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WEDNESDAY, JANUARY 26, 1977

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Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
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DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

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

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

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

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

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

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Title 3—The President

CORRECTION

Executive Order 11952

Conforming the Foreign Service and Civil Service Retirement and Disability Systems

In section 2(d) of Executive Order 11952, appearing at page 2295 in the FEDERAL REGISTER issue of January 11, 1977, a typographical error resulted in an incorrect reference to "Section 221 of the Foreign Service Act of 1946." The correct reference is "Section 821 of the Foreign Service Act of 1946."

As corrected, the first paragraph of section 2(d) reads as follows:

(d) In accord with Public Law 93–474, Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), shall be deemed to be amended to provide for the recomputation of annuities for nonmarried annuitants, as follows:

rules and regulations

Title 7—Agriculture

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

[Docket No. AO-333-A5]

PART 912—HANDLING OF GRAPEFRUIT GROWN IN THE INDIAN RIVER DISTRICT IN FLORIDA

Order Amending Order, as Amended

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 each previously issued amendment 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 upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed amendment of the marketing agreement, as amended, and Order No. 912, as amended (7 CFR Part 912), regulating the handling of grapefruit grown in the Indian River District in Florida.

Upon the basis of the record it is found that:

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

(2) The order, as amended, and as hereby further amended, regulates the handling of grapefruit grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of grapefruit grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of grapefruit grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Grapefruit Grown in the Indian River District in Florida" upon which the aforesaid public hearing was held has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the grapefruit covered by the said order, as amended, and as hereby further amended) who, during the period August 1, 1975, through July 31, 1976, handled not less than 50 percent of the volume of such grapefruit covered by the said order, as amended, and as hereby further amended, and

(2) The issuance of this amendatory order, amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who during the period August 1, 1975, through July 31, 1976 (which has been deemed to be a representative period), have been engaged within the Indian River District in Florida, in the production of grapefruit for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

ORDER RELATIVE TO HANDLING

It is therefore ordered, that on and after the effective date hereof, the handling of grapefruit, shall be in conformity to and in compliance with the terms and conditions of the said order, as amended, and as hereby further amended, as follows:

1. a. Section 912.8 is revised to read as follows:

§ 912.8 Carton or standard packed carton.

"Carton or standard packed carton" means a unit of measure equivalent to four-fifths (⅘) of a United States bushel of grapefruit, whether in bulk or in any container.

b. Paragraph (a) of § 912.41 is revised to read as follows:

§ 912.41 Assessments.

(a) Each handler who first handles fruit shall pay to the committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds will be incurred by such committee for its maintenance and functioning during each fiscal period. Each such handler's share of such expenses shall be that proportion thereof which the total quantity of fruit shipped by such handler as the first handler thereof during the applicable fiscal period is of the total quantity of fruit so shipped by all handlers during the same fiscal period. The Secretary shall fix the rate of assessment per standard packed carton of fruit to be paid by each such handler. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

c. Section 912.50 is revised to read as follows:

§ 912.50 Overshipments.

During any week for which the Secretary has fixed the total quantity of grapefruit which may be handled, any person who has received an allotment may handle, in addition to the total allotment available to him, an amount of grapefruit equivalent to 10 percent of such total allotment or 1,000 cartons, whichever is greater: *Provided*, That the Secretary, on the basis of a recommendation of the committee or other available information, may set such amount at any figure not less than 1,000 cartons and not more than 2,000 cartons. Handlers may overship (a) during such week the entire 1,000 cartons or other amount not in excess of 2,000 cartons as may be set by the Secretary, or (b) during two or more consecutive weekly periods when regulations are in effect, any portion of such 1,000 cartons or any other amount set by the Secretary until the accumulated overshipments reach the applicable maximum number of cartons permitted to be overshipped. The quantity of grapefruit so overshipped when regulations are in effect shall be deducted from such person's allotment for the week following the one in which the total permitted overshipment is reached or for the week in which such person makes no shipments of grapefruit. If such person's allotment for such week is an amount less than the excess shipments permitted under this section, the remaining quantity shall be deducted from succeeding weekly allotments issued to such person until such excess has been entirely off-

set: *Provided*, That any time there is no volume regulation in effect it shall be deemed to cancel all requirements to undership allotment because of previous overshipments pursuant to this part.

2. Paragraph (b) of § 912.32 is revised to read as follows:

§ 912.32 Procedure of committee.

* * * * *

(b) For any decision or recommendation with respect to regulations to be effective during any calendar week, nine members shall constitute a quorum and nine concurring votes shall be required: *Provided*, That the quorum necessary to make a recommendation for regulation for any week immediately following three or more continuous weeks of regulation shall be twelve members and twelve concurring votes shall be required. The requirements of this paragraph shall not apply to recommendations to amend an existing regulation.

* * * * *

3. Section 912.24 is amended as follows:

a. Redesignate paragraph (b) as paragraph (c) and insert a new paragraph (b) as follows:

§ 912.24 Nomination of handler members for the Indian River Grapefruit Committee.

(a) * * *

(b) The committee, as soon as practicable after issuance of the amendment to this part and every third year thereafter, not later than the date prescribed in paragraph (a) of this section, shall reallocate the six handler member and six handler alternate member positions for which voting for nominees is to take place. At such meetings, voting for nominees shall be in accordance with representation which may be required as a result of any reallocation. The reallocation of committee member and alternate member positions shall be between handlers affiliated with bona fide cooperative fresh fruit marketing organizations, herein referred to as "cooperative" handlers, and handlers not so affiliated, herein referred to as "independent" handlers, on the basis of the relative amounts of grapefruit shipped by each group during each of the three immediately preceding completed crop years. The committee shall make its recommendation for allocating handler member positions to the Secretary. The following percentages of grapefruit shipments shall be used by the committee as a basis for allocating handler member and alternate member representation: *Provided*, That the committee, with the approval of the Secretary, may modify the percentages and/or allocation, whenever necessary to meet changing circumstances: *Provided*, That in no event shall any group be allocated less than one member.

Percentages of grapefruit shipped previous 3-year-period		Allocation of handler members	
Cooperatives	Independents	Cooperatives	Independents
Under 25	75 and above	1	5
25 through 41.99	58 through 74.99	2	4
42 through 57.99	42 through 57.99	3	3
58 through 74.99	25 through 41.99	4	2
75 and above	Under 25	5	1

* * * * *

b. Section 912.25 is amended to read as follows:

§ 912.25 Selection of handler members of the Indian River Grapefruit Committee.

From the nominations made pursuant to § 912.24, or from other qualified persons, the Secretary shall select six members and six alternate members of the committee. Three such members and their alternates shall be affiliated with bona fide cooperative fresh fruit marketing organizations, and three such members and their alternates shall not be so affiliated: *Provided*, That when membership is reallocated as provided in § 912.24(b), selection shall reflect such reallocation.

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

Effective Date: February 28, 1977.

Signed at Washington, D.C., on January 21, 1977.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.77-2557 Filed 1-25-77;8:45 am]

CHAPTER XI—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS: MISCELLANEOUS COMMODITIES), DEPARTMENT OF AGRICULTURE

[Docket No. CRPA-2]

PART 1205—COTTON RESEARCH AND PROMOTION

Subpart—Cotton Research and Promotion Order

ORDER AMENDING ORDER

On December 6, 1976, there was published in the FEDERAL REGISTER (41 FR 53350) a proposed order amending the Cotton Research and Promotion Order which was annexed to and made a part of the final decision and referendum order of the Secretary of Agriculture. The referendum was conducted among cotton producers during the period December 13–17, 1976 to determine whether the requisite number of producers voting in the referendum favor the issuance of said order amending the Cotton Research and Promotion Order, and such producers favored such issuance. Therefore, it is hereby ordered that at the time hereinafter specified, the aforesaid order amending the Cotton Research and Promotion Order shall become effective.

FINDINGS AND DETERMINATIONS

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

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Cotton Research and Promotion Act, as amended (80 Stat. 279 et. seq., 90 Stat. 991; 7 U.S.C. 2101–2118), and the applicable rules of practice and procedure governing the formulation and amendments of cotton research and promotion orders (7 CFR Part 1205), a public hearing was held upon proposed amendment of the Cotton Research and Promotion Order. Upon the basis of the record thereof it is found that:

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

(2) All cotton produced and handled in the United States is in the current interstate or foreign commerce, or directly burdens, obstructs, or affects interstate or foreign commerce in cotton and cotton products.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective January 26, 1977. Any delay beyond that date would tend to disrupt the procedure for implementing the order amending the order.

In order for the Cotton Board to be ready to start the collection of the supplemental producer assessment as set forth in the order amending the order beginning with the 1977 ginning season, it will be necessary to issue rules and regulations to specify the method of collection, including any procedural changes necessary for collecting the supplemental assessment. These proceedings and actions are expected to take several months.

The provisions of the order amending the order are well known to cotton producers and other interested parties by reason of the public hearing and other procedures previously conducted with respect to the order amending the order, and the publication in the FEDERAL REGISTER of the notice of hearing, and recommended and final decisions (September 3, 1976 (41 FR 37337); November 15, 1976 (41 FR 50270); December 6, 1976 (41 FR 53350), respectively). All producers eligible to vote in the referendum were mailed a summary of the provisions of the order amending the order and copies were available to producers and other interested parties upon request. Compliance with the provisions of this order amending the order will not require advance preparation on the part of persons subject thereto which cannot be completed prior to the effective date of

regulations that may be issued thereunder.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective January 26, 1977 and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER (sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that the issuance of this order amending the Cotton Research and Promotion Order is favored or approved by at least two-thirds of the cotton producers who participated in a referendum on the question of its approval, and who, during calendar year 1976 (the period determined to be a representative period for the purpose of such referendum) were engaged in the production of Upland cotton in the United States for the 1976 crop.

It is therefore ordered, that at the time hereinafter specified, the aforesaid Cotton Research and Promotion Order is hereby amended as follows, shall become effective:

1. Revise § 1205.302 to read:

§ 1205.302 Act.

"Act" means the Cotton Research and Promotion Act, as amended (80 Stat. 279 et seq., 90 Stat. 991; 7 U.S.C. 2101–2118).

§ 1205.327 [Amended]

2. Amend § 1205.327(b) by adding "s" to the word "assessment".

3. Revise § 1205.330 to read:

§ 1205.330 Expenses.

(a) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart.

(b) The Board shall reimburse the Secretary (1) for expenses up to $200,000 incurred by him in connection with any referendum conducted under the Act and (2) for expenses incurred by the Department of Agriculture for administrative and supervisory costs up to five employee years annually.

(c) The funds to cover such expenses incurred under paragraphs (a) and (b) of this section shall be paid from assessments received pursuant to § 1205.331.

4. Revise § 1205.331 to read:

§ 1205.331 Assessments.

Each cotton producer or other person for whom cotton is being handled shall pay to the handler thereof designated by the Cotton Board pursuant to regulations issued by the Board and such handler shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board, at such times and in such manner as prescribed by regulations issued by the Board, assessments as prescribed in paragraphs (a) and (b) of this section to be used for such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Cotton Board and the Secretary under this subpart:

(a) An assessment at the rate of $1 per bale of cotton handled.

(b) A supplemental assessment on cotton handled which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in Cotton Board rules and regulations. For the 1977 and subsequent crops of cotton this supplemental assessment shall be at the rate of four-tenths of one percent of the value of cotton: *Provided*, That for any crop of cotton, beginning with the 1978 crop, the rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation whether the assessment rate shall be levied on (1) the current value of cotton, or (2) an average value determined from current and/or historical cotton prices and converted to a fixed amount for each bale.

§ 1205.334 [Amended]

5. Amend § 1205.334(c) by adding "s" to the word "assessment".

(Secs. 5 and 10, 80 Stat. 279 et. seq.) 90 Stat. 991 (7 U.S.C. 2101–2118).)

Issued at Washington, D.C. this 21st day of January 1977.

Effective date: January 26, 1977.

RICHARD L. FELTNER,
Assistant Secretary for Marketing and Consumer Services.

[FR Doc.77-2556 Filed 1-25-77;8:45 am]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 500—MANDATORY GASOLINE AND DIESEL FUEL RATIONING REGULATIONS

Adoption of New Part Establishing Contingency Rationing Plan for Gasoline and Diesel Fuel

On May 25, 1976, the Federal Energy Administration (FEA) issued a notice of proposed rulemaking and public hearing (41 FR 21918, May 28, 1976) to amend Chapter II, Title 10 of the Code of Federal Regulations, to establish a new part setting forth regulations with respect to mandatory gasoline and diesel fuel rationing. Written comments were invited through June 28, 1976. Public hearings were held on June 21, 22 and 24, 1976, in Washington, Atlanta, Kansas City, San Francisco and Anchorage.

One hundred and seven written comments were received in response to the notice of proposed rulemaking and 37 oral presentations were made at the five public hearings. Those making comments included representatives of the travel industry, vehicle rental companies, firms engage in direct sales, refiners and others associated with the petroleum industry, Federal, State and local government, agriculture, transportation industry and firms engaged in energy production.

This contingency rationing plan, required by section 203 of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163), if approved by the Congress, would remain in standby status unless the President finds that putting the plan into effect is required by a severe energy supply interruption or in order to fulfill obligations of the United States under the international energy program and transmits such finding to the Congress, together with a statement of the effective date and manner for exercise of such plan. Pursuant to section 203(b) of EPCA, the President would also be required in order to implement a standby rationing plan to find that such plan is necessary to attain, to the maximum extent practicable, the objectives specified in section 4(b)(1) of the Emergency Petroleum Allocation Act of 1973 (EPAA) (Pub. L. 94–163), as amended, and the purposes of the EPCA. For the rationing contingency plan to become effective and be converted from standby status, the President's request to the Congress to put the plan into effect must not be disapproved by either House of Congress. After these steps are completed, the rationing contingency plan would be implemented for the period specified in the plan but for not more than nine months.

The basic provisions of the contingency gasoline and diesel fuel rationing plan adopted today are essentially the same as proposed. FEA will issue ration coupons and ration credits ("ration rights") for each ration period equal to the total estimated available supply of gasoline for the ration period. FEA would then distribute these ration rights through four basic programs. First, FEA would provide ration coupons to all eligible individuals. Second, FEA would provide ration credits to all firms which are engaged in priority activities for which a ration credit level has been established. These ration credits would be in addition to any ration coupons received by a person as an eligible individual. Third, FEA would distribute three percent of all ration rights through the State Hardship Reserves which would be used to meet the needs of certain specified users; e.g., handicapped persons, migrant workers, etc. Fourth, FEA would reserve one percent of the ration rights to distribute itself through the National Ration Reserve.

Persons to whom ration rights are issued would redeem their ration rights for gasoline or could sell them in a ration rights exchange market or give them away.

A supplier of gasoline would be required to collect, redeem, and deposit in the supplier's redemption account ration coupons, ration credit checks or redemption checks for all gasoline sold. Retail sales outlets could agree to supply gasoline to a consumer without ration rights provided the retail sales outlet itself ob-

tained ration rights to cover the transaction within ten days of the sale.

Ration periods for coupons would vary in length depending upon projected supply conditions and other factors and would be announced by FEA's publication of a notice in the FEDERAL REGISTER at least ten days in advance of the ration period. The reason for providing for variable ration periods for coupons is to permit FEA to adjust the number of ration coupons to correspond to the available supply after deduction for the State Hardship Reserves, the National Ration Reserve, and the number of ration credits issued to firms entitled to a ration credit level.

Eligible individuals would apply for ration coupons at issuance points to be designated by FEA, on days designated by FEA. Issuance of ration coupons to eligible individuals would be, for the most part, dependent upon the person's having a valid driver's permit issued by a State. Indians living on reservations under the jurisdiction of the Bureau of Indian Affairs and Alaska Natives may in certain circumstances qualify as eligible individuals even though they do not have driver's permits.

Firms entitled to a ration credit level would be issued ration credits rather than ration coupons. The ration credits would be deposited by FEA each month on the first day of the month in the firm's primary ration credit account maintained with an FEA Regional Processing Center. The firm could then withdraw its ration credits by issuing a ration credit check drawn on its primary ration account to the order of its gasoline supplier. The firm could also issue a ration credit acount for its subsidiaries so that any person; the check could then be deposited in a secondary ration credit account or exchanged for coupons at a ration coupon issuance point. Typically, a firm would open a secondary ration credit account for its subsidiaries so that those subsidiaries could write their own ration credit checks for the purchase of gasoline.

Any firm that was not in operation during a base period could apply to FEA for assignment of a base period use and ration credit allotment. FEA would determine the appropriate base period use, taking into account the typical gasoline or diesel fuel consumption patterns of similar firms.

FEA would establish Regional Processing Centers to perform automated account posting activities in support of the majority of FEA's ration banking activities. FEA would determine the number and location of these Centers, which would serve as sole processing facilities for all ration credit and redemption accounts within given geographic regions. The Regional Processing Centers would establish a check file for each ration credit account. The Centers would arrange to supply the necessary ration credit checks and deposit forms to account owners.

Although not part of the regulations issued today, guidelines are being developed to set forth the procedures which FEA and participating banks and issuance points would follow in carrying out the regulatory program for issuing ration rights and clearing primary and secondary ration credit accounts and redemption accounts. Representatives from the commercial banking industry are assisting in the development of these guidelines.

The functions of the State Rationing Offices and Local Rationing Boards remain essentially as proposed. Hardship allotments could be made by Local Rationing Boards to handicapped persons; low-income, long distance commuters; migrant workers; and, as discussed in more detail below, certain persons engaged in household moves. Other hardship needs could also be handled through the Local Rationing Boards.

The regulations adopted today include the limited diesel fuel rationing program as proposed. Eligible individuals would use their allotments of gasoline ration coupons for their diesel fuel requirements. Firms which have an allocation level under the middle distillate allocation program and which operate diesel-powered vehicles would be issued a diesel fuel entitlement card for each such vehicle, to be used at the time of purchase of diesel fuel at a retail sales outlet. The entitlement card would be linked to a ration credit account maintained by FEA for all firms purchasing diesel fuel at retail sales outlets. A firm having an entitlement card would be able to purchase volumes of diesel fuel comparable to what it would be entitled to receive under the allocation level established in Subpart G of 10 CFR Part 211 (the Mandatory Petroleum Allocation Regulations), but without application of an allocation fraction.

The regulations adopted today contain several modifications to the proposed regulations. The most significant changes are the following:

Relationship of allocation to rationing and maintenance of base period supplier/purchaser relationships. As proposed, the regulations included provisions for the allocation of gasoline from suppliers to wholesale purchaser-resellers utilizing the bulk of the allocation concepts currently contained in 10 CFR Part 211. The existing allocation program would have been substantially modified by eliminating the concept of supplier/purchaser relationships between suppliers and ultimate consumers.

FEA determined that it was preferable to continue to require the maintenance of base period supplier/purchaser relationships between suppliers and bulk purchasers of gasoline. Incorporation of this concept essentially adopts all of 10 CFR Part 211 as it relates to the allocation of motor gasoline. This being so, there is no longer any need to set forth separate gasoline allocation regulations in the Rationing Contingency Plan since the allocation regulations as set forth in 10 CFR Part 211 are adequate.

In reaching the decision to require the maintenance of base period supplier/purchaser relationships between suppliers and bulk purchasers of gasoline, FEA believed that it would make little sense to provide ration rights to bulk purchasers of gasoline without requiring their historical suppliers to supply them with their pro-rata share of gasoline. Therefore, the existing requirement that a bulk purchaser's base period supplier must continue to supply the bulk purchaser is included in the Rationing Contingency Plan. This concept is effectuated by permitting the allocation program in 10 CFR Part 211 to operate as currently in effect and to tie ration credit levels to the allocation levels set forth in Subpart F of the Mandatory Petroleum Allocation Regulations.

It should be noted that the obligation of a supplier to continue to supply its base period customers applies only to those customers which are bulk purchasers as defined in 10 CFR 211.102. Firms (including individuals) which are not bulk purchasers will, of course, be entitled to receive allotments of ration rights, but such purchasers are not entitled to an allocation level and do not have supplier/purchaser relationships which must be maintained for the duration of the Mandatory Petroleum Allocation Program.

In making allotments to firms entitled to a ration credit level, the FEA will deposit ration rights into such firms' primary ration credit accounts in amounts equal to the volume of gasoline those firms would be entitled to receive under the allocation regulations as modified at the time rationing becomes effective, whether or not those firms qualified as bulk purchasers. Also, the number of ration rights allotted to such firms will be calculated without the application of an allocation fraction. For example, a firm entitled to an allocation level of 100 percent of base period use subject to an allocation fraction, which had a base period use of 10,000 gallons of gasoline and whose supplier is applying an allocation fraction of 0.9, would have an allocation entitlement of 9,000 gallons of gasoline (10,000 gallons base period use $\times$0.9 fraction =9,000 gallons). The number of ration rights which FEA would allot to that firm, however, would be 10,000 since that is 100 percent of the firm's base period use.

As proposed, the rationing regulations established three gasoline ration credit levels depending on the end use of the gasoline—100 percent of current requirements, 100 percent of base period use, and 90 percent of base period use. The regulations then specified the types of end uses which qualified for each ration credit level. Since the ration credit levels are now tied to the allocation levels, set forth in the Mandatory Petroleum Allocation Regulations, the ration credit to be allotted to a particular firm will be based on the allocation levels in Subpart F of 10 CFR Part 211 as amended at the time rationing begins. Also, the definitions of the various end uses (e.g., Department of Defense use, agricultural production, sanitation services, etc.) shall be the definitions set forth in 10 CFR 211.51 as amended at the start of the rationing program as discussed below.

Definitions and ration credit levels. As indicated above, the definitions of

end uses of gasoline for purposes of the rationing regulations shall be the same as set forth for the allocation regulations. It is anticipated that, if the rationing regulations are put into effect, the definitions of the following terms will be changed as indicated.

The definition of "Department of Defense use" would be modified from the proposed definition to substitute "national defense operations" for "strategic defense operations" in recognition of the difficulty of separating strategic activities from other essential national defense activities.

The definition of "agricultural production" would also be modified. The new definition would permit firms producing essential food for human consumption to be eligible for 100 percent of current requirements for gasoline for their essential food producing activities, with non-essential food production and all non-food agricultural activities eligible for 90 percent of base period use. FEA recognizes that the use of Standard Industrial Classification (SIC) codes is an imperfect means of distinguishing essential foods from non-essential foods, but feels that other definitions of essential foods would lead to greater problems of definition and interpretation than the SIC codes.

The definition of "emergency services" would be modified to include emergency road services, including snow removal, and the repair of essential public utilities.

The definition of "passenger transportation services" would be restricted to include only vehicles with a manufacturer's seated-capacity rating of greater than 10 persons, counting the driver. FEA has chosen to exclude taxicabs on the gorunds that taxicabs can achieve gasoline savings through reduced cruising, increased use of taxi stands, and greater use of radio call equipment. Carpool vehicles would benefit from the pooled ration coupon allotments of all drivers sharing the pool vehicle.

The definition of "telecommunications services" would be changed to delete the reference to "periods of substantial disruption of normal service" and to exclude sales and routine administrative activities.

The definition of "sanitation services" would be changed to delete reference to "during emergency conditions."

It is FEA's current view that the definitions described above would read as follows:

"Department of Defense use" means those activities of the United States armed forces directly connected with and essential to national defense operations excluding administrative activities.

"Agricultural production" means: (a) all of the activities classified under the industry code numbers specified below, as set forth in the Standard Industrial Classification Manual, 1972 Edition:

011 Cash Grains (excluding 0119, Cash Grains Not Elsewhere Classified)
0133 Sugar Crops
0134 Irish Potatoes
016 Vegetables and Melons
017 Fruits and Tree Nuts (excluding Vineyards)
0182 Food Crops Grown Under Cover
021 Livestock, except Dairy, Poultry, and Animal Specialties (excluding 0214, Sheep and Goats)
024 Dairy Farms
025 Poultry and Eggs
091 Commercial Fishing (excluding 0919, Miscellaneous Marine Products)
201 Meat Products
202 Dairy Products (excluding 2024, Ice cream and Frozen Desserts)
203 Canned and Preserved Fruits and Vegetables
2041 Flour and Other Grain Mill Products
2043 Cereal Breakfast Foods
2044 Rice Milling (except Brewers' Rice)
2045 Blended and Prepared Flour
205 Bakery Products (except dessert products such as pastries, pies, cookies and cakes)
2061 Cane Sugar, Except Refining Only
2062 Cane Sugar Refining
2063 Beet sugar
209 Miscellaneous Food Preparations and Kindred Products;

(b) The following activities classified in the industry code numbers specified below, but only to the extent that they relate to production (including transportation) of food for human consumption:

0119 Cash Grains, Not Elsewhere Classified
0139 Field Crops, Except Cash Grains, Not Elsewhere Classified
0181 Ornamental Floriculture and Nursery Products (limited to vegetable seed production and growing of fruit stocks)
019 General Farms, Primarily Crop
0214 Sheep and Goats
027 Animal Specialties
029 General Farms, Primarily Livestock
071 Soil Preparation Services
072 Crop Services
0741 Veterinary Services for livestock, Except Animal Specialties
0751 Livestock Services, Except Services for Animal Specialties
076 Farm Labor and Management Services
0849 Gathering of Forest Products, Not Elsewhere Classified (limited to gathering of maple sap)
0919 Miscellaneous Marine Products
092 Fish Hatcheries and Preserves
147 Chemical and Fertilizer Mineral Mining
2046 Wet Corn Milling
2048 Prepared Feeds and Feed Ingredients for Animals and Fowls, Not Elsewhere Classified
207 Fats and Oils
2819 Industrial Inorganic Chemicals, Not Elsewhere Classified
286 Industrial Inorganic Chemicals (limited to pesticides and intermediates for the manufacture of pesticides)
287 Agricultural Chemicals
421 Trucking, Local and Long Distance (limited to trucking of fresh produce, perishable foods, livestock and poultry)
497 Irrigation Systems

"Emergency services" means fire fighting, emergency police activities (excluding routine activities), emergency medical services, emergency repair of essential public utilities, and emergency road services including snow removal.

"Passenger transportation services" means (a) surface passenger-carrying services and facilities (excluding water and rail transportation) which serve the general public, whether publicly or privately owned, excluding vehicles with a maufacturer's seated-capacity rating of ten (10) or fewer persons, counting the driver; (b) bus transportation of pupils to and from school.

"Sanitation services" means the collection and disposal for the general public of solid wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities. Sanitation services also includes the provision of water supply services by public utilities, whether privately or publicly owned or operated.

"Telecommunications services" means the repair, operation, and maintenance of voice, data, telegraph, video, and similar communications services to the public by a communications common carrier, excluding sales and routine administrative activities.

With respect to regulations dealing with ration credit levels, it was proposed that non-governmental firms not otherwise accorded a ration credit level would be given a level of 90 percent of base period use if they reported gasoline as an expense to the Internal Revenue Service or were engaged in religious, charitable, educational or other eleemosynary activities. Because gasoline is not always reported as a separate expense but rather is included usually in overall business expenses, FEA currently anticipates that the regulations on allocation levels in 10 CFR 211.103 would be amended to provide an allocation level of 90 percent of base period use (subject to an allocation fraction) for nongovernmental uses by firms not otherwise accorded an allocation level which include gasoline as an expense, whether or not separately identified, on schedules or forms filed with the Internal Revenue Service. Ninety percent of base period use (subject to an allocation fraction) would be the allocation level proposed for religious, charitable, educational or other eleomosynary activities not otherwise accorded an allocation level.

It is anticipated that at the time rationing would be put into effect the allocation levels currently in 10 CFR 211.103 for cargo, freight and mail hauling by truck, aviation ground support vehicles and equipment, industrial use, commercial use, governmental use and social service agency use would all be subsumed within the allocation level for all other non-governmental uses not otherwise accorded an allocation level (90 percent of base period use subject to an allocation fraction). Ration credit levels would be the same as the allocation levels without application of a fraction. As in the case of all other currently anticipated amendments to the allocation regulations, these amendments would be subject to public comment and further consideration by FEA before any of them were adopted.

Based on the revised definitions of end use activities described above, it is currently anticipated that the allocation levels in 10 CFR 211.103 would be amended at the time rationing is implemented to reflect the following

changes in order of precedence of end uses:

(1) *One hundred percent of current requirements (not subject to an allocation fraction).* Department of Defense use; Agricultural production; Emergency services; and Passenger transportation services.

(2) *One hundred percent of base period use (subject to an allocation fraction).* Telecommunication services; Sanitation services; and Energy production.

(3) *Ninety percent of base period use (subject to an allocation fraction).* All other government uses; All other uses by firms which include gasoline as an expense, whether or not separately identified, on schedules or forms filed with the Internal Revenue Service; and All other uses for religious, charitable, educational or other eleemosynary purposes not otherwise accorded a ration credit level.

Ration credit levels for all of the foregoing uses would be the same as the suggested allocation levels but without application of an allocation fraction.

The definitions of "firm" and "retail sales outlet", which are adopted in the rationing regulations issued today, would require amendment to conform to the definitions used in the Mandatory Petroleum Allocation Regulations. The definition of "firm" specifies that the various departments, agencies, offices and instrumentalities of the Federal Government are to be treated as separate firms since the Federal Government does not have centralized records with respect to gasoline consumption. The definition of "retail sales outlet" has been narrowed from the meaning originally proposed so as to make it clear that the entity to which that term applies is clearly understood to be the typical service station where sales of gasoline are made to owners of passenger cars and trucks. The term does not refer to rack sales by jobers or refiners to commercial accounts. To qualify as a retail sales outlet, the maximum amount of fuel, either gasoline or diesel fuel, which could be pumped into a vehicle's fuel tanks would be 130 gallons. The volume of 130 gallons was chosen because it was FEA's understanding that that is the maximum fuel tank size of any vehicle for which fuel would be purchased at a service station.

Alaska Natives. In response to a unique situation in the State of Alaska, the definition of the term "eligible individuals" has been modified to include Alaska Natives of at least age 16 who have no driver's permit but who use gasoline in snowmobiles, boats, or other vehicles or tools. Persons other than Alaska Natives who are similarly situated should apply to their local Rationing Board for assistance.

Invalidation of ration coupons. Several comments addressed the proposed provisions as to the invalidation of ration coupons. Under the regulation issued today, FEA could declare a particular series of ration coupons invalid. Invalidation would occur only where there is evidence of counterfeiting or other severe threat to the integrity of a particular ration coupon series. Invalidation would only occur after sufficient advance notification to the public. It is not anticipated that FEA would exercise this authority except in the most severe situation. FEA recognizes that the authority to invalidate a coupon series may affect the operation of the ration rights exchange market. This provision, however, which would be exercised only upon sufficient advance notice and only when the circumstances clearly require its exercise, is essential to protect ration coupon integrity. Since it is unlikely that invalidation would ever be required, it would have minimal impact on the ration rights exchange market.

Base period use for vehicle rental companies. There was considerable comment with respect to the special meaning of "base period use" for vehicle rental companies. As proposed, and adopted, the base period use for a vehicle rental company includes volumes of gasoline purchased or obtained by a vehicle rental company for its direct use but not including any volumes used by the vehicle rental company's customers. Concern was expressed that customers which have long-term leases with vehicle rental companies would not have available the information to determine their base period use for rented vehicles. It was also suggested that vehicle rental companies should be able to include in their base period use those volumes which were supplied to all customers who leased vehicles during the base period since the vehicle rental company supplies the gasoline as part of an overall service. FEA believes that vehicle rental companies should experience little difficulty in supplying base period consumption information to their customers. With this information, the lessee can apply, as would any other firm, to establish a base period use.

To the extent that a vehicle rental company supplies gasoline as part of its overall service to a customer, that vehicle rental company would be acting as a wholesale purchaser-reseller of gasoline. If a vehicle rental company wishes to acquire supplies from its supplier of gasoline to enable the rental company to continue this service activity, the rental company would have to open a redemption account and pay for its purchases like any other wholesale purchaser-reseller.

The regulations permit a vehicle rental company to require advance payment of ration rights by a lessee. For example, a vehicle rental company could require its lease customer to issue to the rental company on the first day of each month a ration credit check for the estimated amount of gasoline the lessee would use during a month. The vehicle rental company would then be able to deposit this ration credit check into its redemption account and still be able to issue a redemption check to its supplier within 10 days of receipt of the gasoline from its supplier. The vehicle rental company would obviously have to adjust the amount of the next succeeding ration credit check to be requested from the customer to reflect the difference in the estimated amount of gasoline for which it received a ration credit check and the actual volumes of gasoline supplied to the customer.

Base period use for firms with independent sales representatives. As proposed, the Rationing Contingency Plan permitted firms having commissioned direct sales representatives to include in their base period uses the volumes of gasoline used in the sales activities of the firms' commissioned direct sales representatives. On the basis of comments received, the regulations adopted today deal with independent sales representatives rather than commissioned sales representatives. The regulation has also been modified to define more precisely the method by which such firms may include their representatives' gasoline volumes in determining base period use. Those representatives associated with the firm during the base period may, if they themselves would otherwise qualify as firms, agree with the firm to have their base period uses included in the firm's base period use provided the representatives certify to the firm in writing the amount of their base period uses and that they have not and will not include such base period uses in any application to any other firm or to FEA.

New representatives may agree with the firm to have base period uses for their needs included in the firm's total base period use. The volume to be included for each such new representative would be the amount of gasoline equal to the average of all other such representatives' base period uses in the same period. Sales representatives who have entered into an agreement pursuant to the special regulation establishing base period use for firms having independent sales representatives would receive their ration rights directly from the firm.

A firm which includes existing and new independent sales representatives in the firm's base period use must submit a monthly report to FEA indicating the number of such representatives included in the firm's base period use, and the corresponding base period gasoline volumes, broken down by market area or other basis to be specified by FEA. The firm must also agree to make its records available at its headquarters office for FEA audit.

Discrimination between purchasers. The proposed regulations included a provision (proposed § 700.51) which would have prohibited a supplier from discriminating between purchasers. This provision has been eliminated since to some extent a supplier must discriminate in favor of its base period customers which are bulk purchasers of gasoline. In addition, FEA believes 10 CFR 210.62 already prohibits discrimination among purchasers of allocated products where such acts would circumvent the objectives of the EPAA. Therefore, the regulations adopted today do not contain an explicit provision against discrimination among purchasers.

A supplier must accept from a consumer valid ration coupons which are tendered as evidence of entitlement to redeem gasoline if they are offered at the

time of sale. A firm, including a supplier, may accept a ration credit check, but the burden of accepting a check for which there are insufficient ration credits is on the payee, who will be responsible for acquiring valid ration rights to cover any deficiency. Of course, except for a firm entitled to a ration credit level of 100 percent of current requirements, anyone who issues a ration credit check for which there are insufficient credits in the owner's ration credit account will be in violation of the Mandatory Gasoline and Diesel Fuel Rationing Regulations. See 10 CFR 500.42(e) and 500.43(d).

Procedural amendments. At the time rationing is implemented, in addition to the amendments to the Mandatory Petroleum Allocation Regulations already discussed, amendments would be proposed to the Administrative Procedures and Sanctions, 10 CFR Part 205, to provide the necessary procedures in Subpart Q of that part for the administration of those sections of the rationing program delegated to the various States and Local Rationing Boards. 10 CFR Part 205 would also be amended to subject violations of the rationing program to the various remedial provisions, including sanctions set forth in that part. Public comment would be sought when these amendments are proposed.

Impact on tourism. Representatives of the tourist industry were concerned that the Rationing Contingency Plan would have a severe and adverse impact upon their businesses. FEA agrees that, during a period in which rationing is in effect, it is likely that there would be substantial impact on the tourist industry. However, the cause for the disruption would not be the rationing program, but rather would be the lack of available gasoline and the need to structure that program so that priority uses receive equitable treatment.

FEA believes that the implementation of rationing during a period of shortage will in fact be of value to the tourist industry. Because the issuance of ration coupons and ration credits is determined by the actual supply of gasoline, holders of ration rights will be reasonably certain of finding available supplies as they travel throughout the United States. Thus, the fear of being unable to locate supplies during a trip to another section of the country will be greatly reduced since if one has ration rights, there should be available product wherever he travels. However, the rationing program cannot overcome the probable psychological impact of the shortage on most drivers who will understandably attempt to conserve their ration rights for periods of emergency or other unexpected needs, which in all likelihood will mean that most drivers will not engage in what they perceive to be non-essential activities. FEA emphasizes that this would be a consequence of a gasoline shortage and not of the Rationing Contingency Plan.

Hardship allotments for persons engaged in household moves. Several persons commented that there should be a provision for granting an allotment of ration rights from the State Hardship Reserves for persons who must make household moves. It was pointed out that without such a provision, a household would be forced to use the services of a commercial moving company or would have to absorb the cost of purchasing ration rights on the ration rights exchange market sufficient to meet the needs of the vehicle(s) involved in the move. Since many persons must move themselves because they cannot afford either of these alternatives, they would be effectively barred from moving. To avoid this undesirable result, provisions have been included for such households to seek additional ration rights from the State Hardship Reserves.

Adjustments to base period use. In the proposed regulations, there were provisions that firms entitled to a ration credit level would have their base period uses adjusted downward if their requirements for gasoline decreased by 25 percent as compared to volumes used during the base period. Since the regulations as adopted today tie ration credit levels to allocation levels, it is appropriate that the adjustment for decreased base period use be determined by the provisions of 10 CFR 211.13. Any increase in base period use accorded a firm pursuant to 10 CFR 211.13 would, of course, serve to increase the base period use for purposes of the Rationing Contingency Plan. It is anticipated that if rationing were implemented, FEA would propose to amend 10 CFR 211.13 to increase the threshold for unusual growth from ten percent to twenty percent.

Allocation entitlements for the construction industry would continue to be subject to the special provisions of 10 CFR 211.27. The base period use for allocation purposes which is established for a specific construction project will serve as the base period use for calculation of the ration credit allotment.

Current requirements. In the notice of proposed rulemaking, FEA sought comments with respect to retaining the concept of providing 100 percent of current requirements for selected end uses. Those persons addressing this issue supported the continuation of the concept for those uses of clearly high priority. Therefore, the concept of providing 100 percent of current requirements to certain end-uses will be continued.

To prevent an inequity in the operation of the ration rights exchange market, a new provision has been added to prevent firms entitled to a ration credit level of 100 percent of current requirements from overdrawing their ration credit accounts in excess of their true needs and selling the unneeded volume of ration rights on the ration rights exchange market. As adopted, the regulations provide that the FEA will deposit into the primary ration credit account of a firm entitled to a ration credit level of 100 percent of current requirements a volume of ration credits equal to 100 percent of such firm's base period use. If that firm needs less than 100 percent of its base period use, it, like any other firm, may sell the remaining ration rights on the ration rights exchange market. However, if a firm entitled to 100 percent of current requirements needs greater than 100 percent of its base period use, it may overdraw its account to the extent of its actual needs. The resulting overdraft will be recorded at the FEA Regional Processing Center at which time FEA will credit a supplemental ration credit allotment to the firm's account to offset the overdraft. In succeeding months, FEA will again allot to such firm 100 percent of its base period use, and if necessary, that firm may again overdraw its ration credit account without penalty so long as the overdraft is used to reach 100 percent of the current requirements of that firm. However, any firm which overdraws its ration credit account to meet 100 percent of its current requirements may not thereafter sell any of its ration rights in the ration rights exchange market. FEA will monitor those firms which overdraw their ration credit accounts to assure that such firms are not participating in the ration rights exchange market and need the additional ration rights to satisfy those activities accorded a ration credit level of 100 percent of current requirements.

State and Local Rationing Offices. Although there was some disagreement, there was general acceptance of the proposed regulations which set forth the roles of the State and Local Rationing Office. Therefore, the regulations adopted today are essentially the same as the regulations proposed. The criteria for delegation of authority to State Rationing Offices will not be addressed until the Congress approves the rationing plan. FEA will seek additional public participation in shaping the criteria for delegation of authority to State Rationing Offices after Congressional approval has been obtained for the remainder of the Rationing Contingency Plan.

Mid-period eligibility. It was suggested that there would be an inequity if an eligible individual with a valid driver's permit failed to obtain his ration coupons by the first day of rationing and thereafter was prohibited from obtaining ration coupons for that ration period. To permit flexibility to cope with such a situation, the regulations adopted today permit FEA to declare a grace period during which eligible individuals (including new eligible individuals) will be given additional time to acquire ration coupons for a ration period already in progress, as well as for succeeding ration periods.

Initial redemption account credit. As proposed, the rationing regulations did not address the issue of how a retail sales outlet or other supplier would pay its suppliers for initial deliveries of gasoline. The regulations adopted today provide that an initial redemption account credit would be entered into each redemption account when the redemption account is opened equal to the greater of (1) the amount of an average single delivery during the base year or (2) 10 days' average gasoline receipts during the base year. In addition, within 30 days after the start of rationing, each firm would report its initial inventory levels measured on the first day of rationing before

any sales or deliveries are made. On this report, each supplier would compute its adjusted redemption account credit which would be equal to a volume of an average single delivery received during the base year or ten days' average receipts in the base year, whichever is greater, plus 20 percent of total gasoline inventory capacity, minus inventory on the first day of rationing. If the result of this computation is less than zero, the adjusted redemption account credit would be equal to zero.

Special redemption account. FEA recognizes that there are some suppliers in remote regions in the United States (especially in Alaska) which are subject to infrequent supply schedules or which are in areas subject to highly seasonal demand. These suppliers may apply to FEA for a special redemption account credit if the adjusted redemption account credit computed in accordance with the immediately preceding paragraph is insufficient to cover actual gasoline receipts less the amount of ration credits and redemption checks which are received or expected to be received from customers during the first 20 days of the rationing program.

Sales by retail sales outlets to customers not having ration rights. There was some confusion over the purpose of the provision in the proposed regulations which permits a retail sales outlet to sell gasoline to customers without requiring them to transfer ration rights at the time of sale. The purpose of the provision is to permit a retail sales outlet at its option to make sales to customers without ration rights on the assumption that the retail sales outlet will be able through purchase of ration rights from the ration rights exchange market to cover those transactions. The retail sales outlet must obtain the additional ration rights within 10 days of making a sale to a customer who does not have ration rights. The purpose of the 10-day period is not to permit the customer who purchases from the retail sales outlet to go out and find ration rights and then present them to the retail sales outlet. The customer who purchases from a retail sales outlet without transferring ration rights is under no obligation to return ration rights. Presumably such a customer would have paid the retailer the value of the coupons required for the sale in addition to the cost of the gasoline purchased. The obligation is on the operator of the retail sales outlet to either collect ration rights at the time of sale or to use the ration rights exchange market and obtain the necessary ration rights within 10 days of having made the sale.

Excess acquisition of product. Several suppliers commented that in many cases a wholesale purchaser-reseller picks up product directly from its supplier's storage area without any monitoring by the supplier's personnel. This arrangement permits a customer to overdraw his entitlement in violation of the Mandatory Petroleum Allocation Regulations. It was suggested that liability for such excess acquisitions be placed on the customer and that the supplier be exonerated from any such violations. Existing regulations (10 CFR 211.25) permit suppliers and wholesale purchasers to agree between and among themselves to either borrow from future allocations or defer current allocations, or both, on a volume for volume basis within the total allocations for one calendar year as long as such arrangements do not result in an involuntary reduction in allocations to other wholesale purchasers. FEA does not believe it would be in the best interests of the Mandatory Petroleum Allocation Program to shift responsibility for adherence solely to the purchaser when the obligations should fall equally on seller and purchaser to comply with the regulatory program. If the supplier is concerned that its customers will pick up excess supplies of product, it must exercise prudent judgment and station personnel at its storage area to prevent such violations.

Precedence of delivery. Section 203(a)(1)(B) of the EPCA requires that the gasoline and diesel fuel rationing contingency plan provide, among other things, that there be a system whereby end users may obtain gasoline or diesel fuel in precedence to other classes of end users not similarly situated. In the proposals for the Rationing Contingency Plan, a provision to effectuate this provision of the EPCA was not included. The regulations adopted today contain a provision which requires that suppliers who have customers who would be accorded priority one status under 10 CFR 211.10 (c) of the Mandatory Petroleum Allocation Regulations must arrange mutually acceptable delivery schedules with those customers before making commitments for deliveries to its other customers who are not in priority one status. The adoption of this provision does not preclude States from adopting complementary plans to augment this regulation. See FEA Ruling 1974-6 (39 FR 6111, February 19, 1974).

Restrictions on endorsements. In the proposed regulations there was a total prohibition against endorsement of ration credit checks to third parties. To permit greater flexibility in the rationing program, the regulations adopted today permit endorsement of ration credit checks by the payee to designated ration coupon issuance points when the payee wishes to exchange a ration credit check for ration coupons. Endorsements to other third parties, however, remain prohibited.

Ration credit levels for diesel fuels. As originally proposed, the ration credit levels for those firms which purchase diesel fuel at retail sales outlets were to be equal to the allocation entitlements specified in the allocation regulations for middle distillates. As proposed, the regulations would have required that the ration credit level incorporate the concept of an allocation fraction. Since the FEA would not be aware of the allocation fraction being applied by a particular supplier until after ration credits were allotted each month, the regulations adopted today with respect to ration credit levels for purchasing diesel fuel at retail sales outlets parallel the gasoline rationing program in specifying that the ration credit level for a firm entitled to a ration credit level shall be equal to the volume of diesel fuel to which such firm is entitled under the allocation regulations prior to the application of any allocation fraction.

Banking service fees and secondary ration credit accounts. In its proposed regulations, FEA had included a provision for the collection of fees for opening and maintaining ration bank accounts. The principal purpose of these fees would have been to discourage the indiscriminate opening and excessive use of ration bank accounts. In light of comments received from representatives of the banking industry, FEA has decided to eliminate these fees altogether.

To prevent the excessive use of secondary ration credit accounts the regulations issued today include a provision that a minimum initial deposit of 300 gallons of ration rights will be required to open a secondary ration credit account.

These changes will simplify the banking system required for the rationing program while maintaining a barrier to improper use of ration bank accounts. Participating banks like other program participants will be compensated by FEA for their rationing activities from the per gallon fees collected by FEA on each gallon of gasoline sold.

Environmental Assessment

By notice issued August 27, 1976 (41 FR 36823, September 1, 1976) FEA advised interested persons that it had completed an environmental assessment of the Rationing Contingency Plan. Copies of the environmental assessment are available for review and comment as indicated in the August 27, 1976 notice.

Economic Analysis and Inflationary Impact

As required by section 201(f) of the EPCA, an economic analysis has been prepared with respect to the Rationing Contingency Plan. Copies of this economic analysis are available for public review in the FEA Freedom of Information Office, Room 2107, 1200 Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

As required by Executive Order 11821 and Office of Management and Budget Circular A-107, the inflationary impact of the Rationing Contingency Plan has been considered.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended Pub. L. 93-511, Pub. L. 94-99, Pub. L. 93-133 and Pub. L. 94-163; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163; E.O. 11790 (39 FR 23185); E.O. 11912 (41 FR 15825).)

In consideration of the foregoing, Chapter II of Title 10 of the Code of Federal Regulations is amended to add a new Part 500, as set forth below, subject to the approval by a resolution by each House of Congress in accordance with the

procedures specified in in section 552 of the Energy Policy and Conservation Act (Pub. L. 94–163), said Part 500 only to become effective as provided in section 201(b) of that Act.

