereby gives notice of his proposed determinations of flood elevations for the Township of Nether Providence, Delaware County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Township Building on the Bulletin Board, 214 Sykes Lane, Wallingford, Pennsylvania 19086.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Charles A. Waters, Township Secretary of Nether Providence, 214 Sykes Lane, Wallingford, Pennsylvania 19086. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Crum Creek	Chester Rd	43
	Yale Ave	53
	Con Rail bridge	67
	Wallingford Rd	73
	Baltimore Pike	81
	Septa Trolley	85
	Paper Mill Rd	98
	Beatty Rd	101
	Upstream corporate limits	117
Ridley Creek	East 25th St	22
	Irwins Mill Dam	23
	Providence Rd	25
	Chestnut Parkway	29
	Chester Park Dam	33
	Chester Park Dr	39
	Brookhaven Rd	49
	Sacksville Rd	61
Vernon Run	Con Rail bridge	185
	Walker Lane	185

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1756 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2645]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Borough of Conshohocken, Montgomery County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Borough of Conshohocken, Montgomery County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Borough Hall, 8th Avenue & Fayette Street, Conshohocken.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor John F. Di Jiosia, 8th Avenue and Fayette Street, Conshohocken, Pennsylvania 19428. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Schuylkill River	East corporate limits	64
	Fayette St	67
	Plymouth Dam	69
	West corporate limits	70
Plymouth Creek	Reading RR	68
	Elm St	69
	West corporate limits	75

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-1757 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2644]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Borough of Ambler, Montgomery County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Borough of Ambler, Montgomery County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Bulletin Board in the Borough Hall, 31 East Butler Avenue, Ambler.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor George E. Saurman, 31 East Butler Avenue, Ambler, Pennsylvania 19002. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Wissahickon Creek	Stuart Farm Creek	167
	Tannery Run	179

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation

of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by FR 39 2787, January 24, 1974).

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal
Insurance Administrator.

[FR Doc.77-1758 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2643]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Sparta, White County, Tennessee

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the City of Sparta, White County, Tennessee.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall on the bulletin board, P.O. Box 30, Sparta, Tennessee.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Honorable Herman Cowden, Mayor of Sparta, P.O. Box 30, Sparta, Tennessee. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Calfkiller River	Louisville & Nashville RR.	857
	U.S. Route 70	860
	West Bronson St. (extended).	863
	North Church St. (extended).	865
	Wagner St. (extended).	867
Town Creek	Mayberry St.	855
	St. Louis RR.	857
	U.S. Route 111	896
	U.S. Route 70 (upstream of bridge).	906

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

Issued: January 4, 1977.

J. ROBERT HUNTER,
Acting Federal
Insurance Administrator.

[FR Doc.77-1759 Filed 1-21-77; 8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2597]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Addison, Dupage County, Illinois

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Village of Addison, Dupage County, Illinois.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in indentified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the bulletin board in the front entrance at the Village Hall, 130 West Army Trail Road, Addison, Illinois 60101.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. K. Arthur Naumann Village President of Addison, 130 West Army Trail Road, Addison, Illinois 60101. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Salt Creek	North of Armitage Ave.	674
	South of Fullerton Ave.	675
	Interstate Route 20	675
	Army Trail Rd. (extended).	676
Salt Creek—Continued	Confluence with Westwood Creek.	676
	Addison Ave.	676
	Roxanne Dr.	676
	Lincoln St.	677
	Highview Ave.	679
	Lake St.	680
	Mill Rd.	684
	Country Club Dr.	689
	North of Rose Ave. near Addison's northern corporate limits.	692

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

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal
Insurance Administrator.

[FR Doc.77-1771 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2596]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Wood Dale, Dupage County, Illinois

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the City of Wood Dale, Dupage County, Illinois.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the lobby on the bulletin board at 404 North Wood Dale Road, Wood Dale, Illinois.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable Jerry Greer, Mayor of Wood Dale, 404 North Wood Dale Road, Wood Dale, Illinois 60191. The period for comment will be ninety days following the second publication of this no-

tice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Salt Creek	Elisabeth Dr.	677
	Irving Park Rd.	680

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

Issued December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77–1772 Filed 1–21–77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI–2595]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Village of Deerfield, Illinois

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Village of Deerfield, Illinois.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Village of Deerfield must adopt sound flood plain management measures that are consistent with the flood evelations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Village Hall, 850 Waukegan Road, Deerfield, Illinois 60015.

Any person having knowledge, information, or wishing to make comment on these determinations should immediately notify Mayor Bernard Forrest, Village Hall, 850 Waukegan Road, Deerfield, Illinois 60015. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
West Fork Middle Branch Chicago River.	Lake-Cook Rd. (a/k/a County Line Rd.).	653
	Central Ave.	656
	Deerfield Rd.	658
	Juniper Ct.	659
	Hazel Ave.	660
	Wilmot Rd.	661
	Montgomery Dr.	664
Middle Fork North Branch Chicago River.	Deerfield Dr.	654

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

Issued: December 17, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77–1773 Filed 1–21–77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI–2594]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Cedar Rapids, Iowa

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the City of Cedar Rapids, Iowa.

Under these Acts, the Administrator, to whom the Secertary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Cedar Rapids must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, May's Island, 3rd Floor, Cedar Rapids, Iowa 52401.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Donald Canney, City Hall, May's Island, 3rd Floor, Cedar Rapids, Iowa 52401. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Cedar River	Edgewood Rd.	737.0
	1st Ave.	732.0
	8th Ave.	729.0
Prarie Creek	J St.	727.0
	6th St.	728.0
	Bowling St.	725.0
	C St.	724.0
Dry Creek	Bowman Rd.	824.5
	Northbrook Dr.	821.0
	Connell St.	815.0
Indian Creek	30th St.	761.0
	29th St.	760.0

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

Issued: December 17, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77–1774 Filed 1–21–77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI–2593]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Berkley, Massachusetts

The Federal Insurance Administrator in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Berkley, Massachusetts.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Berkley must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, Rural Route 1, Berkley, Massachusetts 02780.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. George Moitoza, Chair-

man, Board of Selectmen, Town Hall, Rural Route 1, Berkley, Massachusetts 02780. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Taunton River	Berkley Bridge	15
Assonet River	Corporate limits	15

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

Issued: December 17, 1976.

HOWARD B. CLARK,
Acting Federal
Insurance Administrator.

[FR Doc.77-1775 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2592]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Abington, Massachusetts

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Abington, Massachusetts.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Abington must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, 10 Railroad Street, Abington, Massachusetts 02351.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Francis J. Giniewicc, Chairman, Board of Selectmen, Town Hall, 10 Railroad Street, Abington, Massachusetts 02351. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Shumatuscacant River.	Summer St.	81
	Center St.	88
	Central Ave.	89
	Adams St.	104
	Wales St.	117
	Washington St.	108
	Lincoln St.	123
	Randolph St.	124
	Summit St.	150

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

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal
Insurance Administrator.

[FR Doc.77-1776 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2591]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for County of Carver, Minnesota

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4 (a)), hereby gives notice of his proposed determinations of flood elevations for the County of Carver, Minnesota.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the County of Carver must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Carver County Courthouse, 600 East 4th Street, Chaska, Minnesota 55318.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. William J. Snyder, County Auditor, 600 East 4th Street, Chaska, Minnesota 55318. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
South Fork Crown River.	Watertown downstream city limit.	936
	Minnesota Highway 25 downstream.	942
	Minnesota Highway 25 upstream.	944
	U.S. Highway 7 downstream.	948
	U.S. Highway 7 upstream.	949
	Minnesota Highway 23 upstream.	951
	County State Aid Highway 30 downstream.	952

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

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal
Insurance Administrator.

[FR Doc.77-1777 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2590]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Harrison, New Jersey

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the Town of Harrison, New Jersey.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town of Harrison must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood ele-

vations are available for review at Town Hall, 318 Harrison Avenue, Harrison, New Jersey 07029.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Frank E. Rodgers, Town Hall, 318 Harrison Avenue, Harrison, New Jersey 07029. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Passaic River	4th St.	10
	Penn Central R.R.	10
	Essex St.	10
	Bergen St.	10
	Harrison Ave.	10

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 3001–4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974)

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1778 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2589]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Township of Hanover, Morris County, New Jersey

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Township of Hanover, Morris County, New Jersey.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the General Office at the Municipal Building, 1000 Route 10, Whippany, New Jersey.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable Saverio C. Iannacone, Mayor of Hanover, P.O. Box 250, Whippany, New Jersey. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Whippany River	Route 10	182
	Whippany Rd.	198
	Parsippany Rd.	207
	Eden Lane	245
	Cedar Knolls Rd.	253
	Hanover Ave.	268
Stony (Malapardis) Brook	Parsippany Rd.	206
	Mount Pleasant Ave.	212
	State Highway 10	229
	Jefferson Rd.	259
Unnamed tributary to Whippany River	Morristown & Erie RR.	265
	East Frederick Pl.	267
	do.	270
	Ridgedale Ave.	272

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

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1779 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2588]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Greenville, North Carolina

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 § 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Greenville, North Carolina.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Greenville must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, Greenville, North Carolina 27834.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Percy R. Cox, P.O. Box 1905, Greenville, North Carolina 27834. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Tar River	Greenville Blvd., NE.[1]	21
	North Green St.[1]	23
Green Mill Run	5th St.[1]	21
	Elm St.	29
	14th St.	35
	Evans St.	38
	Memorial Dr.[1]	49
	SR 1135	60
North Fork Green Mill Run.	N. & S. RR.[1]	63
	SR 1203 [1]	68
Fornes Run	14th St.	39
	South Elm St.[1]	53
Parkers Creek and lateral No. 1.	SR 1530	23
	North Green St.	28
Parkers Creek and lateral No. 2.	NC 30	23
	North Green St.	24
Hardeen Creek	N. & S. RR.[1]	24
Bells Branch	Oxford Rd.	39
	N. & S. RR.[1]	47
	York Rd.	56
Reedy Branch	10th St.[1]	31
	South Wright Rd.	56
	N. & S. RR.[1]	63
Meeting House Branch.	do.[1]	33
	King George Rd.	37

[1] Downstream side of the road.

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

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1780 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2587]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Township of Lower Gwynedd, Montgomery County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of

1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Township of Lower Gwynedd, Montgomery County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Township Building on the bulletin board, Box 293, Bethlehem Pike Spring House, Lower Gwynedd, Pennsylvania.

And person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. George H. Adams, Secretary Treasurer of the Board of Supervisors of Lower Gwynedd, P.O. Box 293, Bethlehem Pike Spring House, Lower Gwynedd, Pensylvania. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Wissahickon Creek.	Western corporate limits.	270
	U.S. Route 202	262
	Con Rail	251
	Plymouth Rd	246
	Gypsy Hill Rd. (extended).	243
	Grasshopper Lane (extended).	235
	Southern corporate limits.	226
	Trewellyn Ave. (extended).	214
	Southern corporate limits.	208

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

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1781 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2586]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Township of Upper Merion, Montgomery County, Pennsylvania

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Township of Upper Merion, Montgomery County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Township must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the bulletin board in the Township Building, 175 West Valley Forge Road, King of Prussia, Pennsylvania.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Robert W. Geerdes, Township Manager, 175 West Valley Forge Road, King of Prussia, Pensylvania 19406. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Schuylkill River.	South corporate limits.	71
	Reading RR. bridge (Con Rail).	72
	Pennsylvania Turnpike 276.	74
	Reading RR. bridge (Con Rail).	79
	Route 363	84
	West corporate limits.	93
Trout Creek	Reading RR. (Con-Rail).	84
	Valley Forge Rd.	89
Trout Creek—Continued	Reading RR. (Con-Rail).	89
	Moore Rd	95
	Route 363	99
	Valley Forge State Park boundary.	106

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

Issued: December 17, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1782 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2585]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Buchanan, Botetourt County, Virginia

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, andw 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Buchanan, Botetourt County, Virginia.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Municipal Building, Buchanan.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor J. Stull Carson, Buchanan, Virginia 24066. The period for comment will be ninety days following

the second pupblication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
James River	East corporate limits	823
	1 mile upstream of Route 11.	857
Purgatory Creek	Downstream of Diversion Dam.	832
	Just upstream of Diversion Dam.	850
	North corporate limit.	881

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

Issued: December 17, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1783 Filed 1-21-77;8:45 am]

[Docket No. FI-2584]

[24 CFR Part 1917]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for Town of Brookneal, Campbell County, Virginia

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4 (a)) hereby gives notice of his proposed determinations of flood elevations for the Town of Brookneal, Campbell County, Virginia.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Town must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Town Hall, Brookneal.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Frank Moon, Superintendent of Public Utilities, Town of Brookneal, Brookneal, Virginia 24528. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Roanoke River	Southwest corporate limits.	391
	North side of U.S. 501.	390
	Carolina Ave. (extended).	390
	Southeast corporate limits.	389
Falling River	North side of Virginia 40.	393
	820 ft north of Virginia 40.	393
	Southeast corporate limits.	392

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

Issued: December 17, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1784 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2583]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of South Boston, Independent City, Virginia

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the City of South Boston, Independent City, Virginia.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Municipal Building, South Boston, Virginia.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. J. A. Houghton, City Manager, P.O. Box 417, South Boston, Virginia 24592. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Dan River	Upstream corporate limits.	338
	U.S. Highway 501 (Watkins Bridge).	335
	State Highway 304 (John Randolph Bridge).	333
	Downstream corporate limits.	332
Poplar Creek	Upstream corporate limits.	364
	Poplar Creek St.	340
	Summit Dr.	336
Balmoral Creek	Cavalier Blvd.	396
	Beechmont Rd.	362
	Sutpain Rd.	350
Reedy Creek	Ridge St.	370
	College St.	364
	State Highway 304.	344
	Downstream corporate limits.	342
Rocky Branch	State Highway 304 west.	371
	State Highway 304 east.	360
	Eastover Rd.	352
	Downstream corporate limits.	352

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

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1785 Filed 1-21-77;8:45 a.m.]

[24 CFR Part 1917]

[Docket No. FI-2582]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Ashland, Wisconsin

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Ashland, Wisconsin.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Ashland must adopt sound flood plain management

measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, Courthouse, Ashland, Wisconsin 54806.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Bruce Hendrickson, City Hall, Courthouse, Ashland, Wisconsin 54806. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Bay City Creek	U.S. Highway 13	676
	Foot bridge near 5th Ave.	660
	C. & N.W. RR	635
	Soo Line RR	622
	3d St	616
	U.S. Highway 2	614
	C. & N.W. RR	605
Unnamed tributary No. 1.	6th St	645
	U.S. Highway 2	623
Unnamed tributary No. 2.	Toll road	638
	U.S. Highway 2	622
	Lakeshore Rd	613

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

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1786 Filed 1-21-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2581]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for City of Berlin, Wisconsin

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)), hereby gives notice of his proposed determinations of flood elevations for the City of Berlin, Wisconsin.

Under these Act, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the City of Berlin must adopt sound flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Map and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at City Hall, 108 North Capron Street, Berlin, Wisconsin, 54923.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Gordon Jodarski, City Hall, 108 North Capron Street, Berlin, Wisconsin 54923. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Fox River	Wisconsin St	756
	Huron Ave	759
Barnes Creek	Washington St. (downstream side).	758
	Hunter St. (downstream side).	762
Winchell Springs Creek.	SR 49 (downstream side).	760
	Ripon Rd	761

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

Issued: December 21, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-1787 Filed 1-21-77;8:45 am]

federal register

MONDAY, JANUARY 24, 1977

PART IV



COMMODITY FUTURES TRADING COMMISSION

■

CONTRACT MARKETS

Revised Statement of Policy on Indemnification of Officers, Directors and Other Officials

COMMODITY FUTURES TRADING COMMISSION

CONTRACT MARKETS

Revised Statement of Policy Regarding Indemnification

The Commodity Futures Trading Commission today modified its policy statement regarding indemnification of officers, directors and other officials of contract markets.

On July 16, 1976, the Commission published in the FEDERAL REGISTER a statement of policy regarding indemnification of officers, directors and other officials of contract markets and futures commission merchants. See 41 FR 29474 (July 16, 1976). In that statement, the Commission expressed the view that it would be against public policy, as expressed in the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. 1–22 (Supp. V, 1975), for a contract market or futures commission merchant directly or indirectly to indemnify its officials for certain civil penalties imposed by the Commission under section 6b of the Act. The Commission also stated that it would be the Commission's policy to consider all the facts and circumstances surrounding the participation of individual officials in alleged violations of the Act before taking enforcement action against individual officials, and to impose civil penalties on individual officials only in those cases involving "culpable conduct." The Commission took no position with respect to indemnification of officials for other expenses, such as liabilities arising out of civil proceedings instituted by private parties or legal fees incurred defending various types of legal proceedings.

On August 9, 1976, the Commission published in the FEDERAL REGISTER a request for public comment on its policy regarding indemnification and on certain related subjects, such as: (1) Whether it would be appropriate to adopt rules concerning indemnification in circumstances having regulatory implications; (2) whether it would be against public policy to allow indemnification of exchange officials for liabilities arising out of civil proceedings instituted by private parties; (3) whether it would be against public policy to allow indemnification of exchange officials for legal fees incurred in the unsuccessful defense of an action brought by the Commission pursuant to section 6b of the Act; and (4) whether it would be appropriate to hold a public hearing on the issue of indemnification. In that notice the Commission stated that its policy regarding indemnification would remain in effect, notwithstanding its request for comments. See 41 FR 33321 (August 9, 1976).

This release supplements the Commission's prior announcements by notifying the public that the Commission has determined to modify its policy regarding indemnification in light of the comments which it has received. Since what constitutes "culpable conduct" cannot be determined in the abstract, the Commission has decided that it will separately determine, in each case in which a civil penalty is imposed on an individual official, whether or not indemnification in that case would violate public policy. Otherwise, the Commission has not changed its original policy regarding indemnification. That is, the Commission takes no official position at this time with respect to indemnification for other expenses, such as liabilities arising out of civil proceedings instituted by private parties; however, the Commission wishes to make clear that it does not believe that indemnification for legal fees would be against public policy, even when the fees are incurred in the unsuccesful defense of an action brought by the Commission.

Set forth below is a discussion regarding the comments received by the Commission in response to its policy statement and the changes which have been made in the policy statement as a result of those comments and further consideration by the Commission.

I. SUMMARY OF COMMENTS ON AND CHANGES IN THE COMMISSION'S POLICY STATEMENT

Eight commodity exchanges and three futures commission merchants submitted written comments. These commentators unanimously opposed the Commission's policy on indemnification and proffered a number of legal and policy-oriented arguments against it.

A. COMMENTS ON POLICY REGARDING INDEMNIFICATION FOR CIVIL PENALTIES IMPOSED BY THE COMMISSION

There were basically three criticisms of the Commission's policy regarding indemnification of exchange officials for certain civil penalties imposed pursuant to section 6b of the Act. These comments may be summarized briefly as follows:

1. A PROHIBITION OF INDEMNIFICATION IS MORE LIKELY TO DISCOURAGE INDIVIDUALS FROM SERVING AS EXCHANGE OFFICIALS THAN IT IS TO STIMULATE DILIGENCE ON THE PART OF EXCHANGE OFFICIALS

Most commentators maintained that the Commission's policy probably would discourage individuals from serving as exchange officials and would make those who do serve overly cautious. They also disagreed with the Commission's conclusion that indemnification for civil penalties would undermine the prophylactic and deterrent effect of the civil penalty authorized by section 6b of the Act. A variety of arguments were made in this connection, but the thrust of most of the comments was that there is no need to use the threat of a civil penalty to stimulate diligence because (1) the officials of contract markets have sufficient dedication to discharge their responsibilities without a threat of penalty and (2) those officials who do not discharge their responsibilities can be removed from office or denied indemnification under standards contained in state laws governing indemnification of corporate officials.

2. THERE IS LITTLE LEGAL AUTHORITY TO SUPPORT THE COMMISSION'S POSITION REGARDING INDEMNIFICATION FOR CIVIL PENALTIES

A number of commentators expressed their view that nothing in the Act or its legislative history indicates Congress intended the Commission to have any authority with respect to indemnification of exchange officials and that the subject seems to be outside the scope of the general rule-making authority granted to the Commission by section 8a(5) of the Act. They also observed that the Commission's policy regarding indemnification is broader than that adopted by the Securities and Exchange Commission or any other government agency and that it conflicts with more liberal state law provisions governing indemnification of corporate officials.

3. THE COMMISSION'S STATEMENT THAT IT WOULD NOT IMPOSE CIVIL PENALTIES ON EXCHANGE OFFICIALS UNLESS "CULPABLE CONDUCT" IS INVOLVED, DOES NOT AMELIORATE THE PROBLEMS CREATED BY ITS POLICY STATEMENT ON INDEMNIFICATION

The principal concern of commentators apparently was that the Commission might impose a civil penalty on an official for "unintentional," technical-type violations of a regulation. The commentators were not assuaged by the Commission's statement that it would impose civil penalties on individual officials only in those cases involving culpable conduct, primarily because the term "culpable conduct" was not defined. These commentators also expressed concern that the mere existence of the statement would have an in terrorem effect and discourage (1) high caliber management from serving as exchange officials and (2) insurance underwriters from providing so-called Directors and Officers liability (D&O) insurance, even for civil penalties that might be imposed where there is no evidence of culpable conduct.

4. THE COMMISSION SHOULD RETRACT OR MODIFY ITS POLICY REGARDING INDEMNIFICATION

Most commentators suggested that, in view of the criticisms outlined above, the Commission should retract its policy statement. Other commentators suggested modifications that would, in their view, make the policy more consistent with the practical needs of the commodities industry. For example, several commentators suggested that the Commission adopt certain state law standards governing the propriety of indemnification so that officials could be indemnified for civil penalties if they acted in good faith, in a manner reasonably believed by them to be in or not opposed to the best interest of their employer. Other commentators suggested that the Commission define the term "culpable conduct" and proffered a variety of definitions. In this connection, one commentator suggested that the Commission adopt the following approach:

(a) Do *not* oppose indemnification in every instance of civil penalties. Rather the Commission should limit its opposition to those instances of civil penalties where the Commission makes a formal finding that the official has engaged in conduct so detrimental as to not permit indemnification.

(b) Either eliminate the phrase "culpable conduct" which has no established

legal meaning, and replace it with language such as "dereliction of duty or gross negligence or willful misconduct in the performance of his duties;" or alternatively, define the phrase "culpable conduct" as being generally the same as dereliction of duty or guilty of willful misconduct or gross negligence.

B. CHANGES IN POLICY REGARDING INDEMNIFICATION FOR CIVIL PENALTIES IMPOSED BY THE COMMISSION

The Commission was not persuaded that it should retract its policy statement regarding indemnification for civil penalties.

(1) To begin with, the Commission is satisfied, as a legal matter, that it has statutory authority to prohibit indemnification for civil penalties imposed on exchange officials by the Commission. For example, section 8a(5) of the Act authorizes the Commission "* * * to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of [the Act] * * *."[1] And, section 6b of the Act provides that:

> * * * if any contract market, or any director, officer, agent or employee of any contract market * * * is violating or has violated any of the provisions of this Act or any of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing and subject to appeal * * * assess a civil penalty of not more than $100,000 for each violation * * *. In determining the amount of the money penalty assessed under this section, the Commission shall consider the appropriateness of such penalty to the net worth of the offending person and the gravity of the offense, and in the case of a contract market shall further consider whether the amount of the penalty will materially impair the contract market's ability to carry on its operations and duties.[2]

The Commission believes, that, in certain situations, a prohibition of indemnification will be necessary to effectuate the provisions of, and to accomplish the purposes of, section 6b of the Act.

(A) The Commission's ability to impose a civil penalty on an individual official would be eliminated, as a practical matter, if contract markets were free to indemnify any official for the amount of any civil penalty that might be imposed by the Commission. That would, in effect, render a nullity that part of section 6b which authorizes the Commission to impose a civil penalty on either a contract market or any director, officer, agent or employee of a contract market, a result which Congress could not have intended. And, since the Commission would be unable to determine whether an exchange official or the exchange would pay a particular civil penalty imposed on an exchange official, there would be a risk that the amount of the penalty would not be "appropriate," as required by section 6b. There is, moreover, nothing in the Act or its legislative history that suggests that Congress intended to give exchanges the authority, through indemnification, to undermine a Commission determination that a particular exchange official should pay a civil penalty.

(B) In the Commission's view, the primary purpose of section 6b civil penalties is to deter violations of the Act. While most exchange officials may in fact be sufficiently dedicated to discharge their responsibilities under the Act without the threat of a civil penalty, the Commission is convinced that the possibility of imposition of a civil penalty for violations of the Act is an important factor in assuring compliance in some cases and that if exchange officials know they need not pay a civil penalty imposed by the Commission, the prophylactic and deterrent effect of section 6b would be undermined.

(2) Secondly, the Commission is satisfied that its position on indemnification for certain civil penalties imposed under section 6b is basically sound as a matter of regulatory policy. The Commission was surprised by comments suggesting that it abandon its policy because prohibiting indemnification of exchange officials for civil penalties would discourage individuals from serving as exchange officials. The point that commentators apparently overlooked or misunderstood is the applicability of the policy statement only to a limited type of situation; that is, when the Commission finds after notice and opportunity for hearing, that a particular exchange official is violating or has violated the Act or the regulations thereunder and that his conduct was "culpable" in the sense that such conduct is of the type included within the phrases, "gross negligence, willful misconduct or dereliction of duty,"[3] and the Commission then determines to impose a civil penalty on that particular official, after considering the appropriateness of the penalty in light of his net worth and the gravity of the offense. The Commission took no position with respect to indemnification of exchange officials for other expenses, such as liabilities arising out of civil proceedings instituted by private parties or legal fees incurred defending various types of legal proceedings.[4] It seems unlikely that prohibiting indemnification for civil penalties imposed by the Commission in the situation described above would discourage high caliber management from serving as exchange officials. Accordingly, the Commission is not persuaded that it should retract its policy statement. The Commission is concerned, however, that its policy regarding indemnification may be misunderstood. For that reason, the Commission has decided to modify its statement of policy regarding indemnification.