Issued in Washington, D.C., January 13, 1977.

DAVID G. WILSON,
Acting General Counsel.

10 CFR Chapter II is amended by adding Part 500, to read as follows:

Subpart A—General Provisions

Sec.
500.1 Scope.
500.2 Relationship of subparts.
500.3 General definitions.
500.4 Ration coupons as obligations of the United States, crimes and offenses.

Subpart B—Rationing of Gasoline

500.21 General.
500.22 Ration rights.
500.23 Validity of ration rights.
500.24 Issuance of ration rights to eligible individuals.
500.25 Issuance of ration rights to firms entitled to a ration credit level.
500.26 Calculations.
500.27 Recordkeeping requirements.

Subpart C—Redemption, Validation of Ration Rights, Scrip and Precedence of Delivery

500.31 General.
500.32 Invalidated ration rights.
500.33 Cancelled ration rights.
500.34 Redeemed ration rights.
500.35 Restriction on endorsements.
500.36 Scrip.
500.37 Precedence of delivery.

Subpart D—Ration Credit and Redemption Accounts

500.41 General.
500.42 Primary ration credit accounts.
500.43 Secondary ration credit accounts.
500.44 Redemption accounts.
500.45 Recordkeeping requirements and reports.
500.46 Redemption account credits.

Subpart E—National Ration Reserve

Sec.
500.51 National Ration Reserve.

Subpart F—State Rationing Offices and Local Rationing Boards

500.61 State Rationing Office.
500.62 Local Rationing Boards.
500.63 Hardship applications.
500.64 Selection of Local Rationing Panel and Local Rationing Board Manager.
500.65 State Hardship Reserves.
500.66 Timeliness.
500.67 Appeals.

Subpart G—Diesel Fuel Rationing

500.71 General.
500.72 Issuance of ration rights.
500.73 Redemption.

Subpart A—General Provisions

§ 500.1 Scope.

(a) This part applies to the end-use rationing of gasoline and diesel fuel produced in or imported into the United States.

(b) *Effective date.* The subparts of this part shall become effective severally or in toto on a date or dates to be specified by the Federal Energy Administration and published in the FEDERAL REGISTER, subject to the provisions of section 201 (b) and (c) of the Energy Policy and Conservation Act (Pub. L. 94–163).

(c) *Relationship to other parts.* Unless otherwise specified, the provisions of parts 205, 210 and 211 of this chapter shall apply to this part. The pricing provisions applicable to this part are provided in Part 212 of this chapter.

§ 500.2 Relationship of subparts.

Unless otherwise specified in a particular subpart, the general provisions set forth in this subpart apply to the mandatory rationing of gasoline and diesel fuel.

§ 500.3 General definitions.

For purposes of this part—

"Allotment" means the value in gallons of gasoline or diesel fuel of the ration rights issued to an eligible individual or any firm.

"Base period" means the calendar month in the base year corresponding to the current calendar month.

"Base period use" means base period use as defined in § 500.25(c).

"Base year" means a calendar year to be determined by FEA and published in the FEDERAL REGISTER.

"Bulk purchaser" means bulk purchaser as defined in § 211.102 of this chapter.

"Current requirements" means the amount of gasoline or diesel fuel needed by a firm to meet its present supply requirements for a particular use of those products, but does not include any amounts which the firm (a) purchases or obtains for resale, (b) accumulates as an inventory in excess of that firm's customary inventory maintained according to its normal business practices, or (c) uses in excess of the supply necessary to meet present supply requirements as constrained by the implementation of the energy conservation program required in § 211.21 of this chapter.

"Diesel fuel" means No. 2–D diesel fuel as defined in American Society of Testing and Materials (ASTM) D975–71 and No. 1–D diesel fuel as defined in ASTM D975–71. Excluded from the definition is No. 4–D diesel fuel as defined in ASTM D975–71.

"Eligible individual" means (a) a natural person having a valid motor vehicle operator's permit, other than a learner's permit, issued by a State in his or her name, (b) an Indian residing on a reservation under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior who has no State driver's permit but who is permitted by the Bureau of Indian Affairs to drive a motor vehicle on the reservation, (c) an Alaska Native of age sixteen (16) or over who has no driver's permit but who uses gasoline in a snowmobile, boat, or other vehicle or tool, or (d) any other natural person designated as an eligible individual by FEA.

"End-user" means end-user as defined in § 211.51 of this chapter.

"FEA" means the Federal Energy Administration or its delegate.

"Firm" means any association, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including a charitable, educational, or other eleemosynary institution, State and local governments and the various departments, agencies, offices, corporations and other instrumentalities of the Federal Government. The FEA may, in regulations and forms issued in this part, treat as a firm:

(a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, (b) a parent and its consolidated entities, (c) an unconsolidated entity, or (d) any part of a firm.

"Gasoline" means motor gasoline as defined in § 211.51 of Part 211 of this chapter excluding, however, aviation fuels as defined in § 211.142 of this chapter.

"Individual" means a natural person.

"Local Rationing Board" means the group consisting of the Local Rationing Panel, the Local Rationing Board Manager and the Local Rationing Board Staff.

"National Ration Reserve" means the ration rights reserved by FEA for each ration period for distribution to meet special or urgent needs during that ration period pursuant to Subpart E of this part.

"Ration credit level" means ration credit level as defined in § 500.25(d).

"Ration period" means the period from the date on which one ration coupon series becomes valid to the date the immediately following ration coupon series becomes valid.

"Ration rights" means ration coupons and ration credits made available pursuant to Subparts B, E, F, and G which shall be evidence of an eligible individual's or firm's right to purchase specified volumes of gasoline and diesel fuel.

"Rationed product" means gasoline distributed pursuant to Subparts B and F of this part and diesel fuel distributed pursuant to Subparts F and G.

"Retail sales outlet" means a site on which a supplier maintains an on-going business of selling any rationed product to any ultimate consumer, provided that the major activity of that supplier is to supply during the course of any single transaction one hundred thirty (130) gallons or less of a rationed product into supply tanks on a vehicle for use as fuel for that vehicle.

"Scrip" means any certificate, writing or token which represents less than five (5) gallons of a rationed product, and which a retail sales outlet may offer to any firm (including an individual) which has accepted less rationed product than the gallon amount of the ration rights surrendered to the retail sales outlet.

"State" means any one of the fifty States, the District of Columbia, Puerto Rico or any territory or possession of the United States.

"State Rationing Office" means the office established by the Chief Executive of each State to carry out the authorities delegated to that office by FEA pursuant to Subpart F of this part.

"State Hardship Reserves" means the ration rights provided to the State Rationing Offices by FEA for distribution within the States to meet the hardship needs of firms (including individuals)

having needs for rationed products in addition to the amounts, if any, allotted to such firms pursuant to Subparts B and G.

"Supplier" means any firm or any part or subsidiary of any firm other than the Department of Defense which currently, during the base period, or during any period between the base period and the present, supplies, sells, transfers or otherwise furnishes (as by consignment) any allocated or rationed product to wholesale purchasers or end-users, including, but not limited to refiners, importers, resellers, jobbers, and retailers.

"Wholesale purchaser" means wholesale purchaser as defined in § 211.51 of this chapter.

"Wholesale purchaser - consumer" means wholesale purchaser-consumer as defined in § 211.51 of this chapter.

"Wholesale purchaser-reseller" means wholesale purchaser-reseller as defined in § 211.51 of this chapter.

"Vehicle rental company" means a firm which rents or leases motor vehicles to other firms (including individuals) who are bailees of the motor vehicles for the period of the rental or lease.

§ 500.4 Ration coupons as obligations of the United States; crimes and offenses.

(a) Ration coupons are an obligation of the United States within the meaning of 18 U.S.C. 8. The provisions of title 18 of the United States Code, "Crimes and Criminal Procedure," relative to counterfeiting and alteration of obligations of the United States and the uttering, dealing in, etc., of counterfeit obligations of the United States are applicable to ration coupons.

(b) Any firm having custody, care and control of ration coupons shall at all times, in receiving, storing, transmitting, or otherwise handling ration coupons, take all precautions necessary to avoid acceptance, transfer, negotiation, or use of spurious, altered, or counterfeit ration coupons and to avoid any unauthorized transfer, negotiation, or use of ration coupons. Such firms shall also safeguard ration coupons from theft, embezzlement, loss, damage, or destruction.

Subpart B—Rationing of Gasoline

§ 500.21 General.

(a) For the duration of the Mandatory Gasoline Rationing Program, no supplier shall supply and no firm shall obtain gasoline from any supplier without transferring to the supplier within ten (10) days valid ration rights or redemption checks for redemption by the supplier equal on a gallon basis to the amount of gasoline transferred, except that any retail sales outlet may transfer gasoline to any firm (including an individual) other than a supplier without obtaining and redeeming ration rights from such firm if the retail sales outlet agrees to obtain and redeem the appropriate amount of ration rights from any source within ten (10) days of the transaction.

(b) For purposes of this subpart, "ration rights" means ration coupons and ration credits issued pursuant to this subpart.

§ 500.22 Ration rights.

(a) For each ration period, FEA shall issue ration rights equal to the estimated total available supply of gasoline for that ration period, as follows:

(1) One (1) percent shall be reserved for distribution pursuant to Subpart E (the National Ration Reserve).

(2) Three (3) percent shall be reserved for distribution to the States based on population and other relevant factors pursuant to Subpart F.

(3) FEA shall issue ration rights to all firms, but not eligible individuals, each calendar month pursuant to § 500.25 of this subpart. The total amount of ration rights issued to firms in a ration period is determined by adding together the pro-rata shares of all firms' allotments for calendar months which fall wholly or partially within the ration period.

(4) The remaining ration rights not issued according to paragraphs (a) (1) through (3) of this section will be issued to eligible individuals pursuant to § 500.24.

(b) Ration rights issued to firms will be distributed in the form of ration credits deposited into a primary ration credit account for each firm. Ration rights issued to eligible individuals will be distributed in the form of ration coupons. Ration credits may be used directly for gasoline or exchanged for coupons at coupon issuance points designated by FEA. Valid ration coupons may be deposited in ration credit accounts, and be subsequently withdrawn as ration credits.

§ 500.23 Validity of ration rights.

(a) *Ration credits.* Unless withdrawn by FEA, ration credits are valid from the date of issuance by FEA through the end of the Mandatory Gasoline Rationing Program. Ration credits may be accumulated in ration credit accounts or may be withdrawn at any time after their issuance.

(b) *Coupons.* Unless declared invalid by FEA or redeemed or cancelled pursuant to Subparts C and D of this part, ration coupons of any series shall be valid from the first day of the ration period for which they are issued through the end of the Mandatory Gasoline Rationing Program even though the ration period for which the ration coupons were issued has ended. FEA may by advance public notice in the FEDERAL REGISTER declare any series or any portion of a series of ration coupons to be invalid. By notice to any holder of particular ration coupons, FEA may declare any ration coupons held by that holder to be invalid and require that such invalid ration rights be immediately surrendered to FEA.

§ 500.24 Issuance of ration rights to eligible individuals.

(a) *Ration periods.* (1) A ration period shall be designated by FEA at least ten (10) days prior to the first day of that ration period by notice published in the FEDERAL REGISTER. A notice designating a ration period may designate more than one ration period and shall establish the term of each ration period designated in the notice.

(2) FEA may by notice published in the FEDERAL REGISTER advance the commencement date of a previously designated ration period.

(b) *Eligible individual's ration allotment.* (1) For each ration period, FEA shall distribute ration rights to eligible individuals equal to the difference between the total ration rights issued for that ration period minus the ration rights to be distributed pursuant to Subparts E and F and § 500.25 of this subpart.

(2) Each eligible individual shall be entitled to receive ration rights as determined pursuant to § 500.26. FEA shall provide notice of the number of ration rights to be issued each eligible individual for a ration period at least ten (10) days prior to the commencement of the ration period.

(c) *Ration coupons.* A ration coupon shall be redeemable for five (5) gallons of gasoline, unless pursuant to advance notice in the FEDERAL REGISTER FEA orders that a ration coupon shall be redeemable for a different volume of gasoline.

(d) *Distribution of ration rights to eligible individuals.* (1) Each eligible individual may obtain his or her ration allotment at an issuance point designated by FEA. For the first three (3) ration periods, an eligible individual will be required to fill out an application form and present his or her State driver's license. Unless otherwise provided by notice published in the FEDERAL REGISTER, for ration periods subsequent to the first three (3) ration periods an eligible individual will be issued his or her ration allotment for three (3) ration periods upon surrender of an authorization card, as provided by paragraph (e) of this section, issued to that eligible individual which is valid for those three (3) ration periods. FEA by notice will designate the day or days on which eligible individuals may apply for their ration allotments. Upon an eligible individual's presentation of a valid authorization card and delivery of his or her ration allotment for one or more designated ration periods, the eligible individual's authorization card for the series of ration rights issued shall be retained and marked or cancelled at the issuance point.

(2) The procedures of paragraph (d) (1) of this section may be followed by agents of eligible individuals unable to apply personally for ration rights. Such agents must present documents authorizing the agent to act on behalf of a particular eligible individual signed by the eligible individual in accordance with FEA forms and instructions.

(3) Indians residing on reservations under the jurisdiction of the Bureau of Indian Affairs may apply to the Bureau of Indian Affairs for their allotments. Alaska Natives may apply to the State agency for their allotments.

(4) Except as provided in paragraph (d) (5) of this section, any eligible individual who applies for a ration allot-

ment after the start of a ration period will receive no allotment for the ration period in progress, but may be given allotments for the next subsequent ration period or periods.

(5) Notwithstanding the provisions of paragraph (d)(4) of this section, FEA may provide additional time at the beginning of any ration period during which any eligible individual may apply for a ration allotment for that ration period.

(e) *Authorization cards.* (1) Any person who is an eligible individual shall be provided with valid authorization cards by the State agency authorized by FEA to issue and distribute authorization cards to licensed drivers holding driver's licenses from that State.

(2) Each eligible individual shall be issued one authorization card for designated ration periods by the appropriate State agency in accordance with notice given by FEA. No eligible individual shall accept or use more than one authorization card for any designated ration period.

(3) Appropriate State agencies shall be authorized by FEA to issue and distribute authorization cards.

(4) State agencies which enter into agreements with FEA to issue and distribute authorization cards which have been approved by FEA in writing shall do so in accordance with forms and instructions issued by FEA.

(5) *Records and reports.* Each State agency authorized by FEA to issue authorization cards shall keep records and submit such reports and other information as FEA may from time to time require.

(6) *Retention of records.* Each State agency shall retain all records and reports submitted to it for possible FEA audit for a period of three (3) years.

(7) *Lost, stolen, or misplaced authorization cards.* Any eligible individual whose authorization card is lost, stolen or misplaced shall immediately report such fact to the State agency. The State agency may issue to such eligible individual a new authorization card in accordance with procedures developed by the State agency and approved in writing by FEA. Within five (5) days of notification, the State agency must transmit the name and number of the lost, stolen, or misplaced authorization card to FEA.

(8) *Appeals concerning authorization cards.* Any individual aggrieved by any act or omission of the State agency with respect to any authorization card may file an appeal in accordance with the provisions of Subpart Q of Part 205 of this chapter.

(9) Each State agency shall establish procedures approved by FEA to ensure timely distribution of authorization cards to eligible individuals.

§ 500.25 Issuance of ration rights to firms entitled to a ration credit level.

(a) For each calendar month, FEA shall issue and distribute ration credits equal to the sum of the ration credit allotments of all firms entitled to a ration credit level and which have primary ration credit accounts with FEA.

(b) *Allotments.* (1) On the first day of each calendar month a firm entitled to a ration credit level of one hundred (100) percent of current requirements and with a primary ration credit account shall receive from FEA an initial allotment equal to one hundred (100) percent of the firm's base period use. If a firm's current requirements exceed one hundred (100) percent of its base period use, the provisions of § 500.42(f) shall determine the manner in which supplementary allotments shall be made to meet the firm's current requirements.

(2) On the first day of each calendar month a firm entitled to a ration credit level other than one hundred (100) percent of current requirements and with a primary ration credit account shall receive from FEA an allotment equal to the firm's ration credit level multiplied by the firm's base period use.

(c) *Base period use.* (1) Except as otherwise specified in paragraphs (c)(2) and (3) of this section, base period use means base period volume or adjusted base period volume, as appropriate. A wholesale purchaser-consumer's or end-user's base period use is the volume of gasoline purchased or obtained in a base period for a use for which there is a ration credit level, including gasoline used by employees or agents of such a wholesale purchaser-consumer or end-user, provided that the gasoline was used for activities authorized as within the scope of the business activities of that wholesale purchaser-consumer or end-user and the employees or agents were reimbursed for the cost of the gasoline they obtained. In the case of a new wholesale purchaser-consumer or new end-user, base period use means the volume assigned by FEA. Suppliers do not have a base period use for the purposes of this subpart except when acting as a wholesale purchaser-consumer or new end-user, base period use means the volume.

(2) *Vehicle rental companies.* For vehicle rental companies, base period use means the base period volume or adjusted base period volume, as appropriate, used by employees or agents of the firm on firm business. Volumes of gasoline used by customers of the vehicle rental company are not included in the firm's base period use. In those instances where a vehicle rental company has not distinguished between gasoline used by customers and gasoline used by employees and agents of the firm, reasonable estimates based on actual mileage records may be used in establishing the firm's base period use. For the purposes of this part, if a vehicle rental company supplies gasoline for a customer's use, that vehicle rental company shall be deemed to be a wholesale purchaser-reseller for such volumes of gasoline supplied.

(3) *Independent sales representatives.* (i) Any firm using independent sales representatives who are not employees of the firm may include the base period use of such representatives in the firm's base period use provided (A) that each such representative would otherwise qualify as a firm for the purposes of receiving an allotment from FEA, (B) that each such representative certifies the amount of his or her base period use, and that he or she has not and will not include such base period use in any application to any other firm or to FEA, and (C) that the firm agrees to provide each such representative with an amount of ration rights equal to the amount such representative would have received from FEA by separate application for uses connected with carrying out the firm's activities.

(ii) Subject to FEA approval, a firm may also include in its base period use for each new such representative who has no base period use an amount of gasoline equal to the average of all other such representatives' base period uses in the same period.

(iii) Any firm which includes in its base period use the volumes permitted in paragraphs (c)(3) (i) or (ii) of this section must attach to its application and submit monthly thereafter a certification showing the current number of such representatives by market area or other basis established by FEA, and the corresponding volumes associated with such representatives which are included in the firm's base period use.

Each such firm must also maintain records of the names, addresses, and telephone numbers of all such representatives, and must make these records available to FEA upon request by FEA at the firm's principal office address shown on its application form. FEA or its representatives may perform audits of these records to verify their accuracy.

(d) *Ration credit level.* A ration credit level is the percentage of current requirements or of base period use of an end-user or wholesale purchaser-consumer, whether or not a bulk purchaser as defined in § 211.102 of this chapter, that FEA shall use in computing the allotment for such firms each calendar month. The ration credit levels for gasoline shall be the same as the allocation levels for motor gasoline specified in § 211.103 of this chapter without application of an allocation fraction.

(e) *Basis of entitlement to ration credits.* A firm entitled to a ration credit level shall receive ration credits based on its conduct of an ongoing business or maintenance of an established end-use for which there is a ration credit level.

(f) *End-users and wholesale purchaser-consumers as firms.* For purposes of defining an end-user or wholesale purchaser-consumer in this part, a firm shall mean all parts of the parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls and which act as ultimate consumers, including all sites, storage tanks and other facilities or entities of the end-user or wholesale purchaser-consumer that use or store gasoline.

(g) *Loss of ration credit entitlement for discontinued activities.* A firm shall not be eligible to receive ration rights based upon discontinued activities and no firm shall accept or use ration rights issued or distributed to that firm or any other firm based upon discontinued activities.

(h) *New wholesale purchaser-consumers and end-users.* Wholesale purchaser-consumers and end-users which did not purchase gasoline during any base period may apply to FEA for assignment of a base period use pursuant to this subpart and to § 211.12(e) of this chapter. In determining base period use for a firm which was not in operation during the base year, FEA shall among other things review the firm's gasoline purchases preceding the firm's application to FEA, the types of vehicles used, and the number of miles driven. FEA will also consider typical consumption patterns of similar firms.

(i) *Adjustments to base period use.* Any firm entitled to a ration credit level which receives an adjustment to its base period use pursuant to § 211.13 and Subpart D of this chapter shall receive an identical adjustment to its base period use for purposes of this part.

(j) *Distribution of ration rights to firms.* (1) Each firm other than a Federal department, agency, office, or other instrumentality, may submit an application for a ration allotment and a primary ration credit account at a participating bank or other initial processing point designated by FEA, during a period to be designated by FEA.

(2) Each Federal department, agency, office or other instrumentality may submit an application for a ration allotment and a primary ration credit account to the FEA National Office.

(3) Following the acceptance and approval of its application by FEA, each firm will receive ration checking materials, forms and instructions to enable it to draw on its primary ration credit account in accordance with Subpart D of this chapter.

§ 500.26 Calculations.

(a) This section establishes the formulae for calculating a firm's ration credit allotments, the total available supply, the adjusting term, and the length of the ration period. A "computation period" is used in these calculations initially, since the precise length of the ration period is not known until the final calculation is made. The first computation period will be 30 days; once rationing has begun the computation period will have the same number of days as the immediately preceding ration period.

(b) For purposes of paragraphs (c)–(i) of this section, the following symbols have the following meanings:

Symbol	Units	Meaning
REF	Gallons	Projected refinery output of gasoline during computation period.
IMP	do	Projected imports of gasoline during computation period.
EXP	do	Projected exports of gasoline during computation period.
LOS	do	Projected losses of gasoline from spillage, evaporation, and casualty losses during computation period.
NEI	Persons	Number of eligible individuals (latest count from State agencies and Bureau of Indian Affairs).
BM,V	Gallons	The base period use of a firm in month *i*.
DM,	Days	Number of days in calendar month *i*.
DM,C	do	Number of days in calendar month *i* which fall within the computation period.
INV	Gallons	Amount of desired gasoline inventory drawdown during computation period from industry and any Government-held (strategic) inventories.
NRR	do	Amount of allotment to be reserved for use in the National Ration Reserve for the upcoming ration period.
ΣSHR	do	Amount of allotment to be provided for the State Hardship Reserves for the upcoming ration period.
CP	Days	Length of the computation period.
RA	Gallons per individual per ration period.	The basic allotment for each eligible individual in a ration period (equal to *NCU*×*VCU*).
NCU	Coupons per ration period	Number of coupons to be given to each eligible individual in a ration period.
VCU	Gallons per coupon	Gallon value of each coupon.
RCL	Fraction expressed as a decimal.	Ration credit level for a firm (90 pct = 0.9; 100 pct = 1.0)
TAS	Gallons	The total available supply of gasoline to be rationed during a ration period.
ADJ	do	An adjusting term representing errors, roundings, authorized overdrafts, and returned allotments in previous periods.
NAS	do	The net available supply of gasoline during a computation period, equal to the TAS minus amounts necessary for the National Ration Reserve and the State Hardship Reserves.
NDAS	do	The net daily available supply equal to the NAS divided by the number of days in the computation period.
PA_i	do	The allotment for the firm in month *i*.
FD_{ap}	do	The weighted average daily allotment for a firm in the computation period.
ΣFD_{ap}	do	The total weighted average daily allotment for all firms in the computation period (computed by adding FD_{ap} for all firms).
RP	Days	The length of a ration period.

(c) *Total available supply (TAS).* The total available supply (TAS) of gasoline which can be sold during the computation period is determined from data available on the refining and importing of gasoline, adjusted for exports, losses, and inventory changes.

$$TAS = REF + IMP - EXP - LOS + ADJ + INV$$

(d) *Adjusting term (ADJ).* The adjusting term is the sum of adjustments required as a result of errors, roundings, authorized overdrafts, and unclaimed allotments from previous ration periods.

ADJ equals $\Sigma(TAS_{\text{Current est}} - TAS_{\text{prior est}})$ for all previous ration periods,
plus UNCLAIMED ALLOTMENTS from individuals, especially those with multiple licenses,
plus RETURNED ALLOTMENTS from firms with reduced or eliminated activities,
plus ROUNDING ADJUSTMENT in computing the prior ration period, where ROUNDING ADJUSTMENT equals

$$\frac{RP\ \text{Rounded} - RP}{RP} \times BA \times NEI$$

minus Authorized overdrafts by firms entitled to ration credit level of one hundred (100) percent of current requirements.

(e) *Net available supply (NAS).* The net available supply is computed by subtracting from the TAS the allotments necessary to replenish or increase the National Ration Reserve and the State Hardship Reserves.

$$NAS = TAS - NRR - \Sigma SHR$$

(f) *Net daily available supply (NDAS).* The net daily available supply (NDAS) is computed by dividing the NAS by the number of days in the computation period.

$$NDAS = \frac{NAS}{CP}$$

(g) *Allotment for each firm* (FA_i). The monthly allotment for each firm is determined by multiplying the firm's base period use times the appropriate ration credit level.

$$FA_i = BM_i V \times RCL$$

(h) *Average daily allotment for each firm* (FD_{cp}). The average daily allotment for each firm during a computation period is calculated using a weighted average to take into account the fact that a computation period will usually overlap two calendar months.

$$FD_{cp} = \left[\frac{FA_1}{DM_1} \times \frac{DM_1 C}{CP}\right] + \left[\frac{FA_2}{DM_2} \times \frac{DM_2 C}{CP}\right]$$

(i) *Length of ration period.* The length of the ration period is determined as follows:

$$RP = \frac{BA \times NEI}{NDAS - \Sigma FD_{cp}}$$

The ration period length computed above will be rounded up to the nearest whole day.

§ 500.27 Recordkeeping requirements.

All firms must maintain at their principal business address records on gasoline purchased, supplied, or obtained during each base period and during each month the Mandatory Gasoline Rationing Program is in effect. The records shall be subject to FEA audit and must be retained for three (3) years after the termination of the Mandatory Gasoline Rationing Program.

Subpart C—Redemption, Invalidation of Ration Rights, Scrip and Precedence of Delivery

§ 500.31 General.

(a) Subject to the provisions of § 500.42 (f), ration rights may be freely transferred for or without consideration provided that such ration rights have not been redeemed, cancelled or invalidated by FEA.

(b) No supplier (including a retail sales outlet) shall require any purchaser to purchase ration rights from any firm (including itself) as a condition of transferring gasoline.

(c) For purposes of this subpart, "ration rights" means ration coupons or ration credits issued pursuant to Subpart B of this part.

(d) No supplier, including a retail sales outlet, may refuse to accept valid ration coupons offered as evidence of entitlement to purchase gasoline if such coupons are tendered by a wholesale purchaser-consumer or end-user at the time of sale. A supplier may accept ration credit checks from a wholesale purchaser-consumer or end-user as evidence of entitlement to purchase gasoline, but if there are insufficient ration credits in the ration credit account on which the check is drawn, it shall be the payee's responsibility to secure valid ration rights to cover the deficiency.

§ 500.32 Invalidated ration rights.

Ration rights which have been invalidated by FEA are not transferable for value and shall be surrendered to FEA.

§ 500.33 Cancelled ration rights.

(a) Ration rights which have not been redeemed for gasoline may be deposited into a ration credit account. Such ration rights are cancelled when deposited.

(b) An owner of a ration credit account shall endorse ration rights to be deposited into that ration credit account with the account owner's name and account number, and shall indelibly mark ration rights with the legend "cancelled" at the time of deposit.

§ 500.34 Redeemed ration rights.

(a) Ration rights and redemption checks shall be redeemed by exchanging them for gasoline and shall be surrendered as provided by these regulations.

(b) A supplier (including a retail sales outlet) which accepts ration rights or redemption checks in exchange for gasoline shall redeem such ration rights and redemption checks by indelibly marking them with the supplier's name, its redemption account number and the legend "redeemed".

(c) A supplier (including a retail sales outlet) shall deposit redeemed ration coupons, ration credit checks and redemption checks in its redemption account.

(d) No supplier (including a retail sales outlet) shall accept from any firm ration coupons, ration credit checks or redemption checks marked "redeemed," "cancelled," or "specimen." No supplier shall deposit in its redemption account any redeemed ration rights or redemption checks which the supplier did not redeem for gasoline.

§ 500.35 Restriction on endorsements.

Except when surrendered for ration coupons by the payee at ration coupon issuance points, ration credit checks must be deposited by the payee and may not be endorsed to third parties.

§ 500.36 Scrip.

A retail sales outlet may issue scrip for any unused value on a ration coupon or ration credit check transferred for a purchase of gasoline. The type and form of the scrip are discretionary with the issuer. The scrip must be redeemed upon demand by the retail sales outlet which issued it. Retail sales outlets may agree among themselves to accept scrip issued by other retail sales outlets.

§ 500.37 Precedence of delivery.

Prior to agreeing to any other delivery schedules, suppliers shall first establish mutually satisfactory delivery schedules with all their wholesale purchaser-resellers and bulk purchasers entitled to the first priority level of allocation pursuant to § 211.10(c)(1) of this chapter.

Subpart D—Ration Credit and Redemption Accounts

§ 500.41 General.

(a) FEA shall establish, maintain and administer primary ration credit accounts, secondary ration credit accounts, redemption accounts and any other accounts required by FEA at FEA Regional Processing Centers.

(b) FEA may authorize certain firms to act as participating banks to accept applications to establish primary ration credit accounts, secondary ration credit accounts, redemption accounts and any other accounts required by FEA, to accept deposits into such accounts and to perform such other duties and services as FEA may authorize.

(c) For purposes of this subpart, "ration rights" means ration coupons or ration credits issued pursuant to Subpart B of this part.

(d) Ration credit checks drawn on either primary or secondary ration credit accounts and redemption checks shall only be issued on forms approved and distributed by FEA.

§ 500.42 Primary ration credit accounts.

(a) Upon application by any firm (including an individual) entitled to a ration credit level, and in accordance with forms and instructions to be issued by FEA, FEA shall establish a primary ration credit account for such firm.

(b) On the first day of each calendar month, FEA shall deposit ration credits for that calendar month in a firm's primary ration credit account in an amount equal to the firm's ration credit allotment.

(c) A firm may deposit additional ration rights in its primary ration credit account; *Provided*, That such ration rights have not been previously canceled, redeemed or declared invalid.

(d) A firm may withdraw ration credits from its primary ration credit account by issuing a ration credit check to the order of the firm to which it wishes to transfer ration credits.

(e) Except as provided in paragraph (f) of this section, no firm shall issue a ration credit check drawn upon a primary ration credit account in which there are insufficient ration credits to cover that ration credit check and other outstanding ration credit checks drawn on that account.

(f) Notwithstanding the provisions of paragraph (e) of this section, a firm entitled to a ration credit level of one hundred (100) percent of current requirements may draw upon its primary ration credit account in excess of the balance in that account; *Provided*, That such firm has not previously or shall not in the future transfer ration rights to another firm except to redeem its ration rights for gasoline to be utilized for activities having a ration credit level of one hundred (100) percent of current requirements.

§ 500.43 Secondary ration credit accounts.

(a) Upon application of any firm in accordance with forms and instructions to be issued by FEA, FEA shall establish secondary ration credit accounts for that firm. The minimum initial deposit required to open a secondary ration credit account shall be three hundred (300) gallons.

(b) A firm may deposit ration rights in its secondary ration credit account; *Provided, That* such ration rights have not been previously cancelled, redeemed or declared invalid by FEA.

(c) A firm may withdraw ration credits from its secondary ration credit account by issuing a ration credit check to the order of the firm to which it wishes to transfer ration rights.

(d) No firm shall issue a ration credit check drawn upon a secondary ration credit account in which there are insufficient ration credits to cover that ration credit check and other outstanding ration credit checks drawn on that account.

§ 500.44 Redemption accounts.

(a) Every supplier including every retail sales outlet shall apply to FEA for the establishment of a redemption account in accordance with forms and instructions issued by FEA.

(b) Suppliers shall deposit in their redemption accounts all redeemed ration rights and redemption checks which they have accepted.

(c) Within ten (10) days of purchasing or obtaining gasoline from any supplier, a wholesale purchaser-reseller must issue a redemption check to such supplier drawn on its redemption account in exchange for gasoline received.

(d) Participating banks shall accept redeemed ration rights and redemption checks on behalf of FEA for deposit in a supplier's redemption account.

§ 500.45 Recordkeeping requirements and reports.

Participating banks shall maintain such records and issue such reports as may be required from time to time by FEA.

§ 500.46 Redemption account credits.

(a) Based on information contained in the supplier's application for a redemption account, every supplier shall receive an initial redemption account credit equal to the greater of (1) the amount of an average single delivery during the base year or (2) ten (10) days' average gasoline receipts during the base year, computed by dividing the base year volume by three hundred sixty-five (365) and multiplying the result by ten (10).

(b) Within thirty (30) days from the date ration rights are required for the purchase of gasoline, every supplier shall report in accordance with FEA forms and instructions its initial inventory levels measured on the first day of rationing before any sales or deliveries of gasoline are made. On this report form each supplier must compute its adjusted redemption account credit, which shall be equal to the volume of an average single delivery received during the base year, or ten (10) days' average receipts during the base year, if greater, plus twenty (20) percent of total gasoline inventory capacity, minus inventory on the first day of rationing. If the result is less than zero, the adjusted redemption account credit is equal to zero.

(c) Suppliers which are located in remote areas subject to infrequent or irregular supply schedules, and suppliers in areas subject to highly seasonal demand may apply to FEA for a special redemption account credit, if the adjusted redemption account credit computed according to paragraph (b) above will be insufficient to cover actual gasoline receipts less the amount of ration credits and redemption checks received or expected to be received from customers during the first twenty (20) days of the rationing program.

Subpart E—National Ration Reserve

§ 500.51 National Ration Reserve.

(a) The National Ration Reserve shall be used by FEA to meet national disaster relief needs or for emergency replenishment of a State Hardship Reserve or for any other emergency need at the discretion of the Administrator of the FEA.

(b) Each ration period, one (1) percent of the ration rights issued by the FEA pursuant to Subpart B of this part shall be reserved for distribution at the discretion of the FEA National Office through the National Ration Reserve. The percentage of ration rights to be retained in the National Ration Reserve may be increased or decreased during subsequent ration periods upon notice published in the FEDERAL REGISTER.

Subpart F—State Rationing Offices and Local Rationing Boards

§ 500.61 State Rationing Office.

(a) Any State may apply to the FEA National Office to create a State Rationing Office within the State. The Bureau of Indian Affairs shall be treated as a State Rationing Office with respect to the Indian reservations under its jurisdiction.

(b) After FEA review of the criteria in paragraph (d) of this section and upon certification by FEA, such State Rationing Office will be delegated authority (1) to administer the State Hardship Reserve alloted by FEA to that State, (2) to receive petitions from any user of rationed products with respect to the priority and entitlement of such user under these regulations, and (3) consistent with these regulations and guidelines issued by FEA, to order a reclassification or modification of any prior determination made with respect to such user's rationing priority or rights specified in paragraph (b) (2) of this section subject to review by FEA.

(c) Each State shall maintain a primary ration credit account into which FEA shall deposit each month ration credits equal to that State's Hardship Reserve. No State shall issue a ration credit check drawn upon this ration credit account if there are insufficient ration credits to cover that ration credit and other outstanding ration credit checks drawn on that account.

(d) The State Rationing Office may redelegate the authority given to it by FEA to one or more Local Rationing Boards.

(e) *Criteria for delegation of authority to State Rationing Offices.* [Reserved]

§ 500.62 Local Rationing Boards.

(a) Local Rationing Boards may be established within a State by the State Rationing Office pursuant to § 500.61.

(b) Each Local Rationing Board shall include a Local Rationing Panel selected pursuant to § 500.64.

(c) The Local Rationing Board shall be allotted an equitable portion of the State Hardship Reserve by the State Rationing Office. The Local Rationing Board shall maintain a secondary ration credit account into which it shall deposit the portion of the State Hardship Reserve it receives from time to time. From this secondary account, the Local Rationing Board may issue ration rights to eligible individuals determined to be experiencing hardships pursuant to § 500.63. The Local Rationing Board shall not issue a ration credit check drawn upon its secondary ration credit account if there are insufficient ration credits to cover that ration credit check and other outstanding ration credit checks drawn on that account.

(d) Each Local Rationing Board shall accept hardship applications pursuant to § 500.63 and either approve or disap-

prove such petitions pursuant to instructions and guidelines to be issued by FEA.

(e) Each week the Local Rationing Board shall report to the State Rationing Office with respect to the preceding week (1) the number of hardship applications received per category of hardship alleged, (2) the disposition made of hardship applications, and (3) the amount of ration rights issued to individuals found to be experiencing hardships.

(f) The Local Rationing Panel shall review and decide all appeals of decisions made by the Local Rationing Board pursuant to § 500.63(d) and in accordance with guidelines to be issued by FEA. The Local Rationing Panel shall also review and decide appeals filed by any person aggrieved by a decision of the Local Rationing Board with respect to any matters redelegated to it by the State Rationing Office pursuant to § 500.-61. Appeals from the decision of the Local Rationing Panel may be further appealed pursuant to § 500.67.

(g) The Bureau of Indian Affairs may establish Local Rationing Boards on Indian reservations under its jurisdiction. Such boards will carry out the duties and functions of Local Rationing Boards as set forth in this subpart.

§ 500.63 Hardship applications.

(a) An individual may file a hardship application for rationing rights in addition to the rationing rights, if any, which he or she is entitled to receive pursuant to Subpart B of this part. The application shall be made in accordance with FEA forms and instructions.

(b) Hardship applications will be received by the Local Rationing Board for review and determination if the applicant alleges any one or more of the following hardships:

(1) *Handicapped persons.* Any individual who, by reason of disease, injury, age, congenital malfunction, or other permanent incapacity or disability, is unable without special facilities, planning or design to utilize mass transportation vehicles, facilities and services, who has a substantial, permanent impediment to mobility and whose needs for rationed products exceed the amount, if any, represented by the ration rights issued pursuant to Subpart B of this part may file a hardship application.

(2) *Low-income, long-distance commuters.* Persons who without ration rights in addition to the amount, if any, allotted to them pursuant to Subpart B of this part would be forced to spend over five (5) percent of their adjusted gross incomes purchasing ration rights for travel to and from their place of employment, and for whom carpooling or public transportation is not a reasonable alternative, may file a hardship application.

(3) *Migrant workers.* An individual who holds a drivers licensed by a State, who travels from one agricultural work site to another agricultural work site, and whose needs for rationed products exceed the amount represented by the ration rights, if any, issued pursuant to Subpart B of this part may file a hardship application with the Local Rationing Board which serves the community in which the current work site is located. The applicant should be awarded sufficient ration rights to assist the individual in traveling to his or her next work site.

(4) *Persons engaged in household moves.* Persons who are driving vehicles as part of their own household move and who in order to complete the move will need more than twenty-five (25) percent of the total amount of ration rights for one ration period allotted to all members of the household pursuant to Subpart B of this part may file a hardship application. Rationed products needed by firms engaged in household moving for hire may not be obtained through the Local Rationing Board.

(5) *Other recurring or one-time hardship needs.* Any individual experiencing severe hardships on a recurring or one-time-only basis, who is not specified in paragraphs (b) (1), (2), (3) and (4) above, may file a hardship application. The Local Rationing Board must review and decide any application filed pursuant to this paragraph (b)(5) consistent with the objectives of the Mandatory Gasoline Rationing Program.

(c) *Processing of applications.* (1) The Local Rationing Board may initiate an investigation of any statement in an application, whether written or verbal, and use in its evaluation any relevant facts obtained by such investigation. The Local Rationing Board may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the Local Rationing Board may consider any other source of information. The Local Rationing Board on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

(2) If the Local Rationing Board determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the Local Rationing Board may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the Local Rationing Board may dismiss the application with prejudice.

(3) After processing, the Local Rationing Board or upon appeal the Local Rationing Panel shall either grant or deny a hardship application. If the application is granted, the Local Rationing Panel or the Local Rationing Board shall determine the amount of ration rights to be granted, shall notify the applicant in writing of the amount determined, and shall issue ration rights to the applicant in that amount. If the Local Rationing Board or the Local Rationing Panel determines that the application is not to be granted, the applicant shall be notified in writing promptly upon such determination.

(d) An applicant who does not receive as many ration rights as he or she applied for or an applicant whose application is not granted may appeal to the Local Rationing Panel. The appeal must be filed within fifteen (15) calendar days of receipt of the notice of determination specified in paragraph (c)(3) of this section. There has not been an exhaustion of administrative remedies until an appeal has been filed and decided, and all further appellate proceedings provided in § 500.67 of this subpart have been completed.

§ 500.64 Selection of Local Rationing Panel and Local Rationing Board Manager.

The Local Rationing Panel shall consist of an odd number of volunteers selected by the local government in which the panel serves in accordance with FEA guidelines. The members of the Local Rationing Panel shall designate one of their members as the individual responsible for calling meetings of the panel to determine local procedures and to carry out the duties of the Local Rationing Panel. The Local Rationing Board Manager shall be selected by the Chief Executive of the State in which the Local Rationing Board is located.

§ 500.65 State Hardship Reserves.

(a) Pursuant to Subpart B of this part, FEA shall distribute ration rights to each State Rationing Office to be used by Local Rationing Boards to meet the needs of approved individual hardship applicants pursuant to § 500.63 of this subpart and to meet the needs of approved hardship applications filed with the State Rationing Office by firms pursuant to paragraph (b) of this section.

(b) *Application by firms experiencing severe hardships.* (1) A firm entitled to a ration credit level, other than as a supplier or a wholesale purchaser-reseller, may file an application with the State Rationing Office for rationing rights in addition to any rationing rights it is entitled to receive pursuant to Subparts B and G of this part. The application shall be made in accordance with FEA forms and instructions.

(i) The State Rationing Office may initiate an investigation of any statement in an application, whether written or verbal, and use in its evaluation any relevant facts obtained by such investigation. The State Rationing Office may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the State Rationing Office may consider any other source of information. The State Rationing Office on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

(ii) If the State Rationing Office determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the State Rationing Office may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the State Rationing

Office may dismiss the application with prejudice.

(2) The State Rationing Office shall notify the applying firm in writing of the decision made with respect to the application and the amount, if any, of ration rights the firm is to receive from the State Hardship Reserve.

(3) Any firm aggrieved by the decision of the State Rationing Office with respect to its application may appeal that decision pursuant to § 500.67(c) of this subpart.

(c) Each month the State Rationing Office shall report to FEA with respect to the preceding month (1) the number of hardship petitions received per category of hardship alleged, (2) the disposition made of hardship applications, and (3) the amount of ration rights issued from the State's Hardship Reserve.

(d) Within ten (10) days of the end of a ration period, any ration rights remaining in the State Hardship Reserve shall be reported to FEA. FEA may, among other courses of action, add it to the State Hardship Reserve for the next ration period, transfer all or a portion of the balance to another State Hardship Reserve, or treat the balance as an advancement on the State Hardship Reserve for the next ration period.

§ 500.66 Timeliness.

(a) If the Local Rationing Board, the Local Rationing Panel or the State Rationing Office fails to take action on an individual's or a firm's application, respectively, within ten (10) days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in § 500.67.

(b) Notwithstanding paragraph (a) of this section, the Local Rationing Board or the State Rationing Office may temporarily suspend the running of the 10-day period if it finds that additional information is necessary or that the application was improperly filed. The temporary suspension shall remain in effect until the Local Rationing Board or the State Rationing Office serves upon the individual or firm notice that the additional information has been received and accepted or that the application has been properly filed as appropriate. Unless otherwise provided in writing, the 10-day period shall resume running on the first day that is not a Saturday, Sunday, or Federal legal holiday and that follows the day on which the Local Rationing Board or the State Rationing Office serves upon the person the notice described in this paragraph.

§ 500.67 Appeals.

(a) An individual aggrieved by a decision made by a Local Rationing Board may appeal that decision to the Local Rationing Panel pursuant to § 500.63(d).

(b) An individual aggrieved by an appeal decision of a Local Rationing Panel may appeal that decision to the State Rationing Office in accordance with the procedures established by the State office. The appeal shall be filed within fifteen (15) days of serivce of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

(c) Any person aggrieved by a decision made by a State Rationing Office with respect to any matters coming within the authority delegated to it pursuant to § 500.61 or relating to its decisions on applications for additional ration rights made pursuant to § 500.65 or on an appeal decision made pursuant to paragraph (b) of this section may file an appeal of that decision pursuant to Subpart Q of Part 205 of this chapter.

Subpart G—Diesel Fuel Rationing

§ 500.71 General.

(a) No firm shall obtain diesel fuel at retail sales outlets from any supplier without transferring to the supplier valid ration rights equal on a gallon basis to the amount of diesel fuel transferred and no supplier (including a retail sales outlet) shall transfer diesel fuel at retail sales outlets to any wholesale purchaser-consumer or end-user, without obtaining and redeeming ration rights from such wholesale purchaser-consumer or end-user, except that a supplier at a retail sales outlet may transfer diesel fuel to any firm other than a supplier without obtaining and redeeming ration rights from such firm if the supplier at a retail sales outlet agrees to obtain and redeem the appropriate amount of ration rights from any source and does so within ten (10) days of the transaction.

(b) For purposes of this subpart, "ration rights" means ration coupons issued pursuant to Subparts B and F of this part or charges against a diesel fuel entitlement card issued by FEA pursuant to § 500.72.

§ 500.72 Issuance of ration rights.

(a) Ration coupons issued for gasoline pursuant to the provisions of Subparts B and F of this part may be used to purchase diesel fuel at retail sales outlets in lieu of gasoline at the option of the holder. However, no ration coupon may be used for both gasoline and diesel fuel.

(b) Ration coupons issued pursuant to Subparts B and F of this part which the holder uses to purchase diesel fuel at retail sales outlets shall be valid in the same manner as specified in § 500.23.

(c) A firm which purchases diesel fuel at retail sales outlets may apply to FEA for establishment of a diesel fuel ration credit account and for issuance of a diesel fuel entitlement card which shall enable the holder to purchase diesel fuel at retail sales outlets. The amount of the ration allotment which FEA will make for each diesel fuel primary ration credit account shall be the same as the allocation levels for middle distillate specified in Part 211 of this chapter prior to the application of an allocation fraction.

(d) Firms applying for a diesel fuel entitlement card shall be provided a diesel fuel ration credit account to which FEA will credit in each calendar month the amount of diesel fuel to which the firm is entitled pursuant to paragraph (c) of this section.

(e) A firm which wishes to purchase diesel fuel at retail sales outlets in excess of volumes purchased at retail sales outlets during the base period may petition FEA pursuant to Subpart D of Part 205 to increase the amount of the firm's ration credits to be issued by FEA in a calendar month. A firm which did not purchase diesel fuel at retail sales outlets during a base period may apply for assignment of a base period use pursuant to Subpart C of Part 205.

(f) A firm may apply to FEA for a diesel fuel entitlement card in accordance with FEA forms and instructions. The applicant shall be required to determine its base period use of diesel fuel and to indicate for each period corresponding to a base period how much by volume of its base period use of diesel fuel was purchased at retail sales outlets.

(g) FEA may invalidate any diesel fuel entitlement card by notice to the firm to which it was issued if FEA finds, among other things, that the card is being improperly used or is reported lost or stolen.