The Commission was persuaded by commentators that it should clarify the situations in which it would consider indemnification for a civil penalty to be against public policy. Since the term "culpable conduct" is not susceptible of precise definition,[5] the Commission has decided that it will determine, in each case in which a civil penalty is imposed on an individual official, whether or not indemnification would violate public policy. Thus, if the Commission determines that a particular official is guilty of gross negligence, willful misconduct or dereliction of duty, the Commission would consider indemnification for a civil penalty imposed on that official to be against public policy. The Commission will make an independent determination—in the administrative proceeding in which the civil penalty is imposed—whether indemnification for the civil penalty would violate public policy under the particular circumstances, and if indemnification would violate public policy, the Commission will include a statement to that effect in its order imposing the penalty. If the Commission finds, on the other hand, that indemnification would not violate public policy

[1] 7 U.S.C. 12a(5) (Supp. V, 1975).

[2] 7 U.S.C. 13a (Supp. V, 1975) (emphasis added).

[3] The phrases "gross negligence, willful misconduct or dereliction of duty" are meant to convey their broadest legal construction, not the interpretation of those specific phrases by any contract market or the application thereof by any rule of such contract market.

[4] As discussed below, the Commission did not intend, by requesting public comment on indemnification for certain legal fees, to suggest that it might prohibit contract markets or futures commission merchants from reimbursing officials for legal fees incurred in the unsuccessful defense of an action brought by the Commission. To make this clear, the Commission has stated below its view that indemnification for legal fees would not violate public policy.

[5] As noted above, several commentators suggested that the Commission adopt certain state law standards governing the propriety of indemnification so that officials could be indemnified for civil penalties if they "acted in good faith, in a manner reasonably believed by them to be in or not opposed to the best interests of the corporation." The Commission disagrees. The good faith of an official or the best interests of the corporation may be relevant in considering the propriety of indemnification for certain liabilities, but the Commission believes that a different standard should be used in deciding whether an official is to be indemnified for a civil penalty imposed by the Commission for a violation of the Act. It is possible, for example, that the "best interests of the corporation" might be found by a sympathetic board of governors to dictate a course of action by an official that is at variance with the requirements of the Act. The Commission believes that to be consistent with the purpose of section 6b—to stimulate diligence on the part of exchange officials—the propriety of indemnification must depend upon the efforts of the official to discharge his responsibilities under the Act, whether or not that seems to be in the best interest of the corporation.

This is not to say that the Commission intends to hold exchange officials to unrealistically high standards of conduct in determining whether or not indemnification for a civil penalty would violate public policy. Nor does the Commission intend to intervene in exchange determinations to indemnify officials in situations having no impact on the Commission's regulatory responsibilities. However, the Commission believes that exchange officials have certain responsibilities to the public and will not favor indemnification for civil penalties in situations where an official's conduct evidences gross negligence or willful misconduct or dereliction of duty in discharging responsibilities under the Act.

in a particular case, it will not oppose indemnification if the contract market or futures commission merchant wishes to reimburse the official for the amount of the civil penalty in that case.

The Commission believes that this case-by-case approach will clarify those circumstances in which it considers indemnification to be against public policy. In this way, the Commission hopes to ameliorate the two major problems which commentators said might be created by the Commission's policy: (1) that it would discourage individuals from serving as exchange officials; and (2) that it would discourage commercial insurers from underwriting D&O policies routine civil penalties.

The Commission agrees with all the commentators who said that its policy on indemnification should not be codified into regulations at this time.

II. Summary of Comments Regarding Indemnification for Other Legal Expenses

A. Comments on Policy Regarding Indemnification for Other Legal Expenses

Most of the commentators also responded to the Commission's request in the August 9, 1976 Federal Register notice for comments on, among other things: (1) whether it would be against public policy to allow indemnification of exchange officials for liabilities arising out of civil proceedings instituted by private parties; and (2) whether it would be against public policy to allow indemnification of exchange officials for legal fees incurred in the unsuccessful defense of an action brought by the Commission pursuant to section 6b of the Act.[6] These comments may be summarized briefly as follows:

1. The Commission Should Not Prohibit Indemnification of Officials for Liabilities Arising Out of Civil Proceedings Instituted by Private Parties

Most of the commentators said it would be a mistake to prohibit indemnification of officials for liabilities arising out of civil proceedings instituted by private parties. A variety of reasons were suggested, but most commentators said that these expenses should not be treated as penalties because the amount of the expense generally would not depend upon the gravity of the violation or the culpability of the official and because individuals would be reluctant to serve as exchange officials if there was a risk that they might be held personally liable for potentially large sums of money required to compensate injured traders.

2. Legal Fees Should Be Subject to Indemnification in All Cases

Most commentators said that the public interest would be better served by allowing indemnification for legal fees, even when they are incurred in the unsuccessful defense of an action brought against individual exchange officials by the Commission, for the reasons, among others, that (1) the amount of legal fees depends upon the quality and complexity of the legal representation, not the gravity of the violation or the culpability of the defendant, and (2) that indemnification would encourage a vigorous defense against possibly frivolous claims.

B. No Changes Were Made in Policy Regarding Indemnification for Other Legal Expenses

The Commission has not changed its original policy regarding indemnification for liabilities other than section 6b civil penalties. In other words, the Commission takes no position at this time with respect to indemnification for other expenses, such as liabilities arising out of civil proceedings instituted by private parties or legal fees incurred defending various types of legal proceedings.

The Commission believes the propriety of indemnification for liabilities incurred in private civil actions—such as suits under the Commodity Exchange Act for damages sustained by injured traders as a result of an action taken by an exchange official—can only be viewed in the context of the actual cases as they arise. Consequently, the Commission does not believe the propriety of indemnification in these circumstances is susceptible to treatment by a regulation or policy statement of general applicability and is willing generally to leave such matters to the determination of the exchanges themselves.[7]

However, the Commission has proposed a rule that would, if adopted, require contract markets to notify the Commission if an official of a contract market is to be indemnified for liabilities arising from private civil actions. See 41 Fed. Reg. 37597 (September 7, 1976). In this way, the Commission will be able to review the propriety of indemnification for these expenses on a case-by-case basis. And, if the Commission strongly believes, because of the nature of the particular case, that there should be no indemnification in that case, it may institute separate administrative proceedings against the official or it may seek to participate as *amicus curiae*, or to intervene, in the proceedings.[8]

The Commission also wishes to make clear that, by requesting public comment on indemnification for certain legal fees, it did not intend to suggest that it might prohibit contract markets or futures commission merchants from reimbursing officials for legal fees incurred in the unsuccessful defense of an action brought by the Commission. In general, the Commission shares the view of the commentators that legal fees should not be treated as a penalty, since the amount of the fees usually depends upon the quality and complexity of the legal representation, not the gravity of the violation or the culpability of the defendant. The Commission therefore does not believe it would be against public policy, as expressed in the Act, for a contract market or futures commission merchant to indemnify an official for legal fees, including fees incurred in the unsuccessful defense of an action brought by the Commission.

As noted above, the Commission is satisfied that no public interest would be served by holding further hearings on the subject of indemnification. However, interested persons may submit written comments on the Commission's revised policy regarding indemnification. All comments should be addressed to Commodity Futures Trading Commission, 2033 "K" Street, N.W., Washington, D.C. 20581, ATTN: Secretariat. Copies of all comments received will be available for public inspection at the Commission's office in Washington, D.C.

Issued in Washington on January 18, 1977.

William T. Bagley,
Chairman.

[FR Doc.77-2045 Filed 1-21-77;8:45 am]

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[6] The Commission also specifically requested comment on whether it would be appropriate to hold a public hearing on the issue of indemnification. All the commentators said that the Commission should hold a hearing on indemnification. In this way, they suggested, the Commission could gather empirical evidence about the number of exchange officials who might be expected to resign in the face of the Commission's policy on indemnification. The Commission is satisfied, however, that no public interest would be served by holding further hearings on the subject of indemnification since the written comments covered the subject exhaustively.

[7] Unlike civil penalties imposed under section 6b, amounts paid as a settlement or judgment in a particular private action may be based in part on the need to compensate injured traders and in part on the need to deter conduct violative of the Act. The mixed character of these awards is one of the principal obstacles to treating indemnification in these circumstances under a regulation or policy statement of general applicability.

[8] In reviewing the propriety of indemnification in any case, the Commission will be primarily concerned with the impact of indemnification on the Commission's regulatory responsibilities. For example, the Commission might oppose indemnification of an exchange official for amounts paid as a settlement or judgment in a private civil action based on a violation of the Act if it appears that the official's conduct amounts to gross negligence, willful misconduct or dereliction of duty in discharging his responsibilities under the Act. The Commission does not intend to intervene in exchange determinations to indemnify officials in situations having no impact on the Commission's regulatory responsibilities.

federal register

MONDAY, JANUARY 24, 1977

PART V



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

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NONDISCRIMINATION IN FEDERALLY ASSISTED RAILROAD PROGRAMS

Implementation of Railroad Revitalization and Regulatory Reform Act of 1976

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 265—NONDISCRIMINATION IN FEDERALLY ASSISTED RAILROAD PROGRAMS

Implementation of Railroad Revitalization and Regulatory Reform Act of 1976

This Part 265 implements section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("Act") to ensure that no person in the United States shall, on the grounds of race, color, national origin, or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program or activity funded in whole or in part through financial assistance under the Act, or any provision of law amended by the Act, and to require recipients of such financial assistance and certain of their contractors and subcontractors to take affirmative action to ensure that minority persons and minority businesses have a fair opportunity to participate in employment and contractual opportunities which may result from projects, programs and activities funded by such assistance.

Proposed regulations implementing section 905 of the Act were published in the FEDERAL REGISTER on October 22, 1976 (41 FR 46612). Interested persons were invited to submit on or before November 26, 1976, their written comments on the proposed regulations and comments were received. As a result of consideration of these comments by the Federal Railroad Administration ("FRA"), several changes have been made in the regulations, each of which will be noted in succeeding paragraphs.

In addition to numerous technical comments, the substantive public comments related to the following general areas: (A) duplicative and possibly conflicting equal opportunity requirements of the proposed regulations in light of the Civil Rights Act of 1964, and Executive Order 11246; (B) potential conflict of the requirements of the proposed regulations with provisions of existing collective bargaining agreements; and (C) authority to impose affirmative action requirements. In addition, the National Railroad Passenger Corporation ("Amtrak") denies that section 905 of the Act, and any regulations issued thereunder, reach section 601 of the Rail Passenger Service Act, which is the prime source of federal financial assistance to Amtrak.

A. DUPLICATIVE EQUAL OPPORTUNITY REQUIREMENTS

Many commenters noted the provisions of the Civil Rights Act of 1964, Executive Order 11264, and regulations issued pursuant thereto, and complained of the necessity of complying with more than one set of regulations dealing with the same area. Potential conflicts in enforcement were cited along with the possibility that two agencies implementing similar bodies of law, may have differing interpretations or policies which would unduly complicate or confuse the responsibilities of those covered by the regulations. It was urged that compliance with the affirmative action requirements of E.O. 11246 be deemed to satisfy the requirements of the proposed regulations. It was also urged that the handling of all Federal equal opportunity programs be consolidated in one agency, especially in the areas of alleged discrimination in employment.

The scope of section 905 of the Act is broader than Titles VI and VII of the Civil Rights Act of 1964, and E.O. 11246. Section 905 applies to sex discrimination and to loan guarantees, while Title VI does not. As is discussed later, the proposed regulations under section 905 require affirmative action in areas of minority employment and minority business while E.O. 11246 and regulations issued thereunder only apply to employment. In addition, E.O. 11264 and its implementing regulations apply only to government contracts, or programs involving federally assisted construction projects, whereas section 905 applies to any type of Federal financial assistance provided under the particular programs covered by section 905. Consequently, there is a need for a body of regulations implementing section 905 because existing regulations in this area do not cover all situations to which section 905 applies. FRA, by delegation from the Secretary, has the congressionally imposed responsibility to ensure that the provisions of section 905 are applied to covered financial assistance programs. While FRA should make every effort consistent with its responsibility to coordinate its requirements with those of other agencies, it must retain the final responsibility for actions taken under section 905.

In an effort to avoid duplication, or conflicting requirements, and to consolidate equal opportunity programs to the maximum extent possible, FRA has coordinated its proposed regulations dealing with employment with the General Services Administration which is the compliance agency for railroads under E.O. 11246. As a consequence, all affirmative action plans for employment will be developed in accordance with the regulations of the Department of Labor at 41 CFR 60-2. In addition, railroad applicants will be required to develop their analysis by establishment and by job classification in accordance with the requirements of the Joint Reporting Committee of the Equal Employment Opportunity Commission and the Department of Labor.

Applicants for financial assistance and their contractors which have previously furnished another agency with a written affirmative action program, may, of course, use such a written program (updated if necessary) as a basis for compliance with this part. If the previously furnished program meets all of the requirements of this part it will be accepted by the Administrator. Because FRA has final responsibility as noted above, acceptance by another agency under a separate authority cannot be deemed or presumed to indicate acceptance by the Administrator.

B. POTENTIAL CONFLICT OF PROPOSED REGULATIONS WITH EXISTING COLLECTIVE BARGAINING AGREEMENTS

Many commenters were concerned with the stated policy of FRA that conflicting provisions of existing collective bargaining agreements will not be an excuse for a recipient's failure to live up to affirmative action requirements (see § 265.7(a)(2)(iv) of proposed regulations). Some see irreconcilable conflicts which may require an applicant to forego federal financial assistance, while others view this policy as requiring carriers to alter unilaterally collective bargaining agreements in contravention of the Railway Labor Act.

FRA believes that commenters in this regard have misunderstod the impact of the proposed regulations. At the outset it should be noted that private contractual arrangements cannot be used to thwart public policy. *Contractors Ass'n of Eastern Pa. v. Secretary of Labor*, 442 F. 2d 159 (3d Cir. 1971). The potential conflict as perceived by FRA would come about when, based on a review and analysis of utilization of minority employees, underutilization is established, and goals and timetables to overcome the underutilization are imposed by the Administrator as a condition to the receipt of federal financial assistance. The establishment of such goals and time tables with respect to utilization of minority employees may conflict with existing collective bargaining agreements to the extent that such agreements would require the applicant to hire or rehire furloughed employees before any person is newly hired. FRA does not perceive this conflict as irreconcilable, nor have the comments from labor organizations stated that any such conflict is irreconcilable. FRA believes that as a result of good faith negotiations among the applicant, the Administrator, and any affected labor organizations, accommodations can be reached where the interests of each party can be substantially achieved.

Insofar as the Railway Labor Act is concerned, the regulations in no way abrogate the provisions of that Act. Any amendments to existing collective bargaining agreements made to accommodate the requirements of the Administrator would, of course, be made pursuant to that Act.

C. AUTHORITY TO REQUIRE AFFIRMATIVE ACTION

Certain commenters questioned the authority of FRA to require affirmative action pursuant to section 905 of the Act. Noting the similarity of section 905(a) to Title VI of the Civil Rights Act of 1964, and suggesting that under Title VI an agency does not have the authority to establish appropriate affirmative action requirements, it is argued that no such authority exists under section 905. FRA disagrees. Title VI does not so limit an agency administering a Federal financial

assistance program. *Contractors Ass'n of Eastern Pa. v. Secretary of Labor, supra.* Further, section 905 differs from Title VI in that section 905(d) authorizes the Secretary of Transportation to "* * * prescribe such regulations and take such actions as are necessary to monitor, enforce, and *affirmatively* carry out the purposes of this section [905]" (italics added). In FRA's view such a grant of authority clearly authorizes, indeed mandates, the requirements contained in these regulations for affirmative action programs.

Again noting the similarity between section 905(a) of the Act and Title VI, it was argued that FRA has no authority to require affirmative action with respect to minority business enterprises, since Title VI has not been interpreted as authorizing or requiring the promulgation of requirements with respect to minority businesses. While FRA is not aware of any judicial determination of Title VI in this regard, it does not interpret section 905 as being limited to equal opportunity in employment. Rather section 905 is intended to reach all manifestations of discrimination and assure that no person is denied the benefits of the programs covered by section 905. The affirmative action requirements with respect to minority business are consistent with the intent of Congress, especially in light of section 906 of the Act which established the Minority Business Resource Center. However, it should be made clear that affirmative action requirements for minority businesses are established pursuant to section 905 of the Act, and not section 906 as some commenters apparently believed.

APPLICABILITY OF SECTION 905 OF THE ACT TO SECTION 601 OF THE RAIL PASSENGER ACT

Amtrak argues that section 601 of the Rail Passenger Service Act ("RPSA") was not amended by the Act, and consequently section 905 and regulations promulgated thereunder do not apply to section 601 of the RPSA. FRA disagrees. Section 905(b) of the Act provides that financial assistance provided by the Act, *or provisions of law amended by the Act*, is subject to the basic nondiscrimination provision set forth in section 905(a) (italics added). Section 704(b) of the Act provides:

> No funds appropriated under this section or pursuant to section 601 of the Rail Passenger Service Act may be used to subsidize any operating losses of commuter rail or rail freight services.

In FRA's view, this provision substantively amended section 601 by placing the limitation on the use of section 601 grant funds. Such an amendment is clearly within the scope of section 905 coverage, particularly considering its remedial purpose warranting a liberal construction of its language.

OTHER SUBSTANTIVE COMMENTS

Commenters expressed concern with the cost of preparing and complying with affirmative action programs, and delays in procuring goods and services caused by applying such programs to contractors and subcontractors of a recipient. Considering the administrative burden such requirements would impose on recipients and the government, section 265.11 will be amended to require contractors to develop and implement affirmative action plans in accordance with this part over a period of time. It will not be required that such plans receive the prior approval of the Administrator before contracts may be awarded.

One commenter suggested adding a provision providing for labor organization participation in compliance proceedings where the matter could affect persons who are covered by collective bargaining agreements. The adopted regulations will be revised to make clear that labor organizations may present their views in such matters where their interests may be affected.

Several commenters suggested that procurement information required by the proposed regulations or requested by the Minority Business Resource Center be treated confidentially upon request of applicant where necessary to protect trade secrets or competitive position. An appropriate provision will be added to the adopted regulations to afford such protection to the extent permitted by the Freedom of Information Act (5 U.S.C. 552) and applicable case law.

Several commenters suggested that affirmative action programs be developed and maintained after the award of financial assistance, or that any conflict between the requirements of the Administrator and the provisions of collective bargaining agreements be resolved after such award. To ensure that section 905 of the Act, and these regulations are fully implemented, and in recognition of the very little time available for such action once an award has been made, FRA deems it appropriate that such actions be taken before financial assistance is awarded.

Objection was made to the requirement that recipients monitor the equal opportunity requirements of their contractors. FRA believes that recipients of federal financial assistance have the responsibility to monitor the activities of contractors which are paid from such assistance since the recipients, not FRA, are in privity with the contractors. However, it should be understood that the term "monitor" does not include enforcement actions but rather is limited to actions necessary to determine from time to time whether the contractor is in compliance and if not to report the appropriate facts to the Administrator.

Several commenters urged that in reviewing utilization of minority employees, the classification by "job categories" be eliminated, or be related to the classifications established by the Department of Labor pursuant to E.O. 11246. Any classification of job categories which fully reflects the organizational structure of the applicant, recipient, or contractor and in the aggregate includes all of its employees may be used by an applicant, recipient or contractor. However, as previously discussed, railroads will be required to undertake their review by establishment and by job categories as required by the Joint Reporting Committee.

The propriety of forbidding a recipient from entering into a contract with a "debarred" contractor was questioned where such contractor will not be performing a contract which is part of a project, program or activity receiving federal financial assistance. The regulations are modified to limit this prohibition to the project, program, or activity which is receiving Federal financial assistance.

Several commenters objected to the notice posting requirements which would advise employees and applicants for employment of the equal opportunity requirements of recipients established by the proposed regulations, since they are required, in many cases, to post similar notices pursuant to E.O. 11246. FRA will in establishing the content of such notice, make every effort to eliminate any duplication of material contained in other required notices. Nevertheless, since the requirements of section 905 of the Act and these regulations differ in several significant ways from other affirmative action requirements, the additional notice will be necessary.

Several concerns were expressed in regard to affirmative action in utilization of minority business enterprises. Concern was expressed that the affirmative action requirements would compel a recipient to purchase goods and services on less than a sound business basis. A railroad company observed that very few minority businesses offered goods and services of the type it sought. Nothing in the required affirmative action program will compel a recipient to contract with a business that cannot deliver the type of goods or services sought. What the affirmative action program does, however, is to require recipients and contractors to develop an awareness of the need to assist minority businesses in getting into the mainstream of commerce, take positive steps to utilize minority businesses, tailor its requirements to meet the particular problems generally associated with minority businesses (e.g. smallness), and expand the scope of traditional thinking by considering the utilization of minority businesses in such fields as legal, financial, insurance and economic services, engineering, real estate, banking and the like. Such an expanded approach will go far in implementing section 905 of the Act.

CHANGES IN PROPOSED REGULATIONS

Based on the public comment to the proposed regulations and further analysis by FRA, the following changes have been made to the proposed rules:

(1) The definition of "Minority Business" in section 265.5(j) has been changed to mean a business which has at least 50% of its equity owned by a minority group person or persons, or if less than 50%, controlled by such a person or

persons, and such other organizations which the Administrator determines to be bona-fide minority businesses;

(2) Section 265.7(a) has been amended to make clear that existing financing agreements are to be amended to include the nondiscrimination clauses;

(3) Section 265.7(a)(11) and 265.13(c)(1) are amended to allow certain procurement information furnished by applicants to be treated confidentially upon request and to the extent permitted by law;

(4) New nondiscrimination clauses (14) and (15) are added to § 265.7 to exact an agreement from the recipient to (a) comply with the written affirmative action program as approved by the Administrator; and (b) notify the Administrator of any discrimination complaints filed against recipient;

(5) Section 265.11 is amended (a) to require the submission of two copies of written affirmative action programs; (b) to eliminate the requirement that contractors and subcontractors submit their affirmative action programs to the Administrator for approval, although such programs are to be developed and maintained; and (c) in cases of contractors and subcontractors which have less than fifty employees, to require the development only of affirmative action plans for minority businesses;

(6) Section 265.13(b) is amended (a) to require applicants or recipients to indicate in their written affirmative action programs the number of jobs which will be established or filled during the program period as a result of the project, program or activity receiving financial assistance; (b) to show the source of employee comparison data; and (c) to require adherence to 41 CFR 60-2 in developing written affirmative action plans for employment.

(7) Section 265.13(c)(1) is amended to highlight the need to furnish data on potential contracts for professional and financial services.

(8) Section 265.23 is amended to allow participation by affected labor organizations in compliance proceedings, and to allow the Administrator to suspend financial assistance during such proceedings in instances other than when hearings are accorded.

(9) A new § 265.23 has been added to elicit information necessary to assess the impact of the project, program or activity for which financial assistance is sought, to the extent such information is not contained in the application.

Since this part is a matter relating to loans, grants, benefits and contracts, this part is effective January 17, 1977.

In consideration of the foregoing, Chapter II of Title 49 of the Code of Federal Regulations is amended by adding a new part 265 reading as follows:

Subpart A—General

Sec.
265.1 Purpose.
265.3 Applicability.
265.5 Definitions.

Subpart B—Requirements

265.7 Nondiscrimination clauses.
265.9 Affirmative action program—general.
265.11 Submission of affirmative action program.
265.13 Contents of affirmative action program.
265.15 Implementation and maintenance of affirmative action program.
265.17 Review of affirmative action program.

Subpart C—Compliance

265.19 Compliance information.
265.21 Conduct of investigations.
265.23 Procedure for effecting compliance.
265.25 Other information.

AUTHORITY: Sec. 905 of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210 (90 Stat. 31); Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(u).

Subpart A—General

§ 265.1 Purpose.

The purpose of this part is to effectuate the provisions of section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976 (hereinafter referred to as the "Act") to ensure that no person in the United States shall, on the grounds of race, color, national origin, or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program or activity funded in whole or in part through financial assistance under the Act, or any provision of law amended by the Act. Nothing contained in these regulations is intended to diminish or supersede the obligations made applicable by either Title VI of the Civil Rights Act of 1964, (42 U.S.C. 2000d), or Executive Order No. 11246, (42 USCA 2000e (note)). Subsection (d) of section 905 of the Act authorizes the Secretary to prescribe such regulations and take such actions as are necessary to monitor, enforce, and affirmatively carry out the purposes of that section. This authority, coupled with the provisions of section 906 of the Act, which requires the establishment of a Minority Resource Center, which is authorized to encourage, promote and assist in the participation by minority business enterprises in the restructuring, improvement, revitalization and maintenance of our Nation's railroads, provides the basis for requirements for the development of affirmative action programs by recipients of Federal financial assistance and certain of their contractors to insure that minorities and minority businesses are afforded ample consideration with respect to employment and contractual opportunities produced as a result of the implementation of the Act and other provisions of law amended by the Act.

§ 265.3 Applicability.

This part applies to any project, program, or activity funded in whole or in part through financial assistance provided under the Act, and to any activity funded under any provision of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 701 et seq.) or the Rail Passenger Service Act, as amended (45 U.S.C. 501 et seq.) amended by the Act including the financial assistance programs listed in Appendix A. It applies to contracts awarded to implement the Northeast Corridor Project and to financial assistance programs administered by the United States Railway Association.

§ 265.5 Definitions.

As used in this part, unless the context indicates otherwise:

(a) "Act" means the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. No. 94-210).

(b) "Administrator" means the Federal Railroad Administrator or his delegate.

(c) "Affirmative action program" means the program described in § 265.9 through § 265.15 of this part.

(d) "Agency" means the Federal Railroad Administration.

(e) "Applicant" means persons applying for financial assistance under any of the Rail Acts.

(f) "Contractor" means a prime contractor or a subcontractor who will be paid in whole or in part directly or indirectly from financial assistance provided under the Rail Acts.

(h) "Includes" means includes but not limited to.

(i) "Minority" means women, Blacks, Hispanic Americans, American Indians, American Eskimos, American Orientals and American Aleuts.

(j) "Minority Business" means a business organization having at least 50 percent of its equity (exclusive of any equity interest held by any governmental agency) owned by minority group persons, or where less than 50 percent, the organization is controlled by such persons, or such other organizations as the Administrator determines to be a bona-fide minority business organization.

(k) "Minority Business Resource Center" means the Minority Resource Center established in the Department of Transportation pursuant to section 906 of the Act.

(l) "Rail Acts" means the Railroad Revitalization and Regulatory Reform Act of 1976, the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 701 et seq.) and the Rail Passenger Service Act, as amended (45 U.S.C. 501 et seq.).

(m) "Recipient" means a person who receives financial assistance under any of the Rail Acts except under section 602 of the Rail Passenger Service Act, as amended (45 U.S.C. 501 et seq.).

(n) "Underutilization" means the condition of having fewer minority employees in a particular job group or fewer awards of contracts to minority businesses than would reasonably be expected by their availability for such jobs or awards.

SUBPART B—REQUIREMENTS

§ 265.7 Nondiscrimination clauses.

(a) Each agreement for financial assistance made under any provision of the Rail Acts shall include, or, in the case of agreements made prior to the effective date of this part, shall be amended to include, the following clauses:

(1) As a condition to receiving Federal financial assistance under the Railroad Revitalization and Regulatory Re-

form Act of 1976 ("Act"), or the provisions of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 701 et seq.), or the Rail Passenger Service Act or 1970, as amended (45 U.S.C. 501 et seq.) amended by the Act (collectively called, together with the Act, the "Rail Acts"), the recipient hereby agrees to observe and comply with the following:

(1) No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program, or activity funded in whole or in part through such assistance.

(2) The following specific discriminatory actions are prohibited:

(i) A recipient under any project, program or activity to which these clauses apply shall not, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(A) Deny a person any service, financial aid, or other benefit provided under such project, program or activity;

(B) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under such project, program or activity;

(C) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid or other benefit under such project, program or activity;

(D) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid or other benefit under such project, program or activity; or

(E) Deny a person an opportunity to participate in such project, program or activity through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under such project, program or activity.

(ii) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such project, program or activity or the class of persons to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under any such project, program or activity, or the class of persons to be afforded an opportunity to participate in any such project, program or activity shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the project, program or activity, with respect to individuals of a particular race, color, national origin or sex.

(iii) In determining the site or location of facilities, a recipient shall not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any project, program or activity to which these clauses apply on the grounds of race, color, national origin or sex, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of these clauses.

(iv) The recipient shall not discriminate against any employee or applicant for employment because of race, color, national origin or sex. Except as otherwise required by the regulations or orders of the Administrator, the recipient shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, national origin or sex. Such action shall include, but not be limited to the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the agency's representative setting forth the provisions of these nondiscrimination clauses. The recipient understands and agrees that it shall not be an excuse for the recipient's failure to provide affirmative action that the labor organizations with which the recipient has a collective bargaining agreement failed or refused to admit or qualify minorities for admission to the union, or that the provisions of such agreements otherwise prevent recipient from implementing its affirmative action program.

(v) The recipient shall not discriminate against any business organization in the award of any contract because of race, color, national origin or sex of its employees, managers or owners. Except as otherwise required by the regulations or orders of the Administrator, the recipient shall take affirmative action to insure that business organizations are permitted to compete and are considered for awards of contracts without regard to race, color, national origin or sex.

(3) As used in these clauses, the services, financial aid, or other benefits provided under a project, program, or activity receiving financial assistance under the Rail Acts include any service, financial aid, or other benefit provided in or through a facility funded through financial assistance provided under the Rail Acts.

(4) The enumeration of specific forms of prohibited discrimination does not limit the generality of the prohibition in paragraph (a)(1)(i) of this section.

(5) These clauses do not prohibit the consideration of race, color, national origin or sex if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, recipient's operations or activities on the grounds of race, color, national origin or sex. Where prior discriminatory or other practice or usage tends, on the grounds of race, color, national origin or sex, to exclude individuals or businesses from participation in, to deny them the benefits of, or to subject them to discrimination under any project, program or activity to which these clauses apply, the recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage to which this part applies, the recipient is expected to take affirmative action to insure that no person is excluded from participation in or denied the benefits of the project, program or activity on the grounds of race, color, national origin or sex, and that minorities and minority businesses are afforded a reasonable opportunity to participate in employment and procurement opportunities that will result from financial assistance provided under the Rail Acts.

(6) The recipient agrees to take such actions as are necessary to monitor its activities and those of its contractors who will be paid in whole or in part with funds provided by the Rail Acts, or from obligations guaranteed by the Administrator pursuant to the Rail Acts, except obligations guaranteed under section 602 of the Rail Passenger Service Act, in order to carry out affirmatively the purposes of paragraph (1) above, and to implement the affirmative action program developed and implemented pursuant to 49 CFR 265.

(7) The recipient shall, in all advertisements for employees, or solicitations for services or materials from business organizations placed by or on behalf of the recipient, in connection with any project, program or activity funded in whole or in part with financial assistance under the Rail Acts, state that all applicants for employment will receive consideration for employment, and all business organizations will receive consideration for an award of a contract, without regard to race, color, national origin or sex.

(8) The recipient shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency's representative, advising the labor organization or workers' representative of the recipient's commitments under section 905 of the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(9) The recipient shall comply with all provisions of section 905 of the Act, the Civil Rights Act of 1964, any other Federal civil rights act, and with the rules, regulations, and orders issued under such acts.

(10) The recipient shall furnish all information and reports required by the rules, regulations, and orders of the Administrator, and will permit access to its books, records, and accounts by the Administrator for purposes of investigation to ascertain compliance with rules, regulations, and orders referred to in paragraph (9) hereof.

(11) Recipient shall furnish such relevant procurement information, not in-

cluded in its affirmative action program, as may be requested by the Minority Business Resource Center. Upon the request of the recipient, the Center shall keep such information confidential to the extent necessary to protect commercial or financial information or trade secrets to the extent permitted by law.

(12) In the event of the recipient's noncompliance with the nondiscrimination clauses of this agreement, or with the provisions of section 905 of the Act, the Civil Rights Act of 1964, or with any other Federal civil rights act, or with any rules, regulations, or orders issued under such acts, this contract will, after notice of such noncompliance, and after affording a reasonable opportunity for compliance, be canceled, terminated, or suspended in whole or in part and the recipient may be declared ineligible for further Federal financial assistance in accordance with procedures authorized in section 905 of the Act, or as otherwise provided by law.

(13) The recipient shall not enter into any contract or contract modification whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction, in connection with a project, program or activity which receives financial assistance under the Rail Acts with a contractor debarred from or who has not demonstrated eligibility for Federal or federally assisted contracts, and will carry out such sanctions and penalties for violation of this part as may be imposed upon contractors and subcontractors by the Administrator or any other authorized Federal official. The recipient shall insure that the clauses required by 41 CFR § 60–1.46 implementing executive Order No. 11246 will be placed in each non-exempt federally assisted construction contract.

(14) The recipient agrees to comply with and implement the written affirmative action program as approved by the Administrator pursuant to section 265.17 of Title 49 CFR.

(15) The recipient agrees to notify the Administrator promptly of any law suit or complaint filed against the recipient alleging discrimination on the basis of race, color, national origin or sex.

(16) The recipient shall include the preceding provisions of paragraphs (1) through (15) in every contract or purchase order, whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction relating to projects, programs or activities financed in whole or in part under the Rail Acts. The recipient shall cause each such contractor or vendor to include the provisions of paragraphs (1) through (15) in every subcontract. The recipient will take such action with respect to any such contract or purchase order as the Administrator may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the recipient becomes involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the Administrator, the recipient may request the United States to enter into such litigation.

§ 265.9 Affirmative action program—General.

Recipients of financial assistance under the Rail Acts and their contractors, as specified herein, shall develop and maintain an affirmative action program to insure that persons and businesses are not discriminated against because of race, color, national origin or sex in programs, projects and activities financed in whole or in part through financial assistance provided under the Rail Acts, and that minorities and minority businesses receive a fair proportion of employment and contractual opportunities which will result from such programs, projects and activities.

§ 265.11 Submission of affirmative action program.

(a) Each application for financial assistance under any of the Rail Acts shall, as a condition to its approval and the extension of any financial assistance pursuant to the application, contain or be accompanied by two copies of a written affirmative action program for review by and approval of the Administrator. Recipients that have already entered into an agreement or other arrangement providing for such assistance shall, within 60 days after the effective date of this part, develop and submit to the Administrator two copies of a written affirmative action program for review by and approval of the Administrator and thereafter maintain such program.

(b) (1) Beginning 30 days after the effective date of this part, and until 120 days after such date, each recipient shall require any contractor, as a condition to an award of a contract for $50,000 or more for services or products on a project receiving federal financial assistance under a program covered by section 905 of the Act:

(i) To furnish to the recipient a written assurance that it will, within 90 days after the date of the award, develop and maintain a written affirmative action program meeting the requirements of this part for the project, program or activity covered by the contract,

(ii) To require each of its subcontractors receiving an award of a subcontract for $50,000 or more within 120 days after the effective date of this part, to furnish to the contractor as a condition to such an award the written assurance described in clause (i) of this paragraph.

(2) Beginning 120 days after the effective date of this part, each recipient shall require as a condition to the award of a contract or subcontract of $50,000 or more that the contractor or subcontractor furnish a certificate to the recipient or contractor as appropriate that a written affirmative action program meeting the requirements of this part has been developed and is being maintained.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, each contractor or subcontractor having a contract of $50,000 or more but less than 50 employees shall be required to develop and maintain a written affirmative action program only for contracts in accordance with § 265.13(c) of this part.

(4) A recipient or contractor shall not procure supplies or services in less than usual quantities or in a manner which is intended to have the effect of avoiding the applicability of this paragraph.

§ 265.13 Contents of affirmative action program.

(a) *General.* A prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and utilization of minority businesses, and an evaluation of opportunities for utilization of minority group personnel and minority businesses. Therefore, an affirmative action program to guarantee employment and contractual opportunities shall provide for specific actions keyed to the problems and needs of minority persons and minority businesses including, where there are deficiencies based on past practices, and with respect to future plans for hiring and promoting employees or awarding contracts, the development of specific goals and timetables for the prompt achievement and maintenance of full opportunities for minority persons and minority businesses with respect to programs, projects and activities subject to this part.

(b) *Employment practices.* (1) The affirmative action program for employment showing the level of utilization of minority employees, and establishing a plan to insure representative opportunities for employment for minority persons shall be developed in accordance with the regulations of the Department of Labor at 41 CFR 60–2.

(2) Railroad applicants or recipients shall develop their program for each establishment in their organization and by job categories in accordance with the requirements of the Joint Reporting Committee of the Equal Employment Opportunity Commission and the Department of Labor. Other applicants, recipients or contractors may use any program format or organization which has been approved for use by other Federal agencies enforcing equal opportunity laws.

(3) The affirmative action program shall show the source of statistical data used.

(4) The affirmative action program shall include a listing by job category of all jobs which may be established or filled by the applicant, recipient or contractor as a result of the project, program or activity funded by federal financial assistance under the Rail Acts for the first five years of such project, program or activity or the period during which such project, program or activity will be undertaken, whichever is the lesser ("program period").

(5) The affirmative action program shall set forth in detail a plan to insure that with respect to the project, program or activity financed in whole or in part through financial assistance un-

der the Rail Acts, minority persons have an opportunity to participate in employment in proportion to the percentage of the minority work force in the area where the applicant's, recipient's or contractor's operations are located as compared to the total work force, and that such minority persons have an equal opportunity for promotion or upgrading. Where appropriate because of prior underutilization of minority employees, the program shall establish specific goals and timetables to utilize minority employees in such projects, programs or activities in the above-mentioned proportion.

(c) *Contracts.* (1) The affirmative action program shall include details of proposed contracts in excess of $10,000 to be awarded in connection with projects, programs and activities funded in whole or in part through financial assistance under the Rail Acts, including contracts for professional and financial services, for the program period. The details shall include a description of the services or products which will be sought including estimated quantities, the location where the services are to be provided, the manner in which proposals will be solicited (e.g., cost plus fixed fee, fixed price), the manner in which contracts will be awarded (e.g., competitive or sole source). The plan shall also give details as to bidding procedures, and information as to other qualifications for doing business with the applicant, recipient or contractor. Upon request by the applicant, recipient or contractor, any information submitted to the Administrator shall be kept confidential to the extent permitted by law.

(2) The affirmative action program shall review the procurement practices of the applicant, recipient or contractor for the full year preceding the date of the submission of the affirmative action program and evaluate the utilization of minority business in its procurement activities. Such evaluation of utilization of minority businesses shall include the following:

(i) An analysis of awards of contracts to minority businesses during such year describing the nature of goods and services purchased and the dollar amount involved; and

(ii) A comparison of the percentage of awards of contracts to minority businesses (by number of contracts and by total dollar amount involved) to the total procurement activity of the applicant, recipient or contractor for said year.

(3) The affirmative action program shall set forth in detail applicant's, recipient's or contractor's plan to insure that minority businesses are afforded a fair and representative opportunity to do business with applicant, recipient or contractor (both in terms of number of contracts and dollar amount involved) for the program period. Such plan shall identify specific actions to be taken to:

(i) Designate a liaison officer who will administer the minority business program;

(ii) Provide for adequate and timely consideration of the availability and potential of minority businesses in all procurement decisions;

(iii) Assure that minority businesses will have an equitable opportunity to compete for contracts, by arranging solicitation time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority businesses and by assisting minority businesses who are potential contractors in preparing bid materials and in obtaining and maintaining suitable bonding coverage in those instances where bonds are required;

(iv) Maintain records showing that the policies set forth in this part are being complied with;

(v) Submit quarterly reports of the records referred to in subparagraph (iv) above in such form and manner as the Administrator may prescribe; and

(vi) Where appropriate because of prior underutilization of minority businesses, establish specific goals and timetables to utilize minority businesses in the performance of contracts awarded.

(d) *Successor organizations.* Where applicant, recipient or contractor is a successor organization, its affirmative action program shall review the hiring and procurement practices of its predecessor organization or organizations.

§ 265.15 Implementation and maintenance of affirmative action program.

The affirmative action program with respect to employment and procurement practices shall set forth in detail applicant's, recipient's or contractor's program to implement and maintain its recommended action program to insure that persons and businesses are not discriminated against because of race, color, national origin or sex, and that minorities and minority businesses have equal employment and contractual opportunities with applicant, recipient or contractor. In developing its maintenance program for employment, applicants, recipients and contractors shall follow the applicable regulations of the Department of Labor implementing Executive Order 11246 at 41 CFR 60-2, Subpart C, which provisions may also be helpful in implementing and maintaining applicant's, recipient's or contractor's procurement program.

§ 265.17 Review of affirmative action program.

(a) Except as provided for contractors and subcontractors in § 265.11(b), each affirmative action program to be acceptable must have the written approval of the Administrator.

(b) The Administrator recognizes that there may be some exceptional situations where the requirements of § 265.13 through § 265.15 may not fulfill the affirmative action objectives sought or that those objectives may be better achieved through modified or different requirements. Accordingly, the applicant, recipient or contractor may request approval for modified or different requirements that embody the objectives of § 265.13 through § 265.15. Such a request must include detailed showings that the particular situation is exceptional and that the modified or different proposals substantially comply with the objectives of this part. If the Administrator determines that the requirements for a detailed justification have been met, he may waive or modify these requirements or impose different requirements as he deems necessary to further the objectives sought herein.

Subpart C—Compliance

§ 265.19 Compliance information.

(a) Each recipient and contractor shall keep such records and submit to the Administrator complete and accurate reports, at such times, and in such form, and containing such information as the Administrator may determine to be necessary to enable him to ascertain whether the recipient or contractor has complied or is complying with this part. These records shall show in connection with the project, program or activity funded in whole or in part through financial assistance under the Rail Acts:

(1) Procedures which have been adopted to comply with the policies set forth in this part, including the establishment of a source list of minority businesses;

(2) Specific efforts to identify and award contracts to minority businesses; and

(3) Awards to minority businesses on the source list required in paragraph (1) of this subsection.

(b) Each recipient and contractor shall permit access by the Administrator during normal business hours to such of its books, records, accounts and other sources of information and its facilities as may in the opinion of the Administrator be necessary to ascertain compliance with this part.

(c) Each recipient and contractor shall make available to participants, beneficiaries and other interested persons, such information regarding the provisions of this part and the applicability to the program, project or activity under which the recipient received financial assistance from the Rail Acts or under which the contractor is awarded a contract and make such information available to them in such manner as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 265.21 Conduct of investigations.

(a) The Administrator shall from time to time review the practices of recipients and contractors to determine whether they are complying with this part. The Administrator shall to the fullest extent practicable seek the cooperation of recipients and contractors in obtaining compliance with this part and shall provide assistance and guidance to recipients and contractors to help them comply voluntarily with this part. As required by § 265.7(a)(6) of this part recipients and contractors shall from time to time review the practices of their contractors

and subcontractors to determine whether they are complying with this part.

(b) Any person who believes himself or herself or any other person to be subjected to discrimination prohibited by this part, may file with the Administrator a written complaint. A complaint must be filed not later than sixty (60) days after the date complainant discovers the alleged discrimination, unless the time for filing is extended by the Administrator.

(c) The Administrator will make a prompt investigation in cases where a compliance review, report, complaint or other information indicates a possible failure to comply with this part.

(d) (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Administrator shall within ten (10) days after such determination so inform the recipient or contractor in writing of the specific grounds for alleging noncompliance and the matter shall be resolved by informal means whenever possible. The notice shall provide that, if it has been determined that the matter is not resolved by informal means within thirty (30) days after the delivery of the notice, action will be taken as provided for in § 265.23.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the Administrator shall within ten (10) days after such determination so inform the recipient, or contractor and the complainant, if any, in writing.

(e) No recipient, contractor or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 905 of the Act or this part, or because he or she made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential at their election during the conduct of any investigation, proceeding or hearing under this part. But when such confidentiality is likely to hinder the investigation the complainant will be advised for the purpose of waiving the privilege.

§ 265.23 Procedures for effecting compliance.

(a) Whenever the Administrator determines that any recipient, or contractor has failed to comply with the provisions of this part, or with any Federal civil rights statute, or with any order or regulation issued under such a statute, and such failure has not been resolved by informal means pursuant to § 265.21 of this part, the Administrator shall within ten (10) days after such determination notify such recipient or contractor, and the appropriate labor organization if the matter may appear to affect a person who is covered by a collective bargaining agreement, in writing of the specific grounds for alleging noncompliance, and the right of such persons to respond to such determination in writing or to request an informal hearing. Where the Administrator determines that substantial noncompliance exists and it is unlikely that compliance will be obtained, or that lack of good faith exists, or that other good cause exists, he may order that further financial assistance be suspended in whole or in part pending a final decision in the matter. Subject to the provisions of paragraphs (b) through (e) of this section, the recipient or contractor shall have sixty (60) days from the date of delivery of the notice within which to comply. The recipient or contractor may be entitled to additional time if it is demonstrated that compliance is not possible within the sixty day period and that the necessary initial curative actions were undertaken promptly and have been diligently prosecuted toward completion. The Administrator shall specify the last day upon which curative action must be completed to his satisfaction. Unless the Administrator determines that compliance cannot be reasonably attained, failure to take curative action shall be grounds for the Administrator to:

(1) Direct that no further Federal financial assistance be provided to the recipient;

(2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(3) Exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*); or

(4) Take such other actions as may be provided by law or this part.

(b) Persons receiving notification and a directive pursuant to paragraph (a) of this section may within thirty (30) days after receipt respond to the notice in writing in lieu of requesting an informal hearing as specified in subsection (c). The Administrator will make a determination as to compliance within thirty (30) days after receipt of such written response, and advise the person in writing of his determination. If the Administrator determines that compliance is reasonably attainable and that such person has failed to comply with the provisions of this part or with his determination within 30 days after receipt of his determination, the Administrator shall pursue the remedies set forth in the last sentence of subsection (a) of this section.

(c) Persons receiving notification and a directive pursuant to subsection (a) of this section may within ten (10) days after receipt request an informal hearing in lieu of filing a written response as specified in subsection (b). The Administrator may, in his discretion, grant a request for an informal hearing for the purpose of inquiring into the status of compliance of such person. The Administrator will advise persons subject to his directive in writing as to the time and place of the informal hearings and may direct such persons to bring specific documents and records, or furnish other relevant information concerning their compliance status. When so requested, such person shall attend and bring the requested information. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. The failure of such person to request a hearing or to appear at a hearing for which a date has been set shall be deemed to be a consent to the applicability of the procedures set forth in subsection (a) of this section.

(d) The hearing shall be conducted by a hearing officer appointed by the Administrator. Such hearings shall commence within twenty (20) days from the date the hearing is granted and shall be concluded no later than thirty (30) days from the commencement date. Parties to informal hearings may be represented by counsel or other authorized representative and shall have a fair opportunity to present any relevant material. Formal rules of evidence will not apply to such proceedings.

(e) *Decisions and notices.* (1) Within ten (10) days after the conclusion of such hearings, the hearing officer will advise the Administrator, in writing, of his views and recommendations as to compliance with this part and a copy of such decision shall be sent by registered mail, return receipt requested, to the recipient or contractor and participating labor organization. If the hearing officer in his decision determines that the recipient or contractor is in noncompliance with this part, he may, if he determines that it is unlikely that compliance will be obtained, or that a lack of good faith exists, or for other good cause, order that further financial assistance, be suspended in whole or in part, pending a decision by the Administrator in the matter.

(2) The recipient, contractor or labor organization may file exceptions to the hearing officer's decision, with his reasons therefor, with the Administrator within thirty (30) days of receipt of the initial decision. Within twenty (20) days, after the time for filing exceptions, the Administrator shall determine, in writing, whether or not the parties involved are in compliance with this part. A copy of the Administrator's decision will be given to the recipient, contractor, labor organization, if appropriate, and to the complainant, if any.

(3) If the Administrator determines that compliance can reasonably be attained, his decision shall provide that if such person fails or refuses to comply with the decision of the Administrator within thirty (30) days after receipt of the decision, the Administrator shall:

(i) Direct that no further Federal assistance be provided to such a person;

(ii) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(iii) Exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964; and/or

(iv) Take such other actions as may be provided by law or this part.

(4) A recipient or contractor adversely affected by a decision of the Administrator issued under paragraph (a) or (b) of this section shall be restored to full eligibility to receive Federal assistance

or award of a federally assisted contract if the recipient or contractor takes complete curative action to eliminate the noncompliance with this part and if the recipient or contractor provides reasonable assurance that the recipient or contractor will fully comply with this part.

§ 265.25 Other information.

(a) Each person required to submit a written affirmative action program pursuant to this part shall include as an appendix thereto, the following information except to the extent such information is already provided as part of the application for financial assistance:

(1) A brief description of other pending applications to other federal agencies for financial assistance, and of federal assistance being provided at the time of submission of the affirmative action program;

(2) A statement of any civil rights compliance reviews regarding applicant or recipient conducted in the two year period before the application, or affirmative action program; the name of the agency or organization performing the review, and the findings of the review;

(3) Where the project, program or activity receiving financial assistance will require the relocation of persons and businesses, a description of the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color, or national origin;

(4) Where the project, program or activity receiving financial assistance will result in the construction of new facilities or expansion of existing facilities, a description of the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin.

(5) Where (3) and (4) above are applicable, additional data such as demographic maps, racial composition of affected neighborhoods, or census data should be provided where necessary or appropriate to evaluate the impact of projects, programs and activities referred to in (3) and (4) above.

Dated: January 17, 1977.

ASAPH H. HALL,
Administrator,
Federal Railroad Administration.

APPENDIX A

The following are the financial assistance programs to which this part applies:

(a) *Railroad Revitalization and Regulatory Reform Act of 1976,* (1) purchase of redeemable preference shares or trustee certificates pursuant to section 505;

(2) guarantee of obligations, the proceeds of which will be used to acquire, or rehabilitate or improve rail facilities, or equipment, pursuant to section 511; and

(3) grants and contracts made to implement the Northeast Corridor project under section 704.