(h) Sales to holders of diesel fuel entitlement cards at retail sales outlets of diesel fuel shall be made by imprinting the information on the card on an FEA form which shall, among other information, indicate the volume of diesel fuel sold; the date of sale; the name of the retail sales outlet; and certification by the card holder that he or she is currently authorized by the firm (including an individual) to which the card was issued to use the card for purchases of diesel fuel at retail sales outlets. A copy of the completed form shall be provided to the holder; a second copy held for transmittal to the FEA regional processing center; and a third copy maintained by the retail sales outlet.

§ 500.73 Redemption.

(a) The retail sales outlet of diesel fuel shall collect all ration rights exchanged for diesel fuel and after stamping any ration coupons redeemed for diesel fuel with the legend "redeemed for diesel," keep all such ration rights separate from ration rights exchanged for gasoline. Those ration rights exchanged for diesel fuel shall not be deposited in a wholesale purchaser-reseller's redemption account.

(b) From time to time and upon prior notification by FEA, retail sales outlets of diesel fuel may be required to transmit to a FEA regional processing center all ration rights exchanged for diesel fuel including copies of the transaction forms used by holders of diesel fuel entitlement cards which the owner of the retail sales outlet retained at the time of sale pursuant to § 500.72(h).

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CHAPTER III—U.S. ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

PART 711—GUIDELINES FOR ENVIRONMENTAL REVIEW

Miscellaneous Amendments

On February 14, 1974, guidelines were promulgated and published in the FEDERAL REGISTER (39 FR 5620) establishing

policies and procedures for the discharge of the responsibilities of the Atomic Energy Commission (AEC)—operations with respect to the National Environmental Policy Act of 1969 (NEPA) and other related authorities. The Energy Research and Development Administration (ERDA), the statutory successor to the operational functions of the AEC as a result of the Energy Reorganization Act of 1974, adopted those guidelines on March 3, 1975 (40 FR 8794). The purpose of those regulations was explained in the preamble to the AEC operations guidelines.

Experience with these guidelines has indicated that certain changes are needed for the sake of clarity, particularly in amending the guidelines to conform to ERDA's organizational structure. Accordingly, Part 711 of Title 10, Code of Federal Regulations is amended as set forth below.

These amendments will apply to all units of ERDA. They will apply to all reviews of proposed actions not yet commenced and will also apply to the maximum extent practicable to reviews currently in process. These amendments are promulgated as final amendments to the guidelines since they are matters relating to agency procedures and the agency desires that these procedures be available immediately for application to the large number of environmental reviews currently in process. For these reasons, the agency has determined that it is not necessary to provide notice of proposed rulemaking, opportunity for public participation or delay of effective date. However, in order to provide the public with an opportunity to comment on these guidelines, interested persons may submit, on or before March 14, 1977, written comments to the Director, Office of NEPA Coordination, Mail Station E-201, U.S. Energy Research and Development Administration, Washington, D.C. 20545. These comments will be considered with respect to the desirability of further amendment of this Part.

These amendments are promulgated under authority provided in Section 105, 88 Stat. 1238 (42 USC 5815), and section 102, 83 Stat. 853 (42 USC 4332) and are effective January 26, 1977. Part 711 is hereby revised to read as follows.

Dated at Germantown, Maryland, this 8th day of December 1976.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator, for Environment and Safety.

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AUTHORITY: Sec. 105, 88 Stat. 1238 (42 U.S.C. 5815); Sec. 102, 83 Stat. 853 (42 U.S.C. 4332).

Subpart A—General

§ 711.1 Background.

(a) The National Environmental Policy Act of 1969 (NEPA), implemented by Executive Order 11514 (E.O. 11514) dated March 5, 1970 (35 FR 4247), and the Guidelines of the Council on Environmental Quality (CEQ) of August 1, 1973 (40 CFR Part 1500, 38 FR 20550), require that all agencies of the Federal Government prepare detailed environmental statements on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The objective of NEPA is to build into the Federal agency decisionmaking process, beginning at the earliest possible point, an appropriate and careful consideration of environmental aspects of proposed actions in order that adverse environmental effects may be avoided or minimized. In addition, section 309 of the Clean Air Act (CAA), as amended, provides that the Administrator of the Environmental Protection Agency (EPA) shall review and comment on any matter relating to EPA's authority contained in such proposed legislation or such other major Federal action. Office of Management and Budget (OMB) Bulletin No. 72-6 of September 14, 1971, and OMB Circular No. A-95 (Revised) of January 2, 1976, provide guidance in connection with the evaluation, review and coordination of Federal projects and activities.

§ 711.2 Purpose.

(a) This Part establishes policy and procedure for discharging the Energy Research and Development Administration's (ERDA) responsibilities with respect to NEPA, E.O. 11514, section 309 of the CAA, OMB Bulletin No. 72-6, OMB Circular No. A-95 (Revised) and the CEQ Guidelines, as they may be amended from time to time. This Part will be reviewed and revised, in consultation with CEQ, to ensure full compliance with these directives. This Part is intended to provide guidance for:

(1) Identifying the agency environmental appraisal process, those ERDA actions requiring environmental impact assessments and statements and the time schedule for appropriate participation prior to agency decision of applicable Federal, State and local governmental units and members of the public;

(2) Obtaining information to allow the potential environmental impact of administrative and legislative actions to receive full consideration in the agency decisionmaking process;

(3) Obtaining information and internal ERDA review required for the preparation of environmental impact assessments and statements;

(4) Designating the ERDA officials who are to be responsible for preparation, review and approval of environmental impact assessments and statements.

§ 711.3 Policy.

(a) Consistent with ERDA's statutory responsibilities and other essential considerations of national policy, ERDA shall conduct its activities in a manner calculated to promote the general welfare, to encourage productive and enjoyable harmony between man and his environment, to minimize damage to the environment, to enhance environmental quality, to restore environmental quality lost previously, and to preserve natural systems and resources to the greatest possible extent.

(b) To this end, ERDA will incorporate into its planning and decisionmaking processes, a careful consideration of the environmental consequences which may be caused by its proposed actions by:

(1) Evaluating both the long-range and short-range implications of such actions to man, including his physical and social surrounding, and to nature;

(2) Exploring, developing and analyzing alternative actions that may avoid, minimize or compensate adverse impacts;

(3) Providing for disclosure of the potential environmental effects of such proposed actions to agency and other decisionmakers, including Congress and the President, and to the public.

§ 711.5 Applicability.

(a) This part applies to all ERDA organizations.

(b) This part covers ERDA administrative actions and legislative proposals, including those actions and proposals sponsored jointly with other agencies. In this latter connection, if an environmental impact assessment or statement is to be prepared, the agencies involved shall determine as early as possible their respective responsibilities the preparation and processing of that document including designation of a single agency to assume leadership responsibilities where appropriate. Where a lead agency prepares the document, the other agencies involved are expected to provide assistance with

respect to their areas of jurisdiction and expertise. Factors relevant in determining an appropriate lead agency include time sequence in which the agencies become involved, the magnitude of their respective involvement, and their relative expertise with respect to the anticipated environmental effects of the proposed action. Whether an assessment or statement is prepared by a lead agency or is prepared jointly by several agencies, the document should:

(1) Evaluate the environmental consequences of the full range of Federal actions involved;

(2) Reflect the views of all participating agencies;

(3) Be prepared before major or irreversible actions have been taken by any of the participating agencies.

(c) This part applies to proposed actions which may have a significant environmental effect even though they arise from projects or programs initiated prior to enactment of NEPA.

(d) The following actions are not subject to the requirements of this part:

(1) Administrative procurements (e.g., general supplies);

(2) Contracts for personal services;

(3) Personnel actions;

(4) Legislative proposals originating in another agency;

(5) Legislative proposals not relating to or affecting matters within ERDA's primary areas of responsibility;

(6) Legislative or administrative actions in the nature of conceptual design, architectural and engineering studies, basic research, and other administrative matters or legislative proposals having no foreseeable impact on the quality of the human environment.

§ 711.7 Definitions.

(a) An "action" as used in this Part is one which may affect the quality of the human environment.

(1) An "administrative action" is an ERDA action, other than a legislative action (as defined herein), which includes but is not necessarily limited to:

(i) A new or continuing project or program, or expansion or revision to a continuing program:

(A) Directly undertaken by ERDA;

(B) Supported in whole or in part through ERDA contracts, grants, loans, guarantees, subsidies, or other forms of financial assistance;

(C) Involving an ERDA lease, permit, or license.

(ii) The establishment or modification by ERDA of rules, regulations, or policies.

(2) A "budgetary action" is a legislative action (as defined herein), involving an ERDA request to Congress for authorization and appropriation of funds for a proposed construction line item, or other proposed major activity or program.

(3) A "legislative action" is a favorable report or recommendation on a proposal for legislation sponsored by ERDA, including a budgetary action as defined herein.

(b) An "environmental development plan" (EDP) is generally anticipated to be the basic ERDA management document for planning, budgeting, managing, and reviewing the broad environmental implications of an ERDA energy research, development and demonstration program.

(c) An "environmental impact assessment" (EIA) is a written document which evaluates the environmental impacts of proposed ERDA actions to assure that environmental values are considered at the earliest meaningful point in the decisionmaking process, and which provides the basis for a determination whether an environmental impact statement will be prepared.

(d) An "environmental impact statement" (EIS) is a written document prepared at the earliest meaningful point in the decisionmaking process which analyzes the environmental impacts associated with a proposed ERDA action and of reasonably available alternatives and reflects responsible public and governmental views and concerns.

(1) A "draft environmental impact statement" (DEIS), is a preliminary statement which is circulated for review and comment outside of ERDA as a vehicle for eliciting additional public and governmental participation in the ERDA environmental review process.

(2) A "final environmental impact statement" (FEIS) is a revised DEIS which considers and evaluates (a) the substantive issues and comments raised and (b) new information developed during the public review period.

(e) A "negative declaration" is a document prepared subsequent to a decision that an environmental impact statement will not be prepared for a proposed action where the action is one which: (1) Has been identified earlier in an EDP or EIA as an action for which a statement would be prepared; (2) Is similar to actions for which ERDA has prepared a significant number of statements; (3) Has previously been announced as being the subject of a statement; or (4) ERDA has determined not to prepare such a statement in response to a request from CEQ to prepare a statement. This document shall set forth the decision and briefly state the reasons therefor.

(f) "Programs" are aggregates of projects which share a common objective or purpose and are so inter-related that planning or decisionmaking with respect to any one component would be likely to significantly affect planning or decisionmaking with respect to any other component.

(g) "Projects" are individualized ERDA actions including, but not limited to, proposed construction of a facility which may, but need not, constitute a part of a larger program.

(h) "Responsible Assistant Administrator" is that Assistant Administrator who has been assigned overall responsibility for the conduct of a program, project, or other ERDA action which may be subject to this Part.

(i) "Appropriate ERDA official" is the program division, field organization, or any other subunit head within ERDA who has been assigned direct responsibility for the conduct of a program, project, or other ERDA action subject to this Part.

(j) "Summary sheet" is a brief summary of the significant aspects of an environmental impact statement which accompanies the EIS. It is prepared in accordance with Appendix I of the CEQ Guidelines (40 CFR 1500).

Subpart B—Environmental Impact Assessments

§ 711.23 Criteria for determining need for environmental impact assessments.

(a) An environmental impact assessment is ordinarily not required for actions and alternatives with respect to which an environmental impact assessment or statement has been formerly prepared by ERDA or another Federal agency and that in the opinion of the AES still reflects a current evaluation of such impacts and issues. In these instances, the relevant assessment or statement should accompany the proposal for such action through the ERDA review and decisionmaking process to the same extent as an assessment or statement prepared under this Part.

(b) The appropriate ERDA officials are responsible for the preparation of environmental impact assessments for all proposed administrative and legislative actions to which this Part is applicable and have not been previously identified as requiring environmental impact statements.

(c) The Assistant Administrator for Environment and Safety (AES), in consultation with the Office of the General Counsel (OGC), may request the responsible Assistant Administrator or appropriate ERDA official to prepare an environmental impact assessment for any proposed ERDA action under their respective jurisdiction, which, in the opinion of the AES, may impact the quality of the environment.

§ 711.25 Content of environmental impact assessments.

(a) Environmental impact assessments (EIA) should be brief, factual documents that evaluate and analyze the environmental consequences of proposed ERDA actions in enough detail to assure that environmental values are considered as early as possible in the decisionmaking process and to provide the factual basis for a determination of the need for the preparation of an environmental impact statement. Assessments should be structured in a manner that is most useful for planning and decisionmaking. EIA's should ordinarily contain the following information:

(1) *Description of the proposed action.* The proposed action should be briefly described and known environmental issues should be identified. Drawings, maps, and charts should be included only if directly pertinent to the assessment.

(2) *Description of the existing environment.* The existing environment affected by the proposed action should be described only in sufficient detail to permit a meaningful evaluation of the

potential environmental consequences of the proposed action.

(3) *Potential environmental impacts.* The potential impacts and risks of the proposed action should be assessed, including those adverse impacts which cannot be avoided should the proposal be implemented. The potential cumulative and long-term environmental effects, including any bentficial effects should also be evaluated. Any known issue identified in subparagraph (1) above, should be discussed. The risks and effects of significant credible accidents should be evaluated For proposed construction projects, potential impacts in the following three areas should be addressed:

(i) *Construction.* The probable environmental effects that may occur from site preparation, roads, excavation, utilities, parking lots, hauling, clean-up, etc., should be assessed. Included should be the effects of dust, earthmoving, silt, water and noise. Secondary impacts, such as increased labor force and effect on community resources, and new housing and services, should be discussed whenever appropriate.

(ii) *Operation.* The probable environmental impacts from the use of resources, such as materials, supplies, fuel, personnel, and from plant affluents, should be assessed.

(iii) *Site restoration.* The plans, if any, that may be required for site restoration and the resulting impacts should be briefly described.

(4) *Coordination with Federal, state, regional or local plans.* The potential conflicts of the proposed action with Federal, state, regional or local plans and policies and how any conflicts will be mitigated or resolved should be described.

(5) *Description of alternatives.* The reasonably available alternatives to the proposed action should be briefly described.

§ 711.27 Submission of environmental impact assessments.

(a) Environmental impact assessments shall be submitted to the AES through the responsible Assistant Administrator along with a recommendation as to whether an environmental impact statement should be prepared and the reasons therefor. If it is recommended that a statement should be prepared, the transmittal shall include the information specified in § 711.47(b).

§ 711.29 Review of environmental impact assessments.

(a) The AES, in consultation with OGC, shall review environmental impact assessments and accompanying recommendations in accordance with § 711.41 to determine whether proposed actions require the preparation of an environmental impact statement.

(b) If the AES determines that a statement is required, he will so inform the responsible Assistant Administrator who shall cause the preparation of an environmental impact statement in accordance with § 711.47, and Subpart D.

(c) A copy of all environmental impact assessments shall remain on file with AES who shall place copies of unclassified documents in appropriate ERDA public document room(s) for public inspection as soon as possible. Unless or until superseded by an environmental impact statement, environmental impact assessments shall accompany the proposed action through the agency decisionmaking process.

§ 711.31 Negative declarations.

(a) If it is determined that a proposed action does not require the preparation of an environmental impact statement and the proposed action meets the criteria of § 711.7(e), the AES shall so inform the appropriate ERDA official and cause a negative declaration to be prepared which documents the reasons for that determination. Negative declarations shall be published in the FEDERAL REGISTER. No action related to the subject of the negative declaration shall be taken sooner than 15 days following publication in the FEDERAL REGISTER.

(b) Lists of negative declarations shall be provided to CEQ at least quarterly in accordance with 40 CFR 1500.6(e).

Subpart C—Environmental Impact Statements

§ 711.41 Criteria for determining need for environmental impact statements.

(a) An environmental impact statement is ordinarily not required for actions with respect to which an environmental impact statement has been formerly prepared by ERDA or another Federal agency and that in the opinion of the AES still reflects a current evaluation of such impacts and the issues involved in ERDA's implementation of the proposed action. In these instances, the relevant statement should accompany the proposal for such action through the ERDA review and decisionmaking process to the same extent as a statement prepared under this Part.

(b) Environmental impact statements shall be prepared for those proposed actions identified in current environmental development plans as requiring such statements except as provided in § 711.31 and all other major ERDA actions having a potentially significant effect on the quality of the human environment.

(c) In determining what is a "major ERDA action having a potentially significant effect on the quality of the human environment", the following should be considered:

(1) The term "major ERDA actions" implies a threshold of magnitude of ERDA involvement which must be met before a statement is required. The action must be one where there is sufficient ERDA control and responsibility to influence the course of the action. In assessing the nature of the action, the role of ERDA funds, manpower, studies and discretionary decisions should be considered.

(2) The term "significantly affecting the quality of the human environment" implies a threshold of impacts which must be met before a statement is required. In assessing the significance of the impact, the following should be considered:

(i) The overall cumulative impact of the proposed action and related Federal actions;

(ii) The potential for degradation of the quality of the environment, curtailment of the range of beneficial uses of the environment, and the furtherance of short-term to the disadvantage of long-term environmental goals;

(iii) Effects on management, allocation or consumption of important scarce or nonrenewable resources; and

(iv) Whether expected environmental impacts are likely to be controversial.

(3) Significant effects may include secondary effects such as socioeconomic impacts and actions which could have both beneficial and adverse effects. Additional guidance is set forth in the CEQ Guidelines, 40 CFR 1500.6 (a), (b) and (c).

§ 711.43 Scope of environmental impact statements.

(a) Programmatic environmental impact statements. The scope of programmatic environmental impact statements should be determined on a case by case basis. The following is provided as general guidance only:

(1) Environmental impact statements covering a program as defined in § 711.7 (f), generally shall assess all reasonably foreseeable environmental consequences generic to component subprograms, projects, and actions; and shall focus on the cumulative effects of such related activities. In general, an analysis of specific impacts and alternatives dependent upon design, site, or other specific details of component projects or actions should be treated in environmental impact assessments or statements for specific projects or actions.

(2) Environmental impact statements covering technology research, development, demonstration, or commercialization programs generally shall discuss the anticipated impacts of commercial deployment of such technology, including discussion of any major uncertainties with respect to the environmental effects of such deployment.

(b) Project environmental impact statements. Environmental impact statements covering projects ordinarily should focus on the localized environmental impacts of a specific proposed action, such as the construction and operation of a proposed facility at a specific site.

(c) Site environmental impact statements. Environmental impact statements covering a site under ERDA jurisdiction generally should assess collectively the environmental consequences of a number of continuing and/or proposed individual actions such as the operation of facilities at the given site. They should also discuss the interrelationship of the cumulative environmental effects from past activities at the site with those expected from continuing and/or proposed activities at the site.

§ 711.45 Timing of environmental impact statements.

(a) Programmatic environmental impact statements. The planned timing for preparation of a programmatic environmental impact statement shall be determined on a case by case basis and identified as appropriate in the environmental development plan for the specific program.

(1) For research, development and demonstration programs, a programmatic environmental impact statement should be written late enough in the development process to contain meaningful information on the effects of application of the technology. However, it should be written early enough so that the environmental information contained can be factored into the decisionmaking process before the development process has reached a stage of investment or commitment to implementation likely to determine subsequent development or to foreclose or restrict later alternatives. Therefore, the following factors, among others, should be evaluated and periodically reevaluated (particularly when new information becomes available concerning the potential environmental impacts of the program) to determine the appropriate point for preparation of a program statement:

(i) The magnitude of Federal investment in the program.

(ii) The likelihood and proximity of widespread application of the technology.

(iii) The degree and controversial nature of the environmental effects of the program, individually and cumulatively, which are likely to occur in the event the technology were widely applied.

(iv) The pace at which the program is moving from basic research toward demonstration of a viable technology.

(v) The extent to which continued investment in the new technology is likely to foreclose or restrict future alternatives.

(2) For commercialization or other programs not identified in paragraph (a)(1) of this section, a programmatic environmental impact statement should be written late enough in the formulation of the proposed program to contain meaningful information on the likely environmental impacts of implementation but early enough so that the environmental information contained therein can be factored into the decisionmaking process prior to the foreclosure or restriction of reasonable alternatives.

(b) Project environmental impact statements. The environmental impact statement shall be prepared late enough in the development of the proposal to contain meaningful information on the potential localized environmental impacts at the site of the construction and operation of a proposed specific research, development, demonstration, or commercial facility but early enough to provide meaningful environmental input into the decisionmaking process. In all cases, the statement should be prepared before major resources are irrevocably or irreversibly committed and prior to taking an action with respect to the proposed project that has a potential for significant environmental impact.

(c) Legislative actions involving environmental impact statements. To the maximum extent practicable final environmental impact statements should be prepared in time for consideration by the Administrator before submission to the Congress of ERDA legislative actions. In cases where that is not practical and where the scheduling of Congressional hearings on such actions do not allow adequate time for the completion of a final environmental impact statement, a draft environmental impact statement may be furnished to the Congress with transmittal of comments as received. In any event, the text of the final environmental impact statement should be made available (1) when completed and (2) prior to administrative implementation.

§ 711.47 Responsibilities for preparation of environmental impact statements.

(a) Appropriate ERDA officials shall undertake the preparation of environmental impact statements in accordance with § 711.43 and Subpart D for proposed actions identified as requiring the preparation of an EIS (1) in an appropriate environmental development plan, (2) in accordance with § 711.29, or (3) by the AES, after consultation with OGC and the responsible Assistant Administrator.

(b) Before preparation of an environmental impact statement is initiated, the appropriate ERDA official shall submit through the responsible Assistant Administrator the following information to the AES for concurrence:

(1) A description of the proposed action and scope of the document.

(2) An outline of what is intended to be discussed in the statement, including identification of known environmental issues.

(3) The alternatives which will be analyzed.

(4) The anticipated dates of issuance for both draft and final statements.

(5) A description of activities, if any, which will continue, commence or occur with respect to the subject of the document prior to 30 days after issuance of the final environmental impact statement.

(6) Recommendations as to the need for, and composition of, intra-agency or inter-agency task forces to prepare or assist in the preparation of the environmental impact statement and the suggested composition.

(7) A recommendation regarding the desirability of a joint statement with the participation of other agencies in light of § 711.5(b), and, if so, the conditions under which such participation should proceed.

(c) If, after consultation with OGC, the AES concurs in the approach described pursuant to paragraph (b) of this section, he shall advise the appropriate ERDA official to commence preparation of the environmental impact statement and shall publish a notice of intent pursuant to § 711.49. If, after consultation with OGC, the AES does not concur he shall advise the appropriate ERDA official of the modifications which will be required to obtain AES concurrence.

§ 711.49 Notice of intent.

(a) After a determination has been made to prepare an EIS, the responsible Assistant Administrator, at the direction of the AES, shall cause to be submitted to the AES:

(1) A Notice of Intent to prepare an environmental impact statement which:

(i) Describes the proposed action and proposed scope of the document in sufficient detail to promote responsive comment.

(ii) Lists the alternatives to be analyzed.

(iii) Indicates the location(s) of known documentation to be utilized in the preparation of the statement.

(iv) Invites comments and suggestions for consideration in the preparation of the environmental impact statement.

(2) A list of individuals or organizations whom the appropriate ERDA official has identified as having interest in the environmental implications of the subject action.

(b) Whenever practicable, the AES shall cause to be published in the FEDERAL REGISTER the Notice of Intent to prepare the environmental impact statement and shall transmit a copy of that Notice of Intent to appropriate Federal, state, and local agencies and to persons or groups known to be interested in the environmental implications of the proposed action.

§ 711.51 Required lists.

(a) The AES shall be responsible for the preparation and maintenance of:

(1) Lists of actions for which environmental impact statements are being prepared.

(2) Lists of actions for which negative declarations have been prepared.

(3) Lists of persons or groups known to be interested in the environmental implications of specific ERDA actions (interest lists).

(b) The AES shall revise lists (1) and (2) in paragraph (a) of this section at least quarterly and shall transmit a copy of those unclassified lists and subsequent revisions to CEQ.

(c) The AES shall compile list (3) in paragraph (a) of this section from those individuals or groups who have either:

(1) Requested that copies, or notification of availability, of draft environmental impact statements be sent to them.

(2) Commented on a previous draft environmental impact statement.

(3) Participated in a public hearing held on an environmental impact statement.

(4) Been identified by the appropriate ERDA official as having an interest in the environmental implications of a proposed ERDA action.

(d) List (3) in paragraph (a) of this section shall be maintained in accordance with the provisions of the Privacy

Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a).

(e) Individuals or organizations desiring to be placed on specific interest lists or to request copies of environmental impact statements and notifications of intent to prepare such statements should address their requests to:

Director, Office of NEPA Coordination, Energy Research and Development Administration, Washington, D.C. 20545.

§ 711.53 Submission and review of draft environmental impact statements.

(a) Internal review and approval of draft environmental impact statements.

(1) The appropriate ERDA official shall submit the draft environmental impact statement (DEIS) through the responsible Assistant Administrator to the AES for review and approval.

(2) the AES shall be assisted in his review by OGC and an Interdisciplinary Review Committee (IRC), chaired by the Director of the Office of NEPA Coordination, or his representative, and composed of such representatives of ERDA Headquarters and field organizations as the AES deems appropriate.

(b) External review of draft environmental impact statement Upon the completion of ERDA's review, the AES shall make the draft environmental impact statement and Summary Sheet available to the CEQ, and solicit comments from appropriate Federal, state and local agencies and organizations and individuals. He shall publish a FEDERAL REGISTER notice of the public availability and the comment period for the draft environmental impact statement, and make copies available for comment upon request. Copies of the FEDERAL REGISTER notice will be made available to those on the appropriate interest list. Copies of the DEIS will be placed in appropriate places for public inspection.

(c) Commenting entities should endeavor to furnish comments on draft environmental statements which follow the format of the statement wherever practical and should be as specific, substantive and factual as possible without undue attention to matters of form in the statement. They should place emphasis on the environmental impacts of the proposed action and the acceptability of those impacts on the quality of the environment particularly as compared or contrasted with the impacts of reasonably available alternatives. Commenting entities may recommend modifications to the proposed action and/or new alternatives that they believe will enhance environmental quality and avoid or minimize adverse environmental impacts.

(d) Comments on the draft environmental impact statement shall be considered in the final environmental impact statement if received by the Director, Office of NEPA Coordination within the comment period announced in the CEQ and ERDA Notices of Availability of environmental statements in the FEDERAL REGISTER. A 45 calendar day comment period will be used unless a different period is specified in the ERDA's notice of availability of the draft statement covering the proposed action.

(e) The AES, upon request, may grant extensions of time for receipt of comments for such periods as he deems appropriate. In determining the appropriate period for comment or in acting upon an extension request, consideration will be given to the magnitude and complexity of the statement, and the extent of public interest in the proposed action. Where no time extension has been requested and granted and comments are not received within the designated comment period, it shall be conclusively presumed that no comment is to be made.

§ 711.55 Public hearings.

(a) The AES determines, in consultation with the responsible Assistant Administrator and OGC, whether a public hearing would be appropriate and in the public interest considering among other things:

(1) The magnitude of the proposed action in terms of economic costs, the geographic area involved, and the uniqueness or size of the commitment of the resources involved;

(2) The degree of interest in the proposed action, as evidenced by requests from the public and from Federal, state, and local authorities that a hearing be held;

(3) The complexity of the issues and the likelihood that additional information will be of assistance to the agency in fulfilling its responsibilities under NEPA; and

(4) The extent to which public involvement already has been achieved through other means, such as earlier public hearings, meetings with citizen representatives and/or written comments or suggestions on the proposed action.

(b) If it is determined as set forth in the above paragraph that a public hearing is to be held, the AES will issue a notice in the FEDERAL REGISTER at least 15 calendar days prior to the time of such hearing which will:

(1) Identify the subject matter of the hearing;

(2) Announce the date, time and place of such hearing and the procedures to be followed;

(3) Indicate the availability of the draft environmental impact statement, the comments, if any, received to date, and other data, as determined appropriate, for public inspection. The hearing will also be announced through local news media when practicable.

(c) Written notification of the scheduling of a public hearing, providing the information referred to in paragraph (b) of this section, shall be sent to all persons and organizations known to be interested in the action, including those who have commented on the draft environmental impact statement, and those who have requested copies of such statement.

(d) Public hearings will be legislative rather than adjudicatory in nature with no right to formal discovery, subpoena of witnesses, cross-examination of participants, testimony under oath, and other similar formalities more appropriate to an adjudicatory procedure. OGC shall prescribe the detailed procedures to be followed for specific hearings.

(e) Public hearings will be conducted by a Presiding Board appointed by the AES.

(f) After the close of the hearing, a hearing record will be prepared which consists of the transcript of the hearing and all documents, exhibits and other papers received into the record by the Presiding Board. The Presiding Board shall render a report based upon its review of the draft environmental impact statement, the comments received thereon, and the hearing record and shall forward its report, together with the record, to the AES. The report shall (1) identify unresolved issues raised at the hearing which the Presiding Board deems to be material to future decisions concerning the subject matter of the environmental impact statement, and (2) include recommendations concerning the treatment of these issues in the final environmental impact statement in a manner to promote informed decisionmaking. In discharging its functions, however, the Presiding Board shall not undertake to resolve issues or render judgment concerning the proposed action.

(g) The hearing record and the Board report shall be placed in appropriate places for public inspection and considered in the preparation of the final environmental impact statement. The text of the Board report shall be appended to the final statement.

§ 711.57 Preparation, review and distribution of final environmental impact statements.

(a) Preparation of final environmental impact statements. As soon as practicable after the expiration of the written comment period and the closing of the public hearing record, if any, the appropriate ERDA official shall initiate the preparation of the final environmental impact statement and summary sheet, taking into account all substantive written comments received, the hearing record, the Board report and new information developed during the review period. The final environmental impact statement shall include a meaningful, objective and informative treatment of all substantive issues raised, including a description of known responsible views on such issues. The text of all comments received, and the Board report, or summaries thereof, shall be appended to the statement.

(b) Internal review of final environmental impact statements

(1) The appropriate ERDA official shall submit final environmental impact statements (FEIS) through the responsible Assistant Administrator to the AES for review.

(2) The AES shall be assisted in his review by OGC and an Interdisciplinary Review Committee (IRC), chaired by the Director of the Office of NEPA Coordination or his designee.

(3) Upon completion of AES review and approval of the FEIS, the responsi-

ble Assistant Administrator shall transmit the FEIS through the AES to the Administrator for his review and approval for issuance.

(c) Distribution of final environmental impact statements.

(1) Upon receipt of Administrator approval, the AES shall:

(i) Sign the FEIS and distribute the statement and Summary Sheet to CEQ, EPA, and Federal, State and local agencies, and others who submitted timely comments, participated in the public hearing on the draft environmental impact statement, or requested a copy of the FEIS prior to its issuance. In the case of FEISs on legislative actions approved by the Administrator, the AES shall submit the statement to the Congress and the OMB in accordance with OMB Bulletin 72-6.

(ii) Publish a Notice of Availability of the FEIS in the FEDERAL REGISTER which notice shall include the location(s) at which the statement is available for public inspection and where copies can be obtained.

(iii) Transmit copies of the FEIS to appropriate ERDA public document room(s).

§ 711.65 Timing for proposed ERDA actions.

(a) Except in special cases when approval is given after consultation with CEQ, no proposed ERDA action for which an environmental impact statement is prepared shall be taken:

(1) Sooner than 90 calendar days after a draft environmental impact statement has been issued; or

(2) Sooner than 30 calendar days after the final environmental impact statement has been issued. (This period may run concurrently with that in paragraph (a)(1) of this document).

§ 711.67 Amendments or supplements to final environmental impact statements.

(a) Since the ERDA environmental review process is designed to subject ERDA actions to formal review at the earliest stages in their development, it is recognized that additional reviews may be necessary or desirable as the action evolves and matures. Accordingly, whenever substantial new information pertinent to an existing final environmental impact statement becomes available, or whenever substantial modifications of an action covered by such final statement occurs, the appropriate ERDA official shall consult with AES and OGC to determine whether to amend or supplement the existing final environmental impact statement.

(b) When a determination is made to prepare such a supplement or amendment, the resulting document shall be subject to the procedures governing draft environmental impact statements under this Part unless, after consultation with OGC and CEQ, it is determined by the AES that circulation for comment is unnecessary. In that event, the document shall be subject to the procedures governing final environmental impact statements under this part.

§ 711.69 Review of other agencies' environmental impact statements.

(a) The Office of NEPA Coordination shall maintain a list of environmental impact statements received from other agencies for comment and shall identify those environmental impact statements which involve matters of interest to ERDA due to jurisdiction by law, special expertise or otherwise.

(b) Environmental impact statements so identified shall be transmitted to the appropriate ERDA organizational units for review and comment. Review and comment shall be conducted according to the instructions of 40 CFR 1500.9(e). ERDA reviews should identify possible conflicts with known current or future programs, indicate areas of research which are underway or planned by ERDA which may suggest new alternatives, ways to mitigate effects, or gaps in the state of relevant knowledge and offer comments in ERDA areas of jurisdiction by law and special expertise.

(c) Such comments shall be transmitted to the Office of NEPA Coordination who shall coordinate the comments and forward them to the initiating agency and the CEQ.

Subpart D—General Guidance for Content of Environmental Impact Statements

§ 711.81 Cover.

The cover shall indicate the type of statement (draft or final), the official project title and location, the month that the statement is issued, the agency and, for final statements, the signature of the issuing official on the title page.

§ 711.83 Body of statement.

(a) Each environmental impact statement should be prepared in accordance with the precept in section 102(2)(C) of the National Environmental Policy Act of 1969, that all agencies of the Federal government "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment." The statement should be a factual and objective evaluation of actions and their reasonable alternatives in light of environmental considerations. The presentation should be (1) concise, including or referencing relevant data, information, and analyses necessary to permit independent evaluation and appraisal of the environmental effects of the proposed ERDA action and its reasonable alternatives, and (2) structured in a manner that is most useful for planning and decisionmaking. Statements should not be drafted in a style which requires extensive scientific or technical expertise to comprehend and should focus on environmental issues relevant to the proposed action. Underlying studies, reports and other information obtained and considered in preparing the statement should be identified at appropriate points in the text. Highly technical and specialized analyses and data should be avoided in the text but should be attached as appendices or referenced with footnotes. Where there are references to documents not likely to be easily accessible, such as internal studies or reports, the statement should summarize wherever practicable and indicate how such information may be obtained. Many evaluations of environmental impact will involve measurements, analyses, calculations, and design drawings much too voluminous to be included in an environmental impact statement of workable length. In these cases, it will not be possible for the reader to make a completely independent evaluation of environmental impact from the statement itself. However, it should be possible for the reader to understand, from the text combined with the appendices and references, the types of impact which have been considered, the general methods of evaluation used and the types of data behind them, and the factual conclusions reached.

(b) Each statement shall disclose and evaluate the environmental trade-offs of proposed actions and of reasonably available alternatives in sufficient detail to permit an independent appraisal of the environmental aspects of the proposed action in relationship to alternatives.

(c) Each statement shall discuss or refer to responsible views regarding the environmental impacts of the proposed action. Substantive suggestions and comments made by other Federal, State, and local agencies and by private organizations and individuals prior to preparation of the environmental impact statement (draft or final) shall be identified and analyzed in the appropriate sections of the draft statement. Similarly, substantive comments received as a result of review of the draft statement shall be considered in the preparation of the final statement.

(d) Environmental impact statements ordinarily should contain the following information:

(1) *Summary.* The salient information and factual conclusions of the environmental statement should be concisely summarized at the beginning of the document. Emphasis should be on any unresolved environmental issues and on factual conclusions concerning the significance of the impacts associated with the proposed action and the relative merits of alternatives.

(2) *Description of proposed action.* The proposed action, its purpose and the policy objectives and tangible benefits both short- and long-term, sought to be realized by implementation of the proposed action should be briefly described. Among factors to be described are the location and duration of the proposed action; historical information necessary to place the proposed action in proper perspective; its relationship to other projects or programs of the Federal Government; and an overall physical description if appropriate, emphasizing features with environmental significance. The environmental controls and other mitigating measures, including plans for site restoration, that are designed into the proposed action should also be described.

(3) *A characterization of the existing environment likely to be affected by the proposed action.* A brief overview of the environmental features of the areas likely to be affected by the proposed action should be described in order to provide a baseline for analysis of environmental impacts. Wherever appropriate, an identification should be made of population and growth characteristics of the affected areas and of the current uses of such areas. Detailed descriptions of the existing environment should be either included in an appendix to the statement or referenced in the text, when necessary for a thorough understanding of the environmental implications of a proposed action. The amount of detail provided should be commensurate with the extent of the expected impact of the action, and the amount of information required at the particular level of environmental analysis.

(4) *Potential environmental impacts of the proposed action.* The probable environmental impacts of the proposed action (assuming implementation of proposed mitigating measures) should be analyzed in order to determine what, if any, environmental issues may be involved in the proposed action. In so doing, the analysis should describe those effects on the environment, beneficial as well as adverse, which could be caused by the proposed action, evaluate the magnitude and importance of each such effect, and identify the time frames in which these effects are anticipated. Any unknowns as to the probable environmental impacts should be clearly identified. The probable primary (direct) as well as secondary (indirect) environmental consequences should be assessed. In this context, "secondary" consequences refer to associated investments and changed patterns of social and economic activities likely to be induced by the proposed action. Such secondary effects, through their impacts on existing community facilities and activities and through changes in natural conditions, may be more substantial than the primary effects of the proposed action. The extent to which the proposal will conform or conflict with any applicable Federal, State, or local statutes, regulations, standards limitations, and policies respecting environmental quality (air and water quality, wastes, pesticides, etc.) should be discussed. The risks attributable to accidental or intentional environmental destruction as well as to normal operations should also be assessed. Risks should be expressed in terms of probability of occurrence and magnitude of consequences to the extent practicable.

(5) *Unavoidable adverse environmental effects.* Adverse environmental effects that cannot be avoided should the proposed action, with its environmental protection strategy, be implemented, and the magnitude and importance of each such effect, should be briefly summarized.

(6) *Irreversible and irretrievable commitment of resources.* The extent to which the proposed action would consume, destroy, or transform scarce or nonrenewable resources, thus curtailing the diversity and range of potential uses of the environment should be summarized. In this context, "resources" means labor and materials devoted to the proposed action as well as natural and cultural resources.

(7) *Relationship of land use plans, policies, and controls.* For project or site statements, there should be an evaluation of how the proposed action may conform or conflict with the objectives and specific terms of approved or proposed Federal, State, and local land use plans, policies and controls, if any, for the affected area.

(8) *The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity.* The extent to which the proposed action would constrain the diversity and range of potential uses of the environment, including nonutilitarian preservation, should be briefly discussed. The cumulative and long-term environmental effects of the proposed action should be assessed from the perspective that each generation is trustee of the environment for succeeding generations. This involves consideration of the present condition and use of the site of the proposed action, its use if the proposed action is implemented, and the long-term prospects for other uses. A brief assessment should be made of the extent to which the proposed action involves trade-offs between short-term gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action and its alternatives foreclosed future options. In this context, short-term and long-term do not refer to any fixed periods but should be viewed in terms of the environmentally significant consequences of the proposed action.

(9) *Alternatives.* A rigorous exploration and factual evaluation of the environmental impacts of the full range of reasonable available alternatives to the proposed action should be presented. In particular, reasonable alternatives to the proposed action that might be specifically formulated to enhance environmental quality or to avoid, mitigate, or compensate for some of the adverse environmental effects should be discussed, e.g., environmental protection strategies beyond those designed in the proposal. The specific alternative of taking no action should always be evaluated. Examples of other alternatives include: the alternative of postponing action pending further study; alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts; alternatives related to different designs or details of the proposed action which would have different environmental impacts, and alternatives to provide for compensation of fish and wildlife loss, including the acquisition of land, waters, and interests therein. In each case, the analysis of alternatives should be sufficiently detailed to permit comparative evaluation of the environmental trade-offs of the proposed action and each reasonable alternative. Where an existing impact statement already contains an analysis of an alternative(s), its treatment of the alternative(s) may be summarized and incorporated by reference provided that such treatment is current and relevant to the precise objective of the proposed action. The range of alternatives should not be limited to measures which the agency has authority to adopt but should include a meaningful discussion of all reasonable alternatives to the proposed action. A more detailed analysis should be made of the environmental impact of alternatives that can be implemented within the same time frame as the proposed action than for those alternatives within different time frames.

(10) *Environmental trade-off analysis.* At the conclusion of the statement there should be a synthesis of the information contained in the body of the statement and analysis of the environmental trade-offs associated with the proposed action and reasonably available alternatives. This analysis should be sufficiently detailed to permit an independent evaluation of the effects associated with the proposed action and each reasonably available alternative so that an informed judgment can be made about the wisdom of undertaking the proposed action rather than one of the alternatives (including the alternative of no action).

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CHAPTER II—FEDERAL ENERGY ADMINISTRATION

[Ruling 1977-3]

CARGO SALES

Ruling

Facts. Firm A is a reseller of covered products, engaged principally in the resale of those products through several terminals, which receive covered products and from which sales are made and products distributed.

In addition to these sales, Firm A is engaged in buying and reselling cargo lots of covered products, a practice known in the industry as "trading". Typically, a transaction of this type involves an agreement between Firm A and Firm B for a specified quantity of product to be furnished to Firm B at a set price on a specific date. Firm A arranges to purchase the product from Firm C for delivery to Firm B. The product never physically enters into Firm A's terminal or distribution system. Firm B is not a regular purchaser from Firm A's terminal.

Firm A made sales of this type prior to May, 1973 and such sales have always been accounted for as separate transactions under Firm A's historical accounting system. Traditionally, these purchases and resales have had a lower margin than those made within Firm A's normal distribution system.

They are high volume sales and the cargoes involved are always identifiable with a specific purchaser. Prices charged in such resales have always been determined exclusively with respect to the cost of the cargo concerned and without regard to the cost or selling prices of product held in inventory by Firm A in its terminals. "Trading" transactions of the nature described above often oc-

curred quite rapidly, with particular cargoes being purchased and resold on the same day, sometimes within less than an hour.

Issue. May Firm A, under the Mandatory Petroleum Price Regulations applicable to resellers of covered products (Subpart F of 10 CFR, Part 212) and prior to the adoption of the "separate inventory" rule effective May 1, 1976, calculate the increased costs of the cargo sold to Firm B separately from the increased costs of the same product purchased and held for resale through its normal terminal and distribution system?

Ruling. Firm A may, prior to the adoption of the "separate inventory" regulations, separately calculate the increased costs of the cargo lot of product purchased and resold to Firm B.

Maximum prices are determined by resellers pursuant to § 212.93(a) which has always provided that "[a] seller may not charge a price for an item . . . which exceeds the weighted average price at which the item was lawfully priced by the seller in transactions with the class of purchaser concerned on May 15, 1973, plus an amount which reflects, on dollar-for-dollar basis, the increased product costs concerned." Section 212.92 defines "increased product costs" as "the difference between the weighted average unit cost of a product in inventory and the weighted average unit cost of that product in inventory on May 15, 1973." Pursuant to an amendment adopted effective May 1, 1976 (41 FR 19110, May 10, 1976), "product in inventory" is defined in § 212.92 as:

> . . . at the option of the seller concerned, either: (1) the entire, undivided stock of a covered product, no matter where located, purchased and held for resale by the seller concerned; or (2) that portion of the total stock of a covered product purchased and held for resale by the seller concerned which constitutes a separate inventory under generally accepted accounting principles consistently and historically applied by the seller concerned . . . .

Under that definition, the cargo lot of product sold to Firm B would represent a "separate inventory," as to which a separate calculation of increased costs of product would be permitted.

Prior to the May 1, 1976 amendment, the price regulations applicable to resellers did not include a definition of "product in inventory." In adopting the May 1, 1976 "separate inventory" amendment, FEA stated:

> Prior to today's amendment, FEA interpreted "product in inventory" to mean the seller's entire undivided stock of a product held for resale.

Even under that interpretation, however, it is not appropriate to regard the cargo lot, in the circumstances described above, as constituting a part of Firm A's "entire undivided stock of a product held for resale." This is because cargo lot resales of the type in which Firm A was engaged have, by their particular nature, never been part of a seller's stock of a product held for resale through the seller's normal distribution system but, of practical necessity, have always been accounted for separately.

The cargo sales represent isolated transactions. Firm A's cost and pricing decisions with regard to the purchases and resales made in the normal distribution system have always been made without taking into account the cost or price of purchases and resales such as the one to Firm B. Indeed, because of the relative speed with which such "trading" transactions often took place, it would have been impracticable, if not impossible, for Firm A to derive a weighted average cost of its terminal inventories, together with the cargo lot in question, prior to the resale of the cargo lot. This is particularly true when such transactions involve several different cargo lots on the high seas which may or may not be in transit at the same time depending on shipment delays caused by weather or other factors.

Moreover, because such cargo lots were purchased and priced for resale without regard to the cost of Firm A's product held for resale in terminals, to have made such a weight-averaging could have seriously distorted Firm A's pricing with respect to its terminal sales. The historically lower margin on this type of sale, reflecting the lower costs associated with these resales, is further indication of the difference in treatment accorded these sales.

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Federal Energy Administration.

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Title 16—Commercial Practices

CHAPTER 1—FEDERAL TRADE COMMISSION

SUBCHAPTER A—ORGANIZATION, PROCEDURES AND RULES OF PRACTICE

PART 4—MISCELLANEOUS RULES

Requests for Disclosure of Records

The Federal Trade Commission's current regulations concerning requests for disclosure of records are set forth in § 4.11 of its procedures and rules of practice (16 CFR 4.11).

At present § 4.11(a)(2)(i)(A) allows a requester 30 days to appeal the Secretary's initial determination of an access request. Where access is granted in part and denied in part, a requester is frequently forced to appeal before he has the opportunity to review all the records to which he has been granted access.

As amended § 4.11(a)(2)(i)(A) would allow for an appeal anytime from the Secretary's initial determination up to 30 days after the last record has been made available.

In light of the foregoing, the Federal Trade Commission announces the following amendment, which is effective on January 26, 1977.

§ 4.11 Requests for disclosure of records.

(a) * * *

(2) *Appeals to the Commission from initial denials.*—(i) *Form and contents; time of receipt.* (A) If the Secretary denies an initial request for records in its entirety, the requester may, within 30 days of the date of the Secretary's determination, appeal such denial to the Commission. If the Secretary denies an initial request in part, the time for appeal shall not expire until 30 days after the date of the letter notifying the requester that all records to which access has been granted have been made available. The appeal shall be in writing and should include a copy of the initial request and a copy of the Secretary's response, if any. The appeal shall be addressed as follows:

> Freedom of Information Act Appeal, Office of General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

(15 U.S.C. 46(g), 5 U.S.C. 552.)

By direction of the Commission dated January 19, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-2484 Filed 1-25-77;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket No. CP77-116]

PART 2—GENERAL POLICY AND INTERPRETATIONS

Interpretive Order

JANUARY 14, 1977.