(b) *Regional Rail Reorganization Act of 1973, as amended,* (1) loans made by the United States Railway Association (USRA) pursuant to section 211;

(2) purchase of securities of the Consolidated Rail Corporation pursuant to section 216; and

(3) grants to States, or local or regional authorities for rail continuation assistance under section 402.

(c) *Department of Transportation Act,* (1) grants to States for rail freight assistance programs under section 5 (sec. 803 of the Railroad Revitalization and Regulatory Reform Act of 1976); and

(2) grants under section 4(i) for the planning, preservation and conversion of rail passenger terminals of historical or architectural significance.

(d) *Rail Passenger Service Act,* (1) grants to Amtrak under section 601.

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federal register

MONDAY, JANUARY 24, 1977

PART VI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

■

Site and Neighborhood Standards for Subsidized Newly-Constructed or Substantially-Rehabilitated Housing

Section 8 Housing Assistance Payment Program—New Construction and Substantial Rehabilitation

Notice of Proposed Rulemaking

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 200]

[Docket No. R-77-432]

SITE AND NEIGHBORHOOD STANDARDS FOR SUBSIDIZED NEWLY-CONSTRUCTED OR SUBSTANTIALLY-REHABILITATED HOUSING

Notice of Proposed Rule Making

The Department of Housing and Urban Development is proposing to establish uniform site and neighborhood standards for housing that is newly constructed, substantially rehabilitated, or purchased for use as low rent public housing, and for which HUD assistance is provided in the form of annual contributions, interest reduction payments, rent supplements, below market interest rate insured mortgages or loans, or housing assistance payments.

The standards would replace 24 CFR Part 200. References are made to these standards in other regulations of the Department. See, *e.g.*, 24 CFR 886.203(a)(2). No change in the regulations governing the Section 202 program for elderly housing (Sec. 202 of the Housing Act of 1959, 12 U.S.C. 1701q) is required because those regulations require compliance with either 24 CFR 880.112 or 881.112. See 24 CFR 885.3.

The proposed regulations would provide uniform criteria for evaluating proposed locations for assisted housing with the aim of ensuring that housing opportunities for lower income and minority households are available in a wide range of locations. The Department has concluded that the best approach to this complex issue of site selection is to allow full and open public discussion by those affected by the proposed regulations before these standards are finalized. Accordingly, the Department presents these regulations not as the Department's conclusion as to the final form the standards should take, but as an option whose specificity will give form and substance to a discussion of the issues involved.

In order to assist the public in commenting on these regulations, this preamble will present a history of the site selection issue and a summary of the provisions of the proposed regulations so that public comments can respond to how these regulations may impact on individual projects or communities.

I. Background

One of the statutory responsibilities of the Department in administering its housing and community development programs is the furthering of fair housing goals (Sec. 808(d)(5) of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3608(d)(5)), and the "reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income." Sec. 101(c)(6), Housing and Community Development Act of 1974 (42 U.S.C. 5301(c)(6)).

Although federally assisted housing constitutes a relatively small portion of the nation's housing stock, it is an important source of housing opportunities for lower income and minority families. Thus, promoting the provision of assisted housing in a wide variety of locations is an essential element in the fair housing goal which finds expression throughout the Department's programmatic responsibilities, and which goes beyond assisted housing to include, for example, the enforcement of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3604–3619); the Community Development Block Grant Program and the related review of local Housing Assistance Plans; and HUD's recently implemented program to provide supplemental allocations of housing assistance, comprehensive planning, and community development funds to areas which have developed housing allocation plans to increase the geographic choice of housing opportunities for lower income families throughout a metropolitan area. See 24 CFR Part 891.

The Department's experience has indicated the need for uniform site and neighborhood standards which clearly articulate the Department's policy of promoting fair housing through the development of assisted housing at locations which broaden the housing opportunities available to lower-income families. The lack of a simple set of uniform criteria applicable to all federally assisted housing programs, and the ambiguity of present requirements have resulted in inconsistent and uneven application of the current standards.

The development of such site and neighborhood standards for federally assisted housing is a difficult and complex task because of the need to balance a number of significant and competing social goals. The goal of dispersing assisted housing must be measured against the need to provide resources to rehabilitate the housing and to improve the quality and viability of the neighborhoods in which lower income families already live. In addition, federal intervention in locally determined land use or in locally devised community development strategies, through the imposition of site and neighborhood standards, may conflict with other statutory or Departmental policies which encourage increased discretion for local governmental officials. Finally, the location of assisted housing should be considered in relation to such concerns as racial imbalances in the public schools, neighborhood transition, and the availability of transportation and social services. These proposed regulations are being published for comment in order to focus discussion on such specific issues so that the Department may make a fully informed decision on a uniform set of standards.

II. History

Since the inception of Low Rent Public Housing in 1937, the earliest of the federally-assisted housing programs, standards of one type or another have been applied by HUD and its predecessor agency, the Public Housing Administration, to the selection of sites. However, those early standards did not reflect a concern for the impact of site selection on housing opportunities for minority families. By the mid-1960's, it became evident that much of the public housing available to minorities was being constructed in areas of minority concentration. Responding to this pattern, pursuant to authority conferred by Executive Order 11063 of 1962 (42 U.S.C. 1982 note), and the Civil Rights Act of 1964 (see particularly 42 U.S.C. 2000d), the Department added a site standard in 1967 which addressed the responsibility of local housing authorities to provide for a balanced distribution of public housing projects within the locality, in order to promote housing opportunities for minorities outside as well as inside "areas of racial concentration." Criterion 2g of Par. 205.1 of the Low-Rent Public Housing Manual.

In 1970, the Department undertook to modify its site selection system to reflect the requirements of Section 808 of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3608) that the Secretary administer HUD programs "in a manner affirmatively to further the policies of this Title."

The development of these new site selection standards was hastened by the United States Court of Appeals decision in *Shannon* v. *HUD*, 436 F. 2d 809 (C.A. 3, 1970), which held that the Department "must utilize some institutionalized method whereby, in considering site selection or type selection, it has before it the relevant racial and socio-economic information necessary for compliance with its duties under the 1964 and 1968 Civil Rights Act." Observing that desegregation is not the only goal of the national housing policy, the Court left room for HUD to approve proposals which might add to racial concentration in "instances where a pressing case may be made for the rebuilding of a racial ghetto," so long as HUD carefully weighed the alternatives and made an informed judgment that "the need for physical rehabilitation or additional minority housing at the site in question clearly outweighs the disadvantages of increasing or perpetuating racial concentration."

In January 1972, HUD published its revised Project Selection Criteria (24 CFR Part 200, Subpart N) which established a formal system for evaluating proposed sites for assisted housing. These new guidelines provided criteria for assessing sites for both public housing and FHA-insured assisted housing, primarily Section 236 (see 12 U.S.C. 1715z-1). Factors included not only the question of minority concentration, but also the overall need for the proposed housing project, the availability of community services, the undue concentration of subsidized units without regard to racial concentration, the environmental impact of the project, the availability of minority job opportunities, the capacity of the

sponsor and quality of the prospective management of the project.

The Project Selection Criteria were intended: (a) to expand existing site selection criteria to reflect the requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3604–3619), and to implement the President's related directive that "the administrator of a housing program should include, among the various criteria by which applications for assistance are judged the extent to which a proposed project, or the overall development plan of which it is a part, would, in fact, open up new housing opportunities that would contribute to decreasing the effects of past housing discrimination (June 11, 1971 statement of the President on Federal policies relating to equal housing opportunity, p. 12); (b) to give priority to projects which provided geographic dispersal, small size and low density, a special mix and good design and management; (c) to assist in the selection of public housing applications which best met this objective; (d) to enable HUD Field Offices to eliminate clearly unacceptable proposals prior to performing the detailed processing required by each program; and (e) to assure that those proposals which met the broad-based criteria reflecting the basic concerns of the Department were given a priority for funding.

The criteria prohibited locating a project in an area of minority concentration unless the project was necessary to meet an "over-riding need" for housing in the area, or "sufficient and comparable" opportunities for assisted housing existed outside the areas of minority concentration.

The 1972 Project Selection Criteria were not applicable to rehabilitation projects, Indian Reservation housing, Section 235 existing housing, public housing acquisition or leasing of fewer than 25 units, and new construction projects of fewer than five dwelling units.

Section 201(a) of the Housing and Community Development Act of 1974 (88 Stat. 653) created the Section 8 (Rental Subsidy) Housing Assistance Payments Program (see 42 U.S.C. 1437f), which is now the Department's primary housing assistance program. The 1974 Act states as statutory purposes the "reduction of the isolation of income groups within communities and geographical areas" and the "spatial deconcentration of housing opportunities for persons of lower incomes." Section 101(c)(6), (42 U.S.C. 5301(c)(6)). It also requires that a community, as a condition to receiving its Community Development Block Grant, prepare a housing assistance plan (HAP) which must identify the general locations of proposed housing for lower-income persons, with the objective of "promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of low income persons". Section 104(a)(4)(C), 42 U.S.C. 5304(a)(4)(C).

The site and neighborhood standards established for the Section 8 New Construction and Substantial Rehabilitation programs (see 24 CFR 880.112 and 881.112 respectively) closely paralleled the standards established in 1972 for the public housing programs, including the 1974 revised standards for the Section 23 program, which was the predecessor to Section 8. The present Section 8 site selection regulations state:

> The site shall promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons. 24 CFR 880.112(c) and 881.112(c).

This Section 8 standard repeats the statutory language (Sec. 104(a)(4)(C)(ii) of the HCD Act of 1974, 42 U.S.C. 5304(a)(4)(C)(ii) with respect to the objectives of the "general locations" requirement of the local Housing Assistance Plans. A related regulatory requirement imposed pursuant to the HCD Act (24 CFR 880.112(f) and 881.112(e)) requires that "the site * * * comply with any applicable conditions in the Local Housing Assistance Plan, approved by HUD."

The standard contained in the earlier Project Selection Criteria concerning areas of racial concentration was rephrased in the regulations for Section 8 New Construction to require that the site shall not be located in areas of minority concentration unless there are "sufficient, comparable opportunities existing for housing for minority families, * * * outside areas of minority concentration, or * * * the project is necessary to meet overriding housing needs." 24 CFR 880.112(c)(1). The Section 8 Substantial Rehabilitation regulations require only that the site be "suitable from the standpoint of facilitating and furthering compliance with * * * applicable" fair housing requirements. 24 CFR 881.112(b).

The regulations for the "Section 8 Housing Assistance Payments Program—Additional Assistance Program for Projects Insured or Formerly Insured by HUD", 24 CFR Part 886, published in the FEDERAL REGISTER on August 4, 1976 (41 FR 32686), incorporated only those site and neighborhood standards in § 881.112 which require assisted units to qualify as decent safe and sanitary housing, but not the provisions concerning minority concentrations. The same standard was applied to the program developed for "PHA Acquisition of HUD-Owned Properties and Properties with HUD-Insured and HUD-Held Mortgages" (24 CFR Part 845) published in the FEDERAL REGISTER as an Interim Rule on June 9, 1976. (41 FR 23292). The minority concentration criteria were not applied to these programs because they only provide additional assistance to existing lower income HUD-insured or HUD-subsidized projects.

Section 8 existing housing (24 CFR Part 882) is not subject to the present or proposed site-selection standards because that program is based on a shopping or "finders-keepers" principle under which families select the location of their own housing. Departmental regulations for the Traditional Public Housing Program (proposed Part 841 of 24 CFR) which were published for comment on November 18, 1976 at 41 FR 50947 provide that the 1972 Project Selection Criteria will continue to apply pending the establishment of new site and neighborhood standards.

III. MAJOR ISSUES POSED BY THE PROPOSED SITE AND NEIGHBORHOOD STANDARDS

A. *Minority Concentrations.* One of the difficult issues which these proposed site-selection standards address is that of under what circumstances subsidized housing may be located in areas with substantial concentrations of racial minorities. The policy which these proposed standards are intended to serve is to ensure that people of all races have a variety of housing opportunities available to them. If comparable housing is available to minorities inside and outside an area of racial concentration, so that minority families have the option of living in either environment, then such a policy is satisfied. See § 200.704(d)(1)(ii). If the policy to be served were to mandate the broad geographic dispersal of minority families, as opposed to housing opportunities, more restrictive stndards would be necessary.

An "area of minority concentration" has been defined in the proposed regulations as an area in which more than 40 percent of the residents are minority citizens or one in which minorities make up a significantly greater proportion of the residents than is true of the locality as a whole. This provision prevents the location of additional assisted housing in an area which already houses a disproportionate share of the locality's minority residents even though the proportion of minority residents in the area does not exceed 40 percent. See § 200.704(a)(1).

The proposed regulation also contains an exception which will avoid imposing an unfair penalty on those localities which presently have a large percentage of minority residents. For example, § 200.704(d)(2) allows approval of a proposed site in an area of minority concentration if sites outside such areas cannot feasibly be made available for assisted housing. This provision, which may be criticized by some as a loophole, avoids the anomaly of barring any assisted housing in a community in which all available sites are in areas with greater than 40 percent minority populations.

Under the proposed regulations, a site is to be considered available if assisted housing would be an incompatible land use, or would frustrate other legitimate land-use or growth-management policies. § 200.704(d)(2). Thus, for example, a site would be unavailable if it were in the midst of a high traffic industrial area or where the physical infrastructure and public services in undeveloped open space or a single-family neighborhood could not accommodate high-density lower-income housing, without an unconscionably high public investment. The proposed regulation specifically provides that sites shall not be considered unavailable for low-income housing if their unavailability is the result of dis-

criminatory zoning or other discriminatory practices. § 200.704(d)(2). The question of what constitutes discriminatory zoning is an unsettled area of case law. The Department specifically requests comments on the types of justifications that could be adopted to assist in determining whether sites are unavailable for the purpose of this provision.

Moreover, areas of minority concentration may be particularly susceptible to neighborhood preservation or renewal programs of which assisted housing is an integral part. Accordingly, sites which are otherwise unacceptable may be approved under the specific conditions described in § 200.704(d)(3), if they are in an area which is the target of concentrated local neighborhood preservation or revitalization efforts. This exception would be invoked only where the community has sites available outside areas of minority concentration and its annual allocation of assisted housing for the relevant year is too small to provide the assisted housing needed to implement the preservation plan to be balanced by comparable housing outside areas of minority concentration. The relevant local government must fully support such an exemption and demonstrate its continuing commitment to the revitalization of the area.

Regardless of whether housing is subject to this preservation area exception, whenever it is to be constructed in an area of minority concentration, a positive finding must be made by HUD that the project will improve rather than impair the physical and social quality of the neighborhood. § 200.704(e).

B. *Racially Mixed Areas.* Racially mixed areas present an issue of particular sensitivity. Because the racial balance in a neighborhood is often very delicate, under these proposed regulations a project site should not be approved in such an area when it would cause a rapid and massive turnover of the residents in the surrounding neighborhood, with the physical decline and disinvestment that may attend such transitions. § 200.704(b). On the other hand, a rapid increase in the number of minority residents in an area is not per se to be avoided. There is no reason to avoid the proportion of minorities in a neighborhood quintupling from 3 to 15 percent, for example. Nor is an increase in the number of minorities in a neighborhood from 25 to 35 percent, because of the racial makeup of a project, necessarily to be avoided, if the project does not significantly and adversely affect the stability of the racially-integrated surrounding neighborhood.

Section 200.704(b) is intended only to reach the situation where the proposed project's likely effect on the surrounding neighborhood will be to cause precipitious racial transition that results in the neighborhood becoming an area of undue minority concentration. Thus, the regulation focuses only on those neighborhoods which, while not yet having a 40 percent minority population, do have, for example, a 30 percent minority population, or a trend of racial transition which will soon result in the neighborhood becoming an area of minority concentration.

A related provision, § 200.704(c), provides that a site in a racially-mixed area should not be approved where it would cause a significant and disproportionate share of the locality's minority students to be concentrated in one or more public schools serving the site. Because patterns of residential segregation and *de facto* school segregation are integrally related, the location of assisted housing should avoid exacerbating racial imbalances in public schools.

Again, however, this provision should not be misused to bar assisted housing and minority families from predominately non-minority neighborhoods. Its purpose is to avoid the location of assisted housing recreating a pattern of *de facto* school segregation, which a court or community has tried to remedy.

C. *Areas with a Concentration of Assisted Housing.* Site-selectiton criteria also must deal with the problem of areas with a significant concentration of lower-income families in federally assisted housing. The proposed standards seek to avoid concentrations of assisted housing which congregate large number of low-income families in particular neighborhoods, since such concentrations may lead to serious management problems in the assisted housing stock. Proposed project sites are to be approved in areas of concentrations of assisted housing only when a positive finding can be made that the project will improve, rather than impair the physical and social quality of the neighborhood. § 200.704(e).

Because of its unique characteristics and the needs of its occupants, however, elderly housing is exempted from the provision designed to avoid concentrations of assisted housing. § 200.704(a)(3)(ii). While concentrating large numbers of assisted low-income families can have serious social and economic repercussions, these problems have not arisen with regard to housing for the elderly. Elderly housing may presently be located in a single section of a city that is ideal for such housing and the presence of additional elderly housing may result in even better services and facilities being provided. Requiring a new elderly project to be located in another section of the locality, where there is not a concentration of elderly housing, could result in a significantly less satisfactory living environment.

D. *Standards for Rehabilitation.* Another basic question concerns whether to exempt or impose a different—presumably lesser—standard for substantial rehabilitation projects, as compared to new construction. The goals of rehabilitating blighted, abandoned or substandard dwellings in central city areas where low-income families live must be weighed against the goal of expanding housing opportunities outside of areas of minority or assisted-housing concentration. In these proposed regulations, the tension between balanced housing opportunities and neighborhood preservation is struck not through a distinction between rehabilitating or building a similar structure on the same site, but rather by the aforementioned local neighborhood preservation exemption to both minority concentration and assisted housing concentration requirements. § 200.704(d)(3).

E. *A healthy living environment.* Sites in areas both of minority concentration and with undue concentrations of assisted housing are not to be approved unless a determination is made that approval of the site will be likely to improve, rather than impair, the physical and social quality of the area. § 200.704(e). Thus, sites for assisted housing must be accessible to employment opportunities. § 200.710. The chance for gainful employment is as important to a lower-income family as is subsidized housing. The requirement that the proposed site be convenient to places of employment is to be applied less rigorously to elderly housing. Although employment opportunities may not be an important to the elderly, sites for elderly housing must be convenient to other supporting social services, such as basic comercial and medical facilities, because the elderly often do not have access to private automobile transportation and may even find dependence on public transportation for these necessities of life unduly burdensome.

F. *Federal and Local Government Roles.* The final tension inherent in the site selection issue is the role of Federal and local governments in balancing competing interests, and determining sites for assisted housing. While the Federal Government has an historic role in assuring the rights of minority and lower income families, local governments have been given an increasing role in determining the use of Federal funds within their jurisdictions. Local officials have the greatest capacity for assessing local needs, coordinating the impact of differing Federal programs on those needs, leveraging public and private resources, and responding to public concerns.

The regulations emphasize the critical role of local government in the decision-making process. Section 200.716 provides that a site must comply with any applicable conditions in the HUD-approved Local Housing Assistance Plan. Section 200.718 also requires that the views and recommendations of the Chief Executive Officer of the unit of general local government reviewing the site pursuant to Section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439) and 24 CFR Part 891 must be carefully considered in approving a site. The matters on which comments are requested from local Chief Executive Officers go considerably beyond the question of consistency with the HAP and include comments with respect to the standards proposed by these regulations. The proposed regulations also require that sites must be consistent with any applicable areawide housing opportunity plan or development plan for a new community.

G. *Miscellaneous Provisions.* Other new provisions in these regulations clarify that approval of a site as meeting these standards does not substitute for or imply HUD review and approval of the site as meeting HUD requirements with respect to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), other related statutes or Executive Orders, or the standards (e.g., those relating to marketability) applicable to the particular housing program.

Interested persons are invited to comment on the proposed revised site and neighborhood standards by submitting written data, views and arguments. Comunications should be identified by the above docket number and title and should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. All relevant material received on or before March 2, 1977 will be considered before adoption of the final rule. Copies of comments submitted will be available for public inspection during normal business hours at the above address.

A Finding of Inapplicability of the National Environmental Policy Act has been made. A copy of the Finding is available for public inspection in the Office of the Rules Docket Clerk during regular business hours at the address set forth above.

In addition, a Finding of Inapplicability of Inflation Impact Statement requirements has been made in accordance with relevant procedures. A copy of this Finding is available for inspection in the Office of the Rules Docket Clerk during regular business hours at the address set forth above.

Accordingly, it is proposed that Chapter II of 24 CFR be amended as follows:

1. Subpart N is revised to read:

Subpart N—Site and Neighborhood Standards for Subsidized Housing

Sec.

200.700 Site and neighborhood standards.
200.702 Requirements as to size, terrain and utilities.
200.704 Equal housing opportunity requirements.
200.706 Environmental requirements.
200.708 Accessibility to community facilities.
200.710 Accessibility to employment opportunities.
200.712 Compliance with relocation requirements.
200.714 Sites in flood zones.
200.716 Consistency with plans.
200.718 Local government comment.
200.720 Other site related reviews.

Subpart N—Site and Neighborhood Standards for Subsidized Housing

AUTHORITY: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); sec. 5(b) and 8 U.S. Housing Act of 1937 (42 U.S.C. 1437c(b) and 1437f).

§ 200.700 Site and neighborhood standards.

Proposed sites for new construction and substantial rehabilitation projects, and projects acquired for use as low rent public housing without rehabilitation, must be approved by HUD as meeting the standards set forth in this Subpart.

§ 200.702 Requirements as to size, terrain and utilities.

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed; and adequate utilities (water, sewer, gas and electricity) and adequate paved streets shall be available to service the site.

§ 200.704 Equal housing opportunity requirements.

The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et. seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3604–3619), Executive Order 11063 (42 U.S.C. 1982 note), the Housing and Community Development Act of 1974 (see particularly 42 U.S.C. 5301–5309), and HUD regulations issued pursuant thereto.

(a) *Determination of minority concentration or racial mixture.* In furtherance of the objectives of the statutes and the Executive Order enumerated in this section, HUD shall determine:

(1) *Whether the site is in an area of minority concentration.* In making such determination, the area to be considered shall be the census tract in which the site is located or such other area for which reliable data as to racial composition is available and which HUD determines, on the basis of functional considerations (i.e., location of neighborhood facilities such as schools, shopping centers, churches, etc.) to be more appropriate. An area shall be determined to be an area of minority concentration if minority residents constitute (i) more than 40 percent of the residents of the area or (ii) a significantly greater proportion of the residents of the area than the proportion of minority residents of the locality as a whole.

(2) *Whether the site is in a racially mixed area.* An area, as determined pursuant to paragraph (a)(1) of this section shall be determined to be a racially mixed area if it contains both minority and non-minority residents and minority residents constitute a significant percent but less than 40 percent of the total residents of the area.

(3) *Whether a site is in an area of undue concentration of federally-assisted housing.* The area, as determined pursuant to paragraph (a)(1), of this section shall be determined to be an area of undue concentration of federally-assisted housing if a substantial number of the housing units in the area (generally over 40 percent) consist of housing (i) constructed, rehabilitated or purchased, leased (exclusive of units leased under the Section 8 Existing Housing Program (24 CFR Part 882) under the U.S. Housing Act of 1937 (42 U.S.C. 1437f)), Sections 221(d)(3) BMIR, 235, or 236 of the National Housing Act (12 U.S.C. 1715L(d)(3), 1715z and 1715z-1), Section 101 of the Housing and Urban Development Act of 1965, (12 U.S.C. 1701s), or Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) and (ii) intended for occupancy by other than elderly households.

(b) *Unacceptability if ratio of minority residents would be increased significantly.* A site in a racially mixed area or area of minority concentration shall not be approved if the proposed project would result in a significant and rapid increase in the proportion of minority to non-minority residents in the area causing it to become an area of minority concentration in which minority residents would constitute more than 40 percent of the residents of the area.

(c) *Unacceptability due to disproportionate concentration of minority students in public schools.* A site in a racially mixed area or area of minority concentration shall not be approved if the proposed project would distort a voluntary or court-imposed plan adopted by the school system or locality to assure equality of educational opportunity in its public schools, by causing a significant and disproportionate concentration of the locality's minority students in one or more of the public schools serving the site.

(d) *Approval of site in an area of minority concentration.* A site located in an area of minority concentration may be approved if one of the following determinations is made:

(1) *Sufficient and comparable opportunities for assisted housing are available outside areas of minority concentration.*

(i) Housing in the jurisdiction of the unit of general local government (or such wider area as may be covered by an areawide housing opportunity plan) constructed or rehabilitated under one or more of the statutory provisions cited in paragraph (a)(3) of this section is located in areas which are not areas of minority concentration. Such housing must be comparable in tenure (owner, renter), size (bedroom distribution), and number of assisted units to the tenure, size and number of assisted units located in areas of minority concentration; and must have units presently available or scheduled to be available within a waiting period of not more than twelve months in a number and type approximating the number and types of units proposed to be constructed or rehabilitated at the site in question;

(ii) Housing to be constructed or rehabilitated under the statutory provisions cited in paragraph (a)(3) of this section has been approved for development (e.g., fund reservation) within the jurisdiction of the unit of general local government (or such wider area as may be covered by an areawide housing opportunity plan) in areas which are not areas of minority concentration. The proposed tenure, size and number of such units must approximate the proposed tenure, size and number of units to be constructed or rehabilitated at the site in question and must be scheduled to be available for occupancy within twelve months of the anticipated completion of the proposed project; or

(2) *There are no sites which are available or which feasibly can be made available for housing constructed or rehabili-*

tated under the statutory provisions cited in Par. (a)(3) within the jurisdiction of the unit of general local government in areas which are not areas of minority concentration. Zoning and other land use controls intended to avoid incompatible land uses or to prevent unwarranted development of land before supporting facilities are available or to implement similar legitimate land-use policies are acceptable reasons for the unavailability of sites. However, sites shall not be considered unavailable if their unavailability is the result of discriminatory zoning or other discriminatory practices.