By telegrams of December 23, 1976, Houston Pipe Line Company (Houston) proposed to sell and deliver up to 150,000 Mcf per day of natural gas commencing January 6, 1977, to United Gas Pipe Line Company (United) at or near the tailgates of the Katy Gas Plant, Waller County, Texas, the Karon Gas Plant, Live Oak County, Texas, and the TCB Gas Plant, Jim Wells County, Texas, pursuant to a contract dated December 21, 1976, and to sell and deliver up to 85,000 Mcf per day of natural gas commencing January 6, 1977, to Transcontinental Gas Pipe Line Corporation (Transco), acting as agent for certain of its distribution customers, at or near the tailgate of the Pledger Gas Plant, Brazoria County, Texas, pursuant to a contract dated December 2, 1976. At the time of the telegrams Houston had been selling and delivering approximately 150,000 Mcf per day of natural gas to Transco at the points at which it proposed to sell and deliver gas to United and had been delivering approxmiately 85,000 Mcf per day of natural gas at the point it proposed to sell and deliver gas to United. Said sales and deliveries were made pursuant to § 2.68 of the Commission's general policy and interpretations (18 CFR 2.68). Houston seeks Commission assurance that upon commencement of the deliveries under the December 21, 1976, and December 2, 1976, contracts, Houston, an intrastate natural gas pipeline company, would not lose its otherwise exempt status under section 1(b) of the Natural Gas Act.

By order issued January 5, 1977, the Commission provided for the development of an administrative hearing record on questions related to the Houston proposal. That order also provided that the otherwise non-jurisdictional status of Houston and any producers supplying Houston under the Natural Gas Act would not be affected by continued deliveries of natural gas by Houston to United or Transco, during the period the Commission would consider the instant matter on its merits and until 24 hours after the issuance of a Commission opinion on the matter. The Commission's hearing in this matter was conducted on January 13 and 14, 1977.

The record amply demonstrates the existence of emergency conditions on the Transco and United systems and the necessity of these pipelines being able to avail themselves of § 2.68(a) procedures. We do have before the Commission an administrative record which indicates that numerous other natural gas pipelines are now facing, or shortly will face, natural gas supply shortfalls to meet high priority loads. Clearly, emergency conditions may vary from system to system depending upon operating factors. In order to mitigate the severity of the current supply situation of these systems, including the need for delivery, storage injection and replenishment,[1] we recognize that a number of pipelines will apply § 2.68 (a) or (b) self-help procedures with increasing frequency for the remainder of the winter heating season of 1977, i.e., for the period ending March 31, 1977, and beyond.

In the context of the Houston, Transco and United proposal, the Commission finds the § 2.68(a) procedures appropriate for this and similar circumstances. In doing so, we also recognize that, in some cases, pipelines and their non-jurisdictional suppliers may not have new or separate source contracts, but rather may have continuing sales arrangements. For the latter type transactions, § 2.68(b) procedures would be appropriate. In that respect, it should be noted that prior interpretations of § 2.68(b) permit certain roll-over operations.[2] Section 2.68 (a) and (b) procedures are alternative, and one does not limit the other. Being self-help measures, the affected systems may utilize one or both.

As a part of this proceeding, the Commission was advised by numerous members of the Congress,[3] that the Congress would undertake a reassessment of the Natural Gas Act in light of current regulatory jurisdiction of this Commission and state regulatory agencies. The Commission will report to Congress and make available copies of the administrative hearing record to the standing Committees with legislative responsibilities over this Commission, the Senate Committee on Commerce and the House Committee on Interstate and Foreign Commerce.

The Commission finds. (1) There is an existing natural gas supply emergency on the systems of United Gas Pipe Line Company and Transcontinental Gas Pipe Line Corporation, contributed to and exacerbated by severe weather conditions, as demonstrated by the record evidence developed at the public hearings held before this Commission on January 13 and 14, 1977.

(2) The sales and deliveries under the contract of December 21, 1976, between Houston and United and the contract of December 2, 1976, between Houston and Transco are emergency sales and deliveries to be initiated within the contemplation of § 2.68(a) of the Commission's general policy and interpretations.

(3) Emergencies exist on the systems of United and Transco such that supplies of natural gas are required from Houston, within the contemplation of § 2.68 (a) of the Commission's general policy and interpretations, for periods of 60-days.

The Commission orders. The status of Houston, of otherwise being exempt from the provisions of the Natural gas Act pursuant to section 1(b) thereof, will not be jeopardized by the initiation of sales and deliveries of natural gas to United and Transco, pursuant to contracts of December 21, 1976, and December 2, 1976, respectively, within the contemplation of § 2.68(a) of the Commission's general policy and interpretations.

By the Commission.[4]

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2429 Filed 1-25-77;8:45 am]

[1] See Nueces Industrial Gas Company, 46 F.P.C. 878, 877 (1971); and General Counsel letter to Richard A. Rosan, Esq., Columbia Gas System Service Corporation, dated November 19, 1976.

[2] Since February 7, 1975, the Commission has permitted at least 9 roll-over operations pursuant to § 2.68(b) including: Llanco, Inc., issued February 7, 1975. Panhandle Eastern Pipeline, issued January 9, 1975. City of Columbia, Kentucky, issued July 17, 1975. City of Norris, Illinois, issued July 14, 1975.

[3] The following members of Congress testified before the Commission: Senator Strom Thurmond, South Carolina; Senator Ernest F. Hollings, South Carolina; Senator Jesse Helms, North Carolina; Senator Robert Morgan, North Carolina; Congressman L. H. Fountain, North Carolina; Congressman Robert E. Bauman, Maryland; Congressman James G. Martin, North Carolina. These members of Congress urged the Commission to approve the proposed transaction due to the potential impact of the shortfall of supplies in the southeastern part of the United States. Recognizing the critical national emergency, they expressed their concern on the issues of pricing, supply shortfall, unemployment, and conservation and their expectation of Congressional action.

[4] Filed as part of the original document.

Smith, Commissioner, would make an explicit condition of this interpretation the Commission's intent to examine the § 2.68 transactions made pursuant to this order on or before the end of the winter heating season and, therefore, concurs in its issuance.

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

PART 655—TRAFFIC OPERATIONS

Highway Safety Improvement Program; Correction

In FR Doc. 76-35716 appearing at page 53003 in the issue for Friday, December 3, 1976, the amendment to § 655.507 should read:

The third sentence in § 655.507 is amended by striking the period at the end thereof and adding the following: "and 203 of the Highway Safety Act of 1973, as amended."

Issued on: January 14, 1977.

D. H. ANDERS,
Acting Chief Counsel.

[FR Doc.77-2527 Filed 1-25-77;8:45 am]

Title 36—Parks, Forests, and Public Property

CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 9—MINING AND MINING CLAIMS

Comprehensive Regulations

On November 11, 1976, the Department of the Interior published in the FEDERAL REGISTER (41 FR 49862) Interim Regulations and Proposed Comprehensive Regulations. The Proposed Comprehensive Regulations were made available for public review and comment for a period of thirty (30) days following publication in the FEDERAL REGISTER and ending December 13, 1976.

A total of 14 written replies with recommendations or comments were received during the comment period, with about one-half being received from mining companies, which as a group stated that the Proposed Comprehensive Regulations went beyond the intent of Congress in the enactment of the Act of September 28, 1976 (Pub. L. 94-429, 90 Stat. 1342, 16 U.S.C. 1901 et seq.) and jeopardized the economic viability of mining operations within the National Park System. On the other hand, two conservation groups stated that these regulations were not, in their present form, strong enough to protect the resources and environments of the units of the National Park System affected by this statute. The additional comments suggested editorial, grammatical, or in some instances, substantive changes in the meaning of specific sections and paragraphs of the proposed regulations.

An attempt was made to utilize as many of the comments and recommendations as was appropriate in carrying out the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., in conjunction with the other statutory National Park Service responsibilities. A number of comments pertained to the preamble of the proposal. Since this has no particular standing with respect to the regulations themselves, no attempt was made to address those issues, with the one exception found in the following

paragraph. The preamble serves only to discuss and/or explain the regulations.

It was noted that a misstatement of section 4 of the Act appeared in the preamble of the proposed regulations. The proper interpretation of this section is that, where there has been no significant disturbance to the surface of one of the enumerated units for purposes of mineral extraction, an operation may expand an existing excavation only if the Secretary finds that such expansion is necessary to make feasible continued production therefrom at an annual rate not to exceed the average annual production level of that operation for the calendar years 1973, 1974, and 1975.

Likewise, a number of comments pertained to the Interim Regulations. Because these regulations were not open for comment and review and will be superseded upon publication of the Final Comprehensive Regulations, it was determined unnecessary to respond. The purpose of the Interim Regulations was to maintain essentially the status quo while more comprehensive regulations could be prepared following passage of the Act of September 28, 1976 (16 U.S.C. 1901 et seq.).

One major area of concern in the comments which were received was that the standards for approval of a plan of operations and for reclamation lacked clarity, particularly with regard to the concepts of "nuisance", and "injury." Those sections have been altered in response to these comments. However, since these doctrines all have foundation in jurisprudence, it has been determined that they are appropriate terms and concepts.

Comments were also received concerning compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) (NEPA). The National Park Service has prepared an environmental assessment of the proposed regulations. Based on this assessment, it has been determined that the proposed action is not a major Federal action that would have a significant impact on the human environment, and therefore, that an environmental impact statement is not required prior to promulgation of the final regulations. Furthermore, an analysis of the environmental impacts associated with execution of each plan of operations submitted by an operator for approval will be made, and in the event that approval of the plan would constitute a major Federal action resulting in a significant impact on the human environment then an environmental impact statement as required by section 102(2)(C) would be prepared prior to approving or denying the plan of operations.

In addition to complying with the general provisions of NEPA, we have increased the potential for public participation by eliminating requirements for submission of certain proprietary documents, and by making available for public review copies of all plans of operations submitted by operators proposing mining activities in units of the National Park System.

A majority of comments related to the surface disturbance moratorium. It has been determined by the National Park Service that the terms and conditions concerning surface disturbance were set by Congress with the passage of the Act of September 28, 1976, (16 U.S.C. 1901 et seq.) and little or no discretion is vested with the Secretary to allow additional surface disturbance, except as expressly authorized by the Act.

The section on the use of water in support of mining operations has been clarified to reflect that the Department's concern is for uses of water from sources within the units of the National Park System. The modification in this provision was made to reflect more accurately the limited extent of the Secretary's authority to dispose of water reserved to the United States.

Certain changes in § 9.5 of these regulations were made in response to comments concerning recorded proofs of labor and other recording requirements. The alterations made should also be considered as amendments to the requirements of the Notice of October 20, 1976, 41 FR 46357.

The regulations also make clear that the filing of notice with the National Park Service satisfies the requirement for the initial filing of notice of a mining claim under section 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 43 U.S.C. 1701, for mining claims within the National Park System. Thus, only one initial notice must be filed for unpatented claims in units of the National Park System and that is the notice prescribed by these regulations, which is a restatement of the October 20, 1976 Notice requirements with the amendments noted above. However, the subsequent annual notice requirements of section 314 are applicable and claimants must file the annual notice prescribed by section 314 and the implementing regulations.

The regulations also provide that the surface use provisions of 43 CFR, Subpart 3826 and 36 CFR 7.26 and paragraphs (a) and (b) of § 7.44 are superseded by the regulations of this Part. However, the regulations in 43 CFR 3826.2–5 and 3826.2–6, 3826.4–1(g) and 3826.4–1(h), and 3826.5–3 and 3826.5–4 will remain applicable to those claimants who wish to take their claim to patent. A technical amendment will also be made to delete the provisions of 36 CFR 7.26 and 7.44 (a) and (b) which have only interim application to existing permits for 120 days after publication of the final regulations unless extended by the Superintendent. The amendments will be made by separate publication.

Modification was made to § 9.11 *Reclamation Requirements* to more adequately reflect the tenet that a holder of a claim patented prior to the establishment of the areas as a unit of the National Park System shall not undertake activities on those lands so as to constitute a nuisance to the federally owned lands or adversely affect those lands. Claims not taken to patent are subject to a stricter reclamation standard.

Two new definitions have been added. *Designated Roads*, § 9.2(n), was added to clarify the meaning of existing and open public roads that might be used with respect to mining operations only outside a unit. Only those roads so designated shall be used for this purpose. In § 9.4(c) *lands contiguous to the existing excavation* is defined to further amplify the public's understanding of the surface disturbance moratorium.

Concerning a prohibition on future surface mining activities within units of the National Park System not covered by the moratorium, it has been determined that with respect to unpatented claims or claims patented with surface use restrictions, surface mining will be permitted in the future only where such activity will not jeopardize the pristine beauty of the unit, or adversely affect the ecological or cultural resources thereof. As a caveat, it should be clearly noted that section 4 of the Act places a moratorium on surface mining activities in Death Valley and Organ Pipe Cactus National Monuments and Mount McKinley National Park, notwithstanding when the location was made. All units of the National Park System upon establishment are closed to further mineral entry and location unless Congress expressly provides otherwise. With respect to the six units of the System which were open to mineral entry and location (now closed under section 3 of Pub. L. 94–429), entry and location was subject to such surface use regulations and restrictions as the Department of the Interior might adopt. Those laws read together with Pub. L. 94–429 now provide a basis for restricting new surface mining operations in units of the National Park System. This restriction will not preclude underground or subsurface mining operations, even if a portal or entry tunnel is required to be developed within the unit.

Additional clarification was made to § 9.10 *Plan of Operations Approval* in order to develop standards for approval of three classes of claims based on the status of the claims and whether extraction operations had begun. As such, no plan of operations shall be approved: (1) For existing or new operations that would constitute a nuisance or injure Federal land if the claim was patented without surface use restrictions; or (2) where the surface of the claim, either unpatented or patented with surface use restrictions, was not significantly disturbed and the operations would preclude management or injure the resources of a unit; or (3) where the surface of the claim, either unpatented or patented subject to surface use restrictions, had been significantly disturbed and the operations would constitute a nuisance or injure Federal lands. In the latter class of claims the provisions of § 9.4 of this Part will apply to other units of the System besides Death Valley and Organ Pipe Cactus National Monuments and Mount McKinley National Park.

These regulations shall take effect on January 26, 1977, because it has been determined that the immediate application of these regulations is necessary to preserve units of the National Park System in their pristine character to fulfill the Congressional mandate that such units be managed to preserve and protect them for present as well as future gen-

erations. Furthermore, the continued application of the Interim Regulations would not be in the public interest, because those regulations are only designed to maintain the status quo, rather than comprehensively implement the policy and provisions of Pub. L. 94-429 (16 U.S.C. 1901 et seq.). Therefore the regulations contained in this Part shall be effective on January 26, 1977.

The purpose of these regulations is to provide control over mining activities within areas of the National Park System to the extent authorized by section 2 of Pub. L. 94-429, but not to constitute a "taking" of any compensable property interest of a mining claimant.

The National Park Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

Title 36 of the Code of Federal Regulations is hereby amended by the addition of a new Part 9 as follows:

Sec.
9.1 Purpose and scope.
9.2 Definitions.
9.3 Access permits.
9.4 Surface disturbance moratorium.
9.5 Recordation.
9.6 Transfer of interest.
9.7 Assessment work.
9.8 Use of water.
9.9 Plan of operations.
9.10 Plan of operations approval.
9.11 Reclamation requirements.
9.12 Supplementation or revision of plans of operations.
9.13 Performance bond.
9.14 Appeals.
9.15 Use of roads by commercial vehicles.
9.16 Penalties.
9.17 Public inspection of documents.
9.18 Surface use and patent restrictions.

AUTHORITY: Mining Law of 1872 (R.S. 2319; 30 U.S.C. 21 et seq.); Act of August 25, 1916 (39 Stat. 535, as amended (16 U.S.C. 1 et seq.); Act of September 28, 1976; 90 Stat. 1342 (16 U.S.C. 1901 et seq.))

§ 9.1 Purpose and scope.

These regulations will control all activities resulting from the exercise of valid existing mineral rights on claims within any unit of the National Park System in order to insure that such activities are conducted in a manner consistent with the purposes for which the National Park System and each unit thereof were created, to prevent or minimize damage to the environment or other resource values, and to insure that the pristine beauty of the units are preserved for the benefit of present and future generations. These procedures apply to all operations conducted on claims in any unit of the National Park System.

§ 9.2 Definitions.

The terms used in this Part shall have the following meanings:

(a) *Secretary.* The Secretary of the Interior.

(b) *Operations.* All functions, work and activities in connection with mining on claims, including: prospecting, exploration, surveying, development and extraction; dumping mine wastes and stockpiling ore; transport or processing of mineral commodities; reclamation of the surface disturbed by such activities; and all activities and uses reasonably incident thereto, including construction or use of roads or other means of access on National Park System lands, regardless of whether such activities and uses take place on Federal, State, or private lands.

(c) *Operator.* A person conducting or proposing to conduct operations.

(d) *Person.* Any individual, partnership, corporation, association, or other entity.

(e) *Superintendent.* The Superintendent, or his designee, of the unit of the National Park System containing claims subject to these regulations.

(f) *Surface mining.* Mining in surface excavations, including placer mining, mining in open glory-holes or mining pits, mining and removing ore from open cuts, and the removal of capping or overburden to uncover ore.

(g) *The Act.* The Act of September 28, 1976, 90 Stat. 1342, 16 U.S.C. 1901 et seq.

(h) *Commercial Vehicle.* Any motorized equipment used for transporting the product being mined or excavated, or for transporting heavy equipment used in mining operations.

(i) *Unit.* Any National Park System area containing a claim or claims subject to these regulations.

(j) *Claimant.* The owner, or his legal representative, of any claim lying within the boundaries of a unit.

(k) *Claim.* Any valid, patented or unpatented mining claim, mill site, or tunnel site.

(l) *Regional Director.* Regional Director for the National Park Service region in which the given unit is located.

(m) *Significantly disturbed for purposes of mineral extraction.* Land will be considered significantly disturbed for purposes of mineral extraction when there has been surface extraction of commercial amounts of a mineral, or significant amounts of overburden or spoil have been displaced due to the extraction of commercial amounts of a mineral. Extraction of commercial amounts is defined as the removal of ore from a claim in the normal course of business of extraction for processing or marketing. It does not encompass the removal of ore for purposes of testing, experimentation, examination or preproduction activities.

(n) *Designated roads.* Those existing roads determined by the Superintendent in accordance with 36 CFR 2.6(b) to be open for the use of the public or an operator.

(o) *Production.* Number of tons of a marketable mineral extracted from a given operation.

§ 9.3 Access permits.

(a) All special use or other permits dealing with access to and from claims within any unit are automatically revoked 120 days after January 26, 1977. All operators seeking new or continued access to and from a claim after that date must file for new access permits in accordance with these regulations, unless access to a mining claim is by pack animal or foot. (See § 9.7 for restrictions on assessment work and § 9.9(d) and § 9.10 (g) for extensions of permits.)

(b) Prior to the issuance of a permit for access to any claim or claims, the operator must file with the Superintendent a plan of operations pursuant to § 9.9. No permit shall be issued until the plan of operations has been approved in accordance with § 9.10.

(c) No access to claims outside a unit will be permitted across unit lands unless such access is by foot, pack animal, or designated road. Persons using such roads for access to such claims must comply with the terms of § 9.15 where applicable.

§ 9.4 Surface disturbance moratorium.

(a) For a period of four years after September 28, 1976, no operator of a claim located within the boundaries of Death Valley National Monument, Mount McKinley National Park, or Organ Pipe Cactus National Monument (see also claims subject to § 9.10(a)(3)) shall disturb for purposes of mineral exploration or development the surface of any lands which had not been significantly disturbed for purposes of mineral extraction prior to February 29, 1976, except as provided in this section. However, where a claim is subject, for a period of four years after September 28, 1976, to this section solely by virtue of § 9.10(a)(3), the date before which there must have been significant disturbance for purposes of mineral extraction is January 26, 1977.

(b) An operator of a claim in one of these units seeking to enlarge an existing excavation or otherwise disturb the surface for purposes of mineral exploration or development shall file with the Superintendent an application stating his need to disturb additional surface in order to maintain production at an annual rate not to exceed an average annual production level of said operations for the three calendar years 1973, 1974, and 1975. Accompanying the application shall be a plan of operations which complies with § 9.9 and verified copies of production records for the years 1973, 1974, and 1975.

(c) If the Regional Director finds that the submitted plan of operations complies with § 9.9, that enlargement of the existing excavation of an individual mining operation is necessary in order to make feasible continued production therefrom at an annual rate not to exceed the average annual production level of said operation for the three calendar years 1973, 1974, and 1975, and that the plan of operations meets the applicable standard of approval of § 9.10 (a)(1), he shall issue a permit allowing the disturbance of the surface of the lands contiguous to the existing excavation to the minimum extent necessary to effect such enlargement. For the purpose of this section "lands contiguous to the existing excavation" shall include land which actually adjoins the existing excavation or which could logically become an extension of the excavation; for example, drilling to determine the extent and direction to which the existing ex-

cavation should be extended may be permitted at a site which does not actually adjoin the excavating.

(d) The appropriate reclamation standard to be applied will be determined by the nature of the claim. (See § 9.11(a)(1) and § 9.11(a)(2).)

(e) Operations conducted under a permit pursuant to this section shall be subject to all the limitations imposed by this Part.

(f) For the purposes of this section, each separate mining excavation shall be treated as an individual mining operation.

§ 9.5 Recordation.

(a) Any claimant of an unpatented mining claim in a unit shall, within 12 months after September 28, 1976, record the claim in the Office of the Superintendent of the unit. Actual receipt by the appropriate Superintendent on or before September 28, 1977, is required. Patented claims do not have to be recorded pursuant to this section.

(b) This recordation shall include, but is not limited to, the following instruments and information:

(1) A certified copy of each location notice should provide: Name of claim; locator(s); type (placer, lode, mill site, or tunnel site); mineral(s) for which claim was located; date of location, date of amendments or relocations, if any; recording date, book, page, county and State, where recorded; and a legal description of the lands included in the mining claim(s). If the location notice does not provide all of the foregoing information, it shall, to the extent possible, be attached in a supplement to the location notice. If the lands are surveyed or unsurveyed, the legal description shall be by:

(i) A recitation of the appropriate location of all or any part of the claim or site within a 160 acre quadrant (quarter section) of a section or sections, if more than one is involved. In addition, there must be furnished the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable.

(ii) A map with a scale of not less than ½ inch to a mile (1:125,000) showing the survey or protraction grids on which there will be depicted the location of the claim or site. Contiguous claims or sites and groups of claims or sites in the same general area may be depicted on this single map so long as the individual claims or sites are clearly identified.

(2) Current claimant's(s) name(s) and address(es).

(3) Statement that annual labor was performed since September 1, 1970.

(c) Pursuant to section 8 of the Act, any unpatented claim not so recorded pursuant to this section shall be conclusively presumed to be abandoned and shall be void. Such recordation will not render valid any unpatented claim which was not valid on September 28, 1976, the effective date of the Act, or which becomes invalid thereafter.

(d) A claimant who initially records under this section or under the notice of October 20, 1976 (41 FR 46357) is in full compliance with all applicable provisions of law, including the recordation provisions of section 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 43 U.S.C. 1701. Thus, a claimant does not have to file this initial notice with the Bureau of Land Management. Copies of all material received pursuant to this section or the notice of October 20, 1976, will be provided by the Regional Director to the Bureau of Land Management. However, subsequent annual filings of notice must be made under section 314 and implementing regulations with the Superintendent who will provide copies to the Bureau of Land Management. These subsequent filings with the Superintendent will satisfy the requirements of section 314 for mining claims in the National Park System.

§ 9.6 Transfers of interest.

(a) Whenever a claimant who has recorded his unpatented claim(s) with the Superintendent pursuant to the requirements of § 9.5 sells, assigns, bequeaths, or otherwise conveys all or any part of his interest in his claim(s), the Superintendent shall be notified within 60 days after completion of the transfer of: The name of the claim(s) involved; the name and legal address of the person to whom an interest has been sold, assigned, bequeathed, or otherwise transferred; and a description of the interest conveyed or received. Copies of the transfer documents will be provided by the Superintendent to the Bureau of Land Management. Failure to so notify the Superintendent shall render any existing access permit void.

(b) If the transfer occurs within the period of 12 months from the effective date of the Act and the prior owner has not recorded the unpatented claim with the Superintendent in accordance with these regulations, the holder by transfer shall have the remainder of the 12-month period to record the unpatented claim. Failure to record shall be governed by the provisions of § 9.5(c).

§ 9.7 Assessment work.

(a) An access permit and approved plan of operations must be obtained by a claimant prior to the performance of any assessment work required by Revised Statute 2324 (30 U.S.C. 28) on a claim in a unit.

(b) Permits will be issued in accordance with the following:

(1) In units subject to the surface disturbance moratorium of section 4 of the Act and § 9.4, no access permits will be granted for the purpose of performing assessment work.

(2) It has been determined that in all other units the Secretary will not challenge the validity of any unpatented claim within a unit for the failure to do assessment work during or after the assessment year commencing September 1, 1976. The Secretary expressly reserves, however, the existing right to contest claims for failure to do such work in the past. No access permits will be granted solely for the purpose of performing assessment work in these units except where claimant establishes the legal necessity for such permit in order to perform work necessary to take the claim to patent, and has filed and had approved a plan of operations as provided by these regulations. (For exploratory or development type work, see § 9.9.)

§ 9.8 Use of water.

(a) No operator may use for operations any water from a point of diversion which is within the boundaries of any unit unless authorized in writing by the Regional Director. The Regional Director shall not approve a plan of operations requiring the use of water from such source unless the right to the water has been perfected under applicable State law, has a priority date prior to the establishment of the unit and there has been a continued beneficial use of that water right.

(b) If an operator whose operations will require the use of water from a point of diversion within the boundaries of the unit can show that he has a perfected State water right junior to the reserved water right of the United States and can demonstrate that the exercise of that State water right will not diminish the Federal right, which is that amount of water necessary for the purposes for which the unit was established, he will be authorized to use water from that source for operations, if he has complied with all other provisions of these regulations.

§ 9.9 Plan of operations.

(a) No operations shall be conducted within any unit until a plan of operations has been submitted by the operator to the Superintendent and approved by the Regional Director. All operations within any unit shall be conducted in accordance with an approved plan of operations.

(b) The proposed plan of operations shall relate, as appropriate, to the proposed operations (e.g. exploratory, developmental or extraction work) and shall include but is not limited to:

(1) The names and legal addresses of the following persons: The operator, the claimant if he is not the operator, and any lessee, assignee, or designee thereof;

(2) A map or maps showing the proposed area of operations; existing roads or proposed routes to and from the area of operations; areas of proposed mining; location and description of surface facilities, including dumps;

(3) A description of the mode of transport and major equipment to be used in the operations;

(4) An estimated timetable for each phase of operations and the completion of operations;

(5) The nature and extent of the known deposit to be mined and a description of the proposed operations;

(6) A mining reclamation plan demonstrating compliance with the requirements of § 9.11;

(7) All steps taken to comply with any applicable Federal, State, and local laws

or regulations, including the applicable regulations in 36 CFR, Chapter I;

(8) In units subject to the surface disturbance moratorium of section 4 of the Act and § 9.4, proof satisfactory to the Regional Director that the surface of the area on which the operation is to occur was significantly disturbed for purposes of mineral extraction prior to February 29, 1976, or if the area was not so disturbed, proof, including production records for the years 1973, 1974, and 1975, that new disturbance is necessary to maintain an average annual rate of production not to exceed that of the years 1973, 1974, and 1975;

(9) An environmental report analyzing the following:

(i) The environment to be affected by the operations,

(ii) The impacts of the operations on the unit's environment,

(iii) Steps to be taken to insure minimum surface disturbance,

(iv) Methods for disposal of all rubbish and other solid and liquid wastes,

(v) Alternative methods of extraction and the environmental effects of each,

(vi) The impacts of the steps to be taken to comply with the reclamation plan; and

(10) Any additional information that is required to enable the Regional Director to effectively analyze the effects that the operations will have on the preservation, management and public use of the unit, and to make a decision regarding approval or disapproval of the plan of operations and issuance or denial of the access permit.

(c) In all cases the plan must consider and discuss the unit's Statement for Management and other planning documents, and activities to control, minimize or prevent damage to the recreational, biological, scientific, cultural, and scenic resources of the unit.

(d) Any person conducting operations on January 26, 1977, shall be required to submit a plan of operations to the Superintendent. If otherwise authorized, operations in progress on January 26, 1977, may continue for 120 days from that date without having an approved plan. After 120 days from January 26, 1977, no such operations shall be conducted without a plan approved by the Regional Director, unless access is extended under the existing permit by the Regional Director. (See § 9.10(g).)

§ 9.10 Plan of operations approval.

(a) The Regional Director shall not approve a plan of operations:

(1) For existing or new operations if the claim was patented without surface use restriction, where the operations would constitute a nuisance in the vicinity of the operation, or would significantly injure or adversely affect federally owned lands; or

(2) For operations which had not significantly disturbed the surface of the claim for purposes of mineral extraction prior to January 26, 1977, if the claim has not been patented, or if the patent is subject to surface use restrictions, where the operations would preclude management for the purpose of preserving the pristine beauty of the unit for present and future generations, or would adversely affect or significantly injure the ecological or cultural resources of the unit. No new surface mining will be permitted under this paragraph except under this standard; or

(3) For operations which had significantly disturbed the surface of the claim for purposes of mineral extraction prior to January 26, 1977, if the claim has not been taken to patent, or the patent is subject to surface use restrictions, where the operations would constitute a nuisance in the vicinity of the operation, or would significantly injure or adversely affect federally owned lands. Provided, however, operations under this paragraph shall be limited by the provisions of § 9.4, notwithstanding the limitation of that section's applicability to the three enumerated units;

(4) Where the claim, regardless of when it was located, has not been patented and the operations would result in the destruction of surface resources, such as trees, vegetation, soil, water resources, or loss of wildlife habitat, not required for development of the claim; or

(5) Where the operations would constitute a violation of the surface disturbance moratorium of section 4 of the Act; or

(6) Where the plan does not satisfy each of the requirements of § 9.9.

(b) Within 60 days of the receipt of a proposed plan of operations, the Regional Director shall make an environmental analysis of such plan, and

(1) Notify the operator that he has approved or rejected the plan of operations; or

(2) Notify the operator of any changes in, or additions to the plan of operations which are necessary before such plan will be approved; or

(3) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional 30 days, is necessary to complete such review, and setting forth the reasons why additional time is required. Provided, however, that days during which the area of operations is inaccessible for such reasons as inclement weather, natural catastrophy, etc., for inspection shall not be included when computing either this time period, or that in subsection (b) above, or

(4) Notify the operator that the plan cannot be considered for approval until forty-five (45) days after a final environmental impact statement, if required, has been prepared and filed with the Council on Environmental Quality.

(c) Failure of the Regional Director to act on a proposed plan of operations and related permits within the time period specified shall constitute an approval of the plan and related permits for a period of three (3) years.

(d) The Regional Director's analysis may include:

(1) An examination of the environmental report filed by the operator;

(2) An evaluation of measures and timing required to comply with reclamation requirements;

(3) An evaluation of necessary conditions and amount of the bond or security deposit to cover estimated reclamation costs;

(4) An evaluation of the need for any additional requirements in access permit; and

(5) A determination regarding the impact of this operation and the cumulative impacts of all operations on the management of the unit.

(e) Prior to approval of a plan of operations, the Regional Director shall determine whether any properties included in, or eligible for inclusion in, the National Register of Historic Places or National Registry of Natural Landmarks may be affected by the proposed activity. This determination will require the acquisition of adequate information, such as that resulting from field surveys, in order to properly determine the presence of and significance of cultural resources within the area to be affected by mining operations. Whenever National Register properties or properties eligible for inclusion in the National Register would be affected by mining operations, the Regional Director shall comply with section 106 of the National Historic Preservation Act of 1966 as implemented by 36 CFR, Part 800.

(1) The operator shall not injure, alter, destroy, or collect any site, structure, object, or other value of historical, archeological, or other cultural scientific importance. Failure to comply with this requirement shall constitute a violation of the Antiquities Act (16 U.S.C. 431–433) (see 43 CFR, Part 3).

(2) The operator shall immediately bring to the attention of the Superintendent any cultural and/or scientific resource that might be altered or destroyed by his operation and shall leave such discovery intact until told to proceed by the Superintendent. The Superintendent will evaluate the discoveries brought to his attention, and will determine within ten (10) working days what action will be taken with respect to such discoveries.

(3) The responsibility for, and cost of investigations and salvage of such values that are discovered during operations will be that of the operator, where the claim is unpatented.

(f) The operator shall protect all survey monuments, witness corners, reference monuments and bearing trees against destruction, obliteration, or damage from mining operations, and shall be responsible for the reestablishment, restoration, or referencing of any monuments, corners and bearing trees which are destroyed, obliterated, or damaged by such mining operations.

(g) Pending approval of the plan of operations, the Regional Director may approve, on a temporary basis, the continuation of existing operations if necessary to enable timely compliance with these regulations and with Federal, State, or local laws, or if a halt to existing operations would result in an unreasonable economic burden or injury to the operator. Such work must be conducted in accordance with all applicable laws, and in a manner prescribed by the

Regional Director and designed to minimize or prevent significant environmental effects.

(h) Approval of each plan of operations is expressly conditioned upon the Superintendent having such reasonable access to the claim as is necessary to properly monitor and insure compliance with the plan of operations.

§ 9.11 Reclamation requirements.

(a) As contemporaneously as possible with the operations, but in no case later than six (6) months after completion of operations and within the time specified in an approved mining reclamation plan, unless a longer period is authorized in writing by the Regional Director, each operator shall initiate reclamation as follows:

(1) Where the claim was patented without surface use restriction, the operator shall at a minimum:

(i) Remove all above ground structures, equipment, and other manmade debris used for operations; and

(ii) Rehabilitate the area of operations to a condition which would not constitute a nuisance; or would not adversely affect, injure or damage, federally owned lands.

(2) On any claim which was patented with surface use restrictions or is unpatented, each operator must take steps to restore natural conditions and processes, which steps shall include, but are not limited to:

(i) Removing all above ground structures, equipment and other manmade debris;

(ii) Providing for the prevention of surface subsidence;

(iii) Replacing overburden and spoil, wherever economically and technologically practicable;

(iv) Grading to reasonably conform the contour of the area of operations to a contour similar to that which existed prior to the initiation of operations, where such grading will not jeopardize reclamation; and

(v) Replacing the natural topsoil necessary for vegetative restoration; and

(vi) Reestablishing native vegetative communities.

(b) Reclamation under paragraph (a)(2), of this section is unacceptable unless it provides for the safe movement of native wildlife, the reestablishment of native vegetative communities, the normal flow of surface and reasonable flow of subsurface waters, the return of the area to a condition which does not jeopardize visitor safety or public use of the unit, and return of the area to a condition equivalent to its pristine beauty.

(c) Reclamation required by this section shall apply to operations authorized under this Part, except that all terms relating to reclamation of previously issued special use permits revoked by this part for operations to be continued under an approved plan of operations shall be incorporated into the operator's reclamation plans.

§ 9.12 Supplementation or revision of plan of operations.

(a) An approved plan of operations may require reasonable revision or supplementation to adjust the plan to changed conditions or to correct oversights.

(1) The Regional Director may initiate an alteration by notifying the operator in writing of the proposed alteration and the justification therefor. The operator shall have thirty (30) days to comment on the proposal.

(2) The operator may initiate an alteration by submitting to the Superintendent a written statement of the proposal, and the justification therefor.

(b) Any proposal initiated under paragraph (a) of this section by either party shall be reviewed and decided by the Regional Director in accordance with § 9.10. Where the operator believes he has been aggrieved by a decision under this paragraph, he may appeal the decision pursuant to § 9.14.

§ 9.13 Performance bond.

(a) Upon approval of a plan of operations the operator shall be required to file a suitable performance bond with satisfactory surety, payable to the Secretary or his designee. The bond shall be conditioned upon faithful compliance with applicable regulations, the terms and conditions of the permit, lease, or contract, and the plan of operations as approved, revised or supplemented.

(b) In lieu of a performance bond, an operator may elect to deposit with the Secretary, or his designee, cash or negotiable bonds of the U.S. Government. The cash deposit or the market value of such securities shall be at least equal to the required sum of the bond.

(c) The bond or security deposit shall be in an amount equal to the estimated cost of completion of reclamation requirements either in their entirety or in a phased schedule for their completion as set forth in the approved, supplemented or revised plan of operations.

(d) In the event that an approved plan of operations is revised or supplemented in accordance with § 9.12, the Superintendent may adjust the amount of the bond or security deposit to conform to the plan of operations as modified.

(e) The operator's and his surety's responsibility and liability under the bond or security deposit shall continue until such time as the Superintendent determines that successful reclamation of the area of operations has occurred.

(f) When all required reclamation requirements of an approved plan of operations are completed, the Superintendent shall notify the operator that performance under the bond or security deposit has been completed and that it is released.

§ 9.14 Appeals.

(a) Any operator aggrieved by a decision of the Regional Director in connection with the regulations in this Part may file with the Regional Director a written statement setting forth in detail the respects in which the decision is contrary to, or in conflict with, the facts, the law, these regulations, or is otherwise in error. No such appeal will be considered unless it is filed with the Regional Director within thirty (30) days after the date of notification to the operator of the action or decision complained of. Upon receipt of such written statement from the aggrieved operator, the Regional Director shall promptly review the action or decision and either reverse his original decision or prepare his own statement, explaining that decision and the reasons therefor, and forward the statement and record on appeal to the Director, National Park Service, for review and decision. Copies of the Regional Director's statement shall be furnished to the aggrieved operator, who shall have 20 days within which to file exceptions to the Regional Director's decision. The Department has the discretion to initiate a hearing before the Office of Hearing and Appeals in a particular case. (See 43 CFR 4.700.)

(b) The official files of the National Park Service on the proposed plan of operations and any testimony and documents submitted by the parties on which the decision of the Regional Director was based shall constitute the record on appeal. The Regional Director shall maintain the record under separate cover and shall certify that it is the record on which his decision was based at the time it is forwarded to the Director of the National Park Service. The National Park Service shall make the record available to the operator upon request.

(c) If the Director considers the record inadequate to support the decision on appeal, he may provide for the production of such additional evidence or information as may be appropriate, or may remand the case to the Regional Director, with appropriate instructions for further action.

(d) On or before the expiration of forty-five (45) days after his receipt of the exceptions to the Regional Director's decision, the Director shall make his decision in writing; Provided, however, that if more than forty-five (45) days are required for a decision after the exceptions are received, the Director shall notify the parties to the appeal and specify the reason(s) for delay. The decision of the Director shall include (1) a statement of facts, (2) conclusions, and (3) reasons upon which the conclusions are based. The decision of the Director shall be the final administrative action of the agency on a proposed plan of operations.

(e) A decision of the Regional Director from which an appeal is taken shall not be automatically stayed by the filing of a statement of appeal. A request for a stay may accompany the statement of appeal or may be directed to the Director. The Director shall promptly rule on requests for stays. A decision of the Director on request for a stay shall constitute a final administrative decision.

§ 9.15 Use of roads by commercial vehicles.

(a) After January 26, 1977, no commercial vehicle shall use roads administered by the National Park Service without first being registered with the Superintendent.

(1) A fee shall be charged for such registration based upon a posted fee schedule, computed on a ton-mile basis.

The fee schedule posted shall be subject to change upon 60 days notice.

(2) An adjustment of the fee may be made at the discretion of the Superintendent where a cooperative maintenance agreement is entered into with the operator.

(b) No commercial vehicle which exceeds roadway load limits specified by the Superintendent shall be used on roads administered by the National Park Service unless authorized by written permit from the Superintendent.

(c) Should a commercial vehicle used in operations cause damage to roads or other facilities of the National Park Service, the operator shall be liable for all damages so caused.

§ 9.16 Penalties.

Undertaking any operation within the boundaries of any unit in violation of this Part shall be deemed a trespass against the United States, and the penalty provisions of 36 CFR Part 1 are inapplicable to this Part.

§ 9.17 Public inspection of documents.

(a) Upon receipt of the plan of operations the Superintendent shall publish a notice in the FEDERAL REGISTER advising the availability of the plan for public review.

(b) Any document required to be submitted pursuant to the regulations in this Part shall be made available for public inspection at the Office of Superintendent during normal business hours. The availability of such records for inspection shall be governed by the rules and regulations found at 43 CFR Part 2.

§ 9.18 Surface use and patent restrictions.

(a) The regulations in 43 CFR 3826.2–5 and 3826.2–6, 3826.4–1(g) and 3826.4–1(h), and 3826.5–3 and 3826.5–4 will apply to any claimant who wishes to take his claim to patent in Olympic National Park, Glacier Bay National Monument or Organ Pipe Cactus National Monument .

(b) The additional provisions of 43 CFR, Subpart 3826 and 36 CFR 7.26 and 7.44(a) and (b) will continue to apply to existing permits until 120 days after January 26, 1977, unless extended by the Regional Director. (See § 9.10(g).)

Dated: January 19, 1977.

NATHANIEL P. REED,
Assistant Secretary of the Interior.

[FR Doc.77-2393 Filed 1-25-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 7—AGENCY FOR INTERNATIONAL DEVELOPMENT, DEPARTMENT OF STATE

[AIDPR Notice 77-4]

PROCUREMENT REGULATIONS

Miscellaneous Amendments

This notice amends various sections of the AID Procurement Regulations (41 CFR Part 7). The substantive changes are:

(1) Section 7-3.200-50 is revised to clarify that negotiated AID contracts are negotiated under the authority of the Foreign Assistance Act of 1961, as amended, and Executive Order 11223 (30 FR 6635). The circumstance permitting negotiations is FPR 1-3.215.

(2) The definition of "immediate family" in § 7-7.5002-3(i) is revised to reflect the current definition in the Uniform State/AID/USIA Regulations.

(3) AID has adopted FPR 1-1.323 as its rules for use of U.S. flag air carriers. Consequently, contract clauses dealing with requirements for use of U.S. flag air carriers for transportation of persons and things have been changed to incorporate the provisions of FPR 1-1.323.

(4) The "Termination for Convenience of the Government" clause has been moved from Section 7-7.5403-2 to Section 7-7.5401-35 thereby making it a required clause for fixed price contracts.

(5) New AIDPR Appendix G, "Contract Closeout Procedures", has been added.

This notice also contains a number of editorial and administrative changes to delete obsolete sections, update cross references, and make clarifications.

PART 7-1 GENERAL

Part 7-1 is amended as follows:

Subpart 7-1.3—General Policies

§§ 7-1.305-2, 7-1.305-3, 7-1.306-1 [Removed]

1. Sections 7-1.305-2, 7-1.305-3, and 7-1.306-1 are deleted.

2. Section 7-1.318 is redesignated as § 7-1.318-1 and revised as follows:

§ 7-1.318-1 Contracting Officer's decision under a disputes clause.

Before a decision is issued, the disputes clause in the contract must be examined, and the decision must be issued by the official designated in the clause, or his legal successor. Decisions shall be issued only after legal review. The text in FPR 1-1.318-1 may be modified as appropriate with the title "Administrator" inserted, unless the right of appeal is to an officer other than the Administrator. The AID contract appeal procedure is set forth in AIDPR 7-60.

§§ 7-1.323, 7-1.323-2 [Removed]

3. Sections 7-323 and 7-323-2 are deleted.

Subpart 7-1.6—Debarred, Suspended, and Ineligible Bidders

4. Sections 7-1.604-1(a)-1, through 7-1.604-1(b)-6 are consolidated and redesignated as § 7-1.604-1 and revised as follows:

§ 7-1.604-1 Procedural requirements relating to the imposition of debarment.

(a) *Initiation of debarment action.* Notice of proposed debarment shall be deemed to have been received by an affected person if the notice was properly mailed to the last known address of such person.

(b) *Hearings.*—(1) Debarment without a hearing. AID may debar a firm, individual, or an affiliate thereof without a hearing if:

(i) No hearing is requested within the period indicated in the notice described in FPR 1-1.604-1(a); or

(ii) There are no disputed questions of fact relevant to the debarment issue; or

(iii) The Administrator determines that the security interests of the sup- States override the interests of the supplier in an adversary hearing.

(2) Date of the hearing. Unless the Administrator determines that for good cause shown additional time should be granted, a hearing shall be instituted within 20 days after receipt of a request from an affected person for a hearing in response to the notice described in FPR 1-1.604-1(a).

(3) Hearing examiner. (i) The hearing shall be conducted before an impartial hearing examiner designated by the Administrator.

(ii) The Administrator shall not be limited in the choice of a hearing examiner to persons employed by AID or by any other agency of the U.S. Government.

(4) Report to the Administrator. The hearing examiner shall submit to the Administrator written findings of fact based upon the record established during the hearing and recommendations concerning the proposed debarment based upon these findings.

(5) Findings. (i) Findings of fact adequate to establish a cause for debarment shall be based upon substantial evidence. Standards of proof necessary for criminal conviction shall not apply.

(ii) Evidence of criminal intent shall not be necessary to establish a cause for debarment.

(iii) Findings shall not be circumscribed by technical rules of evidence.

(6) Recommendations. The Administrator may approve or disapprove the recommendations of the hearing examiner in whole or in part.

PART 7-3 PROCUREMENT BY NEGOTIATION

Subpart 7-3.2—Circumstances Permitting Negotiation

5. Section 7-3.200-50 is revised as follows:

§ 7-3.200-50 Negotiation authority.

All negotiated AID contracts are negotiated under the authority of Section 633 of the Foreign Assistance Act of 1961, as amended, and Executive Order 11223, May 12, 1965, 30 FR 6635. The files of negotiated AID contracts shall cite, as the circumstance permitting negotiation, FPR 1-3.215 ("Otherwise authorized by law"). No other circumstances as set forth in FPR 1-3.2. need be cited.

§§ 7-3.204, 7-3.205, 7-3.211 [Removed]

6. Sections 7-3.204, 7-3.205, and 7-3.211 are deleted.

Subpart 7–3.3—Determinations, Findings, and Authorities

§ 7–3.305 [Removed]

7. Section 7–3.305 is deleted.

PART 7–4 SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 7–4.51—Mission Procurements Under Master Contracts [Removed]

Subpart 7–4.52—Procurement of Technical Assistance from U.S. Carriers [Removed]

Subpart 7–4.54—Procurement by Barter—Commodity Credit Corporation [Removed]

8. Subparts 7–4.51, 7–4.52, and 7–4.54 are deleted in their entirety.

Subpart 7–4.56—General Selection Procedure

§ 7–4.5603 [Removed]

9. Section 7–4.5603 is deleted.

Subpart 7–4.57—Educational Institution and International Research Center Selection Procedure

§ 7–4.5703 [Removed]

10. Section 7–4.5703 is deleted.

Subpart 7–4.58—Collaborative Assistance Selection Procedure

§ 7–4.5803 [Removed]

11. Section 7–4.5803 is deleted.

PART 7–6 FOREIGN PURCHASES

Subpart 7–6.2—Buy American Act—Construction Contracts

12. Subpart 7–6.2 is deleted in its entirety.

Subpart 7–6.52—U.S. Source Restrictions—Commodities

§ 7–6.5203 [Amended]

13. Section 7–6.5203 is amended to substitute "AID Handbook 15, Commodities" for "M.O. 1414.1.1" at the end of the section.

PART 7–7 CONTRACT CLAUSES

Subpart 7–7.50—Clauses for Cost Reimbursement Type Contracts

14. New § 7–7.5001–44 is added as follows:

§ 7–7.5001–44 Clean air and water.