(3) *The site is an integral part of an overall local strategy for the preservation or revitalization of the immediate neighborhood.* This exception is applicable only when the overall level of housing assistance available to the locality makes impractical satisfaction in the same fiscal year of both the requirements of paragraph (d)(1)(ii) of this section and the local government's preservation program. In seeking this exemption, a unit of general local government must explain its overall preservation strategy; describe the concentrated efforts and expenditure of funds being undertaken to improve the neighborhood; demonstrate its continuing commitment to the renewal, revitalization or preservation of the area through such activities as urban renewal, the federal urban homesteading demonstration program, concentrated expenditures of community development block grant funds, or similarly focused neighborhood improvement programs; and indicate how its program is likely to achieve long-term economic viability and increased racial or economic integration for the neighborhood in which the site is located.

(e) *Approval of site likely to improve quality of area.* A site in an area of minority concentration or in an area of undue concentration of housing constructed or rehabilitated under the statutory provisions cited in paragraph (a)(3) of this section shal not be approved unless HUD determines that the approval of the site will be likely to improve rather than impair the physical and social quality of the area in which the site is located.

§ 200.706 Environmental requirements.

The site must be free from adverse environmental conditions, natural or manmade, such as instability, septic tank failures, sewage hazards, earthquake faults, mudslides, harmful air pollution, smoke or dust, excessive noise or vibration, heavy vehicular or aircraft traffic, rodent or vermin infestation, or fire or explosion hazards, or such conditions must be eliminated, substantially mitigated or corrected by the completion date of the project. The neighborhood must not be one which is seriously detrimental to the health or well being of the project residents or in which other undesirable elements predominate, such as dangerously high crime rate, unless there is actively in progress a concerted program to remedy these problems.

§ 200.708 Accessibility to community facilities.

The housing must be accessible to social, recreational, educational, commercial and health facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unsubsidized standard housing of similar market rents. Housing for the elderly must be accessible to public or similar transportation facilities, other than dependence on the private automobile ownership of project residents, and also must be reasonably accessible to basic commercial and medical services.

§ 200.710 Accessibility to employment opportunities.

Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive. While elderly housing should not be isolated from employment opportunities, application of this standard to a proposed site or project intended for occupancy by elderly persons shall take into account the more limited employment opportunity needs of elderly persons.

§ 200.712 Compliance with relocation requirements.

The project may not be built or rehabilitated on a site which has occupants unless applicable relocation requirements are met.

§ 200.714 Sites in flood zones.

The project may not be built or rehabilitated in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 (42 U.S.C. 4001–4027) unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4101–4128), and it meets any relevant HUD standards and local requirements.

§ 200.716 Consistency with plans.

The site shall comply with any applicable conditions in the Local Housing Assistance Plan approved by HUD, any applicable areawide housing allocation plan and/or any applicable Development Plan for a new community approved under Title VII of the HUD Act of 1970 (42 U.S.C. 4501–4532) or Title IV of the HUD Act of 1968 (42 U.S.C. 3901–3914). Where the unit of general local government is a participating jurisdiction in an areawide housing opportunity plan pursuant to 24 CFR 886.301, the site shall be consistent with the plan.

§ 200.718 Local government comment.

Approval of a site as meeting the requirements of this Subpart shall take into account the views of the Chief Executive Officer of the unit of general local government in connection with its review of the project pursuant to Section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439) and 24 CFR Part 891. The views and recommendations of the Chief Executive Officer of the unit of general local government in whose jurisdiction the site is located, together with any factual evidence he submits in support of his recommendations, shall be carefully considered in making the determinations required under §§ 200.704 and 200.716.

§ 200.720 Other site related reviews.

Approval by HUD of a site as meeting the standards set forth in this Subpart shall not substitute for or imply HUD review and approval of the site as meeting HUD requirements with respect to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), The National Historic Preservation Act of 1966 (16 U.S.C. 470–470n), other related statutes or Executive Orders, or the applicable housing program under which the proposed project is to be constructed or rehabilitated.

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

CARLA A. HILLS,
Secretary of Housing and Urban Development.

[FR Doc.77-2085 Filed 1-21-77;8:45 am]

Office of the Secretary

[24 CFR Parts 880 and 881]

[Docket No. R-77-437]

SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM

New Construction and Substantial Rehabilitation

PROPOSED RULE MAKING

Concurrently with the publication of this Notice of Proposed Rulemaking, the Department is proposing to amend Chapter II Part 200 Subpart N of this Title by revising Site and Neighborhood Standards for subsidized housing. As explained in the preamble to that proposed revision the new Site and Neighborhood Standards are intended to provide uniform criteria for evaluating proposed assisted housing locations with the aim of insuring that housing opportunities for lower income and minority house holders are available in a wide range of locations. These proposed amendments of Parts 880 and 881 are intended to accomplish the same uniformity of standards for the Section 8 New Construction and Substantial Rehabilitation Programs as is contemplated for subsidized housing under the proposed revision of Part 200.

The major issues posed by Site and Neighborhood Standards, e.g., minority concentrations, racially mixed areas, areas with a concentration of assisted housing, standards for rehabilitation, healthy living environment, and roles of Federal and local government are each discussed extensively in the preamble to the proposed amendment to Part 200.

Interested persons are invited to comment on these proposed revised Site and Neighborhood Standards by submitting

written data, views and arguments. Communications should be identified by the above docket number and title and should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. All relevant material received on or before March 2, 1977, will be considered before adoption of the final rule. Copies of comments submitted will be available for public inspection during normal business hours at the above address.

Accordingly, it is proposed: 1. to amend Part 880 by substituting the following table of contents and by revising the Part to read as set forth hereinafter:

Sec.

880.112 Site and neighborhood standards.
880.112a Requirements as to size, terrain and utilities.
880.112b Equal housing opportunity requirements.
880.112c Environmental requirements.
880.112d Accessibility to community facilities.
880.112e Accessibility to employment opportunities.
880.112f Compliance with relocation requirements.
880.112g Sites in flood zones.
880.112h Consistency with plans.
880.112i Local government comment.
880.112j Other site related reviews.

AUTHORITY: Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

§ 880.112 Site and neighborhood standards.

Sites proposed for use for housing pursuant to this Part must be approved by HUD as meeting the standards set forth in §§ 880.112 through 880.112j. Reference in any other Part to § 880.112 of this Part shall include reference to §§ 880.112 through 880.112j of this Part.

§ 880.112a Requirements as to size, terrain and utilities.

The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed; and adequate utilities (water, sewer, gas, and electricity) and adequate paved streets shall be available to service the site.

§ 880.112b Equal housing opportunity requirements.

The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Acts of 1968 (42 U.S.C. 3604–3619), Executive Order 11063 (42 U.S.C. 1982 note). The Housing and Community Development Act of 1974 (see particularly 42 U.S.C. 5301–5309), and HUD regulations issued pursuant thereto.

(a) *Determination of minority concentration or racial mixture.* In furtherance of the objectives of the foregoing statutes and Executive Order HUD shall determine:

(1) *Whether the site is in an area of minority concentration.* In making such determination, the area to be considered shall be the census tract in which the site is located or such other area for which reliable data as to racial composition is available and which HUD determines, on the basis of functional considerations (i.e., location of neighborhood facilities such as schools, shopping centers, churches, etc.) to be more appropriate. An area shall be determined to be an area of minority concentration if minority residents constitute (i) more than 40 percent of the residents of the area or (ii) a significantly greater proportion of the residents of the area than the proportion of minority residents of the locality as a whole.

(2) *Whether the site is in a racially mixed area.* An area, as determined pursuant to paragraph (a)(1) of this section, shall be determined to be a racially mixed area if it contains both minority and non-minority residents and minority residents constitute a significant percent but less than 40 percent of the total residents of the area.

(3) *Whether the site is in an area of undue concentration of federally-assisted housing.* The area, as determined pursuant to paragraph (a)(1) of this section, shall be determined to be an area of undue concentration of federally-assisted housing if a substantial number of the housing units in the area (generally over 40 percent) consist of housing (i) constructed, rehabilitated, purchased or leased (inclusive of units leased under the Section 8 Existing Housing Program (24 CFR Part 882)) under the U.S. Housing Act of 1937 (42 U.S.C. 1437f), Sections 221(d)(3) BMIR, 235 or 236 of the National Housing Act (12 U.S.C. 1715L(d)(3), 1715z and 1715z–1), Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), or Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) and (ii) intended for occupancy by other than elderly households.

(b) *Unacceptability if ratio of minority residents would be increased significantly.* A site in a racially mixed area shall not be approved if the proposed project would result in a significant and rapid increase in the proportion of minority to non-minority residents in the area causing it to become an area of minority concentration in which minority residents would constitute more than 40 percent of the residents of the area.

(c) *Unacceptability due to disproportionate concentration of minority students in public schools.* A site in a racially mixed area or area of minority concentration shall not be approved if the proposed project would distort a voluntary or court-imposed plan adopted by the school system or locality to assure equality of educational opportunity in its public schools, by causing a significant and disproportionate concentration of the locality's minority students in one or more of the public schools serving the site.

(d) *Approval of site in an area of minority concentration.* A site located in an area of minority concentration may be approved if one of the following determinations is made.

(1) *Sufficient and comparable opportunities for assisted housing are available outside areas of minority concentration.*

(i) Housing in the jurisdiction of the unit of general local government (or such wider area as may be covered by an areawide housing opportunity plan) constructed under one or more of the statutory authorities cited in paragraph (a)(3) of this section, is located in areas which are not areas of minority concentration. Such housing must be comparable in tenure (owner, renter), size (bedroom distribution), and number of assisted units to the tenure, size and number of assisted units located in areas of minority concentration; and must have units presently available or scheduled to be available within a waiting period of not more than twelve months in a number and type approximating the number and type of units proposed to be constructed at the site in question;

(ii) Housing to be constructed or rehabilitated under any of the statutory provisions cited in paragraph (a)(3) of this section has been approved for development (e.g., fund reservation) within the jurisdiction of the unit of general local government (or such wider area as may be covered by an areawide housing opportunity plan) in areas which are not areas of minority concentration. The proposed tenure, size and number of such units must approximate the proposed tenure, size and number of units to be constructed at the site in question and must be scheduled to be available for occupancy within twelve months of the anticipated completion of the proposed project; or

(2) *There are no sites which are available or which feasibly can be made available for housing constructed pursuant to this Part within the jurisdiction of the unit of general local government in areas which are not areas of minority concentration.* Zoning and other land use controls intended to avoid incompatible land uses to prevent unwarranted development of land before supporting facilities are available or to implement similar legitimate land-use policies are acceptable reasons for the unavailability of sites. However, sites shall not be considered unavailable if their unavailability is the result of discriminatory zoning or other discriminatory practices; or

(3) *The site is an integral part of an overall local strategy for the preservation or revitalization of the immediate neighborhood.* This exception is applicable only when the overall level of housing assistance available to the locality makes impractical satisfaction of the requirements of paragraph (d)(1)(ii) of this section and the local government's preservation program. In seeking this exemption, a unit of general local government must explain its overall preservation strategy; describe the concentrated efforts and expenditure of funds being undertaken to improve the neighborhood; demonstrate its continuing commitment to the renewal, revitalization or preservation of the area through such activities as urban renewal, the federal urban homesteading program, con-

centrated expenditures of community development block grant funds, or similarly focused neighborhood improvement programs; and indicate how its program is likely to achieve long-term economic viability and increased racial or economic integration for the neighborhood in which the site is located.

(e) *Approval of site is likely to improve quality of area.* A site in an area of minority concentration or in an area of undue concentration of housing constructed or rehabilitated under the statutory provisions cited in paragraph (a)(3) of this section shall not be approved unless HUD determines that the approval of the site will be likely to improve rather than impair the physical and social quality of the area in which the site is located.

§ 880.112c Environmental requirements.

The site must be free from adverse environmental conditions, natural or man-made, such as instability, septic tank failures, sewage hazards, earthquake faults, mudslides, harmful air pollution, smoke or dust, excessive noise or vibration, heavy vehicular or aircraft traffic, rodent or vermin infestation, or fire or explosion hazards, or such conditions must be eliminated, substantially mitigated or corrected by the completion date of the project. The neighborhood must not be one which is seriously detrimental to the health or well being of the project residents or in which other undesirable elements predominate, such as a dangerously high crime rate, unless there is actively in progress a concerted program to remedy these poblems.

§ 880.112d Accessibility to community facilities.

The housing must be accessible to social, recreational, educational, commercial and health facilities and service that are at least equivalent to those typically found in neighborhoods consisting largely of unsubsidized standard housing or similar market rents. Housing for the elderly must be accessible to public or similar transportation facilities, other than dependence on the private automobile ownership of project residents, and also must be reasonably accessible to basic commercial and medical services.

§ 880.112e Accessibility to employment opportunities.

Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive. While elderly housing should not be isolated from employment opportunities, application of this standard to a proposed site for elderly persons shall take into acount the more limited employment opportunity needs of elderly persons.

§ 880.112f Compliance with relocation requirements.

The project may not be built on a site which has occupants unless applicable relocation requirements are met.

§ 880.112g Sites in flood zones.

The project may not be built in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 (42 U.S.C. 4001–4027) unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4101–4128) and it meets any relevant HUD standards and local requirements.

§ 880.112h Consistency with plans.

The site shall comply with any applicable conditions in the Local Housing Assistance Plan approved by HUD, any applicable areawide housing allocation plan and/or any applicable Development Plan for a new community approved under Title VII of the Housing and Urban Development Act of 1970 (42 U.S.C. 4501–4532), or Title IV of the Housing and Urban Development Act of 1968 (42 U.S.C. 3901–3914). Where the unit of general local government is a participating jurisdiction in an areawide housing opportunity plan pursuant to 24 CFR 886.301, the site shall be consistent with the plan.

§ 880.112i Local government comment.

Approval of a site as meeting the requirements of §§ 880.112 through 880.112j shall take into account the views of the Chief Executive Officer of the unit of general local government in connection with its review of the project pursuant to section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439) and 24 CFR Part 891. The views and recommendations of the Chief Executive Officer of the unit of general local government in whose jurisdiction the site is located, together with any factual evidence he submits in support of his recommendations, shall be carefully considered in making the determination required under §§ 880.112b and 880.112h.

§ 880.112j Other site related reviews.

Approval by HUD of a site as meeting the standards set forth in §§ 880.112 through 880.112i shall not substitute for or imply HUD review and approval of the site as meeting requirements with respect to the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), the National Historic Preservation Act of 1966 (16 U.S.C. 470–470n), or other related statutes or Executive Orders, or other requirements of this Part.

2. To amend Part 881 by substituting the following table of contents and by revising the Part to read as set forth hereinafter:

Sec.
881.112 Site and neighborhood standards.
881.112a Requirements as to size, terrain and utilities.
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AUTHORITY: (Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

§ 881.112 Site and neighborhood standards.

Sites proposed for use for housing pursuant to this Part must be approved by HUD as meeting the standards set forth in any other Part to § 881.112 of this Part shall include reference to §§ 880.112 through 880.112j of this chapter.

§ 881.112a Requirements as to size, terrain and utilities.

The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed; and adequate utilities (water, sewer, gas, and electricity) and adequate paved streets shall be available to service the site.

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The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3604–3619), Executive Order 11063 (42 U.S.C. 1982 note), The Housing and Community Development Act of 1974 (see particularly 42 U.S.C. 5301–5309), and HUD regulations issued pursuant thereto.

(a) *Determination of minority concentration.* In furtherance of the objectives of the foregoing statutes and Executive Order HUD shall determine:

(1) *Whether the site is in an area of minority concentration.* In making such determination, the area to be considered shall be the census tract in which the site is located or such other area for which reliable data as to racial composition is available and which HUD determines, on the basis of functional considerations (i.e., location of neighborhood facilities such as schools, shopping centers, churches, etc.) to be more appropriate. An area shall be determined to be an area of minority concentration if minority residents constitute (i) more than 40 percent of the residents of the area or (ii) a significantly greater proportion of the residents of the area than the proportion of minority residents of the locality as a whole.

(2) *Whether the site is in a racially mixed area.* An area, as determined pursuant to paragraph (a)(1) of this section, shall be determined to be a racially mixed area if it contains both minority and non-minority residents and minority residents constitute a significant percent but less than 40 percent of the total residents of the area.

(3) *Whether the site is in an area of undue concentration of federally-assisted housing.* The area, as determined pur-

suant to paragraph (a)(1) of this section, shall be determined to be an area of undue concentration of federally-assisted housing if a substantial number of the housing units in the area (generally over 40 percent) consist of housing (i) constructed, rehabilitated, purchased, or leased (inclusive of units leased under the Section 8 Existing Housing Program (24 CFR Part 882)) under the U.S. Housing Act of 1937 (42 U.S.C. 1437f), Sections 221(d)(3) BMIR, 235 or 236 of the National Housing Act (12 U.S.C. 1715L(d)(3), 1715z and 1715z-1), Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), or section 515 of the Housing Act of 1949 (42 U.S.C. 1485) and (ii) intended for occupancy by other than elderly households.

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The site shall comply with any applicable conditions in the Local Housing Assistance Plan approved by HUD, any applicable areawide housing allocation plan and/or any applicable Development Plan for a new community approved under Title VII of the Housing and Urban Development Act of 1970 (42 U.S.C. 4501–4532), or Title IV of the Housing and Urban Development Act of 1968 (42 U.S.C. 3901–3914). Where the unit of general local government is a participating jurisdiction in an areawide housing oppor-

tunity plan, pursuant to 24 CFR 886.301, the site shall be consistent with the plan.

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(Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535 (d)).

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

CARLA A. HILLS,
Secretary of Housing and Urban Development.

[FR Doc.77-2084 Filed 1-21-77;8:45 am]

federal register

MONDAY, JANUARY 24, 1977

PART VII

THE PRESIDENT

GERALD R. FORD

AMERICAN HEART MONTH
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DRIED MILK MIXTURES
Presidential proclamation limiting importation into the United States 4309

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Executive order 4315

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AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE
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Title 3—The President

PROCLAMATION 4481

American Heart Month, 1977

By the President of the United States of America

A Proclamation

For over three decades, diseases of the heart and blood vessels have constituted one of our Nation's most serious health problems. Cardiovascular diseases affect more than 29 million Americans, especially among the elderly, and are the direct cause of more than half of all deaths occurring each year in the United States. While their economic toll in terms of lost wages, productivity, and cost of medical care can be estimated at nearly $44 billion annually, the toll in terms of human suffering can never be measured.

America's continuing determination to meet any challenge to the well-being of its people is illustrated by the dedication that has characterized its efforts to control these disorders. Sustained research and clinical advances since 1950 have contributed substantially to declining mortality rates for stroke, rheumatic fever, coronary and congenital heart disease, and hypertension. Our investment in research, public and professional education, and community service activities has been rewarded. In that same time, the mortality rate in the United States from all heart and blood vessel diseases has declined by 30 percent. In 1975, deaths in this country from major cardiovascular diseases dropped below one million for the first time since 1967.

This multi-faceted assault on heart and blood vessel diseases has been led by the National Heart, Lung, and Blood Institute, a federal agency, and by the American Heart Association, a private health organization funded through contributions from citizens across the country. Their successful efforts illustrate what can be achieved when public and private institutions—and the American people as well—join forces against a common threat.

In recognition of the necessity for constant vigilance against the ravages of cardiovascular disease, and to encourage still greater efforts to combat its threat to the Nation's health, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b) has requested the President to issue annually a proclamation designating February as American Heart Month.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, do hereby proclaim the month of February, 1977, as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, the officials of other areas subject to the jurisdiction of the United States, and the American people, to join with me in reaffirming our commitment to resolving the nationwide problem of cardiovascular disease.

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

Gerald R. Ford

[FR Doc.77-2297 Filed 1-19-77;3:26 pm]

Proclamation 4482 • January 19, 1977

Import Limitation on Dried Milk Mixtures

By the President of the United States of America

A Proclamation

Import quota limitations have been imposed on certain dairy products, including dried milk, pursuant to the provisions of Section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624). Those limitations are set forth in Part 3 of the Appendix to the Tariff Schedules of the United States, which schedules are hereinafter referred to as TSUS, under items 950.01, 950.02, and 950.03, and relate to products classified for tariff purposes under items 115.45, 115.50, 115.55, 115.60, and 118.05 of Schedule 1 of the TSUS.

The Secretary of Agriculture advised me that he had reason to believe that dried milk, containing not over 5.5 percent butterfat by weight, mixed with other ingredients (hereinafter referred to as dried milk mixtures) and thus classified for tariff purposes under items of the TSUS other than the items referenced above, are being, or are practically certain to be, imported under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support program now conducted by the Department of Agriculture for milk, or to reduce substantially the amount of products processed in the United States from domestic milk.

The Secretary of Agriculture also recommended that there be an increase in the monetary limitation in headnote 2(b) of Part 3 of the Appendix to the TSUS, which makes the quota restrictions provided for in Part 3 inapplicable to articles (except cotton and cotton waste) with an aggregate value of not over $10 in any shipment, if imported as samples for taking orders, for the personal use of the importer, or for research.

The Secretary of Agriculture further determined and reported to me that a condition existed with respect to dried milk mixtures which required emergency treatment and, as a result, Presidential Proclamation No. 4423 of March 26, 1976, was issued placing import restrictions upon certain dried milk mixtures without awaiting the recommendations of the United States International Trade Commission, hereinafter referred to as the Commission, such restrictions to continue in effect pending the report and recommendations of the Commission and action thereon by the President.

Under the authority of said Section 22, I requested the Commission to make an investigation with respect to these matters. The Commission has made its investigation and has reported to me its findings and recommendations.

On the basis of the information submitted to me, I find and declare that:

(a) The dried milk mixtures, upon which a limitation is hereinafter imposed, are being imported or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support program now conducted by the Department of Agriculture for milk, or to reduce substantially the amount of products processed in the United States from domestic milk;

(b) for the purpose of the first proviso of Section 22(b) of the Agricultural Adjustment Act, as amended, there is no representative period for imports of the said dried milk mixtures;

(c) the imposition of the import limitation hereinafter proclaimed is necessary in order that the entry, or withdrawal from warehouse, for consumption of such dried milk mixtures will not render or tend to render ineffective or materially interfere with, the price support program now conducted by the Department of Agriculture for milk, or reduce substantially the amount of products processed in the United States from domestic milk; and

(d) the monetary limitation in headnote 2(b) of Part 3 of the Appendix to the TSUS, which makes the quota restrictions provided for in Part 3 inapplicable to articles (except cotton and cotton waste) with an aggregate value of $10 in any shipment, if imported as samples for taking orders, for the personal use of the importer, or for research, should be increased to $25 and that such increase will not result in imports which will tend to render ineffective, or materially interfere with, any price support program now conducted by the Department of Agriculture, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to any price support program which is being undertaken.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, by virtue of the authority vested in me by Section 22 of the Agricultural Adjustment Act, as amended, and Section 604 of the Trade Act of 1974 (88 Stat. 2073, 19 U.S.C. 2483), do hereby proclaim as follows:

1. Item 950.19 of Part 3 of the Appendix to the Tariff Schedules of the United States is amended to read as follows:

"	Articles	Quota Quantity
950.19	Dried milk (described in items 115.45, 115.50, 115.55, and 118.05) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the retail consumers in the identical form and package in which imported; all the foregoing mixtures provided for in items 182.98 and 493.16, except articles within the scope of other import restrictions provided for in this part . . .	None

2. Headnote 2(b) of Part 3 of the Appendix to the Tariff Schedules of the United States is amended to read as follows:

"(b) commercial samples of cotton or cotton waste of any origin in uncompressed packages each weighing not more than 50 pounds gross weight; and articles (except cotton and cotton waste) with an aggregate value of not over $25 in any shipment, if imported as samples for taking orders, for the personal use of the importer, or for research;".

3. This proclamation shall be effective on the third day following the day it is published in the FEDERAL REGISTER.

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

Gerald R. Ford

[FR Doc.77-2394 Filed 1-21-77;10:38 am]

Executive Order 11958 • January 18, 1977

Administration of Arms Export Controls

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Arms Export Control Act, as amended (22 U.S.C. 2751 *et seq.*), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. *Delegation of Functions.* The following functions conferred upon the President by the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), hereinafter referred to as the Act, are delegated as follows:

(a) Those under Section 3 of the Act, with the exception of subsections (a)(1), (b), (c)(3) and (c)(4), to the Secretary of State: *Provided,* That the Secretary of State, in the implementation of the functions delegated to him under Sections 3 (a) and (d) of the Act, is authorized to find, in the case of a proposed transfer of a defense article or related training or other defense service by a foreign country or international organization not otherwise eligible under Section 3(a)(1) of the Act, whether the proposed transfer will strengthen the security of the United States and promote world peace.

(b) Those under Section 5 to the Secretary of State.

(c) Those under Section 21 of the Act, with the exception of the last sentence of subsection (d) and all of subsection (h), to the Secretary of Defense.

(d) Those under Section 22(a) of the Act to the Secretary of Defense.