Insert the clause set forth in FPR 1–1.2302–2 under the conditions set forth therein.

§ 7–7.5002–3 [Amended]

15. Section 7–7.5002–3 is amended to change the date in the title of the clause from "(September 1975)" to "December 1976)".

16. Section 7–7.5002–3(i)(1)(ii) is amended to read as follows:

§ 7–7.5002–3 Travel expenses.

* * * * *

(i) *Emergency and irregular travel and transportation.*

(1)

(ii) Death or serious illness or injury of a member of the immediate family of the employee or spouse. "Serious illness or injury" and "immediate family" are defined in accordance with Section 699.5 of the Uniform State/AID/USIA Regulations, as in effect on the date of such travel.

§ 7–7.5002–3 [Amended]

17. Paragraph (1) of § 7–7.5002–3 is deleted.

18. Section 7–7.5002–15 is amended to change the date in the undesignated center head from "(September 1974)" to "(December 1976)" and paragraph (d) is revised to read as follows:

§ 7–7.5002–15 Transportation and Storage Expenses.

* * * * *

(d) *International ocean transportation.*—(1) All international ocean transportation of persons and things which is to be reimbursed in U.S. dollars under this contract shall be by U.S. flag vessels to the extent they are available.

(i) Transportation of things. Where U.S. flag vessels are not available, or their use would result in a significant delay, the Contractor may obtain a release from this requirement from the Transportation Support Division, Office of Commodity Management, Agency for International Development, Washington, D.C. 20523, or the Mission Director, as appropriate, giving the basis for the request.

(ii) Transportation of persons. Where U.S. flag vessels are not available, or their use would result in a significant delay, the Contractor may obtain a release from this requirement from the Contracting Officer or the Mission Director, as appropriate.

(2) Transportation of foreign-made vehicles. Reimbursement of the costs of transporting a foreign (non-U.S.) made motor vehicle will be made in accordance with the provisions of the Uniform State/AID/USIA Foreign Service Travel Regulations, as from time to time amended.

(3) Reduced rates on U.S. flag carriers. Reduced rates on United States flag carriers are in effect for shipments of household goods and personal effects of AID contract personnel. These reduced rates are available provided the shipper states on the bill of lading that the cargo is "Personal property—not for resale—payment of freight charges is at U.S. Government (AID) expense and any special or diplomatic discounts accorded this type cargo are applicable." The Contractor will not be reimbursed for shipments of household goods or personal effects in amount in excess of the reduced rates available in accordance with the foregoing.

19. New § 7–7.5002–16 is added as follows:

§ 7–7.5002–16 Preference for U.S. flag air carriers.

Insert the clause set forth in FPR 1–1.323–2.

20. New § 7–7.5003–5 is added as follows:

§ 7–7.5003–5 Privacy Act.

Insert the clause set forth in FPR 1–1.327–5(c) under the conditions set forth therein.

Subpart 7–7.52—Basic Ordering Agreement for Participant Training

21. Section 7–7.5201–1(h) is revised to read as follows:

§ 7–7.5201–1 Definitions.

* * * * *

(h) "Director" shall mean the individual who fills the AID position of Director, Office of International Training, or his representative acting within the limits of his authority.

22. New § 7–7.5202–3 is added as follows:

§ 7–7.5202–3 Privacy Act.

Insert the clause set forth in FPR 1–1.327–5(c) under the conditions set forth therein.

Subpart 7–7.53—Contracts for Participant Training

23. Section 7–7.5301–(g) is revised as follows:

§ 7–7.5301–1 Definitions.

* * * * *

(g) "Director" shall mean the individual who fills the AID position of Director, Office of International Training, or his authorized representative acting within the limits of his authority.

24. New § 7–7.5302–3 is added as follows:

§ 7–7.5302–3 Privacy Act.

Insert the clause set forth in FPR 1–1.327–5(c) under the conditions set forth therein.

Subpart 7–7.54—Clauses for Fixed Price Type Contract for Technical Services

25. Section 7–7.5401–35 is added as follows:

§ 7–7.5401–35 Termination for convenience of the Government.

Insert the appropriate clause in accordance with FPR 1–8.700–2(a) (1), (2), or (4).

26. New § 7–7.5401–36 is added as follows:

§ 7–7.5401–36 Clean air and water.

Insert the clause set forth in FPR 1–1.2302–2 under the conditions set forth therein.

27. Section 7–7.5402–8 is revised as follows:

§ 7–7.5402–8 International ocean transportation.

INTERNATIONAL OCEAN TRANSPORTATION (DECEMBER 1976)

All international ocean travel and transportation of persons and things (including commodities and equipment procured specifically for the performance of this contract as well as employee's vehicles, personal effects and household goods, if any) shall be made on United States flag carriers. Where United States flag carriers are not available, or their use would result in significant delays, the Contractor may request a waiver from this requirement. Waivers for shipments of things shall be obtained from the Transportation Support Division, Office of Commodity Management AID, Washington, D.C. 20523; waivers for transportation of persons from the Contracting Officer or Mission Director, as appropriate. If such a waiver is granted it shall be considered a change within the meaning of the "Changes" clause of this contract.

28. New § 7–7.5402–10 is added as follows:

§ 7–7.5402–10 Preference for U.S. flag air carriers.

Insert the clause set forth in FPR 1–1.323–2.

§ 7–7.5403–2 [Removed]

29. Section 7–7.5403–2 is deleted.

30. New § 7–7.5403–6 is added as follows:

§ 7–7.5403–6 Privacy Act.

Insert the clause set forth in FPR 1–1.327–5(c) under the conditions set forth therein.

Subpart 7–7.55—Clauses for Cost Reimbursement Contracts with Educational Institutions

31. New § 7–7.5501–40 is added as follows:

§ 7–7.5501–40 Clean air and water.

Insert the clause set forth in FPR 1–1.2302–2 under the conditions set forth therein.

32. New § 7–7.5502–19 is added as follows:

§ 7–7.5502–19 Preference for U.S. flag air carriers.

Insert the clause set forth in FPR 1–1.323–2.

33. New § 7–7.5503–11 is added as follows:

§ 7–7.5503–11 Privacy Act.

Insert the clause set forth in FPR 1–1.327–5(c) under the conditions set forth therein.

PART 7–8 TERMINATION OF CONTRACTS

Subpart 7–8.1—Definition of Terms [Removed]

34. Subpart 7–8.1 is deleted in its entirety.

Subpart 7–8.2—General Principles Applicable to the Termination for Convenience and Settlement of Fixed Price Type and Cost Reimbursement Type Contracts

§ 7–8.213 [Removed]

35. Section 7–8.213 is deleted.

PART 7–10 BONDS AND INSURANCE

Subpart 7–10.3—Insurance—General

§ 7–10.351 [Redesignated]

36. Section 7–10.351 is redesignated as § 7–10.502–3.

PART 7–12 LABOR

Subpart 7–12.8—Equal Opportunity in Employment

§ 7–12.802–51 [Removed]

37. Section 7–12.802–51 is deleted.

Subpart 7–12.52—Foreign Nationals [Removed]

Subpart 7–12.53—Workmen's Compensation (Defense Base Act) and War Hazards Compensation for Overseas Employees [Removed]

38. Subparts 7–12.52 and 7–12.53 are deleted in their entirety.

PART 7–15 CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 7–15.1—Applicability

§ 7–15.102–50 [Removed]

39. Section 7–15.102–50 is deleted.

§ 7–15.151 [Removed]

40. Section 7–15.151 is deleted.

Subpart 7–15.2—Contracts With Commercial Organizations

§ 7–15.200 [Removed]

41. Section 7–15.200 is deleted.

Subpart 7–15.3—Grants and Contracts With Educational Institutions

§ 7–15.301 [Amended]

42. Section 7–15.301 is amended to substitute "contract clause set forth in AID PR 7–7.55" for "form which is set out in AIDPR subpart 7–16" at the end of the section.

PART 7–30 CONTRACT FINANCING

Subpart 7–30.4—Advance Payments

§ 7–30.403 [Removed]

43. Section 7–30.403 is deleted.

§ 7–30.413 [Removed]

44. Section 7–30.413 is deleted.

APPENDIX F—DIRECT AID CONTRACTS WITH U.S. CITIZENS FOR PERSONAL SERVICES ABROAD

45. A new paragraph d. is added to Clause 9 of Attachment B (General Provisions, Contract with a U.S. Citizen for Personal Services Abroad) to Appendix F as follows:

9. *Insurance.*

* * * * *

d. Claims for private personal property losses.

The Contractor shall be reimbursed for private personal property losses in accordance with AID Handbook 23, "Overseas Support", Chapter 10.

46. Paragraph (b)(9) of Clause 10 of Attachment B to Appendix F is revised as follows:

(9) *Limitation on Travel.*

(a) Public Law 93–623 requires that all Federal agencies and Government contractors and subcontractors will use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available. It further provides that the Comptroller General of the United States shall disallow any expenditures from appropriated funds for international air transportation on other than U.S. flag air carrier in the absence of satisfactory proof of the necessity therefor.

(b) The contractor agrees to utilize U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carrier is available, in accordance with the following criteria:

(i) Passenger or freight srevice by a U.S. flag air carrier is considered "available" even though:

(A) Comparable or a different kind of service by a non-U.S. flag air carrier costs less, or

(B) Service by a non-U.S. flag air carrier can be paid for in excess foreign currency, or

(C) Service by a non-U.S. flag air carrier is preferred by the agency or traveler needing air transportation, or

(D) Service by a non-U.S. flag air carrier is more convenient for the agency or traveler needing air transportation.

(ii) Passenger service by a U.S. flag air carrier will be considered to be "unavailable":

(A) When the traveler, while en route, has to wait 6 hours or more to transfer to a U.S. flag air carrier to proceed to the intended destination, or

(B) When any flight by a U.S. flag air carrier is interrupted by a stop anticipated to be 6 hours or more for refueling, reloading, repairs, etc., and no other flight by a U.S. flag air carrier is available during the 6 hour period, or

(C) When by itself or in combination with other U.S. flag or non-U.S. flag air carriers (if U.S. flag air carriers are "unavailable") it takes 12 or more hours longer from the original airport to the destination airport to accomplish the agency's mission than would service by a non-U.S. flag air carrier or carriers.

(D) When the elapsed traveltime on a scheduled flight from origin to destination airports by non-U.S. flag air carrier(s) is 3 hours or less, and service by U.S. flag air carrier(s) would involve twice such scheduled traveltime.

(c) In the event that the Contractor selects a carrier other than a U.S. flag air carrier for international air transportation, he will include a certification on vouchers involving such transportation which is essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS

I hereby certify that transportation service for personnel (and their personal effects) or property by U.S. flag air carrier was unavailable for the following reasons:

(state reasons)

(d) The terms used in this clause have the following meanings:

(1) "International air transportation" means transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof or between two places both of which are outside the United States.

(2) "U.S. flag air carrier" means one of a class of air carriers holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board, approved by the President, authorizing operations between the United States and/or its territories and one or more foreign countries.

(3) The term "United States" includes the fifty states, Commonwealth of Puerto Rico, possessions of the United States, and the District of Columbia.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase hereunder, which may involve international air transportation.

47. New Appendix G is added as follows:

APPENDIX G—CONTRACT CLOSEOUT PROCEDURES

1. *Purpose.* This Appendix G establishes procedures for the orderly and expeditious closeout of completed AID/W and Mission direct contracts.

2. *Closeout Procedures.* (a) For the purpose of this Appendix, the "closeout phase" is defined as the period of time extending from the date the work has been completed by the contractor (including submission of all reports required under the contract) until all remaining administrative actions have been satisfactorily accomplished and the contract file is retired. The closeout procedures

are administered by the Support Services Branch, Office of Contract Management (CM/SD/SUP).

(b) AID organizational elements accomplish their respective responsibilities during the closeout phase as follows:

(1) *Fixed-Price Type Contracts.* Within 4 months after the contractor has completed the work.

(2) *Cost-Reimbursement Type Contracts.* Within 21 months after the contractor has completed the work.

(c) Contract records are not officially retired by the contracting office until the closeout phase is completed.

3. *Responsibility.* (a) *Contracting Office.* The Contracting Officer is responsible for:

(1) Identifying outstanding closeout actions.

(2) Contacting other offices within AID having responsibilities during the closeout phase for status information.

(3) Assuring that all closeout actions have been accomplished, as evidenced by the information provided by responsible offices on the checklist form.

(4) Initiation of follow-up measures, as necessary, on administrative actions which have not been completed within a reasonable time.

(5) Submitting any contract file to the Office of the General Counsel for review when he feels that (i) litigation may be involved, or (ii), there is a legal problem which GC should comment on before the contract is closed out.

(b) *Other AID Offices.* Other AID offices (e.g., the Technical Office, Auditor General, AID/W or Mission Security, AID/W Paying Office or Mission Controller, and the Mission) are responsible for:

(1) Accomplishing administrative actions on a work-completed contract as expeditiously as possible.

(2) Providing completed checklist forms or other status information as requested by the Contracting Officer in accordance with the procedures in this appendix.

(4) *Procedures.* (a) As soon as feasible, but not more than 90 days after completion of the work under a contract (including receipt of all reports required thereunder), the Contracting Officer, or his designated representa-tracting Officer, or his designated representa-the outstanding closeout actions which must be accomplished prior to retiring the contract.

(b) The Contracting Officer or his designated representative (CM/SD/SUP for AID/W) prepares form AID 1420-15, Contract Closeout Checklist (see Attachment), for transmittal to each of the indicated AID action offices as follows:

Part I—AID/W Technical Office. Two copies.

Part II—AID Security or Mission Security Office. Two copies.

Part III—AID/W AG Audit. Two copies.

Part IV—AID/W Paying Office or Mission Controller. Two copies.

Part V—Mission. Two copies.

(c) The above checklists are sent concurrently to the action offices indicated. Each action office returns one copy of the completed part of the checklist to the Contracting Officer by the date indicated on the form. Additional remarks or comments by the action office may be attached to their reply. In closing out a mission contract, it may be necessary to obtain certain information from AID/W offices before completing the checklist. If an office indicates on the checklist that one or more items are still pending, they forward the second and final signed copy of the checklist when all of their outstanding actions have been completed.

(d) The Contracting Officer, or his designated representative, follows up periodically on outstanding administrative actions that have not been accomplished within a reasonable period of time.

(e) The Contracting Officer shall certify to the Security Office when the contractor has given notification that all classified information in the contractor's possession has been properly disposed of or retained (see Part VI, item 8 of Attachment).

(f) When the Contracting Officer has received the completed, certified checklists from the other action offices, he completes Part VI, the Contracting Officer checklist (form AID 1420-15F), assembles all checklist parts in order, signs the certification in paragraph B of Part VI, and places the document in the contract file. The signed checklist and supporting data then constitute the necessary authority to officially retire the contract file.

CONTRACT CLOSE-OUT

PART I – TECHNICAL OFFICE CHECKLIST

INSTRUCTIONS: PURSUANT TO AIDPR APPENDIX G, PLEASE COMPLETE THE INFORMATION BELOW AND RETURN ONE SIGNED COPY TO THE CONTRACTING OFFICER BY THE DUE DATE INDICATED IN ITEM 2. IF YOU REPORT ANY ACTIONS WHICH ARE STILL PENDING, PLEASE SUBMIT ANOTHER COMPLETED COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER IMMEDIATELY AFTER ALL OF THE ACTIONS FOR WHICH YOUR OFFICE IS RESPONSIBLE HAVE BEEN SATISFACTORILY COMPLETED.

1. DATE

2. REPLY DUE DATE

3. TO

4. FROM (Contracting Officer)

5. CONTRACT NUMBER	6. CONTRACTOR	7. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Have all contract work and services, including reports, been accomplished and accepted by the Government? If No, expected completion date _____.			
2. Has the contractor accounted for all U.S. Government titled property and equipment (under your office's surveillance) for which the contractor has custodial responsibility under the contract?			
3. Has proper disposition been made of such property and equipment? If No, expected date of disposition _____.			
4. Is the contractor free of liability for the loss, destruction or damage to any such U.S. Government titled property or equipment?			
If No, have the Contractor and the Contracting Officer been notified of the extent of such liability?			
5. Has Form AID 1420-43, Contractor Performance Evaluation Report (Final) been submitted? If No, expected date of submission _____.			
6. Have all other known contract requirements been met? If No, state nature of requirements and expected date of completion below.			

7. REMARKS

B. CERTIFICATION

All actions for which the Technical Office is responsible have been completed. ☐ YES ☐ NO

SIGNATURE	OFFICE SYMBOL	DATE

AID 1420-15A (4-70)

CONTRACT CLOSE-OUT

PART II – AID/W OR MISSION SECURITY OFFICE CHECKLIST

INSTRUCTIONS: PURSUANT TO AIDPR APPENDIX G, PLEASE COMPLETE THE INFORMATION BELOW AND RETURN ONE SIGNED COPY TO THE CONTRACTING OFFICER BY THE DUE DATE INDICATED IN ITEM 2. IF YOU REPORT ANY ACTIONS WHICH ARE STILL PENDING, PLEASE SUBMIT ANOTHER COMPLETED COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER IMMEDIATELY AFTER ALL OF THE ACTIONS FOR WHICH YOUR OFFICE IS RESPONSIBLE HAVE BEEN SATISFACTORILY COMPLETED.

1. DATE

2. REPLY DUE DATE

3. TO

4. FROM (Contracting Officer)

5. CONTRACT NUMBER | 6. CONTRACTOR | 7. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Has the Contracting Officer certified that he has been notified by the Contractor that all classified and Limited Official Use information in the Contractor's possession has been disposed of or retained (if related or continuing contracts are involved) in accordance with existing AID Security Regulations?			

2. Remarks:

B. CERTIFICATION

All actions for which the Security Office is responsible have been completed. ☐ YES ☐ NO

SIGNATURE | OFFICE SYMBOL | DATE

AID 1420-18B (4-76)

CONTRACT CLOSE-OUT

PART III - AUDIT CHECKLIST

INSTRUCTIONS: PURSUANT TO AIDPR APPENDIX G, PLEASE COMPLETE THE INFORMATION BELOW AND RETURN ONE SIGNED COPY TO THE CONTRACTING OFFICER BY THE DUE DATE INDICATED IN ITEM 2. IF YOU REPORT ANY ACTIONS WHICH ARE STILL PENDING, PLEASE SUBMIT ANOTHER COMPLETED COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER IMMEDIATELY AFTER ALL OF THE ACTIONS FOR WHICH YOUR OFFICE IS RESPONSIBLE HAVE BEEN SATISFACTORILY COMPLETED.

1. DATE

2. REPLY DUE DATE

3. TO

4. FROM (Contracting Officer)

5. CONTRACT NUMBER | 6. CONTRACTOR | 7. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Has final audit been accomplished by the Cognizant Auditor? If No, expected date of final audit _____.			

2. Remarks:

B. CERTIFICATION

All actions for which the Office of Audit is responsible have been completed. ☐ YES ☐ NO

SIGNATURE | OFFICE SYMBOL | DATE

AID 1420-18C (4-76)

CONTRACT CLOSE-OUT

PART IV – AID/W PAYING OFFICE OR MISSION CONTROLLER CHECKLIST

INSTRUCTIONS: PURSUANT TO AIDPR APPENDIX G, PLEASE COMPLETE THE INFORMATION BELOW AND RETURN ONE SIGNED COPY TO THE CONTRACTING OFFICER BY THE DUE DATE INDICATED IN ITEM 2. IF YOU REPORT ANY ACTIONS WHICH ARE STILL PENDING, PLEASE SUBMIT ANOTHER COMPLETED COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER IMMEDIATELY AFTER ALL OF THE ACTIONS FOR WHICH YOUR OFFICE IS RESPONSIBLE HAVE BEEN SATISFACTORILY COMPLETED.

1. DATE

2. REPLY DUE DATE

3. TO

4. FROM (Contracting Officer)

5. CONTRACT NUMBER	6. CONTRACTOR	7. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Have all suspended or disallowed costs been cleared and settled? If No, expected clearance date _____.			
2. Have all advanced payments or Federal Reserve Letters of Credit been liquidated? If No, expected liquidation date _____.			
3. Have any refunds, rebates, or credits (including any interest thereon) received by the Contractor or Assignee, which arose out of contract performance and are due the Government, been paid to the Government? If No, expected payment date _____.			
4. Have all subcontractors' and vendors' claims chargeable to the contract been settled and paid? If No, expected date of settlement and payment _____.			
5. Has final overhead claim been approved and a voucher submitted in settlement therefor? If No, expected approval date _____.			
6. Has the total fee been paid to the Contractor? If No, expected payment date _____.			
7. Has the Contractor submitted a final release of any further claims to the Government?			
8. Has the Contractor submitted a final voucher (Form SF 1034) with the required supporting documents?			
9. Has the Contractor's final voucher been paid? If No, expected payment date _____.			
10. Have all GAO inquiries or formal exceptions to vouchers been cleared? If No, expected clearance date _____.			

11. Remarks:

B. CERTIFICATION

All action for which the AID/W Paying Office or Mission Controller is responsible have been completed. ☐ YES ☐ NO

SIGNATURE	OFFICE SYMBOL	DATE

AID 1420-18D (4-76)

CONTRACT CLOSE-OUT

PART V – MISSION CHECKLIST

INSTRUCTIONS: PURSUANT TO AIDPR APPENDIX G, PLEASE COMPLETE THE INFORMATION BELOW AND RETURN ONE SIGNED COPY TO THE CONTRACTING OFFICER BY THE DUE DATE INDICATED IN ITEM 2. IF YOU REPORT ANY ACTIONS WHICH ARE STILL PENDING, PLEASE SUBMIT ANOTHER COMPLETED COPY OF THE CHECKLIST TO THE CONTRACTING OFFICER IMMEDIATELY AFTER ALL OF THE ACTIONS FOR WHICH YOUR OFFICE IS RESPONSIBLE HAVE BEEN SATISFACTORILY COMPLETED.

1. DATE

2. REPLY DUE DATE

3. TO

4. FROM (Contracting Officer)

5. CONTRACT NUMBER	6. CONTRACTOR	7. CONTRACTING OFFICE

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Has the contractor accounted for all U.S. or Cooperating Government titled property and equipment (located in the Cooperating Country) for which the contractor has custodial responsibility under the contract?			
2. Has proper disposition been made of such property and equipment? If No, expected disposition date _____.			
3. Is the Contractor free of liability for the loss, destruction or damage to any U.S. or Cooperating Government titled property or equipment?			
If No, has the Contractor and the Contracting Officer been notified of the extent of such liability?			
4. Have all contract work and services (performed in the Cooperating Country), including reports, been accomplished?			
5. Has an overseas audit of the Contractor's activities been accomplished by the USAID/Controller? If in process, expected completion date _____.			
6. Has Form AID 1420-43, Contractor Performance Evaluation Report, been submitted? If No, expected submission date _____.			
7. Have all other known contract requirements been met, e.g., security, local currency, etc.? If No, state nature of the requirements and expected completion date below.			

8. Remarks:

B. CERTIFICATION

All actions for which the Mission is responsible have been completed. ☐ YES ☐ NO

SIGNATURE	OFFICE SYMBOL	DATE

AID 1420-18E (4-76)

CONTRACT CLOSE-OUT PART VI - CONTRACTING OFFICE CHECKLIST			1. DATE
2. CONTRACT NUMBER	3. CONTRACTOR	4. CONTRACTING OFFICE	

A. RESPONSIBILITIES

Indicate Answer by Placing "X" in Proper Column	YES	NO	N/A
1. Has the Contractor complied with all special contract terms and conditions? If No, state nature of special terms and conditions and expected date of compliance.			
2. Have all contractual changes initiated during performance of the contract been reduced to and embodied in formal contractual instruments? If No, expected date of contractual instrument issuance _____.			
3. Have any claims or suits against the Government arising out of the contract been settled? If No, state nature of claim or suit and expected settlement date.			
4. Has action been taken to deobligate any balance of unexpended and excess funds? If No, funds will be deobligated on _____.			
5. Have all reductions in costs, price or fee, to which the Government is entitled, been effected by amendment to the Contract? If No, expected amendment date _____.			
6. Have the following certifications been sent to the AID Paying Office or Mission Controller by the Contracting Officer? (a) All work or services have been satisfactorily completed. If No, certification will be sent on _____			
(b) Contractor has rendered a satisfactory account of property for which he has custodial responsibility.			
(c) Contractor's assignment to the Government of refunds, rebates, credits and other amounts allocable to reimbursable costs under this contract.			
(d) Contractor's release discharging the Government from all liabilities, obligations, and claims arising out of the contract.			
7. Have all disputes been resolved? If No, state nature of dispute and present status.			
8. Has the Contractor notified the Contracting Officer that all classified and Limited Official Use information in his possession has been disposed of or retained (if related or continuing contracts are involved) in accordance with AID Security Regulations?			
9. Does the contract file contain all required documentation sufficient to constitute a full history of the procurement?			
10. Has a determination been made in connection with Contractor liability for the loss, destruction or damage of any property for which the Contractor has custodial responsibility?			

B. FINAL CERTIFICATION

All administrative actions have been completed under the above contract and the contract files may be officially retired.

SIGNATURE (Contracting Officer)	OFFICE SYMBOL	DATE

AID 1420-15F (4-76)

Authority. This AIDPR Notice 77-4 is an interim procurement instruction and is issued pursuant to 41 CFR 7-1.104-4.

Effective date. This notice is effective January 31, 1977.

Dated: January 5, 1977.

JOHN F. OWENS,
Deputy Assistant Administrator for Program and Management Services.

[FR Doc.77-2314 Filed 1-25-77;8:45 am]

Title 42—Public Health

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

SUBCHAPTER I—MEDICAL CARE QUALITY AND COST CONTAINMENT

PART 100—COST CONTAINMENT AND QUALITY CONTROL

Policy on Lack of Timely Notice

Notice is hereby given of the adoption of a policy under section 1122 of the Social Security Act (42 U.S.C. 1320a-1) pursuant to which the Regional Health Administrators, under the authority of section 1122(d)(1) (previously delegated to them by the Secretary), will limit the period of withholding of reimbursement for a capital expenditure when it has been determined under section 1122(d)(1)(A) that timely notice of a proposed capital expenditure subject to review under section 1122 has not been provided as required.

This policy has been developed in response to reports of an increasing number of cases in which capital expenditures subject to review under section 1122 have not been submitted for review to the designated planning agency in the timely manner required by the statute and regulations. The circumstances surrounding the history of these cases are varied, and, while some cases apparently merit the withholding of all reimbursement, others do not.

The law and regulations provide two procedures for limiting the requirement to withhold all reimbursement related to the capital expenditure in cases where timely notice was not provided. One is to use the mechanism provided by section 1122(d)(2) whereby the Regional Health Administrators (to whom that authority is presently delegated) could decide not to withhold reimbursement on the grounds cited in the law and regulations, after submitting the matter to the appropriate national advisory council. This mechanism, however, offers serious disadvantages (among them, complexity, lack of flexibility, and lack of timeliness), and therefore has been rejected as the general procedures to be used in these cases. This mechanism remains available, however, for those cases where the designated planning agency has found a proposed capital expenditure not to conform to applicable plans, criteria, or standards, but where the Regional Health Administrator may wish not to withhold reimbursement on the ground that to do so would discourage the operations or expansion of the health care facility or health maintenance organization or of any facility of such organization which has demonstrated to his satisfaction proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of title V, XVIII or XIX of the Social Security Act.

The second alternative is that provided by the language of section 1122(d)(1):

> * * * if the Secretary determines that—
> (A) neither the planning agency designated in the agreement described in subsection (b) nor an agency described in clause (ii) of subparagraph (B) of this paragraph had been given notice of any proposed capital expenditure (in accordance with such procedure or in such detail as may be required by such agency) at least 60 days prior to obligation for such expenditure; * * * then *for such period as he finds necessary in any case to effectuate the purpose of this section*, he shall, in determining the Federal payments to be made under titles V, XVIII, and XIX with respect to services furnished in the health care facility for which such capital expenditure is made, not include any amount which is attributable to depreciation, interest on borrowed funds, a return on equity capital (in the case of proprietary facilities), or other expenses related to such capital expenditure (italics added).

This language requires the Regional Health Administrator to determine the appropriate period of withholding in each case. In order to promote national uniformity in the application of this policy, and thus assure equitable treatment for

the health care facilities and health maintenance organizations involved, the following policy has been developed to describe the different kinds of cases which might occur and the period of withholding which will apply for each case:

NOTE.—Where the Secretary makes the determination described in 42 CFR 100.108(a)(1), he will follow the following policy in establishing the time period during which reimbursement will be withheld:

(1) Where the health care facility or health maintenance organization by or on behalf of which the expenditure was made demonstrates to the satisfaction of the Secretary that a reasonable effort had been made to determine from the designated planning agency whether the expenditure was subject to review, and the designated planning agency had not informed the facility or organization within a reasonable period of time that the proposed expenditure was subject to review, the Secretary will not withhold reimbursement related to the capital expenditure.

(2) Where the designated planning agency has, in accordance with the requirements of section 1122 of the Act and its regulations (42 CFR Part 100), submitted to the Secretary its finding that such expenditure is not consistent with the standards, criteria, or plans described in § 100.104(a)(2) of the regulations, and where subparagraph (1) above is not applicable, the Secretary will withhold all reimbursement related to the capital expenditure: *Provided*, That where the designated planning agency, in accordance with § 100.109(c), submits to the Secretary a revised funding in accordance with paragraph (c)(2) of that section, the Secretary will apply the provisions of subparagraph (3) or subparagraph (4) below, whichever is applicable.

(3) Where (i) the designated planning agency submits to the Secretary its finding that for the proponent to comply with the requirement of § 100.106 for timely notice of intent to incur the obligation for a capital expenditure, which capital expenditure was not for the purpose of providing a new service or expanding the capacity of the health care facility or health maintenance organization to offer an existing service, would have placed in jeopardy the health or the safety of the patients of the facility or organization, and that the proponent gave such notice as, in the opinion of the designated planning agency, was reasonable under the circumstances, and (ii) if the facility or organization submitted to the designated planning agency within 60 days following the date of the obligation for the expenditure or 90 days following the date of publication of this policy in the FEDERAL REGISTER, whichever is later, a complete application and (iii) the designated planning agency submits to the Secretary its finding that the capital expenditure is consistent with the standards, criteria, and plans described in § 100.104(a)(2) which apply at the time of the review by the designated planning agency, the Secretary will not withhold reimbursement related to the capital expenditure.

(4) Where the designated planning agency submits to the Secretary its finding that the capital expenditure is consistent with the standards, criteria, and plans described in § 100.104(a)(2) which apply at the time of the review by the designated planning agency, but the provisions of neither subparagraph (1) nor subparagraph (3) above apply, the Secretary will withhold reimbursement related to the capital expenditure for a period of one year.

Dated: January 14, 1977.

KENNETH M. ENDICOTT,
Administrator, Health Resources Administration.

[FR Doc.77-2401 Filed 1-25-77;8:45 am]

Title 45—Public Welfare

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1619—DISCLOSURE OF INFORMATION

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"). Section 1006(b)(1), 42 U.S.C. 2996e(b)(1), provides that the Corporation shall have the authority to enforce compliance with the Act and Corporation rules, regulations and guidelines promulgated pursuant thereto.

On September 23, 1976 (41 FR 41724) a proposed regulation on disclosure of recipient policies was published. Interested persons were given until October 26, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

COMMENT

The final regulation is a substantial revision of the draft published for comment on September 23, 1976.

The disclosure requirements of the published draft were very similar to the ones that Part 1602 imposes on the Legal Services Corporation, although the Legal Services Corporation Act applies the Freedom of Information Act to the Corporation, and not to recipients. After considering the comments received, the Corporation concluded that there is a sound basis for the distinction made by the Congress in its treatment of the Corporation and of recipients.

The published draft gave insufficient weight to the fact that a legal services office is a law firm, and that its operations are fundamentally different from those of the Corporation. Opposing attorneys and parties to lawsuits in which the other side is represented by a legal services program attempted to use the proposed regulation as a means of discovery. The regulation sought to protect against such misuse, but its description of the materials exempt from disclosure was necessarily vague and likely to raise many questions of interpretation and application. Some programs that received requests under the regulation reported difficulty in defining the scope of disclosure with respect to information relating to specific cases or clients. Requiring a legal services program to furnish any information related to a client's case might put legal services clients at a disadvantage that is unjustified by the fact that they are being assisted with funds initially provided by the Congress.

Other legal services programs received requests for information from individuals seeking to show that the recipient was violating the Act or Corporation regulations. Insofar as the draft lent itself to this use, it was inconsistent with section 1618, Enforcement Procedures, and section 1604, providing for the establishment of State Advisory Councils. An individual who has reason to believe a legal services program may have violated the Act or Corporation regulations should not undertake a private investigation or fishing expedition, but should make a complaint to the State Advisory Council, the Director of the recipient, or the Corporation. Investigation is then carried out by the Corporation, as required by Part 1618, which informs the complainant of the results.

The public has a legitimate interest in knowing the rules and regulations of the Corporation and the recipient's policies and guidelines and the names and addresses of the members of its governing body. These should be made available for public inspection during business hours at any office maintained by a recipient. Other information concerning a recipient in which the public may have a legitimate interest may be obtained by an FOIA request to the Corporation pursuant to Part 1602.

The final regulation insures that information in which the public has a legitimate interest will be disclosed, and protects recipients against burdensome or inappropriate demands.

Sec.
1619.1 Purpose.
1619.2 Policy.
1619.3 Referral to the Corporation.
1619.4 Exemptions.

AUTHORITY: Sec. 1006(b)(1), (42 U.S.C. 2996e(b)(1)); sec. 1008(e), (42 U.S.C. 2996g(e).)

§ 1619.1 Purpose.

This part is designed to insure disclosure of information that is a valid subject of public interest in the activities of a recipient.

§ 1619.2 Policy.

A recipient shall adopt a procedure for affording the public appropriate access to the Act, Corporation rules, regulations and guidelines, the recipient's written policies, procedures, and guidelines, the names and addresses of the members of its governing body, and other materials that the recipient determines should be disclosed. The procedure adopted shall be subject to approval by the Corporation.

§ 1619.3 Referral to the Corporation.

If a person requests information, not required to be disclosed by this part, that the Corporation may be required to disclose pursuant to Part 1602 of this chapter implementing the Freedom of Information Act, the recipient shall either provide the information or inform the

person seeking it how to request it from the Corporation.

§ 1619.4 Exemptions.

Nothing in this part shall require disclosure of

(a) Any information furnished to a recipient by a client;

(b) The work product of an attorney or paralegal;

(c) Any material used by a recipient in providing representation to clients;

(d) Any matter that is related solely to the internal personnel rules and practices of the recipient; or

(e) Personnel, medical, or similar files.

Effective date: This part shall become effective February 25, 1977.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.77-2578 Filed 1-25-77;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1257]

PART 1033—CAR SERVICE

Priority in Movement of Fuel and Other Essential Commodities

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 21st day of January, 1977.

It appearing, That because of severe weather in the eastern portion of the United States available fuel supplies are seriously depleted; that excessive accumulations of snow and ice and extreme cold have also disrupted normal movement of freight by railroad; that shortages of fuel have caused numerous industries to discontinue operations, resulting in extensive unemployment; that supplies of food stuffs for farm animals and for humans are also being depleted; that there are needs for emergency supplies of equipment and chemicals used in removing snow from streets and highways; that certain other articles of commerce must continue to move to points of use promptly; that railroads in certain areas are unable to move currently all traffic available; that the establishment of priorities for the movement of certain commodities is essential to the national welfare; that in the opinion of the Commission an emergency exists; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1257 Priority in movement of fuel and other essential commodities.

(a) Any railroad which is unable to transport all of the freight traffic which it would normally move by any particular train or engine shall give priority in movement, over all other traffic of all essential commodities consigned for domestic use including but not limited to the following:

Liquid fuels, including liquefied petroleum gas, diesel fuel, fuel oil, gasoline, etc.
Coal.
Animal and Poultry Feed.
Food for human consumption.
Grain, soybeans and other agricultural products for processing into foods for either human or animal consumption.
Snow removal equipment and supplies, including salt and chemicals when consigned to a federal, state, county or municipal body.
Water and sewage processing supplies and equipment essential to the continuity of water and sewage installations.
Electric power, gas and petroleum, petroleum products, distribution and communication systems supplies, materials and equipment required for the continued operation of such systems.
Military freight on bills of lading issued by transportation officers of the military services.
Material moving on bills of lading specifically certified as essential by the Department of Defense, Energy Research and Development Administration or the Federal Energy Administration.
Empty tank cars which last contained liquid fuel or which the car owner certifies will next be used to transport such commodity.
United States mail in accordance with emergency orders of the United States Postal Service.

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

(c) *Effective date.* This order shall become effective at 11:59 p.m., January 21, 1977.

(d) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., January 31, 1977.

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

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

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

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2560 Filed 1-25-77;8:45 am]

Title 50—Wildlife and Fisheries

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

PART 33—SPORT FISHING

Individual Wildlife Refuge Areas

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

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

ALABAMA

CHOCTAW NATIONAL WILDLIFE REFUGE

Sport fishing on the Choctaw National Wildlife Refuge, Jackson, Alabama, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 2,000 acres, are shown on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season is open year-round on all refuge waters not closed by signs.

(2) Fishing permitted during daylight hours only.

(3) Boats and motors are permitted.

(4) Trotlines are not permitted in refuge impoundments.

(5) Equipment (boats, trailers, vehicles, etc.) not permitted overnight.

(6) Boat launching is permitted only at the refuge's north end boat ramp.

ARKANSAS

BIG LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Big Lake National Wildlife Refuge, Manila, Arkansas, is permitted on all water areas. These areas, comprising 4,000 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends year-round except for closure during duck hunting season.

(2) Limb lines not permitted.

(3) Trotline fishing permitted at night.

HOLLA BEND NATIONAL WILDLIFE REFUGE

Sport fishing is permitted on all waters of Holla Bend National Wildlife Refuge. Sport fishing shall be in accordance with all applicable State and Federal regulations covering fishing, subject to the following special conditions:

(1) Fishing is permitted only during the period March 15 through September 30, daylight hours only.

WAPANOCCA NATIONAL WILDLIFE REFUGE

Sport fishing on the Wapanocca National Wildlife Refuge, Turrell, Arkansas is permitted on Wapanocca Lake and other areas as designated by signs as open to fishing. These open areas are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from April 1, 1977 through September 30, 1977.

(2) Fishing permitted during daylight hours only.

(3) Motors larger than 10 horsepower are prohibited.

(4) The use of yo-yo's, jugs, drops, or trotlines is prohibited.

(5) The use of live carp, shad, buffalo, and goldfish for bait is prohibited.

(6) No fishing permitted within 100 yards of any refuge building or structure.

WHITE RIVER NATIONAL WILDLIFE REFUGE

Sport fishing on the White River National Wildlife Refuge, DeWitt, Arkansas, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 2,592 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 16, 1977 through October 31, 1977.

(2) Boats without owner's name plate affixed in a conspicuous place may not be left overnight.

(3) Taking of frogs is prohibited.

LAKE WOODRUFF NATIONAL WILDLIFE REFUGE

FLORIDA

Sport fishing on the Lake Woodruff National Wildlife Refuge, DeLeon Springs, Florida, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 650 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations, subject to the following special conditions:

(1) The sport fishing season is open year-round on designated refuge waters west of Norris Dead River, Lake Woodruff, and Spring Garden Creek. In addition, Highland Park Canal and the canal bordering the east side of Norris Dead River are open year-round. Refuge waters east of Norris Dead River Canal, Lake Woodruff, and Spring Garden Creek will be open to fishing only when such use does not result in undue disturbance to wildlife or does not interfere with wildlife management practices being carried out on the area. Such periods of permitted use will be designated by appropriate signing and will generally occur during the period from March 15 to October 15.

(2) Fishing and access on refuge lands and waters is permitted during daylight hours only.

(3) Air thrust boats are prohibited.

LOXAHATCHEE NATIONAL WILDLIFE REFUGE

Sport fishing is permitted in all waters of the Loxahatchee National Wildlife Refuge, Delray Beach, Florida, except those marked by signs as being closed. The open areas, comprising 61,352 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State and Federal regulations subject to the following special conditions:

(1) All public entry onto the refuge for any purpose is limited to the following points:

(a) S-5A (Twenty-Mile Bend) boat ramp.

(b) Headquarters area.

(c) Loxahatchee Recreation Area.

(2) Sport fishing is permitted year-round.

(3) Fishing is restricted to 1½ hours before sunrise until 1 hour after sunset.

(4) Boats must enter or leave the refuge through the three public ramps:

(a) S-5A (Twenty-Mile Bend) boat ramp.

(b) Headquarters boat ramp.

(c) S-39 (Loxahatchee Recreation Area) boat ramps.

(5) Method of fishing allowed is with attended rod and reel and/or pole and line.

(6) Air thrust boat use is authorized only by special permit issued by the refuge manager. Speed boats and racing craft are prohibited.

MERRITT ISLAND NATIONAL WILDLIFE REFUGE

Sport fishing on the Merritt Island National Wildlife Refuge, Titusville, Florida, is permitted only in open areas as delineated on a map available at the refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Salt and fresh water fish may be taken in accordance with all applicable State regulations subject to the following special conditions:

(1) Sport fishing is permitted during daylight hours, year-round, except when posted as closed.

(2) Bank fishing along Banana Creek is prohibited.

(3) Air thrust boats are not allowed on Refuge waters.

(4) Permitted fishing methods:

(a) Attended rod and reel and/or pole and line.

(b) Bow fishing with retrieving line attached.

(c) Cast nets with not more than 7 feet length and not more than 14 feet in diameter and no less than 1 inch mesh.

ST. MARKS NATIONAL WILDLIFE REFUGE

Sport fishing on the St. Marks National Wildlife Refuge, St. Marks, Florida, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 50,000 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

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

(2) Fishing permitted one-half hour before sunrise until one-half hour after sunset, 7 days a week.

(3) Boats with gasoline engines to 4 horsepower and electric motors are permitted.

(4) Trotlines shall be taken up prior to closing hour of fishing daily.

ST. VINCENT NATIONAL WILDLIFE REFUGE

Sport fishing on the St. Vincent National Wildlife Refuge, Franklin County, Apalachicola, Florida, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 360 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season extends from March 1, 1977 through October 30, 1977.

(2) Fishermen are permitted on the refuge from 1 hour before sunrise to 1 hour after sunset.

(3) No motors of any type may be used.

(4) Boats may be left on the island at designated points during the open season provided they are identified with their owner's name and address. Boats must be removed from the refuge no later than October 30, 1977.

(5) Use of live minnows as bait is prohibited.

GEORGIA

BLACKBEARD ISLAND NATIONAL WILDLIFE REFUGE

Fresh water sport fishing on the Blackbeard Island National Wildlife Refuge, McIntosh County, Townsend, Georgia, is permitted only on two areas. These open areas, comprising 350 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

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

(2) Fishing is permitted in daylight hours only. Fishermen must be off the refuge by dark.

(3) Boats with electric motors permitted. Gasoline powered motors prohibited.

(4) Use of live minnows as bait prohibited.

(5) Overnight storage of private boats on the refuge is prohibited.

OKEFENOKEE NATIONAL WILDLIFE REFUGE

Sport fishing is permitted on the Okefenokee National Wildlife Refuge, Waycross, Georgia. Certain isolated areas are closed and posted. The open areas are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) Fishing permitted during daylight hours only.

(2) Boats with motors not larger than 10 horsepower, canoes, and rowboats permitted.

(3) Use of live minnows as bait prohibited.

(4) Trotlines, limb lines, nets, or other set tackle prohibited.

(5) Persons entering refuge from main access points must register with the respective concessioner.

(6) Persons using the sill access ramp on the pocket are required to sign and register when they enter the swamp and again when they leave.

PIEDMONT NATIONAL WILDLIFE REFUGE

Sport fishing on the Piedmont National Wildlife Refuge, Round Oak, Georgia, is permitted only in the areas designated by signs as open to fishing. These open areas, comprising approximately 30 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

Open season. March 12, 1977 through September 17, 1977—The Falling Creek Bridge Area on Round Oak-Juliette Road and the Little Falling Creek Area at County Line Bridge; April 30, 1977 through September 17, 1977—Allison Lake.

Hours. Daylight hours only.

Boats permitted in Allison Lake only. Electric motors permitted; all other motors prohibited. Boats may not be left on the refuge overnight. Bank fishing permitted within posted areas only.

LOUISIANA

CATAHOULA NATIONAL WILDLIFE REFUGE

Sport fishing on the Catahoula National Wildlife Refuge, Jena, Louisiana, is permitted on the areas designated by signs as open to fishing. The open areas, comprised of the Cowpen Bayou Impoundment and Duck Lake Marsh, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from April 1, 1977 through October 31, 1977.

(2) Fishing permitted from 30 minutes before sunrise to 30 minutes after sunset.

(3) Gasoline powered outboard motors are not allowed in Cowpen Bayou. Electric trolling motors only may be used. Outboard motors may be used in Duck Lake Marsh.

(4) Boats may not be left in the refuge overnight.

DELTA NATIONAL WILDLIFE REFUGE

Sport fishing and sport shrimping on the Delta National Wildlife Refuge, Venice, Louisiana, are permitted only on the areas designated by signs as open to fishing. These open areas, comprising approximately 48,000 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing and sport shrimping shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing and sport shrimping season on the refuge shall be closed during the waterfowl hunting season.

(2) Fishing and shrimping permitted during daylight hours only.

(3) Sport shrimp trawls are restricted to a maximum of 25 feet.

(4) Air thrust boats are prohibited.

LACASSINE NATIONAL WILDLIFE REFUGE

Sport fishing on the Lacassine National Wildlife Refuge, Lake Arthur, Louisiana, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 28,000 acres, the delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

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

(2) Fishing permitted from one hour before sunrise to one hour after sunset.

(3) Entry to Lacassine Pool restricted to four roller-ways provided.

(4) Boats may not be left inside the refuge overnight.

(5) Boats with outboard motors no larger than 25 horsepower permitted in Lacassine Pool. No size restrictions on boats and motors in the canals and streams. Airboats of any size may not be used on the refuge.

SABINE NATIONAL WILDLIFE REFUGE

Sport fishing on the Sabine National Wildlife Refuge, Hackberry, Louisiana, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 40,000 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

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

(2) Fishermen must not enter refuge waters earlier than one hour before sunrise and shall leave refuge waters by one hour after sunset.

(3) Boats may be moored only at designated areas in Pool 1b or Pool 3. Boats left at these mooring sites must bear owner's name and address. All boats must be removed from the refuge prior to the close of the fishing season.

(4) Boats may not be dragged across levees for access to pool areas. Travel over the refuge is restricted to waterways. Fishermen are not to walk canal banks or levees. Boat access into Pool 1b is restricted to bridge sites on Road Canal.

(5) Boats with outboard motors not larger than 25 horsepower permitted in refuge lakes and impoundments. No size restrictions on boats and motors in the canals and bayous.

MISSISSIPPI

NOXUBEE NATIONAL WILDLIFE REFUGE

Sport fishing on the Noxubee National Wildlife Refuge, Brooksville, Mississippi, is permitted on all refuge waters not specifically posted as closed to entry. These open areas, comprising 2,000 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 1 through October 31, 1977.

(2) Fishing permitted during daylight hours only.

(3) A daily permit ($1.00) is required by the Mississippi Game and Fish Commission to fish in Bluff and Loakfoma Lakes and tail waters of the spillways.

(4) No limb lines or limb hooks are permitted in Bluff and Loakfoma Lakes.

(5) All trotlines will be removed from the refuge by the close of the refuge fishing season.

(6) Private boats may not be left overnight on the refuge.

(7) Snag lines prohibited.

YAZOO NATIONAL WILDLIFE REFUGE

Sport fishing on the Yazoo National Wildlife Refuge, Hollandale, Mississippi, is suspended during the 1977 season due to inadequate fishing opportunities.

NORTH CAROLINA

MATTAMUSKEET NATIONAL WILDLIFE REFUGE

Sport fishing, bow fishing, and herring dipping on the Mattamuskeet National Wildlife Refuge are permitted only on the areas designated by signs as open. These open areas, comprising 40,000 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. These activities shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) Sport fishing and bow fishing seasons extend from March 1 through November 1, except the following areas are open to bank fishing during the entire year.

(a) State Highway 94 Causeway.

(b) In the immediate vicinity of the Lake Landing water control structure.

(c) In the immediate vicinity of the Outfall Canal water control structure at Mattamuskeet Lodge.

(2) Herring (alewife) dipping will be permitted from March 1 through May 15 from the canal banks and water control structures in the immediate vicinity of the following locations:

(a) Waupoppin Canal control structure—daylight hours only.

(b) Outfall Canal control structure—daylight hours only.

(c) Lake Landing control structure—except closed from sunset Sunday to sunrise Monday; sunset Tuesday to sunrise Wednesday; sunset Thursday to sunrise Friday.

(3) Boats and outboard motors permitted except in areas posted closed to motor boat use. Airboats are prohibited.

PEE DEE NATIONAL WILDLIFE REFUGE

Sport fishing on the Pee Dee National Wildlife Refuge, Wadesboro, North Carolina, is permitted only on the areas designated by signs as open to fishing. These open areas are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) *Open season.* April 1 through September 30 except Brown Creek within 100 yards of the Brown Creek Recreation Area on U.S. Highway 52 is open year-round.

(2) Fishing permitted sunrise to sunset only.

(3) Only bank fishing permitted.

SOUTH CAROLINA

CAPE ROMAIN NATIONAL WILDLIFE REFUGE

Sport fishing on the Bulls Island Unit of the Cape Romain National Wildlife Refuge, Awendaw, South Carolina, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 610 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 15, 1977 through September 30, 1977.

(2) Fishing permitted during daylight hours only. No overnight camping allowed.

(3) Boats with electric motors permitted. Other motors prohibited.

(4) Boats must be removed from the refuge at the close of each day.

CAROLINA SANDHILLS NATIONAL WILDLIFE REFUGE

Sport fishing on the Carolina Sandhills National Wildlife Refuge, McBee, South Carolina, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising approximately 150 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends year-round on Lake Bee, and the Black Creek Bridge areas on State Road 33, State Road 145, and U.S. Highway 1; from March 14, 1977 through October 8, 1977 on Martin's Lake, and Pools A, B, C, D, G, and H; and from March 14, 1977 through September 10, 1977 on Lake 17 and Pools J and L.

(2) Fishing permitted from official local sunrise until one-half hour after official local sunset.

(3) Unpowered boats and boats with electric motors permitted only in Lake Bee, Lake 17, and Martin's Lake. Other type motors prohibited. All other areas are open only for bank fishing within posted areas.

SANTEE NATIONAL WILDLIFE REFUGE

Sport fishing on Santee National Wildlife Refuge is permitted on all areas except for those designated by signs as being closed. The closed areas are delineated on a map that is available at refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, NE., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

(1) Waters within all land units (Cuddo, Pine Island, Bluff, and Dingle Pond) are closed to fishing.

(2) Cantey Bay, Blackbottom, and Savannah Branch are closed from November 1 to February 28.

(3) The overnight mooring of boats on the refuge is prohibited.

SAVANNAH NATIONAL WILDLIFE REFUGE

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

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

(2) Fishing is permitted during daylight hours only.

(3) Outboard motors prohibited in impounded waters.

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

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

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

TENNESSEE

CROSS CREEKS NATIONAL WILDLIFE REFUGE

Sport fishing on the Cross Creeks National Wildlife Refuge, Dover, Tennessee, is permitted only on areas designated by signs as open to fishing. These open areas, comprising 3,260 acres, are delineated on a map that is available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season on refuge waters is April 1 through September 15, 1977 except the season is year-round on Barkley Lake.

(2) Fishing is permitted from 30 minutes before sunrise until 30 minutes after sunset, except fishing permitted 24 hours per day on Barkley Lake.

(3) Outboard motor size is limited to 6 horsepower or less, except motor size is not restricted on Barkley Lake.

(4) Methods of fishing the two reservoirs and impoundments are limited to hand fishing with rod and reel and/or pole and line.

(5) Overnight camping and/or overnight mooring of boats are prohibited on the refuge.

HATCHIE NATIONAL WILDLIFE REFUGE

Sport fishing on the Hatchie National Wildlife Refuge, Brownsville, Tennessee, is permitted on all waters within the refuge boundary unless designated otherwise. These open areas, comprising 100 acres, are delineated on a map available at the refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from April 1, 1977 through October 31, 1977.

(2) Fishing permitted during daylight hours only.

(3) Boats powered with electric outboard motors are permitted. Gasoline outboard motors are prohibited.

(4) Methods of fishing are limited to pole and line or rod and reel.

(5) Boats must be removed from refuge no later than November 7.

REELFOOT NATIONAL WILDLIFE REFUGE

Sport fishing on the Reelfoot National Wildlife Refuge, Samburg, Tennessee, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 9,092 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The fishing season on that portion of the refuge located north of Upper Blue Basin extends from February 15, 1977 through October 23, 1977. The fishing season on that portion of the refuge located south of Upper Blue Basin extends from January 21, 1977 until the day preceding opening of the 1977 waterfowl season.

(2) Fishing with bows and arrows is prohibited at all times.

(3) Boats with motors of not more than 10 horsepower may be used.

(4) Public use of the refuge is limited to the hours between sunrise and sunset unless otherwise provided by a refuge permit.

LAKE ISOM NATIONAL WILDLIFE REFUGE

Sport fishing on the Lake Isom National Wildlife Refuge, Tennessee, is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 750 acres, are delineated on a map available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 17 Executive Park Drive, N.E., Atlanta, Georgia 30329. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The sport fishing season on the refuge extends from March 16, 1977 through September 30, 1977.

(2) Fishing with bows and arrows is prohibited.

(3) Boats with motors of not more than 6 horsepower may be used.

(4) Public use of the refuge is limited to the hours between sunrise and sunset unless otherwise provided for by a refuge permit.

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

RAY R. VAUGHN,
Deputy Regional Director,
U.S. Fish and Wildlife Service.

JANUARY 11, 1977.

[FR Doc.77-2493 Filed 1-25-77;8:45 am]

proposed rules

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

SMALL BUSINESS SIZE STANDARDS

Definition of Small Bus'ness for Industry No. 2522, and Industry No. 2591, for Purpose of Bidding on Government Procurements

Notice is hereby given that the Small Business Administration proposes to increase the definition of a small business for Industry No. 2522, Metal Office Furniture; and Industry No. 2591, Drapery Hardware and Window Blinds and Shades, from "number of employees" not exceeding 500 persons, to "number of employees" not exceeding 750 persons.

A review of the size structure of the 13 industries in Major Group 25, Furniture and Fixtures, reveals that in the above industries manufacturers that quality as small business under the currently effective 500-employee size standard for such industries account for a significantly smaller percentage of the total sales of that industry than that accounted for by the small businesses in the other 11 industries in the group.

Under such circumstances it is proposed to revise Schedule B of Part 121, Chapter I, Title 13 of the Code of Federal Regulations by inserting immediately after Major Group 22, Textile Mill Products, a new Major Group 25, Furniture and Fixtures, to read as follows:

Census classification code	Industry or class of products	Employment size standard (number of employees)
*	* * * *	*
	MAJOR GROUP 25—FURNITURE AND FIXTURES	
2522	Metal office furniture	750
2591	Drapery hardware and window blinds and shades	750

Interested parties may file with the Small Business Administration, on or before February 25, 1977, written statements of facts, opinions, or arguments concerning the proposal. All correspondence shall be addressed to:

William L. Pellington, Director, Size Standards Division, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.009, Procurement Assistance to Small Business.)

Dated: January 14, 1977.

MITCHELL P. KOBELINSKI,

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SECURITIES AND EXCHANGE COMMISSION

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QUESTIONABLE OR ILLEGAL CORPORATE PAYMENTS AND PRACTICES

Proposed Promotion of Reliability of Financial Information and Prevention of Concealment

The Securities and Exchange Commission today announced a series of rulemaking proposals designed further to promote the reliability and completeness of the financial information which issuers are required to file with the Commission pursuant to the Securities Exchange Act of 1934. These proposals would require each issuer registered pursuant to Section 12 of the Securities Exchange Act, or required to file periodic reports pursuant to section 15(d), to:

(1) Maintain books and records accurately reflecting the transactions and dispositions of assets of the issuer; and

(2) Maintain an adequate system of internal accounting controls designed to provide reasonable assurance that specified objectives are satisfied.

In addition, the Commission, in order to protect the reliability of financial information required to be filed pursuant to the federal securities laws and to protect the integrity of the independent audit of issuer financial statements required under existing Commission rules, is proposing rules which would explicitly

(1) Prohibit the falsification of an issuer's accounting records; and

(2) Prohibit the officers, directors, or stockholders of an issuer from making false, misleading or incomplete statements to an accountant engaged in an examination of the issuer.

Although, as discussed herein, the Commission's authority to promulgate rules of this nature does not rest solely on Section 13 of the Securities Exchange Act, these rules, if adopted, would be codified in a new Regulation 13B, entitled "Accuracy of Books, Records, and Reports."

The Commission believes that these proposals, while not directed solely to the problem of questionable or illegal corporate payments and practices, would serve to create a climate which would significantly discourage repetition of the serious abuses which the Commission has uncovered in this area. The Commission's experience has indicated that improper corporate payments are rarely reflected correctly in the corporate books and records and, indeed, are often symptomatic of a failure in the system of corporate internal accounting controls. In addition, the need to suppress information concerning such payments frequently entails the falsification of records and the deception of auditors.

Because of the unique significance of such payments in the evaluation of the competence and integrity of corporate management, the Commission is also proposing to require disclosure, in connection with any proxy solicitation or information statement pursuant to Regulation 14A under the Securities Exchange Act, of the facts pertaining to the involvement of any officer or director in such corporate payments, and of any corporate policy concerning such matters.[1]

BACKGROUND

Beginning in 1973, as a result of the work of the Office of the Watergate Special Prosecutor, the Commission became aware of a pattern of conduct involving the use of corporate funds for illegal domestic political contributions. Because these activities involved matters of significance to public investors, the nondisclosure of which entail violations of the federal securities laws, on March 8, 1974, the Commission published a statement expressing the views of its Division of Corporation Finance concerning disclosure of these matters in public filings. See Securities Act Release No. 5466 (Mar. 8, 1974).

Subsequent Commission investigations revealed that instances of undisclosed questionable or illegal corporate payments—both domestic and foreign—were indeed widespread and represented a serious breach in both the operation of the Commission's system of corporate disclosure and, correspondingly, in public confidence in the integrity of the system of capital formation. On May 12, 1976, the Commission submitted to the Senate Banking, Housing and Urban Affairs Committee a detailed "Report on Questionable and Illegal Corporate Payments and Practices" ("May 12 Report"). That report describes and analyzes the history of the Commission's activities concerning improper corporate payments and outlines the legislative and other responses which the Commission, based on its experience, recommended to remedy these problems. One of the key conclusions drawn in the May 12 Report was that:

[1] It should be noted that, in large measure, the proposals herein codify existing law rather than create new obligations. One who, for example, falsifies corporate records or deceives corporate auditors would, depending on the facts and circumstances involved, have engaged under present law in a violation of the antifraud provisions of the federal securities laws. Likewise, disclosure of the items proposed to be included expressly in Schedule 14A would, if material, be required under existing law.

The almost universal characteristic of the cases reviewed to date by the Commission has been the apparent frustration of our system of corporate accountability which has been designed to assure that there is a proper accounting of the use of corporate funds and that documents filed with the Commission and circulated to shareholders do not omit or misrepresent material facts. Millions of dollars of funds have been inaccurately recorded in corporate books to facilitate the making of questionable payments. Such falsification of records has been known to corporate employees and often to top management, but often has been concealed from outside auditors and counsel and outside directors.

Accordingly, the primary thrust of our actions has been to restore the efficacy of the system of corporate accountability and to encourage the boards of directors to exercise their authority to deal with the issue. May 12 Report at a.

On the basis of the conclusions in the May 12 Report, the Commission, in addition to pursuing its enforcement and disclosure programs actively, proposed a 2-pronged approach to prevent further such abuses. First, the Commission recommended that Congress enact legislation aimed expressly at enhancing the accuracy of the corporate books and records and the reliability of the audit process which constitute the foundations of the system of corporate disclosure. Specifically, the Commission proposed legislation which would:

(1) Require issuers to make and keep accurate books and records;

(2) require issuers to devise and maintain a system of internal accounting controls meeting the objectives articulated by the American Institute of Certified Public Accountants in Statement on Auditing Standards No. 1, Section 320.28 (1973);

(3) prohibit the falsification of corporate accounting records; and

(4) prohibit the making of false, misleading, or incomplete statements to an accountant in connection with any examination or audit.

The second prong of the Commission's suggested attack on the problem of questionable and illegal corporate payments involved strengthening the independence and vitality of corporate boards of directors by requiring that companies maintain audit committees comprised of independent directors and by encouraging the separation of the functions of independent corporate counsel and director. In the May 12 Report, the Commission proposed that, at least initially, these principles could best be implemented by amendment to the listing requirements of the New York Stock Exchange and the rules of the other self-regulatory organizations, rather than by direct Commission action.[3]

Senator Proxmire, Chairman of the Senate Committee on Banking, Housing and Urban Affairs, introduced, as S. 3418, the Commission's legislative proposal, and held hearings on that and other bills related to the problem of illicit corporate foreign payments.[4] Ultimately, the Committee referred a bill to the Senate floor—S. 3664—which embodied all of the Commission's legislative recommendations (as well as certain other proposals).[5] On September 15, 1976, the Senate, by a vote of 88–0 unanimously passed S. 3664. The House of Representatives, however, was unable to complete work on this legislation before adjournment sine die on October 2, 1976.

The Commission continues to believe that Congressional action on the legislation which it proposed in the May 12 Report would be the most desirable means of demonstrating a national commitment to ending the types of corporate misconduct, and defiance of the recordkeeping systems on which disclosure under the securities laws is premised, which the Commission's investigations have uncovered.[6] The Commission also believes that the serious abuses which its May 12 Report and subsequent activities have disclosed require prompt remedial action and has never taken the position that legislation is the sole means by which the substantive goals of its proposals could be effected. Indeed, the Commission believes that the close relationship between the objectives which Congress, in 1934, sought to accomplish by enactment of the Securities Exchange Act and the substance of its legislative proposals places those proposals within the reach of the Commission's general rulemaking authority under section 23 (a) of the Securities Exchange Act. Accordingly, the Commission is today publishing for comment rulemaking proposals which would accomplish the objectives of its earlier legislative recommendation.

MAINTENANCE OF ACCURATE CORPORATE BOOKS AND RECORDS AND AN ATTENDANT SYSTEM OF INTERNAL ACCOUNTING CONTROL

The Commission has found that improper and undisclosed expenditures of corporate assets are frequently accompanied by inaccurate maintenance, or outright falsification, of corporate accounting records and, similarly, failure in the internal controls system designed to insure the accuracy of corporate records and the utilization of assets solely for proper purposes. In this regard, the May 12 Report states:

[M]ost of the instances of reported abuse also involved some falsification of corporate records or the maintenance of records that appear to be inadequate. In many of the reports submitted voluntarily by corporations, the description of the payments and their documentation appears to have been inadequate to permit ready identification or verification of the purpose of the payments. Similarly, the reports the Commission obtained as a result of enforcement actions disclose flagrant instances of abuse of the system of corporate accountability, including the establishment and maintenance of substantial off-book funds that were used for various purposes, some questionable and some clearly illegal.

Many of the defects and evasions of the system of financial accountability represented intentional attempts to conceal certain activities. Not surprisingly, corporate officials are unlikely to engage in questionable or illegal conduct and simultaneously reflect it accurately on corporate books and records. We regard this to be a significant point, and one that is central to [remedial measures]. May 12 Report at 41–42.

a. *Maintenance of accurate records.* In light of these findings, the Commission is proposing for comment new Securities Exchange Act Rule 13b–1 which would require every issuer registered with the Commission pursuant to Sections 12 or 15(d) of the Securities Exchange Act to make and keep books, records, and accounts which accurately and fairly[8] reflect the transactions of the issuer and the dispositions of its as-

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[3] Exhibit D to the May 12 Report is a letter, dated May 11, 1976, from Chairman Hills to Exchange Chairman Batten suggesting that the New York Stock Exchange ("NYSE") consider action of this nature. Subsequently, on September 7, 1976, the NYSE circulated a proposal requiring listed domestic (but not foreign) issuers to establish independent audit committees and, on January 6, 1977, took final action thereon. The Commission, pursuant to Section 19(b) of the Securities Exchange Act, will formally consider the terms and conditions of the Exchange's proposal, after opportunity for public comment.

To date, neither the NYSE nor the other self-regulatory organizations have taken action with respect to the Commission's suggestion that consideration be given to "whether members of law firms which have the responsibility of advising the corporation, including the board, should also serve as members of that board of directors." May 12 Report at 67 and at Exhibit D, p. 2.

[4] Hearings Before the Committee on Banking, Housing and Urban Affairs U.S. Senate, on S. 3133, S. 3379, and S. 3418, 94th Cong. 2d Sess. (May 18, 1976).

[5] See S. Rep. No. 94–1031, 94th Cong. 2d Sess. (1976).

[6] Cf. May 12 Report at 57: [T]he question of illegal or questionable payments is obviously a matter of national and international concern, and legislation in this area is desirable in order to demonstrate clear Congressional policy with respect to a thorny and controversial problem.

[8] In connection with Congressional consideration of S. 3418 and its progeny, some concern was expressed over whether the phrase "accurately and fairly" in the legislation connoted an unattainable measure of exactitude. As the Senate Banking, Housing and Urban Affairs Committee observed:

The term "accurately" in [S. 3664] does not mean exact precision as measured by some abstract principle. Rather, it means that an issuer's records should reflect transactions in conformity with accepted methods of recording economic events. Thus, for example, recording depreciation in a manner permitted by the Internal Revenue Code may not be a precise measurement, but it is nevertheless clearly a permissible one within the intent of [this requirement]. S. Rep. No. 94–1031, supra, at 11.

The Commission agrees with this observation. Moreover, the Commission believes that to require a lesser standard in defining the obligation to keep books and records could lead to the argument that falsifications or omissions below a certain dollar amount may be tolerated.

sets.[7] The Commission believes that such a rule will discourage the types of misconduct which thrive in the absence of adequate recordkeeping.

The Commission's authority to promulgate such a rule under existing law, and the obligation to maintain accurate books and records, stems from the reporting requirements of the federal securities laws.[8] Section 12(b)(1) of the Securities Exchange Act, for example, permits registration of issuers only upon the filing with the Commission of such information as the Commission may require, as necessary or appropriate in the public interest or for the protection of investors, in respect of, among other things:

(A) the organization, financial structure and nature of the business;

* * * * *

(J) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by independent public accountants;

(K) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission, by independent public accountants; and

(L) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

Likewise, section 13(a) authorizes the Commission to compel the filing of annual reports, certified by independent public accountants if the Commission so requires, and other information necessary to up-date section 12 registration statements.[9] The Commission's activities concerning questionable or illegal corporate payments and practices have demonstrated a connection between the failure to disclose such misconduct in reports filed pursuant to section 12, and 13, 15(d) and the failure to maintain reliable and auditable corporate records. Accordingly, rules such as proposed Rule 13b–1 constitute "such rules and regulations as may be necessary or appropriate to implement the provisions of [the Exchange Act]" section 23(a)(1). Absent reliable underlying corporate records, the preparation of financial statements in accordance with generally accepted accounting principles would be extremely difficult.

b. *Maintenance of a system of internal accounting controls.* Proposed Rule 13b–2, which requires management to devise and maintain a system of internal accounting controls, is closely related to proposed Rule 13b–1 in both purpose and statutory foundation. The reliability of corporate records is dependent on the effectiveness of the procedures adopted to insure that corporate transactions are, in fact, reflected in those records and, conversely, to insure that assets are not exposed to unauthorized access and use. Accordingly, proposed Rule 13b–2 would require that issuers filing reports pursuant to sections 12 or 15(d) of the Securities Exchange Act maintain an adequate system of internal accounting controls sufficient to provide reasonable assurance that:

(a) transactions are executed in accordance with management's general or specific authorization;

(b) transactions are recorded as necessary (1) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements and, (2) to maintain accountability for assets;

(c) access to assets is permitted only in accordance with management's authorization; and

(d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

These proposed objectives for a system of internal accounting controls have been drawn from the objectives of such a system defined by the American Institute of Certified Public Accountants in Statement on Auditing Standards No. 1, Section 320.28 (1973). The Commission believes that these goals provide a reasonable basis for the implementation of the required system of controls, and that such objectives are already familiar to the business community.

The establishment and maintenance of a system of internal controls is an important management obligation. A fundamental aspect of management's stewardship responsibility is to provide shareholders with reasonable assurance that the business is adequately controlled. Additionally, management has a responsibility to furnish shareholders and potential investors with reliable financial information on a timely basis. An adequate system of internal accounting controls is necessary to management's discharge of these obligations.[10]

Systems of controls will, of course, vary from company to company. The size of the business, diversity of operations, degree of centralization of financial and operating management, amount of contact by top management with day-to-day operations, and numerous other circumstances are factors which management must consider in establishing and maintaining an internal accounting controls system. The design of any such system necessarily involves exercise of management's judgment, and entails the balancing of the cost of implementing any given internal accounting control against the benefit to be derived. By requiring that a system provide reasonable assurance that the specified objectives are met, the Commission's proposed rule recognizes that the issuer must, in good faith, balance the costs and benefits as they relate to the circumstances of that company. The definition of the term "reasonable assurance" in proposed Rule 13b–2 is, like the objectives for a system of internal accounting controls, taken from existing accounting literature. See Statement on Auditing Standards No. 1, supra, section 320.32.

Although the Commission understands that there may be practical limitations to the implementation of internal accounting controls,[11] the Commission believes that, despite the inherent limitations on a system of internal accounting controls, all companies should establish and maintain such systems. A properly functioning system should provide reasonable assurance to investors that the data generated by that system and em-

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[7] In proposing this language in the May 12 Report, the Commission did not, of course, intend the phrase "dispositions of its assets" as in any sense a limitation on the scope of the requirement that accurate books and records be maintained. The issuer's responsibility to keep records correctly reflecting the status of its liabilities and equities is no less than its obligation to maintain such records concerning its assets. The word "transactions" in the proposal encompasses accuracy in accounts of every character, and the phrase "disposition of its assets" was added simply to reflect the fact that the abuses outlined in the May 12 Report involved almost exclusively improper accounting for assets. In any event, proposed Rule 13b–1 is intended to require accuracy throughout an issuer's accounting records.

[8] See S. Rep. No. 94–1031, supra, at 11.

[9] In this regard section 13(b) authorizes the Commission to prescribe the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earning statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer * * *.

[10] The term "internal accounting controls" does not ordinarily encompass all corporate policies and procedures. Matters of efficiency, employee relations, and production quality control, for example, should not be confused with the accounting controls established to insure the reliability of financial information.

[11] Statement on Auditing Standards No. 1 sets forth some of these limitations:

There are inherent limitations that should be recognized in considering the potential effectiveness of any system of accounting control. In the performance of most control procedures, there are possibilities for errors arising from such causes as misunderstanding of instructions, mistakes of judgment, personal carelessness, distraction, or fatigue. Furthermore, procedures whose effectiveness depends on segregation of duties obviously can be circumvented by collusion.

Similarly, procedures designed to assure the execution and recording of transactions in accordance with management's authorizations may be ineffective against either errors or irregularities perpetrated by management with respect to transactions or to the estimates and judgments required in the preparation of financial statements. In addition to the limitations discussed above, any projection of a current evaluation of internal accounting control to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions and that the degree of compliance with the procedures may deteriorate. Statement on Auditing Standards No. 1, supra, Section 320.34.

bodied in interim financial data or annual financial statements fairly reflect the issuer's financial position. Moreover, a property functioning system of internal accounting controls, including articulated policies relating to improper payments, should significantly discourage questionable or illegal payments and practices.[12]

FALSIFICATION OF ACCOUNTING RECORDS AND DECEPTION OF AUDITORS

The Commission is also soliciting comment on a rule—proposed Rule 13b–3—which would prohibit the falsification of corporate accounting records maintained pursuant to proposed Rule 13b–1, and on a rule—proposed Rule 13b–4—which would prohibit issuer officers, directors, or shareholders from deceiving or obstructing accountants in the discharge of their responsibilities in connection with the examination of the financial statements of issuers subject to Rule 13b–1. The Commission believes that express prohibitions of this nature, while already implicit in existing law, are necessary to insure the effectiveness of the proposed corporate recordkeeping requirement and that such prohibitions uniquely respond to problems which the Commission's investigations have disclosed:

> The most devastating disclosure that we have uncovered in our recent experience with illegal or questionable payments has been the fact that, and the extent to which, some companies have falsified entries in their own books and records. A fundamental tenet of the recordkeeping system of American companies is the notion of corporate accountability. It seems clear that investors are entitled to rely on the implicit representations that corporations will account for their funds properly and will not "launder" or otherwise channel funds out of or omit to include such funds in the accounting system so that there are no checks possible on how much of the corporation's funds are being expended or whether in fact those funds are expended in the manner management later claims.
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> Concomitantly, we believe that any legislation in this area should also contain a prohibition against the making of false and misleading statements by corporate officials or agents to those persons conducting audits of the company's books and records and financial operations. May 12 Report at 58.

a. *Prohibition against falsification of accounting records.* Proposed Rule 13b–3 would prohibit any person from falsifying corporate acounting records required to be maintained pursuant to proposed Rule 13b–1. The Commission believes that such a prohibition is a necessary compliment to the requirement that the issuer maintain accurate books and records. In many cases, instances of concealed corporate payments and off-book cash funds have resulted from the activities of particular individuals, acting with or without the knowledge or authorization of top management, to cause such transactions to be improperly reflected on the corporate records. Proposed Rule 13b–3 would permit the Commission to take action to preclude such individuals from further frustrating either the system of corporate recordkeeping or the broader system of accountability by which management monitors the activities of the entire array of individuals entrusted with corporate assets.

The Commission has given consideration to certain facets of the issue, discussed below, and has tentatively concluded that proposed Rule 13b–3 would fall within its authority to promulgate rules "necessary or appropriate to implement the provisions of (the Exchange Act)" section 23(a)(1). At the outset, it must be recognized that, while the Commission proposes to codify the prohibition in question under section 13 of the Act, the Commission does not rely on that provision, in itself, to furnish a complete foundation for the proposed rule. In addition to the periodic reporting requirements, the rule also is predicated upon sections 10(b), 14(a), 20(b) and 20(c) of the Act. The Commission, from experience with the problems treated in its May 12 Report, has concluded that the falsification of accounting records has a strong propensity to lead to a variety of evils against which Congress has authorized it to take rulemaking action including:

(1) The utilization of deceptive devices, such as materially false statements or material omissions, in connection with the purchase or sale of securities by the means of interstate commerce;

(2) The filing of inaccurate and incomplete periodic and annual reports with the Commission;

(3) The solicitation of proxies in contravention of Rule 14a–9, 17 CFR 240.14a–9; and

(4) The hindrance, delay, and obstruction of the making and filing of required documents, reports and information.

Accordingly, the Commission believes that a remedial provision such as proposed Rule 13b–3 would, if adopted, be within the scope of sections 10(b), 13(a), 14(a), and 20(c) of the Act.

The Commission believes it appropriate to outline briefly its present views concerning two issues related to the scope of Rule 13b–3. First, although section 13(a) authorizes the Commission to impose certain *requirements* upon *issuers*, the proposed rule would create a *prohibition* applicable to *any person*. The effects of a falsification in making reports required under Section 13 misleading or incomplete are not, of course, contingent on the identity of the wrongdoer or on whether he acts with the knowledge or acquiescence of management. The falsification of accounting records constitutes an obvious hindrance to the preparation of required reports, the evil which section 20(c) was designed to prohibit, and, therefore, section 20(c) of the Act would permit the Commission to promulgate a rule of this nature applicable to "any director or officer of, or any owenr of any securities issued by, any issuer required to file any document, report or other information." While a prohibition applicable to directors, officers, or securities holders might well serve to encompass many of the problems the Commission has encountered, the Commission thinks it desirable that the rule be broadened to reach any person who engages in the falsification of accounting records. This is especially appropriate in light of section 32(a) of the Securities Exchange Act, which provides criminal penalties for "*any person* who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this title or any rule or regulation thereunder" (emphasis added).

Likewise, section 10(b) of the Act authorizes the Commission to prohibit deceptive devices—regardless of by whom employed—in connection with the purchase or sale of securities. Because the falsification of accounting records, especially in order to conceal questionable corporate payments, has an unavoidable tendency to lead to the concealment of material information from purchasers and sellers of the issuer's securities, and to the omission of such information from proxy solicitations, the Commission believes that the extension of proposed Rule 13b–3 to any person is warranted.

Second, the Commission recognizes that not every falsification of an accounting record will necessarily have the effect of causing a violation of Rule 10b–5 and section 20(c). The Commission believes, however, as stated above, that the nexus between altered books and these violations is so close as to justify a rule of the type proposed. An attempt to define a class of "harmless" falsifications would appear to be futile and would serve only to provide a loophole for the unscrupulous.

b. *Prohibition against deceptive or misleading statements to auditors.* Proposed Rule 13b–4 would prohibit any officer, director or shareholder of the issuer from making a materially false or misleading statement, or omitting to state any material fact necessary to make statements made not misleading, to an accountant in connection with an audit of the financial statements the issuer or the filing of required reports.[13] The purpose and authority for this proposal are, in large measure, similar to those discussed in connection with pro-

[12] The Commission recognizes that no system of internal controls can, in itself, prevent every kind of misconduct which the Commission has encountered in this area. It does not follow, however, that a requirement that such a system be maintained is idle or superflous, and the Commission believes that effective systems of internal accounting controls can discourage such misconduct.

[13] The Commission intends that this rule would encompass the audit of issuer financial statements by independent accountants; the preparation of any required reports, whether by independent or internal accountants; the preparation of special reports required to be filed with the Commission, as, for example, pursuant to judicial orders incident to Commission enforcement proceedings; and any other examination conducted by an accountant and culminating in the filing of a document with the Commission.

posed Rule 13b–3. The accountant's examination of the issuer's financial statements is one of the key safeguards to the reliability of the system of financial disclosure; to the extent that individuals hamper or frustrate the accountant's work, the reliability of that system is diluted.

Although the Commission's legislative proposal would prohibit "any person" from engaging in the types of interference with the accountant's work which proposed Rule 13b–4 proscribes, the proposed rule itself extends only to the individuals to which section 20(c) of the Securities Exchange Act applies: "any director or officer of, or any owner of any securities issued by, any issuer." The Commission adheres to its position that a prohibition extending to "any person" would be desirable and has not concluded that it would lack the authority to promulgate a rule of that scope. The Commission has, however, determined that, for the present, a rule identical in coverage to section 20(c) would be adequate to meet the abuses which it has uncovered in this area, and that rulemaking action of greater coverage is inappropriate.[14] It must be stressed, however, that the exclusion from the express language of proposed Rule 13b–4 of low-level corporate employees and persons unaffiliated with the issuer does not indicate that those individuals may mislead the issuer's accountants with impunity. In appropriate circumstances, the existing antifraud provisions of the federal securities laws, and the concept of aiding and abetting, can be invoked against those who deceive the auditors of a publicly held corporation. In this area, as in other areas where duties and liabilities are created under the federal securities laws, case-by-case balancing of the needs of the investing public against the interests of those who have engaged in conduct injurious to investors is essential.[15]

[14] The fact that proposed Rule 13b–4 is narrower in scope than its legislative counterpart does not indicate that the Commission has determined to accept the position of certain commentators who, in response to the Commission's legislative proposal, argued that a prohibition applicable to third parties would discourage such persons from responding to requests for confirmation of account balances or otherwise cooperating with accountants. In this regard, the Senate report on S. 3664 states:

By specifically prohibiting material false or misleading statements or omissions to state material facts to auditors, the bill is designed to encourage careful communications between the auditors and persons from whom the auditors seek information in the audit process. The Committee does not believe that this provision will inhibit such communications and intends that this prohibition is to be directed only at those who fail to exercise due care in furnishing information to auditors engaged in an audit, a standard that we believe represents what is customarily expected in normal commerce. S. Rep. No. 94–1031, 94th Cong. 2d Sess. at 12 (1976).

[15] Cf. Sections 11 and 12 of the Securities Act of 1933, 15 U.S.C. 77k and 77l; see H. Rep. No. 85, 73rd Cong. 1st Sess. at 9 (1933).

It has been suggested that any prohibition such as proposed Rule 13b–4 be limited to proscribing misleading written communications with auditors. The Commission believes, however, that such a limitation would be ill-advised. One engaged in an audit of corporate books and records can be misled by an oral misstatement just as by a written one, and the resulting injury to investors can be serious. Moreover, section 12(2) of the Securities Act, and also the several antifraud provisions of the Securities Exchange Act, have long been applied in Commission and private actions to oral misstatements without unusual or unintended consequences.

Disclosure Concerning Questionable Payments in Proxy Solicitation

The Commission is also proposing amendments to Schedule 14A under the Securities Exchange Act of 1934 to require information in proxy statements concerning the involvement of top management in specified types of questionable or illegal corporate payments or transactions and concerning formal corporate policies as to such matters. Specifically, these amendments would add two new Subitems, 6(d)(1) and 6(d)(2) to Schedule 14A which would deal, respectively, with disclosure of questionable transactions and disclosure of corporate policies regarding such matters. As discussed below, the Commission believes that this type of information is particularly relevant to shareholder proxy and voting decisions.

Proposed Item 6(d)(1) would require disclosure of the material facts pertaining to the involvement of any director of the issuer, any person nominated for election as director, or any executive officer of the issuer in any material political contributions by the issuer or from its assets, whether legal or illegal;[16] the disbursement or receipt of corporate funds outside the normal system of accountability; payments, whether direct or indirect, to or from foreign or domestic governments, officials, employees or agents for purposes other than the satisfaction of lawful obligations, or any transaction which has as its intended effect the transfer of issuer assets in the manner described; the improper or inaccurate recording of payments and receipts on the books of the issuer or its subsidiaries; or any other matters of a similar nature involving disbursements of issuer assets.[17]

Discussion could, however, be omitted of any facts which have previously been both reported in a filing with the Commission and described in an issuer document distributed to shareholders.

The Commission believes that information concerning disclosure of the facts regarding the involvement of directors or top officers in reported instances of questionable payments is highly significant to shareholders in determining whether to give a proxy. A previous Commission public inquiry suggested that many investors use different criteria in determining whether to give a proxy than in making investment decisions.[18] The proxy solicitation process is, of course, the most direct opportunity which shareholders have to endorse or reject the stewardship of those entrusted with the discharge of corporate affairs. Nevertheless, in many of the disclosures concerning questionable or illegal corporate transactions appearing in current and annual reports filed on Forms 10–K and 8–K—which are designed to supply updated and current information concerning the registrant—the role of particular members of management has not been fully set forth. Where individuals who are standing for election to a corporate board or who are a part of top management which is soliciting proxies have been involved in, or personally aware of, questionable or illegal corporate transactions, the Commission believes that shareholders are entitled to more detailed information concerning their role in such matters than might otherwise be necessary.

Concerning the existence and substance of any corporate policies dealing with questionable transactions, the Commission believes that, in at least some circumstances, such policies are of sufficient importance to investors to merit inclusion in proxy statements. The Commission also recognizes, however, that, in a different context, it declined to require the disclosure of policy statements alone in light of the fact that such statements are subject to public relations posturing or to the recitation of boilerplate assertions of good faith, and do not permit of any type of verification.[19]

In the case of the specified types of questionable practices, however, the Commission believes that the opportunity for investors to compare any stated policy to the actual conduct of those seeking shareholder proxies or votes is especially meaningful. And, given the fact that over 200 registrants have made disclosure concerning specific instances of misconduct of this nature, any policy statement which may have been adopted will be readily subject to comparison with specific fact situations. Because, however, of these special considerations regarding general corporate policy pronouncements, the Commission is considering two alternative formulations of proposed Subitem (d)(2) concerning corporate policies as to questionable payments and transactions. Alternative A would require all issuers subject to Regulation 14A to include in every proxy solicitation disclosure or whether or not the issuer has

[16] The Commission specifically invotes comment on whether lawful corporate political contributions should be included in this instruction.

[17] The Commission intends that the phrase "disbursement or receipt of corporate funds outside the normal system of accountability" would encompass the full range of schemes by which off-book pools of assets are accumulated, including, for example, over-billing, unrecorded transactions in violation of foreign exchange controls, and embezzlement incident to the diversion of corporate assets to improper purposes. Likewise, abuses such as the maintenance of a fictitious set of books would fall within "improper or inaccurate recording of payments or receipts."

[18] See Securities Act Release No. 5627 at 36 (Oct. 14, 1975) (40 FR 51656).

[19] See id. at 33.

adopted any formal policy regarding the types of questionable payments and transactions specified in proposed Item 6(d)(1). Alternative B, on the other hand, would require such disclosure only where the issuer was also required, by virtue of proposed Item 6(d)(1), described above, to disclose facts concerning some particular questionable or illegal payment or transaction. The Commission invites comment on the advantages and disadvantages of each approach in order to assist it in determining which, if either, should be adopted.

CONCLUSION AND REQUEST FOR COMMENT

The Commission believes that the proposed rules herein, in conjunction with its suggestion that the self-regulatory organizations consider requiring certain certain steps to enhance the independence of corporate boards, have the potential significantly to enhance the reliability and accuracy of issuer financial reporting.[26] Likewise, the Commission believes that a specific disclosure requirement concerning the involvement of top management in improper corporate payments may be appropriate in connection with the solicitation of proxies. The Commission recognizes, however, that the area is difficult and complex, and intends to afford careful consideration to the views of all interested persons before taking final action on all, or any part of, these proposals.

All interested persons are invited to submit their views and comments, in triplicate, on the foregoing proposals to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before the close of business March 11, 1977. The Commission specifically invites comment on (1) the effect, operation, and desirability of the proposals herein; (2) the impact which these proposals, if adopted, would be likely to have on the abuses outlined in the May 12 Report; (3) the extent of the Commission's authority in the areas involved; (4) whether it would be appropriate to exempt issuers registered under the Investment Company Act of 1940 from the operation of any of these proposals; and (5) pursuant to section 23(a)(2) of the Securities Exchange Act, the likely impact, if any, which these proposals would have on competition.

All such communications should refer to File S7-671 and will be available for public inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. The text of the proposed amendments discussed herein is set forth below.

TEXT OF PROPOSED AMENDMENTS

[NEW] REGULATION 13B: ACCURACY OF BOOKS, RECORDS, AND REPORTS

[Existing Rule 13b-1 shall be renumbered as Rule 13b-18.]

§ 240.13b-1 Accounting records.

Every issuer which is required to file any report pursuant to section 13 or 15(d) of the Act (and the Commission's rules and regulations thereunder) shall make and keep books, records, and accounts which accurately and fairly reflect the transactions of the issuer and the dispositions of its assets.

§ 240.13b-2 Internal controls system for accounting records.

(a) Incident to the making and keeping of such books, records, and accounts as are required pursuant to Rule 13b-1 of this regulation, every issuer shall devise and maintain an adequate system of internal accounting controls sufficient to provide reasonable assurance that:

(1) Transactions are executed in accordance with management's general or specific authorization;

(2) Transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (ii) to maintain accountability for assets;

(3) Access to assets is permitted only in accordance with management's authorization;

(4) The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(b) As used in (a) of this rule, the term "reasonable assurance" shall mean that the cost of internal accounting control need not exceed the benefits expected to be derived. The benefits consist of reductions in the risk of failing to achieve the objectives implicit in the definition of accounting control.

§ 240.13b-3 Falsification of accounting records.

It shall be unlawful for any person, directly or indirectly, to falsify, or cause to be falsified, any book, record, account, or document, made or kept pursuant to Rule 13b-1 of this regulation.

§ 240.13b-4 Obstruction of accountants.

It shall be unlawful for any director or officer of, or any owner of any securities issued by, any issuer:

(a) directly or indirectly, to make, or cause to be made, a materially false or misleading statement; or

(b) directly or indirectly, to omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in the light of th circumstances under which such statements were made, not misleading, to an accountant in connection with (1) any audit or examination of the financial statements of the issuer required to be made pursuant to this subpart, or (2) the preparation of filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise.

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 6. Nominees and directors.[27]

* * * * *

(d) * * *

(1) State the material facts pertaining to the involvement of any director of the issuer, any person nominated for election as director, or any executive officer of the issuer in any material political contributions by the issuer or from the issuer's assets, whether legal or illegal; the disbursement or receipt of corporate funds outside the normal system of accountability; payments, whether direct or indirect, to or from foreign or domestic governments, officials, employees or agents for purposes other than the satisfaction of lawful obligations, or any transaction which has as its intended effect the transfer of issuer assets for the purpose of effecting such a payment; the improper or inaccurate recording of payments and receipts on the books of the issuer or its subsidiaries; or any other matters of a similar nature involving disbursements of issuer assets. Disclosure need not be made of any matter which has been previously reported in a filing with the Commission and described in an issuer document distributed to shareholders.

(d)(2) ALTERNATIVE AMENDMENTS

ALTERNATIVE A

(2) Indicate whether or not the issuer has any policy regarding payments or transactions of the type described in (1). If the issuer has such a policy, briefly describe it. If the policy is set forth in a written document, three copies thereof are to be filed with the Commission at the time preliminary materials are filed pursuant to Rules 14a-6 or 14c-5.

ALTERNATIVE B

(2) If the issuer is required to disclose any payment or transaction pursuant to (1), then, in addition to such disclosure, indicate whether or not the issuer has any policy regarding payments or transactions of the type described in (1). If the issuer has such a policy, briefly describe it. If the policy is set forth in a written document, three copies thereof are to be filed with the Commission at the time preliminary materials are filed pursuant to Rules 14a-6 or 14c-5.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 19, 1977.

[FR Doc.77-2469 Filed 1-21-77;1:31 pm]

[26] The Commission is also considering soliciting comment on the question of whether to require some form of reporting to shareholders concerning the issuer's system of internal accounting control.

[27] The Commission has previously announced a proposal to amend Schedule 14A, including the alteration of the caption of Item 6 to read "Information Regarding Management." See Securities Act Release No. 5758 (Nov. 2, 1976) (41 FR 49493).

TENNESSEE VALLEY AUTHORITY

[18 CFR Part 301]

GOVERNMENT IN THE SUNSHINE

Proposed Implementation

Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b, requires each agency subject to its provisions to promulgate regu-

lations to implement the requirements of section 552 (b)–(f) of Title 5 of the U.S. Code by March 12, 1977, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the FEDERAL REGISTER of at least 30 days and opportunity for written comment by any person.

Notice is hereby given that the Board of Directors of the Tennessee Valley Authority (TVA) proposes to amend 18 CFR Part 301 by adding a new Subpart C, entitled "Government in the Sunshine Act," to implement the requirements of that act with respect to TVA. It is proposed to make the regulations effective as of March 12, 1977.

Written comments concerning the proposed regulations may be submitted to Herbert S. Sanger, Jr., General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902. All comments received on or before the 30th day after the date of publication of these proposed regulations will be considered. Copies of all comments in response to this proposal will be available for public inspection during normal business hours at the TVA Technical Library, room E2B7, 400 Commerce Avenue, Knoxville, Tennessee.

In accordance with the Government in the Sunshine Act and TVA's practice over the past two years, TVA proposes that all formal meetings of the TVA Board be open to public observation, except in certain specified instances when the Board by recorded vote may decide to close a meeting. TVA proposes to make public announcement, at least one week in advance, of the time, place, and subject matter of each formal Board meeting. If the meeting, or any portion thereof, is to be closed to the public, that fact will also be announced.

TVA anticipates that the Government in the Sunshine Act and these proposed regulations will result in very little change in TVA's procedures for holding formal Board meetings, which TVA has been holding in public for the last two years. The act and these proposed regulations do not grant the public any right to participate in TVA Board meetings, but TVA plans normally to continue its practice of holding question and answer sessions for the public and the news media following the end of the business portion of each formal meeting.

Because of the size, scope, and complexity of the TVA program, decisions on TVA business requiring TVA Board action cannot always be deferred until the next regularly scheduled formal Board meeting. Of necessity then, the TVA Board must gather at informal Board meetings to conduct or dispose of official TVA business during the intervals between formal Board meetings. As with formal TVA Board meetings, TVA proposes that deliberations at such informal meetings be open to public observation, unless closed for one of the specified reasons by a recorded vote of the Board members. Some matters will require that such unscheduled deliberations be convened on very short notice; however, TVA proposes to make public announcement of the time, place, and subject matter of such deliberations as soon as practicable.

Not all gatherings of TVA Board members are meetings subject to the Government in the Sunshine Act. For instance, the act is not intended to prevent any two members of three-member agencies, like TVA, from engaging in informal background discussions which clarify issues and expose varying views, and such discussions do not come within the act's open meeting requirements. Congress' intent in regard to the special problems faced by three-member boards is particularly applicable to TVA's situation and the recognization of these special problems is necessary to maintain the corporate flexibility provided for in the TVA act. The work of the TVA Board is a full-time job and has never been limited to approving or disapproving formal proposals submitted by the TVA staff. The work of Board members includes informal gatherings with the staff and with each other in the day-to-day operations of TVA. Of necessity, this work includes discussions of TVA business on an impromptu basis in the office of one or another Board member, at lunch, while traveling together, or in other similar situations.

Serious and more formalized discussions among Board members on specific topics are generally the result of matters being brought to it for consideration or approval by TVA's General Manager in accordance with longstanding practice under TVA's administrative release system. Consequently, in implementing the Government in the Sunshine Act, TVA intends to use the Board's receipt of a matter from the General Manager for consideration or approval to signal the beginning of the period during which discussions among Board members may become deliberations. TVA's General Counsel has advised its Board members that they should be aware that the Government in the Sunshine Act carries the presumption that all their joint discussions on such matters will be open but that they may continue to have informal and preliminary discussions in private so long as such discussions do not effectively predetermine official actions.