(e) Those under Section 23 of the Act, with the exception of the function of certifying a rate of interest to the Congress as provided by paragraph (2) of that Section, to the Secretary of Defense.

(f) Those under Section 24 of the Act to the Secretary of Defense.

(g) Those under Section 25 of the Act to the Secretary of State. The Secretary of Defense and the Director of the Arms Control and Disarmament Agency, within their respective areas of responsibility, shall assist the Secretary of State in the preparation of materials for presentation to the Congress under that Section.

(h) Those under Section 34 of the Act to the Secretary of State. To the extent the standards and criteria for credit and guaranty transactions are based upon national security and financial policies, the Secretary of State shall obtain the prior concurrence of the Secretary of Defense and the Secretary of the Treasury, respectively.

(i) Those under Section 35(a) of the Act to the Secretary of State.

(j) Those under Sections 36(a) and 36(b)(1) of the Act, except with respect to the certification of an emergency as provided by subsection (b)(1), to the Secretary of Defense. The Secretary of Defense, in the implementation of the functions delegated to him under Sections 36(a) and (b)(1) shall consult with the Secretary of State, who shall, with respect to matters related to subparagraphs (D) and (I) of Section 36(b)(1), consult with the Director of the Arms Control and Disarmament Agency. With respect to those functions under Sections 36(a) (5) and (6), the Secretary of Defense shall consult with the Director of the Office of Management and Budget.

(k) Those under Sections 36 (c) and (d) of the Act to the Secretary of State.

(l) Those under Section 38 of the Act:

(1) to the Secretary of State, except as otherwise provided in this subsection. Designations, including changes in designations, by the Secretary of State of items or categories of items which shall be considered as defense articles and defense services subject to export control under Section 38 shall have the concurrence of the Secretary of Defense;

(2) to the Secretary of the Treasury, to the extent they relate to the control of the import of defense articles and defense services. In carrying out such functions, the Secretary of the Treasury shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States. Designations including changes in designations, by the Secretary of the Treasury of items or categories of items which shall be considered as defense articles and defense services subject to import control under Section 38 of the Act shall have the concurrence of the Secretary of State and the Secretary of Defense;

(3) to the Secretary of Commerce, to carry out on behalf of the Secretary of State, to the extent such functions involve Section 38(e) of the Act and are agreed to by the Secretary of State and the Secretary of Commerce.

(m) Those under Section 39(b) of the Act to the Secretary of State. In carrying out such functions, the Secretary of State shall consult with the Secretary of Defense as may be necessary to avoid interference in the application of Department of Defense regulations to sales made under Section 22 of the Act.

(n) Those under Sections 42 (c) and (f) of the Act to the Secretary of Defense.

SEC. 2. *Coordination.* (a) In addition to the specific provisions of Section 1 of this Order, the Secretary of State and the Secretary of Defense, in carrying out the functions delegated to them under this Order, shall consult with each other and with the heads of other departments and agencies, including the Secretary of the Treasury, the Administrator of the Agency for International Development, and the Director of the Arms Control and Disarmament Agency, on matters pertaining to their responsibilities.

(b) In accordance with Section 2(b) of the Act and under the directions of the President, the Secretary of State, taking into account other United States activities abroad, shall be responsible for the continuous supervision and general direction of sales and exports under the Act, including but not limited to, the negotiation, conclusion, and termination of international agreements, and determining whether there shall be a sale to a country and the amount thereof, and whether there shall be delivery or other performance under such sale or export, to the end that sales and exports are integrated with other United States activities and the foreign policy of the United States is best served thereby.

SEC. 3. *Allocation of Funds.* Funds appropriated to the President for carrying out the Act shall be deemed to be allocated to the Secretary of Defense without any further action of the President.

SEC. 4. *Revocation.* Executive Order No. 11501, as amended, is revoked; except that, to the extent consistent with this Order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued, taken or entered into under the provisions of Executive Order No. 11501, as amended, and not revoked, superseded or otherwise made inapplicable, shall continue in full force and effect until amended, modified or terminated by appropriate authority.

Gerald R. Ford

THE WHITE HOUSE,
January 18, 1977.

[FR Doc.77-2298 Filed 1-19-77;3:27 pm]

Executive Order 11959 • January 18, 1977

Administration of Foreign Assistance and Related Functions

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, Executive Order No. 10973, as amended, is hereby further amended as follows:

SECTION 1. Section 101 is amended by striking out "and (6)" and inserting in lieu thereof "(6) sections 413(b) and 607 of the International Security Assistance and Arms Export Control Act of 1976 (90 Stat. 761, 768; 22 U.S.C. 2431, note 2394a), and (7)".

SEC. 2. Section 105 is revoked and the following new section is substituted therefor:

"Sec. 105. *Allocation of Foreign Assistance.* In carrying out the functions conferred upon the President by section 653 of the Act, the Secretary of State shall consult with the Director of the Office of Management and Budget.".

SEC. 3. Subsection (c) of Section 201 is revoked.

SEC. 4. Section 202 is amended to read as follows:

"Sec. 202. *Reports and Information.* In carrying out the functions under sections 514(e) and 634(b) of the Act delegated to him by section 201 of this order, the Secretary of Defense shall consult with the Secretary of State.".

SEC. 5. Section 203 is amended to read as follows:

"Sec. 203. *Exclusions from Delegation to Secretary of Defense.* The following described functions conferred upon the President by the Act are excluded from the functions delegated by the provisions of section 201(a) of this order:

"(a) Those under section 502(B)(a)(3) of the Act, except to the extent they relate to functions under the Act administered by the Department of Defense.

"(b) Those under sections 504(a), 505(a) relating to other provisions required by the President, and 505(d), (e), and (g) of the Act.

"(c) Those relating to consent under sections 505(a) (1) and (4) of the Act.

"(d) Those under sections 505(b) (1), (2), and (3) of the Act to the extent that they pertain to countries which agree to the conditions set forth therein.

"(e) Those of negotiating, concluding and terminating international agreements.".

SEC. 6. Section 301 is amended to read as follows:

"Sec. 301. *Department of the Treasury.* There are delegated to the Secretary of the Treasury the functions conferred upon the President by the third sentence of section 102(d) as it relates to international development organizations in which the United States is represented by the Secretary of the Treasury, section 301(e)(3) as it relates to organizations referred to in section 301(e)(2), the second sentence of section 612(a), section 634(f), and section 634(g) of the Act. The Secretary of the Treasury shall continue to administer any open special foreign country accounts established pursuant to former section 514 of the Act as enacted by section 201(f) of Public Law 92-226 (86 Stat. 25) and repealed by Section 12(b)(5) of Public Law 93-189 (87 Stat. 722).".

SEC. 7. Section 401 is amended as follows:

(a) Subsection (a) is amended:

(1) by inserting "505(c)" immediately after "504(b)"; and

(2) by inserting "620(x), 620A" immediately after "620(d)"; and

(3) by striking out "and 633(b)" and inserting in lieu thereof "633(b), 662(a), and 663(b)".

(b) Subsection (c) is amended:

(1) by striking out "481" and inserting in lieu thereof "481(a), 504(a)(6)"; and

(2) by inserting "505(d)(2)(A), 505(d)(3)" immediately after "505(b)(4),"; and

(3) by striking out "and 634(c)" and inserting in lieu thereof "634(c), 663(a) and 669(b)(1)".

(c) Subsection (d)(1) is amended to read as follows:

"(d)(1) Those under section 503(a) which relate to findings: *Provided,* That the Secretary of State in the implementation of the functions delegated to him under section 505(a)(1), (a)(4) and (e) of the Act, is authorized to find, in the case of a proposed transfer of a defense article or related training or a related defense service by a foreign country or international organization to a foreign country or international organization not otherwise eligible under section 503(a) of the Act, whether the proposed transfer will strengthen the security of the United States and promote world peace.".

Gerald R. Ford

THE WHITE HOUSE,
January 18, 1977.

[FR Doc.77-2299 Filed 1-19-77;3:28 pm]

Executive Order 11960 • January 19, 1977

Amending the Generalized System of Preferences

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Title V and Section 604 of the Trade Act of 1974 (88 Stat. 2066, 19 U.S.C. 2461 *et seq.*; 88 Stat. 2073, 19 U.S.C. 2483), and as President of the United States of America, in order to adjust the designation of eligible articles, taking into account information and advice received in fulfillment of the requirements of Sections 503(a) and 131–134 of the Trade Act of 1974, it is hereby ordered as follows:

SECTION 1. In order to subdivide existing items for purposes of the Generalized System of Preferences, the Tariff Schedules of the United States (TSUS) are modified as provided in Annex I, attached hereto and made a part hereof.

SEC. 2. Annex II of Executive Order No. 11888 of November 24, 1975, as amended, is further amended as provided in Annex II, attached hereto and made a part hereof.

SEC. 3. Annex III of Executive Order No. 11888, as amended, is further amended as provided in Annex III attached hereto and made a part hereof.

SEC. 4. General Headnote 3(c)(iii) of the TSUS, as amended, is further amended as provided in Annex IV, attached hereto and made a part hereof.

SEC. 5. The amendments made by this Order shall be effective with respect to articles both: (1) imported on or after January 1, 1976, and (2) entered for consumption, or withdrawn from warehouse for consumption, on or after March 1, 1977.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

ANNEX I

GENERAL MODIFICATIONS OF THE TARIFF SCHEDULES OF THE UNITED STATES

NOTES:

1. Bracketed matter is included to assist in the understanding of proclaimed modifications.

2. The following items, with or without preceding superior descriptions, supersede matter now in the Tariff Schedules of the United States (TSUS). The items and superior descriptions are set forth in columnar form and material in such columns is inserted in the columns of the TSUS designated "Item", "Articles", "Rates of Duty 1", and "Rates of Duty 2", respectively.

Subject to the above notes the TSUS is modified as follows:

1. Item 121.57 is superseded by:

	[Leather, in the rough, partly finished, or finished:]		
	[Other:]		
	[Other:]		
	[Not fancy:]		
"121.55	Buffalo	5% ad val.	25% ad val.
121.58	Other	5% ad val.	25% ad val."

2. Item 135.40 is superseded by:

	[Vegetables, fresh, chilled, or frozen : : ::]		
	"Carrots:		
135.41	Under 4 inches long	6% ad val.	50% ad val.
135.42	Other	6% ad val.	50% ad val."

3. Item 137.85 is superseded by:

	[Vegetables, fresh, chilled, or frozen : : ::]		
	[Other:]		
"137.71	Brussels sprouts	25% ad val.	50% ad val."
137.86	Other	25% ad val.	50% ad val.

4. Conforming change: Headnote 1 of subpart C, part 12, Schedule 1 is modified by substituting therein "168.52" for "168.50."

5. Item 389.60 is superseded by:

	[Articles not specially provided for, of textile materials:]		
	[Other articles, not ornamented:]		
	[Of man-made fibers:]		
	"Other:		
389.61	Artificial flowers	25¢ per lb. + 15% ad val.	45¢ per lb. + 65% ad val.
389.62	Other	25¢ per lb. + 15% ad val.	45¢ per lb. + 65% ad val."

6.(a) Item 403.60 is superseded by:

	[Cyclic organic chemical products : : .:]		
	"Other:		
403.58	Ethoxyquin (1, 2-Dihydro-6-ethoxy-2, 2, 4-trimethylquinoline)	1.7¢ per lb. + 12.5% ad val.	7¢per lb. + 40% ad val.
403.61	Other	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val."

(b) Conforming change: Headnote 1 of subpart B, part 1, Schedule 4 is modified by substituting therein "403.61" for "403.60."

7. Item 403.80 is superseded by:

	[All other products : : ::]		
	"Other:		
403.81	Maleic anhydride	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val.
403.82	Other	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val."

8. Item 642.10 is superseded by:

	[Strands, ropes, cables, and cordage : : ::]		
	[Not fitted with fittings and not made up into articles:]		
	[Not covered with textile or other non-metallic material:]		
	[Wire strand:]		
"642.09	Of copper	7.5% ad val.	35% ad val.
642.11	Other	7.5% ad val.	35% ad val."

ANNEX II

Annex II to Executive Order No. 11888, as amended by Executive Orders Nos. 11906 and 11934, is amended by adding, in numerical sequence, the following TSUS item numbers:

100.73	121.55	125.20	135.60	389.61	792.70
111.10	125.01	125.50	136.10	403.58	799.00
111.60	125.10	131.80	136.40	403.81	
121.35	125.15	135.41	177.40	642.09	

ANNEX III

Annex III to Executive Order No. 11888, as amended by Executive Orders Nos. 11906 and 11934, is amended by adding, in numerical sequence, the following TSUS item numbers:

136.50 137.71 140.21 176.49

ANNEX IV

General Headnote 3(c)(iii) of the TSUS as amended by Executive Orders Nos. 11906 and 11934, is amended by adding, in numerical sequence, the following TSUS item numbers and countries set opposite these numbers:

136.50	Lebanon
137.71	Mexico
140.21	Mexico
176.49	Republic of China

[FR Doc.77-2300 Filed 1-19-77;3:29 pm]

Executive Order 11961 • January 19, 1977

Administration of the International Investment Survey Act of 1976

By virtue of the authority vested in me by the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101), and section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. All the functions vested in the President by the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101), hereinafter referred to as the Act, are hereby delegated to the Director of the Office of Management and Budget, hereinafter referred to as the Director. The Director may, from time to time, designate other officers or agencies of the Federal Government to perform any or all of the functions hereby delegated to the Director, subject to such instructions, limitations, and directions as the Director deems appropriate.

SEC. 2. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of the Treasury, with respect to portfolio investment, shall perform the functions set forth in sections 4(a) (1), (2), (4) and 4(c) of the Act.

SEC. 3. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Secretary of Commerce, with respect to direct investment, shall perform the functions set forth in sections 4(a) (1), (2), (4) and 4(b) of the Act.

SEC. 4. Subject to the provisions of section 1 of this order, and in the absence of any contrary delegation or direction by the Director, the Council on International Economic Policy shall perform the function of making periodic reports to the Committees of the Congress as set forth in Section 4(a) (3) of the Act.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

[FR Doc.77-2301 Filed 1-19-77;3:30 pm]

Executive Order 11962 • January 19, 1977

Establishing the President's Advisory Board on International Investment

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including section 8(a) of the International Investment Survey Act of 1976 (90 Stat. 2064, 22 U.S.C. 3107), and as President of the United States of America, in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

SECTION 1. (a) There is hereby established the President's Advisory Board on International Investment, hereinafter referred to as the Board, which shall be composed of not more than fifteen members who shall be appointed by the President. Each member shall serve for a term limited to the remaining life of the Board as determined at the time of appointment.

(b) The President shall designate a Chairman and Vice Chairman from among the members.

SEC. 2. (a) Whenever requested, the Board shall advise the Executive Director of the Council on International Economic Policy, hereinafter referred to as the Executive Director, the Director of the Office of Management and Budget, and the heads of other agencies, with respect to matters relating to the performance of their functions under the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101).

(b) In making its recommendations, the Board shall give due consideration to the usefulness of data to be collected as compared to the burden imposed on those who are to furnish the data.

SEC. 3. (a) The Executive Director shall, to the extent permitted by law, provide administrative and staff services, support, and facilities for the Board.

(b) The Executive Director shall appoint an Executive Secretary for the Board.

SEC. 4. Members of the Board may be compensated for their services in accord with 5 U.S.C. 3109, and may, to the extent permitted by law, be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703) for persons in the government service employed intermittently.

SEC. 5. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Board, shall be performed by the Executive Director in accordance with guidelines and procedures established by the Office of Management and Budget.

SEC. 6. The Board shall terminate on December 31, 1978, unless sooner extended.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

[FR Doc.77-2302 Filed 1-19-77;3:31 pm]

Executive Order 11963 • January 19, 1977

Delegating Reporting Functions Under the Agricultural Trade Development and Assistance Act of 1954, as Amended

By virtue of the authority vested in me by Section 408 of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1736b), Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Executive Order No. 10900, as amended, is further amended by adding to Section 1 thereof a new subsection (d) as follows:

"(d) The Secretary of Agriculture, after consultation with the Secretary of State, Secretary of the Treasury, Administrator of the Agency for International Development, Chairman of the Council of Economic Advisers, Director of the Office of Management and Budget, Chairman of the Council on International Economic Policy and the Assistant to the President for National Security Affairs, shall transmit to the Congress all reports required by Section 408 of the Act (7 U.S.C. 1736b, 1970 ed., Supp. V)."

SEC. 2. Executive Order No. 10900, as amended, is further amended by revoking Section 5 thereof and redesignating Sections 6, 7 and 8 as Sections 5, 6 and 7 respectively.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

[FR Doc.77-2395 Filed 1-21-77;10:39 am]

Executive Order 11964 • January 19, 1977

Implementation of the Convention on the International Regulations for Preventing Collisions at Sea, 1972

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Section 301 of Title 3 of the United States Code, and as President of the United States of America and Commander-in-Chief of the Armed Forces, in order to provide for the coming into force on July 15, 1977, of the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (Senate Executive W, 93d Cong., 1st Sess.), it is hereby ordered as follows:

SECTION 1. (a) With respect to vessels of special construction or purpose, the Secretary of the Navy, for vessels of the Navy, and the Secretary of the Department in which the Coast Guard is operating, for all other vessels, shall determine and certify, in accord with Rule I of the International Regulations for Preventing Collisions at Sea, 1972, hereinafter referred to as the International Regulations, as to which such vessels cannot comply fully with the provisions of any of the International Regulations with respect to the number, positions, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signalling appliances, without interfering with the special function of the vessel.

(b) With respect to vessels for which a certification is issued, the Secretary issuing the certification shall certify as to such other provisions which are the closest possible compliance by that vessel with the International Regulations.

(c) Notice of any certification issued shall be published in the FEDERAL REGISTER.

SEC. 2. The Secretary of the Navy is authorized to promulgate special rules with respect to additional station or signal lights or whistle signals for ships of war or vessels proceeding under convoy, and the Secretary of the Department in which the Coast Guard is operating is authorized, to the extent permitted by law, including the provisions of Title 14 of the United States Code, to promulgate special rules with respect to additional station or signal lights for fishing vessels engaged in fishing as a fleet. In accord with Rule I of the International Regulations, the additional station or signal lights or whistle signals contained in the special rules shall be, as far as possible, such as they cannot be mistaken for any light or signal authorized by the International Regulations. Notice of such special rules for fishing vessels shall be published in the FEDERAL REGISTER.

SEC. 3. The Secretary of the Navy, for vessels of the Navy, and the Secretary of the Department in which the Coast Guard is operating, for all other vessels, are authorized to exempt, in accord with Rule 38 of the International Regulations, any vessel or class of vessels, the keel of which is laid, or which is at a corresponding stage of construction, before July 15, 1977, from full compliance with the International Regulations, provided that such vessel or class of vessels complies with the requirements of the International Regulations for Preventing Collisions at Sea, 1960. Notice of any exemption granted shall be published in the FEDERAL REGISTER.

SEC. 4. The Secretary of the Department in which the Coast Guard is operating is authorized, to the extent permitted by law, to promulgate such rules and regulations that are necessary to implement the provisions of the Convention and International Regulations. He shall cause to be published in the FEDERAL REGISTER any implementing regulations or interpretive rulings promulgated pursuant to this Order, and shall promptly publish in the FEDERAL REGISTER the full text of the International Regulations.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

[FR Doc.77-2396 Filed 1-21-77;10:40 am]

Executive Order 11965 • January 19, 1977

Establishing the Humanitarian Service Medal

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Humanitarian Service Medal with accompanying ribbons and appurtenances for award by the Secretary of Defense or the Secretary of Transportation with regard to the Coast Guard when not operating as a Service in the Navy. Individuals eligible for the medal are members of the Armed Forces of the United States (including Reserve Components) who, subsequent to April 1, 1975, distinguished themselves by meritorious participation in a military act or operation of a humanitarian nature. The Secretary of Defense and the Secretary of Transportation for the Coast Guard will determine types of acts or operations that warrant award of the medal.

SEC. 2. The Humanitarian Service Medal and ribbons and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded by the Secretary of Defense and the Secretary of Transportation for the Coast Guard under uniform regulations, as prescribed by the Secretary of Defense. The regulations shall place the Humanitarian Service Medal in an order of precedence immediately after the Vietnam Service Medal.

SEC. 3. No more than one Humanitarian Service Medal shall be awarded to any one person, but for each subsequent participation in a humanitarian act or operation justifying such an award, a suitable device may be awarded to be worn with that medal as prescribed by appropriate regulations of the Military Departments.

SEC. 4. The Humanitarian Service Medal or device may be awarded posthumously, and when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense or the Secretary of Transportation.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

[FR Doc.77-2397 Filed 1-21-77;10:41 am]

Executive Order 11966 January 19, 1977

Designating Certain Public International Organizations Entitled To Enjoy Certain Privileges, Exemptions, and Immunities

By virtue of the authority vested in me by Section 1 of the International Organizations Immunities Act (59 Stat. 669, 22 U.S.C. 288), and as President of the United States of America, having found that the United States participates in the following organizations, it is hereby ordered as follows:

SECTION 1. The International Development Association, in which the United States participates pursuant to the Act of Congress approved June 30, 1960 (74 Stat. 293, 22 U.S.C. 284) and the Articles of Agreement of the International Development Association (11 U.S.T. 2284, T.I.A.S. 4607), is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act, provided that, this designation shall not affect in any way the applicability of Section 3, Article VIII, of the Articles of Agreement of the International Development Association.

SEC. 2. The International Centre for Settlement of Investment Disputes, in which the United States participates pursuant to the Act of Congress approved August 11, 1966 (80 Stat. 344, 22 U.S.C. 1650) and the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (17 U.S.T. 1270, T.I.A.S. 6090), is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

SEC. 3. The International Telecommunications Satellite Organization (INTELSAT), in which the United States participates pursuant to the authority of the Communications Satellite Act of 1962 (76 Stat. 419, 47 U.S.C. 701–744) and in accord with the Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT) and the Operating Agreement signed pursuant thereto (TIAS 7532), is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

SEC. 4. Executive Order No. 11718 of May 14, 1973, is revoked.

SEC. 5. This Order shall be effective as of November 24, 1976.

Gerald R. Ford

THE WHITE HOUSE,
January 19, 1977.

[FR Doc.77-2398 Filed 1-21-77;10:42 am]

federal register

MONDAY, JANUARY 24, 1977

PART VIII



OFFICE OF MANAGEMENT AND BUDGET

■

BUDGET RESCISSIONS AND DEFERRALS

OFFICE OF MANAGEMENT AND BUDGET

BUDGET RESCISSIONS AND DEFERRALS

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith propose nine new rescissions totalling $1,001.3 million and report eight new deferrals totalling $273.4 million in budget authority developed in connection with the 1978 budget. In addition, I am reporting $70.6 million in increases to five deferrals previously transmitted.

The rescission proposals pertain to programs of the Departments of Commerce, Defense, State, and Transportation as well as the Small Business Administration and an International Security Assistance program.

The new deferrals involve programs of the Departments of Commerce and Transportation and the Energy Research and Development Administration while the increases to existing deferrals relate to the Departments of Agriculture, Defense, and Transportation.

I urge the Congress to act favorably on the rescission proposals.

Gerald R. Ford

The White House, *January 17, 1977.*

SUMMARY OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission #	Item	Budget Authority
	Funds Appropriated to the President:	
	International Security Assistance	
R77-5	Foreign military credit sales.....	41,500
	Commerce:	
	U.S. Travel Service	
R77-6	Salaries and expenses.....	525
	National Oceanic and Atmospheric Administration	
R77-7	Operations, research, and facilities.....	1,500
	Defense-Military:	
R77-8	Retired Pay, Defense.....	143,600
R77-9	Shipbuilding and Conversion, Navy....	721,000
R77-10	Other Procurement, Air Force.....	14,350
	State:	
R77-11	Contributions for international peacekeeping activities.....	12,000
	Transportation:	
	Coast Guard	
R77-12	Retired pay.....	6,803
	Other Independent Agencies:	
	Small Business Administration	
R77-13	Business loan and investment fund..	60,000
	Subtotal, rescission proposals.....	1,001,278
Deferral #		
	Agriculture:	
	Foreign Agricultural Service	
D77-2A	Salaries and expenses (special foreign currency program).....	1,743
	Forest Service	
D77-5A	Miscellaneous permanent appropriations, Licensee programs.....	239
	Commerce:	
	General Administration	
D77-45	Special foreign currency program...	654

Deferral #	Item	2 Budget Authority
	National Oceanic and Atmospheric Administration	
D77-46	Operations, research, and facilities	7,500
	Maritime Administration	
D77-47	Ship construction	200,900
	Defense-Military:	
D77-10B	Military construction	387,652
	Transportation:	
	Federal Aviation Administration	
D77-24A	Civil supersonic aircraft development termination	8,080
D77-25A	Facilities and equipment (Airport and airway trust fund)	287,095
	Federal Highway Administration	
D77-48	Trust fund share of other highway programs	31,250
	Energy Research and Development Administration:	
D77-49	Operating expenses (Energy Extension Service)	7,500
D77-50	Operating expenses (magnetic fusion energy)	12,000
D77-51	Operating expenses (program support-community operations)	5,400
D77-52	Operating expenses (biomedical and environmental research)	8,200
	Subtotal, deferrals	958,213
	Total, rescissions and deferrals	1,959,491

SUMMARY OF SPECIAL MESSAGES
FOR FY 1977
(Amounts in thousands of dollars)

	Rescissions	Deferrals
Seventh special message:		
New items	1,001,278	273,404
Changes to amounts previously submitted	---	70,606
Effect of the seventh special message	1,001,278	344,010
Previous special messages	99,100	6,704,130
Total amount proposed in special messages	1,100,378 (in 13 rescission proposals)	7,048,140 (in 52 deferrals)

NOTE: All amounts listed represent budget authority except for $134,807,092 consisting of two general revenue sharing deferrals of outlays only (D77-26 and D77-27A). Reports for D77-26 and D77-27A are included in the special messages of October 1, 1976, and December 3, 1976, respectively.

Rescission Proposal No: R77-5

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Funds Appropriated to the President	New budget authority (P.L. 94-441) $ 740,000,000
Bureau International Security Assistance	Other budgetary resources ---
Appropriation title & symbol Foreign Military Credit Sales, 1977 1171082	Total budgetary resources 740,000,000
	Amount proposed for rescission $ 41,500,000
OMB identification code: 11-1082-0-1-052	Legal authority (in addition to sec. 1012): ☒ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

Pursuant to Public Law 90-629, the Foreign Military Sales Act, approved October 22, 1968, as amended (including Title II of Public Law 94-329, the International Security Assistance and Arms Export Control Act of 1976, approved June 30, 1976), and Executive Order No. 11501 of December 22, 1969, as amended, the Secretary of Defense, under the continuous supervision and general direction of the Secretary of State, uses appropriated funds to make loans to friendly foreign countries and international organizations to finance procurement of defense articles and defense services from the United States and to guarantee loans made by private U.S. financial institutions or the Federal Financing Bank for the same purpose.

Public Law 94-441, the "Foreign Assistance and Related Programs Appropriations Act, 1977," approved October 1, 1976, appropriated $740,000,000 for the period October 1, 1976, through September 30, 1977, "to enable the President to carry out the provisions of the Foreign Military Sales Act" (now known as the Arms Export Control Act). On December 3, 1976, all of the appropriated $740,000,000 was reported as deferred (D77-38) pending the approval of specific loans to eligible countries by the Departments of State, Defense, and the Treasury.

The President has determined that $41.5 million of the $740.0 million in available budget authority will not be required to carry out the full objectives and scope of the Foreign Military Credit Sales program for which it was provided. Therefore, a rescission of that amount is proposed. The $41.5 million in excess budget authority results from changes in program plans that place increased reliance on guaranteed loans rather than direct credit during fiscal year 1977. Under the guarantee program, funds equal to 10% of the face value of loans are obligated to guarantee loans provided to foreign aid recipients by the Federal Financing Bank or private lending institutions. In contrast, the full face value of the loans is obligated by the U.S. Government in direct credit transactions. The program would be operating at its full authorized level ($2,022.1 million) if the rescission is accepted.

R77-5

Estimated Effects

The planned 1977 program of $2,022.1 million would not be affected by this rescission proposal because the proposal is concerned only with a change in the method of financing the loans--not in the level of loans.

Outlay Effect (Estimated in millions of dollars) 1/

Comparison with the President's 1978 budget:

1. Budget outlay estimate for 1977	575.0
2. Outlay savings, if any, included in the estimate	15.0

Current outlay estimate for 1977:

3. Without rescission	590.0
4. With rescission	575.0
5. Current outlay savings (line 3-line 4)	15.0

Outlay savings for 1978	10.0
Outlay savings for 1979	10.0
Outlay savings for 1980	6.5

1/ The outlay savings listed are savings from on-budget outlays. The shift from direct loans to loan guarantees results in a corresponding shift from on-budget to off-budget (Federal Financing Bank) outlays in the same amount as the "outlay savings" when the loans are made by the Federal Financing Bank.

R77-5

TITLE II - FOREIGN MILITARY CREDIT SALES

Foreign Military Credit Sales

Of the funds appropriated under this head in the Foreign Assistance and Related Programs Appropriations Act, 1977, $41,500,000 are rescinded.

Rescission Proposal No: R77-6

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Commerce	New budget authority (P.L. 94-362) $14,470,000
Bureau United States Travel Service	Other budgetary resources 0
Appropriation title & symbol: Salaries and expenses 1370700	Total budgetary resources 14,470,000
	Amount proposed for rescission $525,000
OMB identification code: 13-0700-0-1-403	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other
Type of account or fund: ☒ Annual	Type of budget authority: ☒ Appropriation
☐ Multiple-year (expiration date)	☐ Contract authority
☐ No-year	☐ Other

Justification

The budget authority available to date in 1977 for the activities of the U.S. Travel Service (USTS) totals $14.5 million. The proposed rescission, if accepted, would reduce the amounts available for the Special Markets program and Industry and State programs.

Funds available for the Industry and State programs are utilized, in part, to support the development of a domestic tourism program. In 1977, budget authority of $1.5 million was made available for this purpose. $500,000 of this amount is proposed for rescission. The domestic tourism industry has agreed in principle with the Secretary of Commerce on the development of a domestic tourism program which would provide $1.0 million in Federal "seed" money to be matched by the industry. The industry has accepted this level of financial commitment as appropriate for developmental purposes. A plan for 1977 is estimated not to be in place until April 1977.

Funds available for the Special Markets program are utilized to support the development of tour packages which encourage travel to the U.S. During 1977 five European special markets will be added to the three primary USTS markets to provide coverage to four-fifths of the Visit USA travelers from Europe. The proposed rescission includes $25,000 in funds available for this program which are not required to support planned field visits to these special markets. $300,000 will remain available for contacting travel representatives in these markets to promote the development of low cost tour packages.

R77-6

2

Estimated Effects

The proposed rescission will have no adverse effects on planned USTS activities in the above two areas. Efforts will continue with industry toward the development of a domestic program in 1977 and contracts for development of tour packages in the five special European markets will be carried out.

Outlay Effect (estimated in millions of dollars):

Comparison with President's 1978 budget:	
1. Budget outlay estimate for 1977	13.8
2. Outlay savings, if any, included in the budget outlay estimate	0.5
Current Outlay Estimates for 1977	
3. Without rescission	14.3
4. With rescission	13.8
5. Current outlay savings (line 3 - line 4)	0.5

R77-6

TITLE III - DEPARTMENT OF COMMERCE

United States Travel Service

Salaries and expenses

Appropriations provided under this head in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977, are rescinded in the amount of $525,000. Of the appropriations remaining, not less than $1,000,000 shall be available for the domestic tourism promotion program.

Rescission Proposal No: R 77-7

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Commerce Bureau National Oceanic and Atmospheric Administration	New budget authority (P.L. 94-362) $ 566,215,000 1/ Other budgetary resources 62,781,270 Total budgetary resources 628,996,270
Appropriation title & symbol Operations, Research, and Facilities 13X1450 (OCEANLAB)	Amount proposed for rescission $ 1,500,000
OMB identification code: 13-1450-0-1-306 Grant program ☐ Yes ☒ No	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

The proposed rescission, if accepted, would decrease the funds available in 1977 to the Operations, research and facilities appropriation of the National Oceanic and Atmospheric Administration by $1,500,000. The funds, available until expended, were provided for the design and engineering studies preliminary to construction, in future years, of an underwater mobile laboratory, OCEANLAB.

Rescinding these funds in 1977 will avoid initiating the expenditure of an estimated total of $21.5 million over the next five years for full construction and operation of an OCEANLAB, and allow further careful review and consideration of any need for acquisition of an underwater laboratory. No specific missions have been identified for an exploratory facility such as the proposed OCEANLAB. Prior to construction and operation of such an expensive piece of scientific equipment, the specific types of studies required and the Federal objectives that would be accomplished should be identified. In addition, it is not now apparent that the proposed OCEANLAB is the most cost-effective means for obtaining necessary information.

Estimated Effects:

Rescission of the available funding in 1977 for design and engineering studies for an underwater mobile laboratory will have no impact on on-going programs. However, in the future some research on fish stocks may not be possible without the advanced capabilities envisioned for OCEANLAB. At the same time, the Executive Branch will be able to review and document the needs and users of the proposed facility, and actually estimate the benefits from the proposed facility against the likely costs of the program.

1/ Does not include $55,000 transfer to General Administration, Department of Commerce for water resources planning activity.

R77-7

2

Outlay Effect (estimated in millions of dollars)

Comparison with President's 1978 Budget:	
1. Budget outlay estimate for 1977	$575.0
2. Outlay savings, if any, included in the budget outlay estimate	0.7
Current Outlay Estimates for 1977	
3. Without rescission	575.7
4. With rescission	575.0
5. Current outlay savings (line 3 minus line 4)	0.7
Outlay Savings for 1978	0.8

R77-7

National Oceanic and Atmospheric Administration

Operations, Research, and Facilities

Of the amount appropriated under this head in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977, $1,500,000 provided for studies (including surveys, mission analyses, cost analyses, and initiation of a design and engineering study) for an underwater ocean laboratory are rescinded.

Rescission Proposal No: R77-8

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Defense	New budget authority (P.L. 94-419) $8,381,700,000
Bureau Office of the Secretary of Defense	Other budgetary resources ____
Appropriation title & symbol Retired Pay, Defense 9770030	Total budgetary resources 8,381,700,000
	Amount proposed for rescission $ 143,600,000
OMB identification code: 97-0030-0-1-051	Legal authority (in addition to sec. 1012): [X] Antideficiency Act
Grant program [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [X] Annual [ ] Multiple-year ____ (expiration date) [ ] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification

The amount expected to be obligated is $143.6 million below the Fiscal Year 1977 Appropriation as a result of lower than anticipated Consumer Price Index (CPI) adjustments, the effect of the new method for adjusting annuities, and net strength and rate changes. Therefore, rescission of $143.6 million is proposed under provisions of the Antideficiency Act (31 U.S.C. 665).

Estimated Effects

There is no programmatic effect of this rescission proposal since the funds cannot be obligated.

Outlay Effect

There is no outlay effect of this proposal since the funds cannot be used.

R77-8

DEPARTMENT OF DEFENSE - MILITARY

TITLE II

RETIRED MILITARY PERSONNEL

Retired Pay, Defense

Of the amount appropriated under this head in the Department of Defense Appropriation Act, 1977, $143,600,000 is rescinded.

Rescission Proposal No: R77-9

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency Department of Defense	New budget authority (P.L. 94-419) $6,195,000,000
Bureau	Other budgetary resources
Appropriation title & symbol Shipbuilding and Conversion, Navy 177/11611	Total budgetary resources 6,195,000,000
	Amount proposed for rescission $ 721,000,000
OMB identification code: 17-1611-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☒ Multiple-year 1981 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification
The funds proposed for rescission were appropriated for procurement of long lead-time components for the CVN 71 nuclear aircraft carrier ($350.0 million) and the U.S.S. Long Beach conversion program ($371.0 million). This rescission proposal results from a Presidential decision not to procure the CVN 71 or to convert the Long Beach in the 1978-1982 period. This decision resulted from a review of the five-year Navy shipbuilding program, which was based on a National Security Council study on U.S. strategy and naval force requirements.

Estimated Effects
This rescission proposal would reduce 1977 budget authority by $721 million, less any amount unrecoverable, and result in outlay reductions of $51 million in 1977 and $132 million in 1978 with the remainder of the reductions occurring in later years.

Outlay Effects (estimated in millions of dollars)
Comparison with the President's 1978 budget:

1. Budget outlay estimate for 1977	$2,983.0
2. Outlay savings, if any, included in the budget outlay estimate	51.0

R77-9

2

Current outlay estimate for 1977:

3. Without rescission	3,034.0
4. With rescission	2,983.0
5. Current outlay savings (line 3 - line 4)	51.0

Outlay savings for 1978	$132
Outlay savings for 1979	144
Outlay savings for 1980	144

R77-9

DEPARTMENT OF DEFENSE - MILITARY

TITLE IV

PROCUREMENT

Shipbuilding and Conversion, Navy

Of the funds appropriated under this head in the Department of Defense Appropriation Act, 1977, $721,000,000 are rescinded.

Rescission Proposal No: R77-10

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Defense	New budget authority (P.L.) $
Bureau: Department of the Air Force	Other budgetary resources 213,817,857
Appropriation title & symbol: Other Procurement, Air Force 575/73080	Total budgetary resources 213,817,857
	Amount proposed for rescission $ 14,350,000
OMB identification code: 57-3080-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☒ Multiple-year 1977 (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

Funds provided to the Other Procurement, Air Force account have been used to terminate the Advanced Logistics System (ALS). The Department of Defense has determined--after the settlement of contracts for the termination of the ALS--that there is $14.4 million remaining which it does not plan to obligate. Since there is no intention to obligate these funds and they will lapse under present plans, they are being proposed for rescission. The House Appropriation Committee, in House Report (94-5) (pages 163-165), concurs in the view that any funds which remain after termination costs have been met should be permitted to lapse.

Estimated Effects

This rescission proposal has no programmatic effects since the funds are excess to program requirements.

Outlay Effects

There is no outlay effect of this proposed rescission.

R77-10

DEPARTMENT OF DEFENSE-MILITARY

TITLE IV

PROCUREMENT

Other Procurement, Air Force

Of the funds appropriated under this head in the Department of Defense Appropriation Act, 1975, $14,350,000 are rescinded.

Rescission Proposal No: R77-11

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of State Bureau: International Organization Affairs Appropriation title & symbol: Contributions for International Peacekeeping Activities 1971124	New budget authority (P.L. 94-362) $ 40,000,000 Other budgetary resources — Total budgetary resources 40,000,000 Amount proposed for rescission $ 12,000,000
OMB identification code: 19-1124-0-1-152 Grant program ☐ Yes ☒ No	Legal authority (in addition to sec. 1012): ☒ Antideficiency Act ☐ Other
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification:

Public Law 94-37, approved June 19, 1975, "authorized to be appropriated to the Department of State such sums as may be necessary from time to time for payment by the United States of its share of the expenses of the United Nations peacekeeping forces in the Middle East, as apportioned by the United Nations in accordance with article 17 of the United Nations Charter, notwithstanding the limitation on contributions to international organizations contained in Public Law 92-544 (86 Stat. 1109, 1110)." The 1977 Budget contained an estimate of $45,000,000 for the U.S. share of those expenses to be paid from funds appropriated for fiscal year 1977. The Foreign Relations Authorization Act, Fiscal Year 1977, (Public Law 94-350, approved July 12, 1976) authorized to be appropriated to the Department of State for fiscal year 1977 for "International Organizations and Conferences", $342,460,453, an amount sufficient to allow $45,000,000 to be appropriated for "Contributions for international peacekeeping activities."

The Department of State Appropriation Act, 1977 (Title I, Public Law 94-362, approved July 14, 1976) appropriated $40,000,000 for fiscal year 1977 "for payments, not otherwise provided for, by the United States for expenses of United Nations peacekeeping forces in the Middle East". From these funds the State Department will pay the U.S. assessed share (approximately 29%) of the expenses of the United Nations Emergency Force (UNEF) in the Sinai and the United Nations Disengagement Observer Force (UNDOF) on the Golan Heights through October 24, 1977. The amount of the appropriation was based on the best estimate, at the time of congressional action, of the U.S. assessed share of the expenses of both peacekeeping forces for the twelve month period ending as indicated above.

On December 21, 1976, the United Nations General Assembly approved a resolution which definitively established these peacekeeping budgets at substantially lower levels than anticipated, resulting in a total U.S. assessment of $28,000,000. Accordingly, the President has determined that part of the budget authority will not be required to carry out the full objectives or scope of the program for which it is provided, and a rescission of $12,000,000 is proposed. These funds have been reserved for savings under the Antideficiency Act (31 U.S.C. 665).

Estimated Effects:

The proposed rescission will have no programmatic effects.

Outlay Effect:

There is no outlay effect of this deferral because the funds would not be used if made available.

R77-11

INTERNATIONAL ORGANIZATIONS AND CONFERENCES

Contributions for International Peacekeeping Activities

Of the funds appropriated under this head in the Departments of State, Justice, and Commerce, and Judiciary, and Related Agencies Appropriation Act, 1977, $12,000,000 are rescinded.

Rescission Proposal No: R77-12

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Transportation Bureau: U.S. Coast Guard Appropriation title & symbol: Retired Pay 6970241	New budget authority (P.L. 94-387) $147,103,000 Other budgetary resources — Total budgetary resources 147,103,000 Amount proposed for rescission $6,803,000
OMB identification code: 69-0241-0-1-406 Grant program ☐ Yes ☒ No	Legal authority (in addition to sec. 1012): ☒ Antideficiency Act ☐ Other
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

Funds totalling $147,103,000, were appropriated in the Department of Transportation and Related Agencies Appropriation Act, 1977, for payment of retired pay for military personnel of the U.S. Coast Guard and U.S. Coast Guard Reserve and members of the former Lighthouse Service. In addition, this appropriation provides for annuities payable to beneficiaries of retired military personnel under the retired serviceman's family protection plan (10 U.S.C. 1431-1446) and survivor benefit plan (10 U.S.C. 1447-1455).

Lower-than-expected cost-of-living adjustments will result in the development of $6.8 million in budget authority that is excess to requirements and will--if not rescinded--lapse at the end of fiscal 1977. These funds have been reserved for savings under the Antideficiency Act (31 U.S.C. 665).

Estimated Effects

This rescission proposal would have no programmatic effect on the Coast Guard retirement program.

Outlay Effect

There is no outlay effect of this rescission proposal because the funds will lapse if they are not rescinded.

R77-12

DEPARTMENT OF TRANSPORTATION

COAST GUARD

Retired Pay

Of the funds appropriated under this head in the Department of Transportation and Related Agencies Appropriation Act, 1977, $6,803,000 are rescinded.

Rescission Proposal No: R77-13

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency Small Business Administration	New budget authority (P.L. 94-362) $601,600,000
Bureau	Other budgetary resources 539,633,992
Appropriation title & symbol Business Loan Investment Fund 73X4154 (Section 7(a) Regular Business Loan Program)	Total budgetary resources 1,141,233,992
	Amount proposed for rescission $ 60,000,000
OMB identification code: 73-4154-0-3-403	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

The Regular Business Loan program pursuant to section 7(a) of the Small Business Act, as amended (15 U.S.C. 636), provides direct and guaranteed loan assistance to those small businesses which are unable to obtain financing in the private credit market on reasonable terms. Since 1975, the private credit market has been improving and providing small business with greater access to debt financing at lower interest rates. It is expected that these credit conditions will continue in 1977 and 1978. The Congress added $95 million to the 1977 budget request of $100 million for the 7(a) direct loan program in the State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977, (enacted in July, 1976). A current assessment is that $60 million of these funds are not now needed in light of present credit market conditions and are, therefore, proposed for rescission. This proposal would reduce the loan level for this program in 1977 from $195 million to $135 million. The proposed revision in the 1977 direct loan level is in line with the level requested for 1978.

Estimated Effects

This proposal will result in approximately 1,400 fewer direct loans to small businesses in 1977. However, the revised program level of $135 million would still provide over 3,200 direct loans to small businesses in 1977 as compared to 2,673 loans actually approved in 1976. The revised program level also represents a 20 percent increase (+$23 million) above the $112 million in direct loan funds provided in 1976.

R77-13

Outlay Effect (estimated in millions of dollars)

Comparison with President's 1978 Budget	
1. Budget outlay estimate for 1977	$335.3
2. Outlay savings, if any, included in the budget outlay estimate	42.0
Current Outlay Estimates for 1977	
3. Without rescission	$377.3
4. With rescission	335.3
5. Current outlay savings (line 3 - line 4)	42.0
Outlay Savings for 1978	18.0

R77-13

SMALL BUSINESS ADMINISTRATION

Business Loan and Investment Fund

Of the funds appropriated under this head in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977, $60,000,000 are rescinded.

D77-2A

SUPPLEMENTARY REPORT
Report Pursuant to Section 1014 (c) of P.L. 93-344

This supplementary deferral report revises a previously submitted deferral report, Deferral No. D77-2, transmitted in a special message to Congress on October 1, 1976.

The amount to be deferred in FY 1977 for the Special Foreign Currency Program account of the Foreign Agricultural Service is now $1,742,928, an increase of $133,320 over the previously proposed deferral of $1,609,608. This change reflects an adjustment in unobligated balances brought forward on October 1, 1976, from an estimated to an actual basis.

Deferral No: D77-2A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency U.S. Department of Agriculture Bureau Foreign Agricultural Service	New budget authority (P.L. _____) $ _____ Other budgetary resources *2,242,928 Total budgetary resources *2,242,928
Appropriation title & symbol Special Foreign Currency Program 12X2901	Amount to be deferred: Part of year $ _____ Entire year *1,742,928
OMB identification code: 12-2901-0-1-352 Grant program ☐ Yes ☒ No	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other _____
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification

Title I, Sec. 104 of P.L. 480, the Agricultural Trade Development and Assistance Act of 1954 authorizes the use of foreign currencies (acquired from the sale of U.S. farm products under Title I) to carry out programs for developing new markets for U.S. agricultural commodities. The funds appropriated are used to purchase excess foreign currencies necessary to carry out the program. The funds are available until expended, and the unused balance is carried over into the next year. The amount of funds used each year is dependent upon the availability of the U.S.-owned currencies and the availability of worthwhile market development projects in the foreign countries. Current indications are that no more than $500 thousand of the reserved balances brought forward can be utilized effectively in FY 1977. This deferral action is taken under provisions of the Antideficiency Act (31 USC 665) that authorize the establishment of reserves for contingencies.

Estimated Effects

No programmatic or budgetary impact results from this deferral action. Since the funds are used to purchase currencies already owned by the U.S., any outlays shown under this account would be offset by the receipt of a like amount in another account.

Outlay Effects

There is no outlay effect of this deferral because the funds would not be used if made available.

* Revised from previous report.

D77-5A

SUPPLEMENTARY REPORT
Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D77-5, transmitted to the Congress on October 1, 1976, and printed as House Document No. 94-650.

This revision reflects a change in the amount deferred from $145,665 to $239,139. This increase in the deferral of $93,474 results from an identical increase in the unobligated balance (from an estimate made in the connection with initial apportionment for 1977 to the actual unobligated balance carried in 1977).

Deferral No: D77-5A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Agriculture	New budget authority (18 USC 711): $280,000
Bureau: Forest Service	Other budgetary resources: * 234,139
Appropriation title & symbol: Licensee Programs, Forest Service 12X5214	Total budgetary resources: * 514,139
	Amount to be deferred: Part of year: $ ____
	Entire year: * 239,139
OMB Identification code: 12-5214-0-2-302	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual	Type of budget authority: ☒ Appropriation
☐ Multiple-year ____ (expiration date)	☐ Contract authority
☒ No-year	☐ Other ____

* Justification:

Royalties collected under licenses for use of the characters "Smokey Bear" and "Woodsy Owl" are permanently appropriated and utilized for furthering the nationwide forest fire prevention campaign and promoting the wise use of the environment as provided by the Act of May 23, 1952 (18 USC 711), and for Woodsy Owl, 31 USC 488b-3--6. The total budgetary resources available in this program for fiscal year 1977 consist of $234,139 in actual receipts earned in fiscal year 1976 and transition quarter and $280,000 in receipts anticipated for fiscal year 1977. In keeping with routine financial management practices maintained over the years, $239,139 of the total budgetary resources available has been reserved. The reserve is justified on two grounds.

First, the reserve contributes to a consistent, stable program level from year to year which, in turn, promotes more efficient operations. The fiscal year 1977 program is being funded, in part, from reserved balances carried forward from last year. The 1978 program will be partially funded by the estimated receipts being deferred in fiscal year 1977.

* Revised from previous report.

Second, reservation of funds is required to avoid the possibility of a violation of the Antideficiency Act (31 USC 665, (a), (b), (h)). A violation of the sections cited could occur if all the estimates of receipts now deferred were made available and obligated while estimated receipts were not fully realized.

This reserve action is taken under provisions of the Antideficiency Act that authorize the establishment of reserves for contingencies (31 USC 665(c) (2)).

Estimated Effects:

The funds made available are sufficient to carry out 1977 program objectives. If the deferred funds were made available for use and obligated in 1977, the 1978 program level would be below that conducted in the current year because some portion of 1977 receipts normally carried forward into the next fiscal year would not be available.

Release of deferred funds would necessitate development of a plan for an expanded 1977 program.

Outlay Effect

No effect on outlays results from this deferral action.

Deferral No: D77-45

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Commerce	New budget authority (P.L. ____) $ ____
Bureau General Administration	Other budgetary resources 1,540,063
Appropriation title & symbol	Total budgetary resources 1,540,063
Special Foreign Currency 13X0160	Amount to be deferred: Part of year $ ____
	Entire year 654,000
OMB identification code: 13-0160-0-1-403	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual	Type of budget authority: [X] Appropriation
[ ] Multiple-year ____ (expiration date)	[ ] Contract authority
[X] No-year	[ ] Other ____

Justification

This account is used to supplement the activities of Domestic and International Business Administration, the National Bureau of Standards, and the National Oceanic and Atmospheric Administration by providing U.S.-owned foreign currencies in those countries where the Department of the Treasury determines that the supply of currencies is in excess of the normal requirements of the U.S. Government. In fiscal year 1977, the "excess" currency countries are: Burma, Guinea, India, Pakistan, Tunisia and Egypt.

There is a total of $1,540,063 in unobligated balances, available until expended, remaining in this account. An estimated $886,063 will be needed during fiscal 1977. The remaining funds of $654,000 are to be deferred throughout fiscal 1977 for use in future years. These funds have been reserved for contingencies under the Antideficiency Act (31 U.S.C. 665).