In addition, TVA staff briefings of Board members will not generally be meetings subject to the open meeting requirement so long as the Board members do not engage in deliberations which determine or result in the joint conduct or disposition of TVA business on such occasions. Furthermore, the Government in the Sunshine Act permits TVA to continue its longstanding practice of circulating written material to Board members sequentially for each member to consider and act on individually. This practice has been followed by TVA largely because of the volume, detail, and urgency of the business handled by the TVA Board and not delegated to the TVA staff. When TVA business is conducted in this manner, there is no meeting subject to the act. In continuing to follow this procedure, TVA is not attempting to circumvent the spirit of the Government in the Sunshine Act but only to carry its statutory responsibilities under the Tennessee Valley Authority Act of 1933 as efficiently and effectively as possible.

NOTE.—The Tennessee Valley Authority has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

In consideration of the foregoing, TVA proposes to amend 18 CFR Part 301 by adding a new Subpart C, as follows:

Subpart C—Government in the Sunshine Act

Sec.

301.41 Purpose and scope.
301.42 Definitions.
301.43 Open meetings.
301.44 Notice of meetings.
301.45 Procedure for closing meetings.
301.46 Criteria for closing meetings.
301.47 Transcripts of closed meetings.
301.48 Public availability of transcripts and other documents.

AUTHORITY: Sec. 3(a), Pub. L. No. 94-409, 90 Stat. 1241 (5 U.S.C. 552b), and 48 Stat. 58, as amended (16 U.S.C. 831-831dd).

§ 301.41 Purpose and scope.

(a) The provisions of this Subpart are intended to implement the requirements of section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552b, consistent with the purposes and provisions of the Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

(b) Nothing in this subpart expands or limits the present rights of any person under the Freedom of Information Act (5 U.S.C. 552) and the provisions of Subpart A of this Part, except that the exemptions set forth in § 301.46 shall govern in the case of any request made pursuant to the Freedom of Information Act and Subpart A to copy or inspect the transcripts, recordings, or minutes described in § 301.47.

(c) Nothing in this Subpart authorizes TVA to withhold from any individual any record, including transcripts, recordings, or minutes required by this Subpart, which is otherwise accessible to such individual under the Privacy Act (5 U.S.C. 552a) and the provisions of Subpart B.

(d) The requirements of Chapter 33 of Title 44 of the United States Code shall not apply to the transcripts, recordings, and minutes described in § 301.47.

§ 301.42 Definitions.

For the purposes of this Subpart:

(a) The term "Board" means the Board of Directors of the Tennessee Valley Authority;

(b) The term "meeting" means the deliberations of two or more members of the TVA Board where such deliberations determine or result in the joint conduct or disposition of official TVA business, but the term does not include deliberations required or permitted by § 301.44 or § 301.45;

(c) The term "member" means an individual who is a member of the TVA Board; and

(d) The term "TVA" means the Tennessee Valley Authority.

§ 301.43 Open meetings.

Members shall not jointly conduct or dispose of TVA business other than in accordance with this Subpart. Except as provided in § 301.46, every portion of every meeting of the agency shall be open to public observation, and TVA shall provide suitable facilities therefor, but participation in the deliberations at such meetings shall be limited to members and certain TVA personnel. Public observation does not include the recording of any deliberations or actions by means of electronic or other devices or cameras.

§ 301.44 Notice of meetings.

(a) TVA shall make a public announcement of the time, place, and subject matter of each meeting, whether it is to be open or closed to the public, and the name and telephone number of a TVA official who can respond to requests for information about the meeting.

(b) Such public announcement shall be made at least one week before the meeting unless two or more members determine by a recorded vote that TVA business requires that such meeting be called at an earlier date. If an earlier date is so established, TVA shall make such public announcement at the earliest practicable time.

(c) Following a public announcement required by paragraph (a) of this section, the time or place of the meeting may be changed only if TVA publicly announces the change at the earliest practicable time. The subject matter of a meeting or the determination to open or close a meeting or portion of a meeting to the public may be changed following the public announcement required by paragraph (a) of this section only if two or more members determine by a recorded vote that TVA business so requires and that no earlier announcement of the change was possible and if TVA publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(d) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the proceedings, and the name and phone number of the TVA official designated to respond to requests for information about the meeting shall be submitted for publication in the FEDERAL REGISTER.

§ 301.45 Procedure for closing meetings.

(a) Action under § 301.46 to close a meeting shall be taken only when two or more members vote to take such action. A separate vote shall be taken with respect to each meeting a portion or portions of which are proposed to be closed to the public pursuant to § 301.46 or with respect to any information which is proposed to be withheld under § 301.46. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series. The vote of each member participating in such vote shall be recorded and no proxies shall be allowed.

(b) Notwithstanding that the members may have already voted not to close a meeting, whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraphs (e), (f), or (g) of § 301.46, the Board, upon request of any one of its members made prior to the commencement of such portion, shall vote by recorded vote whether to close such portion of the meeting.

(c) Within one day of any vote taken pursuant to this section, TVA shall make publicly available in accordance with § 301.48 a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, TVA shall, within one day of the vote taken pursuant to this section, make publicly available in accordance with § 301.48 a full written explanation of this action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(d) For every meeting closed pursuant to § 301.46, there shall be a certification by the General Counsel of TVA stating whether, in his or her opinion, the meeting may be closed to the public and each relevant exemptive provision. A copy of such certification shall be retained by TVA and shall be made publicly available in accordance with § 301.48.

§ 301.46 Criteria for closing meetings.

Except in a case where the Board finds that the public interest requires otherwise, the second sentence of § 301.43 shall not apply to any portion of a meeting and such portion may be closed to the public, and the requirements of § 301.44 and § 301.45 (a), (b), and (c) shall not apply to any information pertaining to such meeting otherwise required by this subpart to be disclosed to the public, where the Board properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of an agency;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. § 552), provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would—

(1) In the case of any agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(2) In the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that this provision shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(j) Specifically concern an agency's issuance of a subpena, or its participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by an agency of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 301.47 Transcripts of closed meetings.

(a) For every meeting closed pursuant to § 301.46, the presiding officer of the meeting shall prepare a statement setting forth the time and place of the meeting, and the persons present, and such statement shall be retained by TVA.

(b) TVA shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraphs (h), (i) (1), or (j) of § 301.46, TVA shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) TVA shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any TVA proceeding with respect to which the meeting or portion was held, whichever occurs later.

§ 301.48 Public availability of transcripts and other documents.

(a) Public announcements of meetings made pursuant to § 301.44, written copies of votes to change the subject matter of meetings made pursuant to § 301.44(c), written copies of votes to close meetings and explanations of such closings made pursuant to § 301.45(c), and certifications of the General Counsel made pursuant to § 301.45(d) shall be available for public inspection during regular business hours in the TVA Technical Library, room E2B7, 400 Commerce Avenue, Knoxville, Tennessee.

(b) TVA shall make promptly available to the public at the location described in paragraph (a) of this section the transcript, electronic recording, or minutes (as required by § 301.47 (b)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as TVA determines to contain information which may be withheld under § 301.46. Each request for such material shall be made to the Director of Information, Tennessee Valley Authority, Knoxville, Tennessee 37902; state that it is a request for records pursuant to the Government in the Sunshine Act and this Subpart; and reasonably describe the discussion or item of testimony, and the date of the meeting, with sufficient specificity to permit TVA to identify the item requested.

(c) In the event the person making a request under paragraph (b) of this section has reason to believe that all transcripts, electronic recordings, or minutes or portions thereof requested by that person and required to be made available under paragraph (b) of this section were not made available, the person shall make a written request to the Director of Information for such additional transcripts, electronic recordings, or minutes or portions thereof as that person believes should have been made available under paragraph (b) of this section and shall set forth in the request the reasons why such additional material is required to be made available with sufficient particularity for the Director of Information to determine the validity of such request. Promptly after a request pursuant to this paragraph is received, the Director of Information or his designee shall make a determination as to whether to comply with the request, and shall immediately give written notice of the determination to the person making the request. If the determination is to deny the request, the notice to the person making the request shall include a statement of the reasons for the denial, a notice of the right of the person making the request to appeal the denial to TVA's General Manager, and the time limits therefor.

(d) If the determination pursuant to paragraph (c) of this section is to deny the request, the person making the request may appeal such denial to TVA's General Manager. Such an appeal must be taken within 30 days after the person's receipt of the determination by the Director of Information and is taken by delivering a written notice of appeal to the General Manager, Tennessee Valley Authority, Knoxville, Tennessee 37902. Such notice shall include a statement that it is an appeal from a denial of a request under § 301.48(c) and the Government in the Sunshine Act and shall indicate the date on which the denial was issued and the date on which the denial was received by the person making the request. Promptly after such an appeal is received, TVA's General Manager or his designee shall make a final determination on the appeal. In making such a determination, TVA will consider whether or not to waive the provisions of any exemption contained in § 301.46. TVA shall immediately given written notice of the final determination to the person making the request. If the final determination on the appeal is to deny the request, the notice to the person making the request shall include a statement of the reasons for the denial and a notice of the person's right to judicial review of the denial.

(e) Copies of materials available for public inspection under this section shall be furnished to any person at the actual cost of duplication or transcription.

Dated: January 19, 1977.

LYNN SEEBER,
General Manager.

[FR Doc.77-2526 Filed 1-25-77;8:45 am]

PENSION BENEFIT GUARANTY CORPORATION

[29 CFR Part 2610]

VALUATION OF PLAN BENEFITS

Notice of Proposed Rulemaking

On November 3, 1976, the Pension Benefit Guaranty Corporation (hereinafter referred to as the "PBGC") issued an interim regulation establishing the methods for valuing plan benefits under Title IV of the Employee Retirement Income Security Act of 1974 (hereinafter referred to as the "Act"). (41 FR 48484 et seq.) The regulation includes an appendix containing rates and factors to be used to value benefits in plans which terminate on or after September 2, 1974, but before October 1, 1975.

On November 3, 1976, PBGC published for comment in the FEDERAL REGISTER additional rates and factors for valuing benefits in plans which terminate on or after September 2, 1974, but before September 1, 1976. (41 FR 48503 et seq.)

The appendices to the regulations did not provide rates and factors for valuing benefits in plans that terminate on or after September 1, 1976. PBGC has now developed rates and factors to value benefits in plans that terminate on or after September 1, 1976, but before December 1, 1976. Notice is hereby given that the PBGC proposes to amend Chapter XXVI of Title 29 of the Code of Federal Regulations to provide valuation factors for plans that terminate on or after September 1, 1976, but before December 1, 1976.

Interested persons may submit written comments on this proposal to the Office of the General Counsel, Pension Benefit Guaranty Corporation, Suite 7200, 2020 K Street, NW, Washington, D.C. 20006. Each person submitting comments should include his/her name and address, identify this notice and give reasons for any recommendation. Comments should be submitted before February 7, 1977. Copies of written comments will be available for examination by interested persons in the Office of Communications, Suite 7100, 2020 K Street, NW, between the hours of 9 a.m. and 4 p.m. The proposal may be changed in the light of comments received.

In consideration of the foregoing, it is proposed to amend Part 2610 of Chapter XXIV of Title 29, Code of Federal Regulations by adding a new Table VI to Appendix B to read as follows:

VI. The following interest rates and quantities used to value benefits shall be effective for plans which terminate on or after September 1, 1976 and on or before November 30, 1976:

Table I—*Interest rate for valuing immediate annuities.* An interest rate of 7 percent shall be used to value immediate annuities, to compute the quantity "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III—*Interest rates and quantities used to value deferred annuities.* The follow-

ing factors shall be used to value deferred annuities pursuant to § 2610.6:

$k_1 = 1.06$
$k_2 = 1.0475$
$k_3 = 1.035$
$n_1 = 8$
$n_2 = 10$

(Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93-406, 88 Stat. 1004, 1020, 1025-27, 1029 (29 U.S.C. 1302(b)(3), 1341(b), 1344, 1362(b)(1)(A)).)

Issued at Washington, D.C., on this 21st day of January, 1977.

MATTHEW M. LIND,
Acting Executive Director,
Pension Benefit Guaranty Corp.

NOTE: Issued on the date set forth above, pursuant to a resolution of the Board of Directors authorizing the Executive Director to issue same.

HENRY ROSE,
Secretary,
Pension Benefit Guaranty Corp.

[FR Doc.77-2583 Filed 1-25-77;8:45 am]

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

[33 CFR Part 207]

CAPE FEAR RIVER, NORTH CAROLINA

Proposed Navigation Regulation

Notice is hereby given that pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1) the regulations set forth below in tentative form are proposed by the Secretary of the Army (acting through the Chief of Engineers) to govern the use, administration and navigation of the three locks on the Cape Fear River, North Carolina. This proposal would establish a schedule of operation for the three locks and dams operated by the Corps of Engineers of navigational purposes.

The locks are currently available for navigation 24 hours a day, every day of the year. In view of declining use of the river for navigation and the small number of vessel lockages, combined with the increasing cost of operation and maintenance, continuous operation is uneconomical. It is apparent that the cost of making the locks available on a continuous basis far outweighs the benefits of accommodating the very few vessels currently using the locks. The proposed schedules would reduce the cost of operation by about 50 percent.

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions or objections thereto which are submitted in writing to the Office of the Chief of Engineers, Forrestal Building, Washington, D.C. 20314, Attention: DAEN-CWO-N on or before February 20, 1977.

§ 207.161 Cape Fear River, Navigation Locks, Between 29 and 94 River Miles North of Wilmington, North Carolina; Use, Administration and Navigation.

(a) The owner of or agency controlling the locks shall be required to open the navigation locks upon demand for passage of vessels during the following hours and periods:

Lock and dam No. 1, Lock and dam No. 2, Wm. O. Huske lock and dam

Apr. 1 through Oct. 31.	Monday through Friday.	7 a.m. to 11 a.m., 12 noon to 4 p.m.
	Saturday and Sunday.	7 a.m. to 9 a.m., 6 p.m. to 8 p.m.
Nov. 1 through Mar. 31.	Monday through Friday.	8 a.m. to 11 a.m., 12 noon to 5 p.m.

In addition, lockages will be provided during other hours if prior requests are made 48 hours in advance to the District Engineer, U.S. Army Engineer District, Wilmington, North Carolina.

(b) The owner of or agency controlling the locks shall place signs, of such size and description as may be designated by the District Engineer, U.S. Army Engineer District, Wilmington, North Carolina, at the locks indicating the nature of the regulations of this section.

(40 Stat. 266 (33 U.S.C. 1).)

Dated: January 13, 1977.

MARVIN W. REES,
Colonel, Corps of Engineers,
Executive Director of Civil Works.

[FR Doc.77-2480 Filed 1-25-77;8:45 am]

[33 CFR Part 207]

SAN FRANCISCO BAY, SAN PABLO BAY, CARQUINEZ STRAIT, SUISUN BAY, SAN JOAQUIN RIVER, AND CONNECTING WATERS, CALIF.

Proposed Navigation Regulation

Notice is hereby given that pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1) the regulations set forth in tentative form below are proposed by the Secretary of the Army (acting through the Chief of Engineers) to amend 33 CFR 207.640. We propose to amend only paragraphs (j) and (n) by changing the descriptive titles, changing the designated command having authority over the restricted areas, and redefining the limits of the restricted area in paragraph (n). These changes are proposed in accordance with a request by the Commanding Officer, Naval Weapons Station, Concord, California, to revise the limits of the restricted area off Port Chicago to include the Seal Islands East Lighter Mooring and to make editorial changes outlined above.

Prior to the adoption of the proposed regulations consideration will be given to any comments, suggestions or objections thereto which are submitted in writing to the Office of the Chief of Engineers, Forrestal Building, Washington, D.C. 20314, Attention: DAEN-CWO-N on or before February 25, 1977.

§ 207.640 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and connecting waters, California.

* * * * *

(j) San Francisco Bay in vicinity of the NSC Fuel Department, Point Molate; restricted area.

(1) * * *

(2) *The regulations.* Vessels not operating under supervision of the local military or naval authority or public vessels of the United States shall not enter this area except by specific permission of the Commanding Officer, Naval Supply Center, Oakland.

* * * * *

(n) Suisun Bay at Naval Weapons Station, Concord; restricted area—

(1) *The area.* Beginning at a point on the shore and on the easterly side of the mouth of a small slough (known as Hastings Slough) bearing 189°, 2,412 yards from Tripon at Preston Point on Roe Island; thence 340°30', 400 yards, to the shore line of the westerly of the two Seal Islands; thence 60°30', 940 yards; thence 75°, 1,650 yards; thence 102°, 1,850 yards; thence 99°, 1,880 yards; thence 180°, 435 yards, to the shore line; thence following the high water shore line in a general westerly direction to the point of beginning.

(2) *The regulations.* Vessels and other craft not operating under the authority of the local military or naval authority shall not enter, lie to, anchor, or moor in this area except by specific permission of the Commanding Officer, Naval Weapons Stations, Concord.

* * * * *

(33 U.S.C. 1.)

Dated: January 14, 1977.

MARVIN W. REES,
Colonel, Corps of Engineers,
Executive Director of Civil Works.

[FR Doc.77-2481 Filed 1-25-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 639-1]

[40 CFR Part 60]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Sewage Sludge Incinerators

Subpart 0 sets forth standards of performance for new, modified, and reconstructed sewage sludge incinerators in sewage treatment plants. The standards limit emissions of particulate matter to 0.65 g/kg dry sludge input (1.30 lb/ton dry sludge input) and visible emissions to 20 percent opacity. The State of Alaska recently requested EPA to revise § 60.150 of the regulation. The basis of the request is that incinerators which are small enough to meet the needs of small communities in Alaska and also comply with the particulate matter standard are not available, and the disposal of sewage sludge in landfills is not a viable option because of permafrost and other factors resulting in landfill problems (shallow and soft landfills). The proposed amendment would exempt incinerators with a capacity of less than 140 kg/hr (300 lb/hr) dry sludge provided that disposal by land application or sanitary landfill are shown to be infeasible because of freezing conditions.

BACKGROUND

The standards of performance for sewage sludge incinerators were promulgated March 8, 1974 (39 FR 9308), under section 111 of the Clean Air Act. Section 111 directs the Administrator to establish standards of performance for new stationary sources which reflect the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) the Administrator determines has been adequately demonstrated. The best system of emission reduction for sewage sludge incinerators (multiple hearth and fluid bed reactor type incinerators) was determined to be low energy venturi scrubbers.

At the time the standards were promulgated EPA was developing a standard for murcury emissions from sewage sludge incinerators and guidelines for municipal sludge management. The standard limiting mercury emissions was promulgated under section 112 (Hazardous Air Pollutants) of the Clean Air Act on October 14, 1975 (40 FR 48302), and the proposed guideline was issued for public comment on June 3, 1976, under the title "Technical Bulletin on Municipal Sludge Management: Environmental Factors."

Incineration is just one of several methods available for sludge disposal. The standards, which limit emissions of mercury and particulate matter, insure that adequate emission control systems are employed when incineration is used as the method of sludge disposal. Incineration is only a volume reduction method. After incineration, the ash, either dry or in scrubber water, remains to be disposed of to the land. Ash disposal must be designed to protect ground water, to prevent dust, and to insure no erosion to surface waters.

INVESTIGATION

In investigating Alaska's request, EPA contacted the vendors of sewage sludge incinerators and found that multiple hearth or fluid bed reactor type incinerators which can achieve the particulate matter standard are not commercially available below a size capacity of 140 kg/hr (300 lb/hr). This means that incineration would not be a disposal option where units smaller than 140 kg/hr are needed. Since the unique problems in parts of Alaska also prevent disposal by land application or sanitary landfill, sludge disposal cannot be accomplished in an environmentally acceptable mnaner under existing regulations. EPA concluded that a revision to the standards of performance for sludge incinerators is appropriate.

In developing a revision to the standard to accommodate the unique problems in parts of Alaska, EPA intends that the proposed exemption not create an incentive to utilize small incinerators which would not be covered under the standard. To avoid this situation the proposed exemption applies only where an owner or operator can demonstrate to the satisfaction of the Administrator that land application and sanitary landfills are not feasible disposal methods for the sewage sludge. The size exemption is based on the capacity of the waste water treatment plant rather than the incinerator in order to prevent constructing multiple small incinerators rather than larger units which would be subject to the standard.

The proposed amendment of § 60.150 would not affect applicable national mercury emission standards under § 61.50 which currently regulates mercury emissions from all sludge incinerators. These standards are not subject to the exemption because control of mercury emissions can be achieved by ordinances or statutes which prevent mercury-bearing material from being introduced into the municipal waste treatment system.

PUBLIC PARTICIPATION

Interested persons may participate in this proposed rulemaking by submitting written comments (in triplicate) to the Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention: Mr. Don R. Goodwin. Comments on all aspects of the proposed revision are welcome. All relevant comments received not later than March 15, 1977 will be considered. Comments received will be available for public inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, S.W., Washington, D.C. 20460.

AUTHORITY: Sections 111, 114, and 301(a) of the Clean Air Act, as amended by sec. 4(a) of Pub. L. 91-604, 84 Stat. 1678 and by sec. 15(c)(2) of Pub. L. 91-604, 84 Stat. 1713 [42 U.S.C. 1857c-6, 1857c-9 and 1857g(a)].

Dated: January 14, 1977.

RUSSELL E. TRAIN,
Administrator.

In 40 CFR Part 60, it is proposed to amend Subpart 0, by revising § 60.150 as follows:

§ 60.150 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each incinerator which combusts the sludge produced by municipal sewage treatment plants except as provided under paragraph (b) of this section.

(b) The owner or operator of a sewage sludge incinerator may apply to the Administrator for an exemption to the requirements of this subpart for any sewage sludge incinerator that is in a municipal waste treatment plant having a dry sludge capacity below 140 kg/hr (300 lb/hr). The Administrator will grant an exemption provided the owner or operator demonstrates to the Administrator's satisfaction that it is not feasible to dispose of the sludge by land application or in a sanitary landfill because of freezing conditions. For the purpose of determining the capacity of a municipal waste treatment plant under this paragraph, the dry sludge capacity of the municipal waste treatment plant or the dry sludge capacity of the sewage sludge incinerator, whichever is greater, is used.

[FR Doc.77-2384 Filed 1-25-77;8:45 am]

LEGAL SERVICES CORPORATION

[45 CFR Part 1606]

FINANCIAL ASSISTANCE

Procedures Governing Applications for and Denial of Refunding

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996l ("the Act"). Section 1011 of the Act, 42 U.S.C. 2996j, provides that the Corporation shall prescribe procedures to insure that, among other things, applications for refunding are not denied unless the grantee, contractor, or person or entity receiving financial assistance has been afforded reasonable notice and an opportunity for a timely, full, and fair hearing.

Pursuant to section 1008(e) of the Act, the Corporation hereby affords notice and publishes for comment the following proposed regulation concerning procedures governing applications for and denial of refunding. Public comment will be received by the Corporation at its headquarters offices, Suite 700, 733 15th Street, NW., Washington, D.C. 20005 on or before February 25, 1977. Comments must be in writing and may be accompanied by a memorandum or brief in support thereof. Comments received may be seen at the above offices during business hours Monday through Friday.

Final regulations will be issued by the Corporation after review and consideration of public comments received pursuant to this notice.

COMMENT

To insure that the provision of legal assistance to eligible clients would not be disrupted unnecessarily, Congress provided, in section 1011 of the Act, that a recipient's application for refunding should not be denied unless the recipient had been afforded reasonable notice and opportunity for a timely, full, and fair hearing.

The current draft was prepared after consideration of 48 written comments received in response to the publication of a proposed temporary regulation on March 12, 1976 (now in effect) and a proposed final draft on April 30, 1976, as well as lengthy analyses submitted by NLADA and PAG, and proposed drafts prepared by those organizations.

It seems a fair conclusion that section 1011 of the Act calls for procedures less elaborate than those of the Administrative Procedure Act,[1] but broadly comparable to the due process requirements applied to termination of governmental

[1] Had full APA procedures been intended, the Act could simply have adopted them as it did 5 U.S.C. 552 in section 1005(g).

financial benefits, licenses, or employment. This conclusion precludes summary procedures or any provision that is unfair, but does not compel the Corporation to imitate courtroom procedures. Most refunding decisions require the exercise of discretion and policy judgments, issues that are better settled by discussion than by adversarial confrontation. Rarely will refunding hearings be adjudicative in the conventional sense. Nor is it the purpose of the hearing to review or to challenge a decision after it has been made; the purpose is to provide an opportunity for meaningful involvement of a recipient before a final decision is reached, thereby insuring that the Corporation will not act hastily, or on mistaken grounds, or without receipt of all information and viewpoints entitled to consideration.

The major issues raised in the comments received by the Corporation should be considered by the Board.

1. GROUNDS FOR DENIAL OF REFUNDING

The requirements of section 1011 are procedural, and nothing in the Act requires the Corporation to issue a regulation stating all the grounds and criteria that may be applied in the future in considering applications for refunding. The Committee decided that it is desirable to do so, however, and that the grounds enumerated in § 1606.4 are adequate to cover all contingencies likely to occur.

This draft corrects a flaw that comments identified in the earlier one, which failed to provide a hearing on the question whether a generally applicable law or policy was being applied correctly in a particular case.

2. PRESIDING OFFICER

Section 1606.7(a)(1) states that the presiding officer "may be an officer or employee of the Corporation who has not previously been concerned with the investigation or consideration of the application for refunding, or may be a person recruited or retained from outside the Corporation who is familiar with the provision of legal services to the poor and supportive of the purposes of the Act."

Many comments urged the use of an administrative law judge or another person not employed by the Corporation in every case. The request seems misfounded.

Assuming that the presiding officer was not involved in the preliminary determination or the investigation that led to it, there cannot be a serious question about the propriety or validity of designating a Corporation official to preside at the hearing. In "The National Paralegal Institute v. The Legal Services Corporation," Civ. No. 76-1260, (August 12, 1976) the Court held that the provision of the Corporation's temporary regulations authorizing a Corporation employee to act as presiding officer satisfied the requirements of section 1011. The decision was clearly supported by Supreme Court decisions defining constitutional requirements for an impartial tribunal.[1]

The Corporation's regulation is consistent with the one adopted by ACTION, that is also required by statute to provide a full and fair hearing before terminating funding, 42 U.S.C. 5052. It provides that the presiding officer shall be the responsible ACTION official, or at the discretion of the responsible ACTION official, an independent hearing examiner designated pursuant to the Administrative Procedure Act. 45 CFR 1206.1-7(b)(1). The ACTION regulations were published in the FEDERAL REGISTER on January 16, 1974, seven months before passage of the Legal Services Corporation Act, with its provision containing identical language. There is no reason to believe that the Congress intended to impose heavier requirements on the Corporation than on ACTION.[2]

The current draft authorizes appointment of a presiding officer who is not employed by the Corporation. It may be expected that an outsider will most frequently be appointed when a recipient is charged with violating the Act or failing to provide high quality assistance, and the burden of proof is upon the Corporation as provided by § 1606.11. But when the issues presented require judgments about the effective use of Corporation resources, decisions should be made by a person familiar with the overall development of Corporation policy.

3. OBLIGATIONS OF THE CORPORATION

The temporary regulation places the burden of proof in every case upon the recipient. Section 1606.11 of the current draft imposes upon the Corporation the obligation of proving, by a preponderance of the evidence, any disputed fact relied upon as a ground for denying refunding. On issues of policy, the Corporation has the obligation of showing that there is a substantial basis for denying refunding.

The Committee believes there is no legal requirement for the Corporation to assume these obligations, but concluded that it would be wise policy for it to do so.

The other changes from the published draft were minor or technical in nature.

[1] Thus, a parole revocation hearing, or one for the revocation of probation, may be conducted before an in-house presiding officer so long as he was not directly involved in the antecedent investigation. "Morrissey v. Brewer," 408 U.S. 471 (1972); "Gagnon v. Scarpelli," 413 U.S. 788 (1973). A board of physicians may first investigate and then itself bear a license suspension. "Withrow v. Larkin," 421 U.S. 35 (1975). A board composed of senior prison officials may decide a disciplinary case. "Wolff v. McDonnell," 418 U.S. 539 (1974). A "neutral investigative officer", reviewed by the hospital superintendent, can determine whether a mental patient should be transferred to the maximum security unit. "Jones v. Robinson," 440 F.2d 249 (CADC, 1971). A school may be denied eligibility for educating nonimmigrant alien students if the due process hearing is conducted before an official who did not participate in the investigation. "Blackwell College of Business v. Attorney General", 454 F.2d 928 (CADC, 1971).

[2] See also 45 CFR 1067.1-7, and 45 CFR 1303.3-1, implementing 42 U.S.C. 2944(e) (OEO), and 42 U.S.C. 2928(h)(3) (Head-start), respectively.

PART 1606—PROCEDURES GOVERNING APPLICATIONS FOR AND DENIAL OF REFUNDING

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AUTHORITY: Secs. 1006(b)(1), (3), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1011 (42 U.S.C. 2996e(b)(1) and (3), 2996f(a)(1), 2996f(a)(3), 2996f(a)(9), 2996(d), 2996g(e), 2996j.

§ 1606.1 Purpose.

By affording a recipient the opportunity for a timely, full, and fair hearing that will promote informed deliberation by the Corporation when there is reason to believe an application for refunding should be denied, this part seeks to avoid unnecessary disruption in the delivery of legal assistance to eligible clients.

§ 1606.2 Definitions.

(a) "Denial of refunding" means a decision that, after expiration of its current grant or contract, a recipient—

(1) Will not be provided with financial assistance; or

(2) Will have its annual level of financial support reduced to an extent that is not required by a reduction in the Corporation appropriation that is apportioned among all recipients of the same class, and is either more than 10 percent or more than $20,000 below the recipient's annual level of financial assistance under its current grant or contract; or

(3) Will be provided with financial assistance subject to a new condition or restriction that is not generally applicable to all recipients of the same class, and that would significantly reduce the ability of a recipient to maintain its current level of legal assitance to eligible clients.

(b) "Director of a recipient" means the person who has overall day-to-day responsibility for management of operations by the recipient.

(c) "President", as used in this part, means the President (or acting President) of the Corporation, and not his designee.

(d) "Presiding Officer" means the President, or a person designated by the President to recommend a final decision that an application for refunding should be granted or denied.

§ 1606.3 Application for refunding.

At least 120 days before expiration of its current grant or contract, a recipient that desires refunding shall file an application therefor with the Corporation in conformity with directions that, from time to time, may be issued by the Corporation.

§ 1606.4 Grounds for denial of refunding.

An application for refunding may be denied when:

(a) Denial is required by law; or

(b) Denial is required by a Corporation policy that is generally applicable to all recipients of the same class; or

(c) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of a current or prior grant from or contract with the Corporation or a predecessor agency. In the absence of unusual circumstances, refunding shall not be denied for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action.

(d) There has been substantial failure by a recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the Act, or a rule, regulation or guideline issued by the Corporation. In the absence of unusual circumstances, refunding shall not be denied for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action.

(e) Denial will implement a provision of the Act, or a Corporation policy, rule, regulation or guideline regarding economical or effective use of resources.

§ 1606.5 Preliminary determination.

(a) When there is reason to believe an application for refunding should be denied, the Corporation shall serve a written preliminary determination upon the recipient, which shall state the grounds for proposed denial, and shall identify, with reasonable specificity, any facts or documents relied upon as justification for denial.

(b) The preliminary determination shall advise the recipient that it may, within ten days of receipt of the preliminary determination, make written request for

(1) A hearing under this part, or

(2) An informal conference under § 1606.6 with a subsequent right as there provided to request a hearing.

(c) The preliminary determination shall also advise the recipient of its right to request interim or termination funding, as the case may be, under § 1606.18 or §1606.19.

§ 1606.6 Informal conference.

On timely request by the recipient, the Corporation employee who made the preliminary determination shall conduct an informal conference with the recipient at a time and place designated by the employee. The parties thereto shall exchange views, seek to narrow the issues, and explore the possibilities of settlement or compromise. At the conclusion of the conference, which may be adjourned for deliberation or consultation, the Corporation employee may, in writing, modify, withdraw, or affirm the preliminary determination. The recipient may, within five days thereafter, make written request for a hearing under § 1606.9 through § 1606.15.

§ 1606.7 Initiation of proceedings.

Within ten days of a request for a hearing made under § 1606.5(b) or § 1606.6, the Corporation shall notify a recipient in writing of

(a) The name of the presiding officer, and of the attorney who will represent the Corporation;

(b) The date, time and place scheduled for a prehearing conference, if any should be requested or ordered; and

(c) The date, time and place scheduled for the hearing.

§ 1606.8 Presiding Officer.

(a) The presiding officer may be an officer or employee of the Corporation who has not previously been concerned with the investigation or consideration of the application for refunding, or may be a person who is not an employee of the Corporation, who is familiar with the provision of legal services to the poor and supportive of the purposes of the Act.

(b) After designation, the presiding officer shall not consult with or receive communications from the employee who made the preliminary determination or from those representing the Corporation on any of the factual issues in the hearing except in the presence of, or with copies to, the recipient.

§ 1606.9 Prehearing conference.

(a) A prehearing conference may be ordered by the presiding officer, and shall be ordered if requested by either the recipient or the Corporation. The matters to be considered at the conference shall include:

(1) Proposals to define and narrow the issues;

(2) Efforts to stipulate the facts, in whole or in part;

(3) The probable number, identity, and order of presentation of exhibits and witnesses;

(4) On the agreement of the parties, the possibility of presenting the case on written submission or oral argument;

(5) The desirability of advance submission of some or all of the direct testimony in writing;

(6) Any necessary variation in the date, time and place of the hearing; and

(7) Such other matters as may be appropriate.

(b) In advance of the prehearing conference, the presiding officer may require a party to submit a written statement discussing any matter described in paragraph (a) of this section. After the prehearing conference, the presiding officer may establish the procedures, consistent with this part, to be followed at the hearing.

(c) The presiding officer may, at the prehearing conference or at any subsequent appropriate time prior to completion of the hearing, require the Corporation or the recipient, on sufficient notice, to produce a relevant document in its possession, to make a report not unduly burdensome to prepare, or to produce a person in its employ to testify, if any might offer a relevant and substantial addition to the accuracy or completeness of the record. With the consent of the presiding officer, a party may make a written submission before the hearing.

§ 1606.10 Conduct of hearing.

(a) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 45 days after the notice required by § 1606.7, and, whenever practical, shall be held at a place convenient to the recipient and the community it serves. A hearing affecting more than one community or recipient shall be held in a single centrally located place unless the presiding officer determines that an additional hearing place is required.

(b) The presiding officer shall preside, conduct a full and fair hearing, avoid delay, maintain order, and insure that a record sufficient for full disclosure of the facts and issues is made. The hearing shall be open to the public unless, for good cause and in the interests of justice, the presiding officer shall determine otherwise.

(c) The presiding officer may allow any interested person or organization to participate in the hearing if such participation will not broaden the issues unduly or cause delay, and will aid in proper determination of the issues.

(1) A person or organization wishing to participate in a hearing shall request permission from the presiding officer, stating the reason for the request, and the nature of the evidence or argument to be offered; and shall notify the Corporation and the recipient of its request.

(2) The presiding officer shall notify the Corporation, the recipient, and the person or organization requesting participation whether the request has been granted, and in case of denial shall include a brief statement of the reasons therefor.

(3) The presiding officer may limit the scope or form of participation authorized under this paragraph.

(d) The Corporation and the receipent each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any document submitted by another party, and submit rebuttal evidence.

(e) If a party fails, without good cause, to produce a person or document required under § 1606.9(c), the presiding officer may make an adverse finding on the fact or issue with respect to which production was required.

(f) Technical rules of evidence shall not apply. The presiding officer shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(g) Official notice may be taken of published policies, rules, regulations, guidelines and instructions of the Corporation, of any matter of which judicial notice may be taken in a federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(h) A record or summary of the hearing shall be made in a manner determined by the presiding officer, and shall be made available to a party upon payment of its cost.

§ 1606.11 Obligations of the Corporation.

At a hearing under § 1606.10:

(a) The Corporation shall have the obligation of proving, by a preponderance of the evidence, the existence of any disputed fact relied upon as justification for denial of refunding on a ground described in paragraph (c) or (d) of § 1606.4; and

(b) On all other issues, the Corporation shall have the obligation of establishing a substantial basis for denying the application for refunding.

§ 1606.12 Briefs and argument.

(a) Within ten days after the close of the hearing, each party may, and upon request of the presiding officer, shall, submit to the presiding officer, with service upon all other parties, proposed findings of fact and argument on matters of law or policy.

(b) The presiding officer may direct or permit oral argument at the close of the hearing or after submission of briefs.

§ 1606.13 Recommended decision.

(a) As soon as practicable after the hearing, and normally within twenty days after its conclusion, the presiding officer shall issue a written recommended decision

(1) Granting the application for refunding, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; or

(2) Denying the application for refunding.

(b) The recommended decision shall contain findings of the significant and relevants facts and shall state the reasons for the decision. Findings of fact shall be based solely on the evidence adduced at the hearing or on matters of which official notice was taken.

§ 1606.14 Final decision.

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision shall become final ten days after receipt by a recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within ten days after receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) Within thirty days after receipt of a request for review of a recommended decision, the President may adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1606.13(b).

(d) If the presiding officer is the President, within thirty days after the conclusion of a hearing, a final decision that conforms to the requirements of § 1606.13 shall be issued.

(e) A decision by the President shall become final upon receipt by a recipient.

§ 1606.15 Time extension and waiver.

(a) Any period of time provided in these rules may, upon good cause shown and determined, be extended (1) By the person making the preliminary determination, prior to the time the presiding officer is designated; (2) By the presiding officer, prior to the issuance of a recommended decision; or (3) By the President at any time.

(b) Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 90 days of the preliminary determination.

(c) Any other provision of these rules may be waived or modified (1) By the presiding officer, if other than the President, with the assent of the recipient and of counsel for the Corporation, or (2) By the President upon good cause shown and determined.

§ 1606.16 Right to Counsel.

At a hearing under § 1606.10, the Corporation and the recipient each shall be entitled to be represented by counsel, or by another person. The attorney designated may be an employee, or may be outside counsel retained for the purpose, who may be compensated at the reasonable and customary rate for an attorney practicing in the vicinity of the attorney retained. Unless prior written approval is received from the Corporation, such fees shall not exceed the daily equivalent of the rate of level V of the Executive Schedule specified in section 5316 of Title 5, United States Code.

§ 1606.17 Reimbursement.

If an application for refunding is granted after a Preliminary Determination has been issued under § 1606.5, a recipient, at the discretion of the President, may receive reimbursement by the Corporation, in whole or in part, for reasonable and actual expenses that were required in connection with proceedings under this part.

§ 1606.18 Interim funding.

Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to refunding. If the Corporation fails to take final action upon an application for refunding prior to the expiration of the term of a recipient's current grant or contract, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities under the Act until

(a) The application for refunding has been approved and funds pursuant thereto received, or

(b) A final decision denying the application has been made.

§ 1606.19 Termination funding.

After a final decision to deny refunding, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding it necessary to enable a recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibility to its present clients.

§ 1606.2 Notice.

A notice required to be sent to a recipient under this part shall be sent to the director of the recipient, and may be sent to the chairperson of its governing body.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.77-2576 Filed 1-25-77;8:45 am]

[45 CFR Part 1621]

CLIENT GRIEVANCE PROCEDURE

Proposed Rulemaking

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"). Section 1006(b)(1), 42 U.S.C. 2996e(b)(1), provides that the Corporation shall have authority to insure compliance of the Act.

Pursuant to section 1008(e) of the Act, the Corporation hereby affords notice and publishes for comment the following proposed regulations concerning client grievance procedures. Public comment will be received by the Corporation at its headquarters offices, Suite 700, 733 15th Street, NW., Washington, D.C. 20005 on or before February 25, 1977. Comments must be in writing and may be accompanied by a memorandum or brief in support thereof. Comments received may be seen at the above offices during business hours Monday through Friday.

Final regulations will be issued by the Corporation after review and consideration of public comments received pursuant to this notice.

COMMENT

A person who is denied legal assitance by a recipient, or who is dissatisfied with the assistance rendered, is unable to ob-

tain legal assistance from another source. And, although a client does not pay a fee, adequate recourse should be available when the client believes that the services provided by a recipient do not meet the high standards of effectiveness required by the Act. Further, the fact that a recipient carries on its activities with funds from a public source imposes an additional responsibility beyond those imposed on every lawyer by the Code of Professional Responsibility. An effective client grievance procedure is an appropriate means of insuring the accountability of a recipient to its clients.

The proposed regulation requires the establishment by the governing body of a recipient of a grievance committee with authority to consider compliants that have not been resolved by staff action. The Code of Professional Responsibility does not prevent a committee containing nonlawyers from inquiring into a lawyer's conduct of a case when the committee is acting at the request of the client. Ethical prohibitions against interference with the professional judgment of a lawyer are designed to insure that the lawyer will be directly responsible to the client, and not subject to interference or control by an intermediary. See ABA Formal Opinions 237 and 294. Inquiry by a grievance committee acting at the request of the client is consistent with these opinions.

If a client expresses dissatisfaction with any aspect of the assistance provided by a recipient, it would be appropriate for the recipient to inform the client of the existence of a local group, such as the National Clients Council or the National Welfare Rights Organization, that may be able to counsel the client about the subject of the complaint.

PART 1621—CLIENT GRIEVANCE PROCEDURE

Sec.
1621.1 Purpose.
1621.2 Governing Body Grievance Committee.
1621.3 Procedures.

AUTHORITY: Sec. 1006(b)(1) (42 U.S.C. 2996e(b)(1)).

§ 1621.1 Purpose.

By providing an effective remedy for a client who believes that legal assistance has been denied improperly, or who is dissatisfied with the assistance provided, this part seeks to insure that every recipient will be accountable to its clients and will provide the high quality legal assistance required by the Act.

§ 1621.2 Governing Body Grievance Committee.

The governing body of a recipient shall establish a grievance committee, composed of lawyer and client representatives in the same proportion in which they are on the governing body.

§ 1621.3 Procedures.

(a) A recipient shall establish effective procedures for determining the validity of a complaint that assistance has been improperly denied or ineffectively rendered. The procedures adopted shall be subject to approval by the Corporation.

(b) The procedures shall include:

(1) Adequate notice to clients of how to make a complaint;

(2) Provision of assistance to a client who requests help in presenting a complaint; and

(3) An opportunity for a complainant to appear before the grievance committee established by the govrening body if the director of the recipient is unable to resolve the matter.

(c) A record of every complaint and its disposition shall be preserved for review by the Corporation.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.77-2577 Filed 1-25-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Provisions for Interagency Corporation

Proposed regulations to assist the Federal agencies in complying with section 7 of the Endangered Species Act of 1973.

The Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior, and the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, hereby jointly issue substantively identical proposed rulemakings that would establish rules and procedures for interagency cooperation pursuant to section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1543 (hereinafter cited as Act). The U.S. Fish and Wildlife Service (hereinafter cited in this preamble as FWS) regulations would be established in Part 17 of Chapter I of Title 50, Code of Federal Regulations, while the National Marine Fisheries Service (hereinafter cited in this preamble as NMFS) regulations (published elsewhere in this issue, see FR Doc 77–2382, published in the proposed rules section of this issue under the Department of Commerce) would be established in Parts 217 and 223 of Chapter II of Title 50, Code of Federal Regulations. The NMFS regulations in Parts 217 and 223 are only for those species under the jurisdictional responsibilities of the Secretary of Commerce (endangered species are identified in 50 CFR 222.23(a) and threatened species are identified in 50 CFR 227.4). The FWS regulations in Part 17 would apply to all other endangered and threatened species.

BACKGROUND

The Act became effective on December 28, 1973. Recognizing that all Federal agencies must cooperate to conserve and protect endangered and threatened species and their habitat, section 7 of the Act states:

INTERAGENCY COOPERATION

Section 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessar to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

By internal memorandum of October 16, 1974, the Secretary of the Interior further defined Interior's responsibilities under section 7 and established the lead role of the FWS within the Department of the Interior.

In a joint letter to all Federal agencies on December 3, 1974, the Secretaries of the Interior and Commerce pointed out the responsibilities of the agencies under section 7 and asked for their cooperation in implementing the Act. The letter of December 3 also clarified the responsibilities of the FWS and the NMFS as lead agencies for the two Departments in implementation of the Act.

On April 22, 1975, the Director of the FWS and the Director of the NMFS published a joint notice in the FEDERAL REGISTER (40 FR 17764–17765) describing how "critical habitat" would be determined for endangered and threatened species pursuant to section 7 of the Act.

On May 29, 1975, the FWS and NMFS convened a conference for affected Federal agencies to discuss the Act and its implications for the activities and programs of the agencies. At this meeting, the Federal agencies requested that guidelines be developed to assist them in meeting their responsibilities under section 7.

In response to that request, the FWS and NMFS convened an Ad Hoc Interagency Committee of representatives from 11 Federal agencies to advise the two Services in developing the necessary guidelines.

An April 22, 1976, "Guidelines to Assist the Federal Agencies in Complying with Section 7 of the Endangered Species Act of 1973" were transmitted to all Federal agencies by the FWS and NMFS. These guidelines are an interim measure to furnish a broad and flexible framework within which Federal agencies may prepare internal procedures to fulfill their responsibilities under section 7. However, as stated in the guidelines, they are "a starting point for the development and promulgation of regulations."

At the request of the Office of Management and Budget, copies of the guidelines were again transmitted to the Federal agencies on May 20, 1976, and comments due by August 1, 1976, were solicited for a "quality of life" review. As of

September 28, 1976, 40 comments had been received from Federal agencies. Although 8 comments expressed unequivocal support for the guidelines and 3 comments were opposed, the remaining 29 did not express general support or opposition, limiting themselves to comments on particular language, organization, or approach. Seven of the 29 simply stated they had no comment at that time.

The guidelines were subsequently revised by the FWS and NMFS for publication as a proposed rulemaking incorporating various comments of the Federal agencies. At the request of the Office of Management and Budget, the Director of the FWS, on behalf of the FWS and of the NMFS, forwarded this draft proposed rulemaking to the affected Federal agencies on November 11, 1976, requesting comments not later than December 1, 1976. As of January 5, 1977, 4 Federal agencies had commented. The draft regulations were then revised for this proposed rulemaking, incorporating many of the Federal agency comments.

DISCUSSION OF THE COMMENTS OF THE FEDERAL AGENCIES

Many of the comments of the Federal agencies on both the guidelines and draft regulations were clearly appropriate, have been incorporated into the proposed regulations, and need not be discussed here. However, several comments, whether adopted or not, merit discussion because of their importance and generality.

First, nearly one-third of the Federal agencies commenting indicated that use of the consultation process should be discretionary with the agency, although the Council on Environmental Quality took the opposite position. The position taken in the proposed rulemaking affirms the ultimate responsibility of each individual agency to decide whether or not it is in compliance with the Act. The proposal establishes a fixed procedure of consultation because the FWS and NMFS believe they cannot responsibly fulfill their obligations under section 7 unless there is a rational and uniform procedure for the provision of biological advice to agencies considering actions within the borders of section 7.