Estimated Effects

None. Planned activities in 1977 can be conducted within the amount made available. The funds remaining after 1977 will be used to meet future requirements.

Outlay Effects

There is no outlay effect of this deferral.

Deferral No: D77-46

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Commerce	New budget authority (P.L. 94-362) $ 566,215,000 1/
Bureau National Oceanic and Atmospheric Administration	Other budgetary resources 62,781,270
Appropriation title & symbol: Operations, Research and Facilities (Ship Construction) 13X1450	Total budgetary resources 628,996,270
	Amount to be deferred: Part of year $ ____ Entire year 7,500,000
OMB identification code: 13-1450-0-1-306	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification

This deferral of $7.5 million will delay funding until 1978 for the construction of two new (Class IV) fishery research vessels provided in the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977 (P.L. 94-362). The funds are available until expended. Construction of the two new research vessels was provided for in order to give the National Oceanic and Atmospheric Administration (NOAA) additional ship-days to conduct the expanded fisheries resources conservation, assessment, and management efforts required by section 304 of the United States Fisheries Management and Conservation Act of 1976, (P.L. 94-265). The deferral is appropriate because this expenditure of funds is not actually needed at this time to provide the additional ship-days.

Estimated Effects

The construction delay should have no adverse impact on the fisheries resource program in that the need for additional days at sea can be met by five other existing NOAA ships which will be upgraded.

1/ Does not include $55,000 transfer to General Administration, Department of Commerce for water resources planning activity.

D77-46

2

Outlay Effect (estimated in millions of dollars)

Comparison with President's 1978 Budget:	
1. Budget outlay estimate for 1977	$572.7
2. Outlay savings, if any, included in the budget outlay estimate	3.8
Current Outlay Estimate for 1977	
3. Without deferral	576.5
4. With deferral	572.7
5. Current outlay savings (line 3 minus line 4)	3.8
Outlay Savings for 1978	-0.1
Outlay Savings for 1979	-3.7

Deferral No: D77-47

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Commerce	New budget authority (P.L. ____) $ ____
Bureau Maritime Administration	Other budgetary resources 362,811,241
Appropriation title & symbol	Total budgetary resources 362,811,241
Ship Construction 13X1708	Amount to be deferred: Part of year $ ____
	Entire year 200,900,000
OMB identification code: 13-1708-0-1-406	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program [X] Yes [ ] No	[ ] Other ____
Type of account or fund: [ ] Annual	Type of budget authority: [X] Appropriation
[ ] Multiple-year ____ (expiration date)	[ ] Contract authority
[X] No-year	[ ] Other ____

Justification

This appropriation, available until expended, provides subsidies to U.S. shipyards for the construction and reconstruction of ships for foreign trade.

The deferral is based on the current projections of realizable demand for U.S. shipbuilding. Anticipated new subsidized shipbuilding contracts through the end of fiscal 1977 can be funded within the $161,911,241 apportioned for this period.

The amount being deferred has been reserved for contingencies under the Antideficiency Act (31 U.S.C. 665).

Estimated Effects

The deferral will not delay planned construction or conversion of subsidized ships and will not affect the international competitive position of U.S. shipyards.

Outlay Effect

There is no outlay effect of this deferral.

D77-10B

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D77-10A transmitted to the Congress on December 3, 1976, and printed in the Federal Register of December 8, 1976, (Volume 41, No. 237, Part II).

This revision reflects a net increase of $51,768,837 in the amount to be deferred in fiscal year 1977 for the Military Construction and Family Housing, Defense appropriations. The increase is due to cost savings generated by favorable bids that were experienced during fiscal year 1976. The total amount now deferred is $387,651,837.

The decrease of $371,399,937 in total budgetary resources is the difference between the estimated and actual unobligated balances brought forward on October 1, 1976.

Deferral No: D77-10B

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Defense	New budget authority (P.L. 94-367): $3,451,306,000
Bureau:	Other budgetary resources: 2,974,575,746*
Appropriation title & symbol: See Coverage section below	Total budgetary resources: 6,425,881,746*
	Amount to be deferred: Part of year: $ 387,651,837*
	Entire year:
OMB identification code: See Coverage section below	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [X] Annual; [ ] Multiple-year (expiration date); [X] No-year	Type of budget authority: [X] Appropriation; [ ] Contract authority; [ ] Other

Coverage

Account title	Appropriation Symbol	OMB Identification code 1/	Amount Deferred *
Military Construction, Army	21X2050	21-2050-0-1-051	$135,550,000
Military Construction, Navy	17X1205	17-1205-0-1-051	74,527,904
Military Construction, Air Force	57X3300	57-3300-0-1-051	41,380,000
Military Construction, Defense Agencies	97X0500	97-0500-0-1-051	11,138,000
Military Construction, Army National Guard	21X2085	21-2085-0-1-051	42,054,000
Military Construction, Air National Guard	57X3830	57-3830-0-1-051	21,240,000
Military Construction, Army Reserve	21X2086	21-2086-0-1-051	31,422,000
Military Construction, Naval Reserve	17X1235	17-1235-0-1-051	14,491,000
Military Construction, Air Force Reserve	57X3730	57-3730-0-1-051	8,504,933
Family Housing, Defense	97X0700	97-0701-0-1-051	7,344,000
Family Housing, Defense	9770700	97-0701-0-1-051	-0-
			387,651,837

Justification

The above amounts in the listed no-year appropriations are currently deferred under provisions of the Antideficiency Act (31 U.S.C. 665) which authorizes the establishment of reserves for contingencies.

* Revised from previous report.

D77-10B

2

Justification (continued)

Due to the long period of time required to construct facilities, the Congress makes appropriations for this purpose available until expended. The above funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with either other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon completion of project design and/or coordination.

Estimated effects

These deferrals have no programmatic or budgetary effect because the funds could not be obligated at this time, even if they were made available.

Outlay effect

There is no outlay effect resulting from this deferral since the funds could not be used if made available.

D77-24A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No.D77-24, transmitted to the Congress on October 1, 1976, and printed as House Document No.94-650.

This revision reflects a change in the amount deferred from $463,585 to $8,080,232. This increase in the deferral results from an identical increase in the unobligated balance available to this program. The actual unobligated balance that developed was $7,616,647 higher than had been originally estimated because of a deobligation of funds.

Deferral No: D77-24A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Transportation	New budget authority (P.L. ———) $ -0-
Bureau: Federal Aviation Administration	Other budgetary resources * 8,116,232
Appropriation title & symbol: Civil Supersonic Aircraft Development Termination, 69X0106; Civil Supersonic Aircraft Development, 69X1358	Total budgetary resources * 8,116,232
	Amount to be deferred: Part of year $ -0-
	Entire year * 8,080,232
OMB Identification code: 69-0106-0-1-405	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other ———
Type of account or fund: ☐ Annual ☐ Multiple-year ——— (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ———

* Coverage	Total Budgetary Resources	Amount Deferred
Civil Supersonic Aircraft Development Termination	$ 812,283	$ 776,283
Civil Supersonic Aircraft Development	7,303,949	7,303,949
Total	$8,116,232	$8,080,232

Justification

This account finances the termination of the supersonic transport development program. The total cost of settlement of contractor claims and closeouts, airline refunds, completion of specifically designated technology programs, and necessary governmental administrative costs incidental to these activities is included. These funds were appropriated by the Department of Transportation and Related Agencies Appropriation Acts, 1971 and 1972. Because of the difficulty in ending such a complex and massive undertaking, termination has taken a number of years. Settlement is being accomplished as quickly as possible consistent with the legitimate claims of the contractors and the protection of government interests.

Estimated Effects

This deferral action has no programmatic effect.

Outlay Effect

There is no outlay effect of this deferral because the funds would not be used if made available.

* Revised from previous report.

D77-25A

*SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D77-25, transmitted to the Congress on October 1, 1976, and printed as House Document No. 94-650.

This revision reflects a change in the amount deferred from $276,101,000 to $287,095,484. This increase in the deferral of $10,994,484, results from an identical increase in the unobligated balance (from an estimate made in connection with initial apportionment for 1977 to the actual unobligated balance carried into 1977).

Deferral No: D77-25A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Transportation	New budget authority (P.L. 94-387) $200,000,000
Bureau Federal Aviation Administration	Other budgetary resources *294,495,484
Appropriation title & symbol Facilities and equipment (Airport and airway trust fund) 69X8107 695/78107 696/88107 697/98109	Total budgetary resources *494,495,484
	Amount to be deferred: Part of year $ ____ Entire year *287,095,484
OMB identification code: 69-8107-0-7-405	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Grant program [ ] Yes [X] No	
Type of account or fund: [ ] Annual 695/78107 Sept 30, 1977 696/88107 Sept 30, 1978 [X] Multiple-year 697/98109 Sept 30, 1979 (expiration date) [X] No-year	Type of budget authority: 1/ [X] Appropriation [ ] Contract authority [ ] Other ____

Justification

Funds from this account are used to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the national airway system. Projects financed from this account include construction of buildings and purchase of new equipment for new or improved air traffic control towers, automation of the enroute airway control system, and expansion and improvement in the navigational and landing aid systems. These funds were appropriated in the Department of Transportation and Related Agencies Appropriation Acts of 1977 and prior years. The estimated total cost for each project is traditionally included in the budget submission and appropriation for the year in which it is requested. Because of the lengthy procurement and construction time for interrelated new facilities and complex equipment systems, it is not possible to obligate all funds necessary to complete each project in the year funds are appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This deferral action is consistent with the Congressional intent to provide multi-year funding for the total costs of these projects and is taken under provisions of the Antideficiency Act (31 U.S.C. 665) which authorize the establishment of reserves for contingencies.

* Revised from previous report.
1/ None of these funds are deferred.

D77-25 A

2

Estimated Effects

This deferral action is consistent with normal operations for this program. The amount deferred could not be economically used if made available in fiscal 1977 because of the planned multi-year procurement, construction and installation cycle.

Outlay Effect

There is no outlay effect of this deferral because the funds would not be used if made available.

Deferral No: D77-48

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Transportation	New budget authority (P.L. _____) $ _____
Bureau Federal Highway Administration	Other budgetary resources $91,003,333 1/
Appropriation title & symbol Trust Fund Share of other Highway Programs (Great River Road) 69x8009	Total budgetary resources $91,003,333 1/
	Amount to be deferred: Part of year $ _____ Entire year $31,250,000
OMB identification code: 69-8009-0-7-404	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program ☒ Yes ☐ No	☐ Other _____
Type of account or fund: ☐ Annual 9-30-77 ...$9,753,333 9-30-78 ...$25,000,000 ☒ Multiple-year 9-30-79 ...$25,000,000 9-30-80 ...$31,250,000 2/ ☐ No-year (expiration date)	Type of budget authority: ☐ Appropriation ☒ Contract authority ☐ Other _____

Justification

The National Scenic and Recreational Highway (Great River Road) was authorized by the Federal-Aid Highway Act of 1973 for the purpose of constructing or reconstructing a two-lane scenic highway in the ten states bordering the Mississippi River. The Great River Road spans over 2,000 miles.

The contract authority provided for this program is liquidated through both the Highway Trust Fund and the General Fund. A total of $121,250,000 in contract authority has been made available through FY 1977 for the program. Of this total, $90,000,000 was made available in the Federal-Aid Highway Act of 1973, and $31,250,000 (the amount to be deferred) was made available in the Federal-Aid Highway Act of 1976. The Highway Trust Fund Share of the $121,250,000 total is $91,250,000, with the balance of $30,000,000 constituting the General Fund Share. The table below displays the origin of the $121,250,000 in contract authority provided through 1977.

1/ This amount is the portion of "Trust Fund Share of other Highway Programs" made available for the Great River Road. Total funds available to the "Trust Fund Share of Other Highway Programs" is $141,097,124.

2/ This amount is deferred.

D77-48
2

($ in thousands)

Origin of Contract Authority	1974	1975	1976	TQ	1977	Total
1973 Highway Act:						
Trust Fund	10,000	25,000	25,000	--	--	60,000
General Fund	10,000	10,000	10,000	--	--	30,000
1976 Highway Act:						
Trust Fund	--	--	--	6,250	25,000	31,250
Totals	20,000	35,000	35,000	6,250	25,000	121,250

In fiscal year 1976, $90,000,000, the full amount of contract authority available at that time, was apportioned for use and allotted to the States (with the exception of a $10 million DOT discretionary reserve).3/ However, as of September 30, 1976, the States had obligated only $370,000 ($246,667 Trust Fund and $123,333 General Fund).

A deferral of the $31,250,000 of contract authority provided by the 1976 Highway Act is proposed for several reasons:

-- State plans for fiscal year 1977 indicate that no more than $34,630,000 will be obligated, falling far short of exhausting the original $90 million of contract authority provided in the 1973 Highway Act. The additional $31,250,000 provided in the 1976 Highway Act is clearly not needed at this time and should be deferred.

-- Present plans envision using only the original $90 million authorized by the 1973 Highway Act.4/ These funds are to be applied to engineering and design and to congressionally-expressed emphasis areas. As noted in House conference Report No. 94-1017, these emphasis areas include "acquisition of areas of archaeological, scentific, or historical importance, necessary easements for scenic purposes, and the construction of roadside rest areas and other appropriate facilities."

The Department of Transportation is currently gathering data on the costs of these emphasis areas. If it is apparent that costs associated with the types of activities mentioned above exceed $90 million, additional contract authority may be proposed for obligation up to a maximum of the additional funding provided in the 1976 Highway Act.

Outlay Effect

There is no outlay effect of this deferral because the funds would not be expected to be used if made available.

3/ Some States may be unable to obligate, in a timely fashion, all funds allocated to them. Therefore, if DOT allocated the entire $90.0 million among the States, some of the funds might lapse. The DOT discretionary reserve was established to provide the balance of funds to those States which have made the most progress in obligating their allocated funds (and, thereby, reducing the risk of a funding lapse).

4/ A general provision is being proposed in the 1978 budget that would permit obligational control at the $90 million level.

Deferral No: D77-49

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Energy Research and Development Administration	New budget authority (P.L. 94-355 & P.L. 94-373) $ 4,668,838,000
Bureau	Other budgetary resources 1,577,109,000
Appropriation title & symbol Operating Expenses 89X100	Total budgetary resources 6,245,947,000
	Amount to be deferred: Part of year $ ____ Entire year 7,500,000
OMB identification code: 89-0100-0-1-999	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification

This deferral withholds funding for an Energy Extension Service provided in the Department of the Interior and Related Agencies Appropriation Act, 1977 (P.L. 94-373). Because the fiscal 1977 authorization legislation for the Energy Research and Development Administration has not been enacted, there does not now exist a sufficient legislative basis on which to apportion funds for an Energy Extension Service.

Estimated Effects

Initiation of an Energy Extension Service will be delayed until such time as a necessary legislative authorization is enacted into law. Congressional disapproval of the deferral will not result in initiation of the program because of the lack of authorizing legislation.

Outlay Effect

There is not expected to be an outlay effect of this deferral. An Energy Extension Service is not now included in the 1977 ERDA Operating expenses outlay estimate. Adjustments to outlays would need to be considered if the program becomes authorized.

Deferral No: D77-50

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Energy Research and Development Administration	New budget authority (P.L. 94-355 &P.L. 94-373): $4,668,838,000
Bureau:	Other budgetary resources: 1,577,109,000
Appropriation title & symbol: Operating Expenses 89X0100	Total budgetary resources: 6,245,947,000
	Amount to be deferred: Part of year: $ ____
	Entire year: 12,000,000
OMB identification code: 89-0100-0-1-999	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual	Type of budget authority: ☒ Appropriation
☐ Multiple-year ____ (expiration date)	☐ Contract authority
☒ No-year	☐ Other ____

Justification

This action defers $12.0 million in budget authority provided for lower-priority long lead-time research activities in the Magnetic Fusion Energy program until an assessment of the most appropriate timing for these activities is completed. The funds could be more usefully applied once an assessment is made of what information is required and when it is required to most efficiently meet the objectives of the magnetic fusion energy program.

Estimated Effects

The 1977 Magnetic Fusion Energy program is planned for a level of $224 million in outlays. The effects on program outlays of this deferral are as follows: Outlays for confinement systems will be reduced by $1.0 million to a level of $85.2 million; development and technology efforts will be reduced by $3.5 million to a level of $48.0 million; applied plasma physics research will be reduced by $.5 million to a level of $47.4 million; and reactor projects will be reduced by $1.0 million to a level of $43.6 million. This overall reduction of 2.6 percent in the level of effort for the Magnetic Fusion Energy program in FY 1977, maintains an increase of $85 million (or a 60 percent increase) over the FY 1976 level and will not delay the potential availability of fusion-generated commercial electrical power.

D77-50

2

Outlay Effect (in millions of dollars)	
Comparison with President's 1978 Budget:	
1. Budget outlay estimate for 1977	$4217.6
2. Outlay savings, if any, included in the budget outlay estimate	6.0
Current Outlay Estimates for 1977:	
3. Without deferral	4223.6
4. With deferral	4217.6
5. Current outlay savings (line 3 - line 4)	$ 6.0
Outlay savings for 1978	$ -6.0

Deferral No: D77-51

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Energy Research and Development Administration	New budget authority (P.L. 94-355 & P.L. 94-373) $4,668,838,000
Bureau	Other budgetary resources 1,577,109,000
Appropriation title & symbol Operating Expenses 89X0100	Total budgetary resources 6,245,947,000
	Amount to be deferred: Part of year $ ____ Entire year 5,400,000
OMB identification code: 89-0100-0-1-999	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification

This deferral delays funding for Program Support-Community Operations provided by the Public Works for Water and Power Development and Energy Research Appropriation Act, 1977, (P.L. 94-355). These funds are being deferred because this special assistance--intended to be provided to the cities of Oak Ridge, Tennessee, Los Alamos, New Mexico, and Richland, Washington, and the counties around Oak Ridge and Los Alamos--is not presently needed.

Of the amount deferred, $1.7 million was to be provided for the schools at Oak Ridge, Los Alamos, and Richland in the event that funds made available to these schools in the past through the School assistance for federally-affected areas (impact aid) program of the Department of Health, Education, and Welfare would not be available. Impact aid funds will be available so that the substitute amounts will not be needed this year.

The remainder of the deferral ($3.7 million) was intended for special payments to the city of Oak Ridge and the counties around Oak Ridge and Los Alamos. The payments are not needed by the counties in fiscal 1977. These communities will receive sufficient special aid in 1977 through the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2208) (Section 168) from payments intended to offset the loss of tax revenues incurred because of the presence of ERDA facilities. (Tax Loss provisions) These counties have not

qualified for payments intended to offset any extra costs to the communities incurred because of the presence of ERDA facilities (Special Burden provisions). In addition, the special payment to Oak Ridge, Tennessee, is reduced because recent tax receipts from Japanese facilities of $2.2 million offset the need for Federal assistance in fiscal 1977.

Estimated Effects

The $1.7 million provided as a substitute for impact aid and the remaining $3.7 million--which in the absence of this deferral would be distributed--will be available to finance general requirements of the program in 1978.

Outlay Effect (in millions of dollars)	
Comparison with President's 1978 Budget:	
1. Budget outlay estimate for 1977	$4,217.6
2. Outlay savings, if any, included in the budget outlay estimate	5.4
Current Outlay Estimates for 1977:	
3. Without deferral	4,223.0
4. With deferral	4,217.6
5. Current outlay savings (line 3 - line 4)	$ 5.4
Outlay savings for 1978	-5.4

Deferral No: D77-52

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Energy Research and Development Administration	New budget authority (P.L. 94-355 & P.L. 94-373): $4,668,838,000
Bureau:	Other budgetary resources: 1,577,109,000
Appropriation title & symbol: Operating Expenses 89X0100	Total budgetary resources: 6,245,947,000
	Amount to be deferred: Part of year: $ ____
	Entire year: 8,200,000
OMB identification code: 89-0100-0-1-999	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification

This deferral delays $8.2 million (from a total of $189.2 million in budget authority available for this program) for the biomedical and environmental research program provided in the Public Works for Water and Power Development and Energy Research Appropriation Act, 1977. The deferral reduces by half the funds available for the environmental policy analysis function, the National Coal Utilization Assessment, and multi-technology integrated assessments. The environmental policy analysis function is intended to review the impact on the energy supply of proposed environmental legislation, government policies, and regulations. The activity is not presently defined well enough to make the best use of all the available funds. It is appropriate that full-funding for this activity be delayed while plans for the efficient use of the deferred funds are developed. Funds for use in developing the National Coal Utilization Assessment and multi-technology integrated assessments are deferred because (1) the coal utilization study, as presently planned, is too broad in scope to achieve optimal benefits and (2) acceptably firm program plans for the multi-technology studies do not exist.

Estimated Effects

The effects of this deferral are as follows:

--The environmental policy analysis function will not, as the result of the funds deferred, have full-funding until the activities to be performed are more adequately defined. Plans that allow for the efficient use of the deferred funds are not expected to be developed before 1978. The deferral will result in a shift in emphasis away from longer-term studies and support for the National Laboratories toward shorter-term, in-house reviews of environmental regulatory, policy, and legislative proposals.

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--The scope of the National Coal Utilization Assessment will be reduced in order to meet only those information needs unfulfilled by earlier studies. The multi-technology studies will be slowed while firm program plans--including the formation of clearly-defined objectives--are developed and reviewed. Regional environmental analyses will be somewhat slowed by this deferral as will liaison efforts by ERDA with the State and regional environmental and energy agencies.

Outlay Effect (in millions of dollars)

Comparison with President's 1978 Budget:	
1. Budget outlay estimate for 1977	$4,217.6
2. Outlay savings, if any, included in the budget outlay estimate	6.2
Current Outlay Estimates for 1977:	
3. Without deferral	4,223.8
4. With deferral	4,217.6
5. Current outlay savings (line 3 - line 4)	$ 6.2
Outlay savings for 1978	-6.2

[FR Doc.77-2236 Filed 1-19-77;11:58 am]

federal register

MONDAY, JANUARY 24, 1977

PART IX

THE PRESIDENT

JIMMY CARTER

■

PRESIDENTIAL PROCLAMATION OF PARDON OF JANUARY 21, 1977

EXECUTIVE ORDER RELATING TO PROCLAMATION OF PARDON

Title 3—The President

PROCLAMATION 4483

GRANTING PARDON FOR VIOLATIONS
OF THE SELECTIVE SERVICE ACT,
AUGUST 4, 1964 TO MARCH 28, 1973

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Acting pursuant to the grant of authority in Article II, Section 2, of the Constitution of the United States, I, Jimmy Carter, President of the United States, do hereby grant a full, complete and unconditional pardon to: (1) all persons who may have committed any offense between August 4, 1964 and March 28, 1973 in violation of the Military Selective Service Act or any rule or regulation promulgated thereunder; and (2) all persons heretofore convicted, irrespective of the date of conviction, of any offense committed between August 4, 1964 and March 28, 1973 in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, restoring to them full political, civil and other rights.

This pardon does not apply to the following who are specifically excluded therefrom:

(1) All persons convicted of or who may have committed any offense in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, involving force or violence; and

(2) All persons convicted of or who may have committed any offense in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, in connection with duties or responsibilities arising out of employment as agents, officers or employees of the Military Selective Service system.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of January, in the year of our Lord nineteen hundred and seventy-seven, and of the Independence of the United States of America the two hundred and first.

Jimmy Carter

[FR Doc.77-2467 Filed 1-21-77;1:04 pm]

EXECUTIVE ORDER 11967

RELATING TO VIOLATIONS OF THE SELECTIVE SERVICE ACT, AUGUST 4, 1964 TO MARCH 28, 1973

The following actions shall be taken to facilitate Presidential Proclamation of Pardon of January 21, 1977:

1. The Attorney General shall cause to be dismissed with prejudice to the government all pending indictments for violations of the Military Selective Service Act alleged to have occurred between August 4, 1964 and March 28, 1973 with the exception of the following:

(a) Those cases alleging acts of force or violence deemed to be so serious by the Attorney General as to warrant continued prosecution; and

(b) Those cases alleging acts in violation of the Military Selective Service Act by agents, employees or officers of the Selective Service System arising out of such employment.

2. The Attorney General shall terminate all investigations now pending and shall not initiate further investigations alleging violations of the Military Selective Service Act between August 4, 1964 and March 28, 1973, with the exception of the following:

(a) Those cases involving allegations of force or violence deemed to be so serious by the Attorney General as to warrant continued investigation, or possible prosecution; and

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(b) Those cases alleging acts in violation of the Military Selective Service Act by agents, employees or officers of the Selective Service System arising out of such employment.

3. Any person who is or may be precluded from reentering the United States under 8 U.S.C. 1182(a)(22) or under any other law, by reason of having committed or apparently committed any violation of the Military Selective Service Act shall be permitted as any other alien to reenter the United States.

The Attorney General is directed to exercise his discretion under 8 U.S.C. 1182(d)(5) or other applicable law to permit the reentry of such persons under the same terms and conditions as any other alien.

This shall not include anyone who falls into the exceptions of paragraphs 1(a) and (b) and 2(a) and (b) above.

4. Any individual offered conditional clemency or granted a pardon or other clemency under Executive Order 11803 or Presidential Proclamation 4313, dated September 16, 1974, shall receive the full measure of relief afforded by this program if they are otherwise qualified under the terms of this Executive Order.

THE WHITE HOUSE,

January 21, 1977.

Jimmy Carter

[FR Doc.77-2468 Filed 1-21-77;1:05 pm]
FEDERAL REGISTER, VOL. 42, NO. 15—MONDAY, JANUARY 24, 1977

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