Second, nearly one-third of the Federal agencies commenting expressed in one form or another that set time frames are necessary for the consultation process. The FWS and NMFS acknowledge these agencies' concern that the process not be protracted. They have adopted a 60-day limit for threshold examinations and a 60-day limit for all consultation following receipt of information adequate for a biological opinion, except where special difficulty is incurred in obtaining necessary data. The FWS and NMFS do not expect that consultation will normally be protracted and anticipate that many requests for consultation will be dispatched summarily after a threshold examination. Nonetheless, the FWS and NMFS would be abdicating their responsibilities under section 7 if they were to commit themselves without exception to a time frame that in some cases would render inadequate biological advice. Therefore, the proposal leaves to agreement of the affected agency and the FWS or NMFS the time frame for completion of consultation on especially difficult actions.

Third, about one-fourth of the Federal agencies commenting stressed the need for habitat maps or published geographic coordinates for listed species, and the FWS and NMFS concur. The FWS is now working to satisfy the need, and has already designated critical habitat. This deficiency is not a valid reason for withholding implementation of the proposal, however, because the requirements of section 7 apply to Federal agencies even in the absence of a rulemaking such as that proposed, and it is to the Federal agency's advantage to have whatever biological advice and assistance the FWS and NMFS have to offer. The intended proposal simply establishes uniform procedures whereby Federal agencies can obtain the best available biological opinion as to the effect of an action on endangered or threatened species.

Fourth, about one-quarter of the Federal agencies commenting, including the Council on Environmental Quality, suggested that the consultation process should be linked to established procedures for interagency review of environmental impact statements. The FWS and NMFS expressly support this suggestion in the proposal and encourage it as a means to reduce paperwork.

Fifth, 4 of the Federal agencies expressed the opinion that the preparation and usual intragency review of environmental impact statements satisfy the consultation requirements of section 7. The Council on Environmental Quality did not support this position, but stated that an environmental impact statement should be prepared if an activity or program would jeopardize a species or potentially destroy its critical habitat. Although the FWS and the NMFS encourage consolidation of section 7 consultation and impact statement review, they will only be able to fulfill their obligations under section 7 if agencies that so consolidate will comply with the procedures stated in this proposal and will state the biological opinions of the FWS and NMFS pursuant to section 7 in final environmental impact statements, assessments, or other documents.

Sixth, 4 of the Federal agencies commenting indicated that advanced projects should be exempted from the requirements of section 7. Neither FWS nor NMFS intends that section 7 bring about the waste that can occur if an advanced project is halted. The proposed regulations would clearly limit application of section 7 to cases where Federal involvement or control remains and in itself could jeopardize the continued existence of a listed species or modify or destroy its critical habitat. That the proposal would not exempt advanced projects where such Federal involvement or control remains simply reflects the belief of the FWS and the NMFS that their role under section 7 is limited to providing biological advice and assistance, not in determining if a project may continue. The affected agency must decide whether the degree of completion and extent of public funding of particular projects justify an action that may be otherwise inconsistent with section 7. It seems reasonable that such an agency should seek the advice of the FWS or of the NMFS as to the effect the action will have upon the species in question, so that the agency may weigh the biological effect among other factors in reaching a decision.

Seventh, 3 of the Federal agencies commenting stressed that critical habitat should be the minimum habitat required by the Act or that the meaning of "modification" of such habitat in section 7 should be strictly qualified. The intended proposal incorporates both of these suggestions. Critical habitat is defined as habitat "the loss of which would appreciably decrease the likelihood of survival and recovery of a listed species or a distinct segment of its population." Modification is incorporated in the phrase "destruction or adverse modification," and then defined to be an alteration that appreciably diminishes the value of that habitat for a listed species.

Eighth, 3 of the Federal agencies commenting expressed the opinion that section 7 has no extraterritorial application, and a fourth agency stated that critical habitat should not be determined extraterritorially. However, the Council on Environmental Quality strongly supported extraterritorial application of section 7, and questioned whether it was appropriate to preclude determination of critical habitat in foreign countries. The proposal adopts the position that critical habitat may not be determined in foreign countries. However, the requirement that Federal agency actions not jeopardize the continued existence of listed species is taken to be applicable to listed species wherever occurring. This position adopts the recommendations of the Interior Department Solicitor's Office and the General Counsel's Office of the National Oceanic and Atmospheric Administration on the issue.

Ninth, 4 of the Federal agencies commenting stated that non-Federal entities should be able to consult with the FWS or the NMFS on behalf of the Federal agency. In response, the regulations for proposal have been revised to clarify that the affected Federal agency may obtain technical assistance from any source. However, the proposed regulations emphasize that the Federal agency must take full responsibility for the initiation, carrying out, and completion of consultation, and may not delegate it.

Tenth, several Federal agencies, both formally and informally, have inquired as to the assistance the FWS and the NMFS will provide in consultation. The proposed regulations have been revised to spell this out as clearly as possible. In general, the FWS and the NMFS take responsibility for review of information provided to them by the affected agency, and they will advise agencies on the

kind of information needed and may perform on-site inspections. However, the FWS and the NMFS cannot commit themselves to fund or to carry out the basic study necessary for decision.

All comments of the Federal agencies have been considered in developing the proposed regulations and are maintained in the Office of the Associate Director for Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

DESCRIPTION OF THE PROPOSAL

The purpose of this proposal is to establish joint rules and procedures for interagency cooperation pursuant to section 7 of the Act. Although these proposed regulations are codified for the FWS in Chapter I of Title 50 of the Code of Federal Regulations, the NMFS is publishing substantively identical proposed regulations codified in Chapter II of the same Title.

This joint proposal is summarized below, with cites to NMFS codification in parentheses:

1. Section 17.3 (§ 217.12) is amended by adding key terms used in section 7 and in this proposal.

2. The following sections of Subpart I—Interagency Cooperation (Part 223—Endangered and Threatened Fish or Wildlife—Interagency Cooperation) are added:

(A) A § 17.91 (§ 223.1) is added on the scope of section 7 of the Act. This section affirms the responsibilities of the Federal agencies under section 7 by directing them to carry out conservation programs for listed species, and requiring them to insure that their actions do not jeopardize the continued existence of listed species or result in destruction or modification of critical habitat. The sections affirms that the prohibition against actions causing jeopardy applies extraterritorially.

(B) Section 17.92 (§ 223.2) describes the application of section 7 to previously initiated Federal agency actions.

(C) Section 17.93 (Subpart B—Consultation) sets forth procedures that the Federal agencies should follow in meeting the consultation and assistance requirements of section 7.

(1) The consultation process is to be initiated by Federal agencies after review and identification of actions that may affect listed species. If such review indicates no effect on listed species, consultation is not required unless requested by the FWS or NMFS. If a Federal agency identifies any action that may affect listed species, that agency should initiate consultation by written request to the appropriate FWS or NMFS official, with a copy to the Secretary of State if foreign countries or the high seas are involved. Additionally, consultation can be requested by either the FWS or NMFS should it become aware of a Federal action that may affect listed species and that has not received the benefit of section 7 consultation. Informal consultation at the field level between the FWS or NMFS and the Federal agencies can be initiated, but is not a substitute for the formal consultation process contained in this proposal. Federal agencies may obtain assistance from any source so long as they retain full responsibility for consultation.

(2) Consultation and assistance can take place in several forms.

(a) Consultation may be consolidated with interagency review under the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), and other appropriate statutes. However, such consolidation does not relieve the Federal agencies of complying with the consultation procedures contained in this proposal.

(b) Consultation may be carried out through one Federal agency when several Federal agencies are involved in a common activity or program, and the FWS or NMFS concurs in the arrangement.

(3) It is the responsibility of the affected Federal agencies to obtain the biological data necessary to evaluate the effect of an action. The FWS or NMFS will assist to the extent feasible when requested, but will not fund the basic study.

(4) Upon receipt of a written request for consultation from a Federal agency, the FWS or NMFS will conduct a threshold examination. A threshold examination is a preliminary assessment by the FWS or NMFS to ascertain if an action will adversely affect listed species or their habitat.

(a) If, in either Director's opinion, the Federal action will promote the conservation of listed species or their habitat, the Federal agency will be notified within 60 days of initiation, and further consultation will not be required unless additional consultation will benefit the listed species.

(b) If an action is not specifically for the conservation of listed species and the threshold examination reveals that listed species or their habitat will not be adversely affected, the Federal agency will be notified within 60 days of initiation, and further consultation will not be required.

(c) If the Federal action may adversely affect listed species or their habitat, the agency will be so notified in writing within 60 days of initiation, and a final biological opinion will be rendered within 60 days after receipt of information adequate for a biological opinion, unless special circumstances require that a longer period be negotiated.

(5) The consultation process is complete only when the FWS or NMFS has rendered a written biological opinion on the effect of the Federal action on listed species or their habitat. Such opinions and any recommendations will be accompanied by supporting facts and documentation. Upon receipt of the biological opinions and recommendations from the FWS or NMFS, it will then be the responsibility of the Federal agency to determine whether and how to proceed in light of its section 7 obligations.

(6) Consultation should be reinitiated on a Federal action if the Federal agency or FWS or NMFS obtains significant information not previously considered, if the Federal action is significantly modified, or if a new species is listed that is affected by the action.

(D) Section 17.94 (Subpart C—Determination of Critical Habitat) sets forth procedures for determining critical habitat and states criteria the FWS or NMFS will consider in making such determinations.

PUBLIC COMMENTS SOLICITED

The Director of the FWS, on behalf of the FWS and NMFS, hereby solicits written comments and suggestions from the public at large, concerned Governmental agencies, the scientific community, industry, private interests, and any other interested persons. It is hoped that such comments will expose any potential problems so that our final rules will be clear, equitable, and effective.

The final promulgation of these regulations will take into consideration the comments received. Such comments or other additional information may lead the FWS and NMFS to adopt final regulations that differ from this proposal.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting written comments to the Director (FWS/LE), U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036. All relevant comments received on or before March 28, 1977 will be considered. The FWS, on behalf of both the FWS and NMFS, will attempt to acknowledge receipt of all comments, but may not respond substantively.

Comments received will be available for public inspection during normal business hours (7:45 a.m. to 4:15 p.m.) at the Office of the Associate Director for Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240.

This notice of proposed rulemaking is issued under the authority of the Endangered Species Act of 1973, 16 U.S.C. 1531–1543.

Dated: January 19, 1977.

NATHANIEL P. REED,
Assistant Secretary,
Fish and Wildlife and Parks.

ROBERT W. SCHONING,
Director,
National Marine Fisheries Service.

Accordingly, it is hereby proposed to amend Part 17, Subchapter B, Chapter I of Title 50, Code of Federal Regulations, as follows:

1. Add to the definitions of § 17.3, maintaining alphabetical order, the following:

§ 17.3 Definitions.

* * * * *

"Activities and programs" means all actions of any kind authorized, funded, or carried out by Federal agencies, in whole or in part, examples of which in-

clude, but are not limited to: (1) actions intended to conserve listed species or their habitat; (2) the promulgation of regulations; (3) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (4) actions directly or indirectly causing modifications to the land, water, or air.

* * * * *

"Critical habitat" means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) or any constituent thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

"Destruction or adverse modification" means a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for survival and recovery of a listed species. Such alterations include, but are not limited to those diminishing the requirements for survival and recovery listed in § 17.94(b). There may be many types of activities which could be carried out in critical habitat without causing such diminution.

* * * * *

"Federal agency" means each authority of the Government of the United States except for the Congress, the courts of the United States, the Governments of the territories or possessions of the United States, or the Government of the District of Columbia.

* * * * *

"Jeopardize the continued existence of" means to engage in an activity or program which reasonably would be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild. The level of reduction necessary to constitute "jeopardy" would be expected to vary among listed species.

"Listed species" means any species of fish, wildlife, or plant which is designated as endangered or threatened pursuant to the Act.

* * * * *

"Recovery" means improvement in the status of listed species to the point at which listing is no longer required.

2. Add §§ 17.91 through 17.94 of Subpart I, to read as follows:

Subpart I—Interagency Cooperation

§ 17.91 Scope.

This subpart interprets and implements section 7 of the Act. Section 7 (16 U.S.C. 1536) applies to all listed species of fish, wildlife, or plants and imposes three burdens upon the Federal agencies. First, it directs them to utilize their authorities to carry out conservation programs for listed species. Such affirmative conservation programs must comply with any applicable permit requirements of 50 CFR Part 17 for listed species. Second, it requires every Federal agency to insure that its activities and programs in the United States, upon the high seas, and in foreign countries will not jeopardize the continued existence of a listed species. And third, section 7 directs all Federal agencies to insure that their activities and programs do not result in the destruction or modification of critical habitat. Although the Fish and Wildlife Service and the National Marine Fisheries Service share responsibilities for the Act, the regulations in this subpart apply only to listed species under the jurisdiction of the Fish and Wildlife Service. A Federal agency can determine which Service to initiate consultation with by scanning the list of species under the jurisdiction of the National Marine Fisheries Service located at 50 CFR 222.23(a) and 227.4. If the Federal agency's activity or program may affect a listed species which is cited in 50 CFR 222.23(a) or 227.4, then the agency should initiate consultation with the National Marine Fisheries Service. If the listed species is not cited in 50 CFR 222.23(a) or 227.4, the Federal agency should initiate consultation with the Fish and Wildlife Service.

§ 17.92 Applicability to previously initiated actions.

Section 7 applies to all activities or programs where Federal involvement or control remains which in itself could jeopardize the continued existence of a listed species or modify or destroy its critical habitat.

§ 17.93 Consultation.

(a) *Initiation.* (1) It is the responsibility of each agency to review its activities or programs and to identify any such activities or programs that may affect listed species or their habitat. Reviewing agencies may obtain advice from the Service, but this is supplemental to and not a substitute for the formal consultation process set forth in this Subpart. Where a Federal agency funds or authorizes an activity or program to be carried out by a non-Federal entity, the Federal agency should initiate the consultation process and not the non-Federal entity.

(2) If a Federal agency decides that its activities or programs will not affect listed species or their habit the consultation requirements of section 7 will not apply unless requested by the Service.

(3) When a Federal agency identifies activities or programs that may affect listed species or their habitat, the agency should convey a written request for consultation to the Regional Director for the Region where the activity or program is or will be carried out or to the Regional Director for the Region where the Federal agency is situated if more than one Region is involved, or to the Director if foreign countries or the high seas are involved. In addition, if foreign countries or the high seas are involved, a copy of the request for consultation should be forwarded to the Secretary of State c/o the Director, Office of Environmental Affairs.

(4) In addition, the Director or Regional Director will request initiation of consultation if he identifies any activity or program of a Federal agency that has not received prior consultation and that may affect listed species or their habitat.

(5) Informal consultation may be initiated at the field level between the Service and the Federal agencies or their authorized representatives. Such informal consultation is supplemental to and not a substitute for the formal consultation process set forth in this Subpart.

(b) *Form.* (1) Consultation under section 7 may be consolidated with interagency cooperation required by other statutes, such as the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) or the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The satisfaction of the requirements of these other statutes, however, does not of itself relieve a Federal agency of its obligation to comply with the consultation procedures set forth in this Subpart.

(2) When particular progams or activities involve more than one Federal agency, these agencies may, with concurrence of the Director, fulfill their consultation responsibilities through a single agency.

(c) *Assistance from the Service.* It is the primary responsibility of each Federal agency requesting consultation to conduct appropriate studies and to provide the biological information necessary for adequate review of the effect an activity or program has upon listed species or their habitat. To the extent it is able, the Service will upon request provide relevant available data and reports, personnel, and recommendations for additional studies or surveys, but the Service will not fund any such additional studies or surveys.

(d) *Assistance from other sources.* Federal agencies may seek assistance from any source to obtain the biological information necessary for review of the effect an activity or program has upon listed species or their habitat. Such assistance may include, but is not limited to that obtained by contract or required by regulations of the Federal agency. However, responsibility for compliance with the procedures of this Section remains with the Federal agency and cannot be delegated by it.

(e) *Threshold examination.* Upon receipt of a request for consultation, the Director or Regional Director will conduct a threshold examination of the activity or program under review. A threshold examination may include a review of available information or an on-site inspection of the area.

(1) If an activity or program under review will, in the opinion of the Director, promote the conservation of listed

species, the appropriate Federal agency shall be notified in writing within 60 days after consultation is initiated, and additional section 7 consultation shall be unnecessary unless it would further benefit the listed species. The Service, to the extent feasible, will assist in carrying out such programs if requested by the Federal agency. The Federal agency should be aware that in addition to satisfaction of section 7 requirements, a permit may be required for activities otherwise prohibited by section 9 of the Act (16 U.S.C. § 1538).

(2) If an identified activity or program is not specifically for the conservation of listed species, but the Director or Regional Director concludes from the threshold examination that in no likelihood will the activity or program jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the appropriate Federal agency shall be notified in writing within 60 days of initiation and further section 7 consultation shall be unnecessary.

(f) *Further consultation.* If an identified activity or program is not specifically for the conservation of listed species, and the Director or Regional Director concludes as a result of the threshold examination that the activity or program may jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the Federal agency will be so notified in writing within 60 days of initiation. The Federal agency, with assistance as feasible from the Service and other sources of expertise, shall then initiate biological surveys or studies to determine how the activity or program may affect listed species or their critical habitat. Within 60 days of receipt of adequate information and documentation, unless special circumstances require negotiation of a longer period, the Service will end consultation by issuing a biological opinion.

(g) *Biological opinions.* (1) If the Director or Regional Director concludes that an activity or program under review is not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat, he will so notify the Federal agency in writing.

(2) If the Director or Regional Director concludes that an activity or program under review is likely to jeopardize the continued existence of a listed species or result in the destruction or modification of critical habitat, he will so notify the Federal agency in writing and may recommend any changes that in his opinion will eliminate these effects of the activities or programs.

(3) Biological opinions issued pursuant to paragraphs (g) (1) and (2) will be accompanied by a statement of the facts and documentation on which they are based.

(4) Upon receipt and consideration of the final biological opinion and recommendations of the Service, it is the responsibility of the Federal agency to determine whether to proceed with the activity or program as planned, in light of its section 7 obligations. Where the consultation process has been consolidated with interagency cooperation required by other statutes, such as the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) or the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the final biological opinion and recommendations of the Service should be stated in the documents required by those statutes.

(h) *Reinitiation.* Consultation shall be reinitiated by the Service or by the Federal agency:

(1) If new information reveals impacts of an activity or program that may hinder the survival and recovery of listed species;

(2) If the activity or program is modified in a manner that may hinder the survival and recovery of listed species; or

(3) If a new species is listed that may be affected by the activity or program.

§ 17.94 Determination of critical habitat.

(a) *Procedure.* Whenever deemed necessary and appropriate, the Director shall determine critical habitat for a listed species. After exchange of biological information, as appropriate, with the affected States and Federal agencies with jurisdiction over the lands or waters under consideration, the Director shall publish proposed rulemakings in the FEDERAL REGISTER. Comments of the scientific community and other interested persons will also be considered in promulgating final rulemaking.

(b) *Criteria.* The Director will consider the physiological, behavioral, ecological, and evolutionary requirements for the survival and recovery of listed species in determining what areas or parts of habitat (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of the species) are critical. These requirements include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing of offspring; and generally,

(5) Ecosystems that are protected from disturbances and are representative of the geographical distribution of listed species.

(c) *Emergency determination.* Paragraphs (a) and (b) notwithstanding, the Director may make an emergency determination of critical habitat if he finds that an impending action poses a significant risk to the well-being of a listed species by the destruction or adverse modification of its habitat. Emergency determinations will be published in the FEDERAL REGISTER and will remain in effect for no more than 120 days.

[FR Doc.77-2383 Filed 1-25-77;8:45 am]

Fish and Wildlife Service

[50 CFR Part 26]

BACK BAY NATIONAL WILDLIFE REFUGE, VIRGINIA

Public Entry and Use

The Department of the Interior is considering issuance of regulations to govern public access, use, and recreation on the Back Bay National Wildlife Refuge. Prior regulations were published in the FEDERAL REGISTER, 41 FR 22361–22364, June 3, 1976 and 41 FR 31537–31539, July 29, 1976.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rule-making process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed revision to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, by February 25, 1977.

PROPOSED REGULATIONS

These regulations are proposed under the authority of Section 4 of 80 Stat. 927, 16 U.S.C. 668dd: 76 Stat. 654, 16 U.S.C. 460k–3: and 65 Stat. 186, 16 U.S.C. 715s. Accordingly it is proposed that the 1976 special regulations governing public access, use and recreation be revised as set forth below:

§ 26.34 Special regulations concerning public access, use and recreation for individual wildlife refuge areas.

VIRGINIA

BACK BAY NATIONAL WILDLIFE REFUGE

(a) General Use. (1) Entry on foot or by motor vehicle on designated travel routes in public use areas is permitted for the purpose of nature study, sightseeing, wildlife observation, photography, hiking, surf fishing, surfing, swimming, and bicycling during daylight hours.

(2) Swimming and surfing are permitted only on that portion of the beach lying between the north boundary of the refuge and the dune crossing at field headquarters. No lifeguards are provided. Swimming and surfing will be at the visitor's own risk.

(3) The parking lot at the field headquarters is reserved for persons engaged in surf fishing and nature study. Surf fishing is permitted in accordance with applicable State regulations.

(4) Open fires are not permitted. Portable grills with a contained fuel supply are permitted on the beach north of the field headquarters.

(5) Pets on a leash not exceeding 10 feet in length are permitted on refuge public use areas.

(6) Bicycles and registered motor vehicles are permitted on the paved refuge access road and on the parking area at field headquarters. All other types of motorized vehicles are prohibited except as specifically authorized pursuant to these regulations.

(b) Access Permits. (1) Access to and travel along the ocean portion of the

refuge by motorized vehicles may be allowed between the dune crossing entrance at the field headquarters and the south boundary of the refuge only after a permit has been issued by the refuge manager or his designated representative.

(2) Permits may be issued for such period of time as appears justifiable to the refuge manager, taking into account the need for and duration of access required by the applicant. In no case will the permit remain in effect beyond December 31 of the year in which it is granted. Permits may be renewed upon the submittal of a proper application.

(3) Permits must be permanently displayed at all times while on refuge property in such a manner as to be readily visible on any motor vehicle. Permits shall be nontransferable. No more than one vehicle owned by the permit holder shall be registered with the refuge manager for use in accordance with these regulations. That vehicle shall be operated on the refuge beach only by the permit holder or a member of his immediate family and household.

(4) Permits may be issued as follows: (i) Residential. (A) To persons now residing on, owning, or leasing land with permanent habitable dwelling, south of the refuge in the False Cape State Park acquisition area, Virginia.

(B) To permanent, full-time residents who can furnish proof of residency prior to December 31, 1975 on the Outer Banks from the refuge boundary south to and including the village of Corolla, North Carolina, as long as they remain permanent, full-time residents. Residence is defined as the dwelling in which the permit applicant lives year round on a full-time basis.

The burden of proof of showing that the prospective permittee meets these criteria shall be on the prospective permittee by presentation of appropriate documentation. Such permitted vehicles shall be restricted to two round trips per day. Travel is restricted to the designated route of travel between the hours of 5 a.m. to 11 p.m. The refuge manager may make exceptions to access restrictions for qualified permittees who have demonstrated, to the satisfaction of the refuge manager, a need for access relating to health or livelihood.

(ii) Non-residential: (A) To full-time commercial fishermen who have verified their dependence for a livelihood since on or before 1972 upon ingress, egress or crossing refuge land. Not more than three (3) special use permits for commercial fishing on the refuge will be in force at one time. Selection of refuge fishing permits will be determined by a lottery when the number of qualified applicants, as described above, exceeds the number of permits available. Commercial fishermen: a commercial fisherman shall be described as one who performs the act of harvesting finfish by gill net or haul seine in the Atlantic Ocean, and who has owned and operated a commercial fishing business since on or before 1972.

(B) For a school bus transporting resident students to and from the False Cape area during the school term.

(C) For service vehicles on business calls during the hours of 8 a.m. to 5 p.m., Monday through Friday, upon written verification of a request from a resident as described in (b) (4) (i) above. Service vehicles. Any vehicle owned or operated by or on behalf of an individual, partnership, or corporation engaged entirely in the business of furnishing construction, maintenance, or repair services, including but not limited to building, plumbing, septic tanks, installation or repair of household appliances, carpentry, painting, lansdcaping, garbage collection, and delivery services.

(D) For public utility vehicles on official business calls upon written verification of a request from a resident as described in (b) (4) (i) above. Public utility vehicles: Any vehicles owned or operated by a public utility company enfranchised to supply Outer Banks residents with electricity or telephone service.

(6) Excluded from the restrictions of these regulations are any military, fire, emergency, or law enforcement vehicle when used for emergency purposes and official use by an employee, agent, or designated representative of the Federal, State, or local government in the course of his official duties.

(7) In an emergency, the refuge manager may suspend, for such period or periods as he shall deem advisable, any or all of the foregoing restrictions on vehicular travel, and he may announce such suspension by whatever means are available. In the event of high winds and waves, storms, adverse weather conditions or high tides, the refuge manager may close all or any portion of the refuge to vehicular travel for such period as he shall deem advisable in the interest of public safety, or may adjust the periods of access otherwise prescribed pursuant to (b) (4) (i) above.

(8) (i) The refuge manager may prescribe restrictions as to the types of vehicles to be permitted to ensure public safety and adherence to all applicable rules and regulations.

(ii) All vehicles registered with the refuge manager must be equipped with four-wheel drive or oversand tires and carry, at all times on the refuge beach a shovel, jack, tow rope or chain, board or similar support for the jack, low-pressure tire gauge and spare tire.

(9) Violators of these special regulations and all other regulations pertaining to the Back Bay National Wildlife Refuge will be subject to legal action as prescribed by 50 CFR 26.31, including mandatory revocation by the refuge manager of such permits for the duration of the permit period.

(10) all permits issued under (b) (4) (i) will be terminated in the event that alternate access is provided during the permit period.

(11) The provisions of this special regulation are effective through December 31, 1977. They supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50.

The refuge, comprising approximately 4,600 acres, is delineated on a map available from the Refuge Manager, Back Bay National Wildlife Refuge, Pembroke Office Park, Pembroke No. 2 Building Suite 218, Virginia Beach, Virginia 23462, and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

WILLIAM C. ASHE,
Acting Regional Director,
U.S. Fish and Wildlife Service.

JANUARY 13, 1977.

[FR Doc.77-2400 Filed 1-25-77;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Parts 217 and 223]

ENDANGERED AND THREATENED FISH OR WILDLIFE

Interagency Cooperation

Proposed regulations to assist the Federal agencies in complying with section 7 of the Endangered Species Act of 1973.

The Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior, hereby jointly issue substantively identical proposed rulemaking that would establish rules and procedures for interagency cooperation pursuant to section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1543. The National Marine Fisheries Service regulations would be established in Parts 217 and 223 of Chapter II of Title 50, Code of Federal Regulations, while the Interior Department regulations (published elsewhere in this issue, see FR Doc. 77-2383, published in the proposed rules section of this issue under the Department of Interior) would be established in Part 17 of Chapter I of Title 50, Code of Federal Regulations.

Parts 217 and 223 are only for those species under the jurisdictional responsibilities of the Secretary of Commerce (endangered species are identified in 50 CFR 222.23(a) and threatened species are identified in 50 CFR 227.4). The FWS regulations in Part 17 would apply to all other endangered and threatened species.

For background information, discussion of comments received from Federal agencies, a description of the joint proposal, and solicitation and submittal of public comments, see FR Doc. 77-2383, supra.

This notice of proposed rulemaking is issued under the authority of the Endangered Species Act of 1973.

Dated: January 19, 1977.

ROBERT W. SCHONING,
Director, National Marine Fisheries Service.

NATHANIEL P. REED,
Assistant Secretary,
Fish and Wildlife and Parks.

Accordingly, it is hereby proposed to amend Part 217, Chapter II of Title 50, Code of Federal Regulations, and to add a new Part 223, Chapter II of Title 50, Code of Federal Regulations, as follows:

§ 217.11 [Amended]

1. Revise the reference "Parts 217–222" in § 217.11 to read "Parts 217–223."

2. Add to the definitions of § 217.12, maintaining alphabetical order, the following:

§ 217.12 Definitions.

* * * * *

"Activities and programs" means all actions of any kind authorized, funded, or carried out by Federal agencies, in whole or in part, examples of which include, but are not limited to: (1) Actions intended to conserve listed species or their habitat; (2) the promulgation of regulations; (3) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (4) actions directly or indirectly causing modifications to the land, water, or air.

* * * * *

"Critical habitat" means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) or any constituent thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

"Destruction or adverse modification" means a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for survival and recovery of a listed species. Such alterations include, but are not limited to those diminishing the requirements for survival and recovery listed in § 223.22. There may be many types of activities which could be carried out in critical habitat without causing such diminution.

* * * * *

"Federal agency" means each authority of the Government of the United States except for the Congress, the courts of the United States, the Governments of the territories or possessions of the United States, or the Government of the District of Coumbia.

* * * * *

"Jeopardize the continued existence of" means to engage in an activity or program which reasonably would be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild. The level of reduction necessary to constitute "jeopardy" would be expected to vary among listed species.

"Listed species" means any species of fish or wildlife which is designatd as endangered or threatened pursuant to the Act.

"NMFS means the National Marine Fisheries Service.

* * * * *

"Recovery" means improvement in the status of listed species to the point at which listing is no longer required.

* * * * *

"Regional Director" as used in Part 223, means a Regional Director of the National Marine Fisheries Service.

3. Add Part 223 to read as follows:

PART 223—ENDANGERED AND THREATENED FISH OR WILDLIFE—INTERAGENCY COOPERATION

Subpart A—Introduction

Sec.
223.1 Scope of regulations.
223.2 Applicability to previously initiated actions.

Subpart B—Consultation

Sec.
223.11 Initiation.
223.12 Form.
223.13 Assistance from the Service.
223.14 Assistance from other sources.
223.15 Threshold examination.
223.16 Further consultation.
223.17 Biological opinions.
223.18 Reinitiation.

Subpart C—Determination of Critical Habitat

Sec.
223.21 Procedure.
223.22 Criteria.
223.23 Emergency determination.

AUTHORITY: Endangered Species Act of 1973, 16 U.S.C. 1531 et seq.

Subpart A—Introduction

§ 223.1 Scope of regulations.

This Part interprets and implements section 7 of the Act. Section 7 (16 U.S.C. 1536) applies to all listed species of fish, wildlife, or plants and imposes three burdens upon the Federal agencies. First, it directs them to utilize their authorities to carry out conservation programs for listed species. Such affirmative conservation programs must comply with any applicable permit requirements of 50 CFR Parts 220, 222, and 227 for listed species. Second, it requires every Federal agency to insure that its activities and programs in the United States, upon the high seas, and in foreign coumtries will not jeopardize the continued existence of a listed species. And third, section 7 directs all Federal agencies to insure that their activities and programs do not result in the destruction or modification of critical habitat. Although the National Marine Fisheries Service and the U.S. Fish and Wildlife Service share responsibilities for the Act (the regulations in this Part apply only to listed species under the jurisdiction of the National Marine Fisheries Service. A Federal agency can determine which Service to initiate consultation with by scanning the list of species under the jurisdiction of the National Marine Fisheries Service located at 50 CFR 222.23(a) and 227.4. If the Federal agency's activity or program may affect a listed species which is cited in 50 CFR 222.23(a) or 227.4, then the agency should initiate consultation with the National Marine Fisheries Service. If the listed species is not cited in 50 CFR 222.23(a) or 227.4, the Federal agency should initiate consultation with the U.S. Fish and Wildlife Service.

§ 223.2 Applicability to previously initiated actions.

Section 7 applies to all activities or programs where Federal involvement or control remains which in itself could jeopardize the continued existence of a listed species or modify or destroy its critical habitat.

Subpart B—Consultation

§ 223.11 Initiation.

(a) It is the responsibility of each agency to review its activities or programs and to identify any such activities or programs that may affect listed species or their habitat. Reviewing agencies may obtain advice from the NMFS, but this is supplemental to and not a substitute for the formal consultation process set forth in this Part. Where a Federal agency funds or authorizes an activity or program to be carried out by a non-Federal entity, the Federal agency should initiate the consultation process and not the non-Federal entity.

(b) If a Federal agency decides that its activities or programs will not affect listed species or their habitat, the consultation requirements of section 7 will not apply unless requested by the NMFS.

(c) When a Federal agency identifies activities or programs that may affect listed species or their habitat, the agency should convey a written request for consultation to the Regional Director for the Region where the activity or program is or will be carried out or to the Regional Director for the Region where the Federal agency is situated if more than one Region is involved, or to the Director if foreign countries or the high seas are involved. In addition, if foreign countries or the high seas are involved, a copy of the request for consultation should be forwarded to the Secretary of State, c/o the Director, Office of Environmental Affairs.

(d) In addition, the Director or Regional Director will request initiation of consultation if he identifies any activity or program of a Federal agency that has not received prior consultation and that may affect listed species or their habitat.

(e) Informal consultation may be initiated at the field level between the NMFS and the Federal agencies or their authorized representatives. Such informal consultation is supplemental to and not a substitute for the formal consultation process set forth in this Part.

§ 223.12 Form.

(a) Consultation under section 7 may be consolidated with interagency cooperation required by other statutes, such as the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) or the Na-

tional Environmental Policy Act (42 U.S.C. 4321 et seq.). The satisfaction of the requirements of these other statutes, however, does not of itself relieve a Federal agency of its obligation to comply with the consultation procedures set forth in this part.

(b) When particular programs or activities involve more than one Federal agency, these agencies may, with concurrence of the Director, fulfill their consultation responsibilities through a single agency.

§ 223.13 Assistance from the Service.

It is the primary responsibility of each Federal agency requesting consultation to conduct appropriate studies and to provide the biological information necessary for adequate review of the effect an activity or program has upon listed species or their habitat. To the extent it is able, the NMFS will upon request provide relevant available data and reports, personnel, and recommendations for additional studies or surveys, but the NMFS will not fund any such additional studies or surveys.

§ 223.14 Assistance from other sources.

Federal agencies may seek assistance from any source to obtan the biological information necessary for review of the effect an activity or program has upon listed species or their habitat. Such assistance may include, but it not limited to that obtained by contract or required by regulations of the Federal agency. However, responsibility for compliance with the procedures of this subpart remains with the Federal agency and cannot be delegated by it.

§ 223.15 Threshold examination.

Upon receipt of a request for consultation, the Director or Regional Director will conduct a threshold examination of the activity or program under review. A threshold examination may include a review of available information or an on-site inspection of the area.

(a) If an activity or program under review will, in the opinion of the Director, promote the conservation of listed species, the appropriate Federal agency shall be notified in writing within 60 days after consultation is initiated, and additional section 7 consultation shall be unnecessary unless it would further benefit the listed species. The NMFS, to the extent feasible, will assist in carrying out such programs if requested by the Federal agency. The Federal agency should be aware that in addition to satisfaction of section 7 requirements, a permit may be required for activities otherwise prohibited by section 9 of the Act (16 U.S.C. 1538).

(b) If an identified activity or program is not specifically for the conservation of listed species, but the Director or Regional Director concludes from the threshold examination that in no likelihood will the activity or program jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the appropriate Federal agency shall be notified in writing within 60 days of initiation and further section 7 consultation shall be unnecessary.

§ 223.16 Further consultation.

If an identified activity or program is not specifically for the conservation of listed species, and the Director or Regional Director concludes as a result of the threshold examination that the activity or program may jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the Federal agency will be so notified in writing within 60 day of initiation. The Federal agency, with assistance as feasible from the NMFS and other sources of expertise, shall then initiate biological surveys or studies to determine how the activity or program may affect listed species or their critical habitat. Within 60 days of receipt of adequate information and documentation, unless special circumstances require negotiation of a longer period, the NMFS will end consultation by issuing a biological opinion.

§ 223.17 Biological opinions.

(a) If the Director or Regional Director concludes that an activity or program under review is not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat, he will so notify the Federal agency in writing.

(b) If the Director or Regional Director concludes that an activity or program under review is likely to jeopardize the continued existence of a listed species or result in the destruction or modification of critical habitat, he will so notify the Federal agency in writing and may recommend any changes that in his opinion will eliminate these effects of the activities or programs.

(c) Biological opinions issued pursuant to paragraphs (a) and (b) of this section will be accompanied by a statement of the facts and documentation on which they are based.

(d) Upon receipt and consideration of the final biological opinion and recommendations of the NMFS, it is the responsibility of the Federal agency to determine whether to proceed with the activity or program as planned, in light of its section 7 obligations. Where the consultation process has been consolidated with interagency cooperation required by other statutes, such as the Fish and Wildlife Coordination (Act (16 U.S.C. 661 et seq.) or the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the final biological opinion and recommendations of the NMFS should be stated in the documents required by those statutes.

§ 223.18 Reinitiation.

Consultation shall be reinitiated by the NMFS or by the Federal agency:

(a) If new information reveals impacts of an activity or program that may hinder the survival and recovery of listed species;

(b) If the activity or program is modified in a manner that may hinder the survival and recovery of listed species; or

(c) If a new species is listed that may be affected by the activity or program.

Subpart C—Determination of Critical Habitat

§ 223.21 Procedure.

Whenever deemed necessary and appropriate, the Director shall determine critical habitat for a listed species. After exchange of biological information, as appropriate, with the affected States and Federal agencies with jurisdiction over the lands or waters under consideration, the Director shall publish proposed rulemakings in the FEDERAL REGISTER. Comments of the scientific community and other interested persons will also be considered in promulgating final rulemaking.

§ 223.22 Criteria.

The Director will consider the physiological, behavioral, ecological, and evolutionary requirements for the survival and recovery of listed species in determining what areas or parts of habitat (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of the species) are critical. These requirements include, but are not limited to:

(a) Space for individual and population growth and for normal behavior;

(b) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(c) Cover or shelter;

(d) Sites for breeding, reproduction, or rearing of offspring; and generally,

(e) Ecosystems that are protected from disturbances and are representative of the geographical distribution of listed species.

§ 223.23 Emergency determination.

Sections 223.21 and 223.22 notwithstanding, the Director may make an emergency determination of critical habitat if he finds that an impending action poses a significant risk to the well-being of a listed species by the destruction or adverse modification of its habitat. Emergency determinations will be published in the FEDERAL REGISTER and will remain in effect for no more than 120 days.

[FR Doc.77-2382 Filed 1-25-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

MANTI DIVISION GRAZING ADVISORY BOARD

Meeting

The Manti Division Grazing Advisory Board will meet at 1:30 p.m., February 17, 1977, in the Ephraim Town Hall, Ephraim, Utah. The purpose of this meeting is to discuss the following specific topics:

1. Resource Planning Act Review.
2. Representative of B.L.M. to discuss new B.L.M. Organic Act.
3. National Forest Management Act of 1976.
4. Discussion of Manti-LaSal National Forest grazing related problems.

The meeting will be open to the public. Persons who wish to attend should notify Mr. Vail H. Neilson, Ephraim, Utah, Telephone No. 283-4398.

Written statements concerning specific topics of discussion may be filed with the committee before or after the meeting. Public comments and discussion concerning topics of the agenda will be permitted to the extent time permits.

Dated: January 14, 1977.

B. J. GRAVES,
Acting Forest Supervisor.

[FR Doc.77-2475 Filed 1-25-77;8:45 am]

OCHOCO NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Ochoco National Forest Grazing Advisory Board will meet at 10:00 a.m., February 25, 1977 in the Forest Supervisor's Office, Federal Building, Prineville, Oregon.

The purpose of this meeting is the Forest's range program in relation to administration; improvement construction and maintenanee; Forest and permittee responsibilities; and other subjects presented by the board members, permittees, and the general public.

The meeting will be open to the general public.

Persons interested in presenting a subject at the meeting may file a request and brief with either:

Carl Mayo, Chairman, Riley, Oregon 97758,
or
Jack H. Royle, Secretary, P.O. Box 490, Prineville, Oregon 97754.

Written statements may be filed with the board before or after the meeting.

Dated: January 18, 1977.

GLEN E. HETZEL,
Forest Supervisor.

[FR Doc.77-2479 Filed 1-25-77;8:45 am]

TIMBER MANAGEMENT PLAN, GREEN MOUNTAIN NATIONAL FOREST

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 on the Timber Management Plan for the Green Mountain National Forest, USDA-FS-R9-DES-(ADM)-77-05.

The environmental statement concerns a proposed plan for managing the timber resource on the Green Mountain National Forest for the period January 1, 1977, through September 30, 1986. The Green Mountain National Forest is located in parts of Addison, Bennington, Rutland, Washington, Windham, and Windsor Counties, Vermont.

This draft environmental statement was transmitted to CEQ on January 19, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3231, 12th St. and Independence Ave., SW., Washington, D.C. 20250.
USDA, Forest Service, Eastern Region, 633 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.
USDA, Forest Service, Green Mountain National Forest, Federal Building, 151 West Street, Box 519, Rutland, Vermont 05701.

A limited number of single copies are available upon request to the Forest Supervisor of the Green Mountain National Forest at the above address.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ Guidelines.

Written 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.

Written comments concerning the proposed action and requests for additional information should be sent to Forest Supervisor, Green Mountain National Forest, at the above address. Written comments must be received by March 18, 1977, in order to be considered in the preparation of the final environmental statement.

CARL N. WILSON,
Acting Regional Forester.

JANUARY 19, 1977.

[FR Doc.77-2476 Filed 1-25-77;8:45 am]

UNION PASS 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 Union Pass Planning Unit, Bridger-Teton National Forest, Wyoming. The Forest Service report number is USDA-FS-DES (Adm) R4-77-3.

The environmental statement identifies and evaluates the probable effects of the land management plan for the Union Pass Planning Unit on the Bridger-Teton National Forest, Wyoming. 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, management 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. The plan provides for minimization of adverse effects and maximization of desirable effects. Significant areas will remain undeveloped with options for future management remaining open.

This draft environmental statement was transmitted to CEQ on January 17, 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 4403, 324—25th Street, Ogden, Utah 84401.
Forest Supervisor, Bridger-Teton National Forest, Forest Service Building, Jackson, Wyoming 83001.

District Forest Ranger, Big Piney Ranger District, P.O. Box 218, Big Piney, Wyoming 83113.

A limited number of single copies are available upon request from Forest Supervisor H. Reid Jackson, Bridger-Teton National Forest, Forest Service Building, Jackson, Wyoming 83001.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CBQ 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 H. Reid Jackson, Bridger-Teton National Forest, Forest Service Building, Jackson, Wyoming 83001. Comments must be received by March 21, 1977, in order to be considered in the preparation of the final environmental statement.

Dated: January 17, 1977.

P. M. REES,
Director, Regional Planning and Budget.

[FR Doc.77-2477 Filed 1-25-77;8:45 am]

WOODS PLANNING UNIT

Availability of Final 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 final environmental statement for the Woods Planning Unit, Arizona, USDA-FS-R3 FES Adm 76-04.

The environmental statement concerns a proposed land use plan. The final environmental statement was transmitted to CEQ on January 18, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, So. Agriculture Bldg., Rm. 3230, 14th and Independence Ave., SW, Washington, D.C. 20250.
USDA, Forest Service, Southwestern Region, 517 Gold Avenue, SW, Albuquerque, New Mexico 87102.
Coconino National Forest, 114 North San Francisco Street, Flagstaff, Arizona 86001.

A limited number of single copies are available upon request to Forest Supervisor, Coconino National Forest, 114 North San Francisco Street, Flagstaff, Arizona 86001.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

GARY E. CARGILL,
Acting Regional Forester, Region 3.

JANUARY 18, 1977.

[FR Doc.77-2478 Filed 1-25-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 77-1-86; Docket 27673; Agreement C.A.B. 26293]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Issued under delegated authority January 14, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers, embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA). The agreement was adopted at the 22nd meeting of the Joint Specific Commodity Rates Board held in Miami Beach on October 19–23, 1976 and has been assigned the above C.A.B. agreement number.

With respect to air transportation as defined by the Act, the agreement proposes revisions to the specific commodity rates structures applicable on the North Atlantic, North/Central Pacific and South Pacific market areas. These revisions are outlined in the attachments hereto, and reflect reductions from otherwise applicable general cargo rates.

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 26293 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.

Agreement CAB 26293

IATA commodity item No.[1]	Specific commodity rate: Cents per kilogram	Specific commodity rate: Minimum weight in kilograms	Market
		North Atlantic	
Rates added under existing commodity descriptions			
0856	[2] 120	1,000	Tunis to New York.
1082	[2] 265	500	New York to Monrovia.
1091	[2] 110	500	Tunis to New York.
1407	127	1,000	Amsterdam to New York.
	127	1,000	Brussels to New York.
1490	[4] 120	500	Tel Aviv to New York.
1992	[4] 290	100	Johannesburg to New York.
2193	126	500	Athens to New York.
2206	146	500	Malta to New York.
	[2] 126	500	
2411	[4] 130	200	Nicosia to New York.
2818	[2] 265	300	Johannesburg to New York.
	[2] 273	300	
	[2] 250	500	
	[2] 243	500	
3200	[4] 273	1,000	Do.
3201	[4] 273	1,000	Do.
3409	[2] 218	100	Belgrade to New York.
	[4] 208	100	
	[2] 188	200	
	[2] 198	200	
6109	[2] 143	100	New York to Zurich.
	[4] 153	100	
7047	[4] 150	500	Tel Aviv to New York.
7108	[4] 235	100	New York to Dubai.
8383	[4] 93	1,000	New York to/from Nice.
9009	[4] 220	1,000	Johannesburg to Miami/New York.
9282	[2] 160	300	Athens to New York.
9512	[4] 320	100	Johannesburg to New York.
9903	[2] 220	1,000	Do.
	[2] 195	500	Kinshasa to New York.
	[2] 185	1,000	
Rates extended under existing commodity descriptions			
1102	[4] 140	200	Athens to New York.
	[4] 121	500	
1400	161	100	New York to Brussels.
1475	208	100	Tel Aviv to New York.
	[2] 198	100	
1951	[4] 350	500	Johannesburg to Miami.
1980	[2] 161	100	Athens to New York.
	[2] 139	200	
7107	[4] 127	100	Amsterdam to/from New York.
	[4] 91	300	
	[4] 127	100	Barcelona to/from New York.
	[4] 91	300	
	[4] 85	300	Belfast to/from New York.
	[4] 134	100	Belgrade to/from New York.
	[4] 98	300	

IATA commodity item No.[1]	Specific commodity rate: Cents per kilogram	Specific commodity rate: Minimum weight in kilograms	Market
	[4] 134	100	Bergen to/from New York.
	[4] 98	300	
	[4] 133	100	Berlin to/from New York.
	[4] 96	300	
	[4] 131	100	Bremen to/from New York.
	[4] 95	300	
	[4] 127	100	Brussels to/from New York.
	[4] 91	300	
	[4] 126	100	Cardiff to/from New York.
	[4] 90	300	
	[4] 127	100	Cologne to/from New York.
	[4] 91	300	
	[4] 131	100	Copenhagen to/from New York.
	[4] 95	300	
	[4] 85	300	Dublin to/from New York.
	[4] 131	100	Frankfurt to/from New York.
	[4] 95	300	
	[4] 125	100	Glasgow to/from New York.
	[4] 87	300	
	[4] 134	100	Gothenburg to/from New York.
	[4] 98	300	
	[4] 131	100	Hamburg to/from New York.
	[4] 95	300	
	[4] 131	100	Hanover to/from New York.
	[4] 95	300	
	[4] 140	100	Helsinki to/from New York.
	[4] 103	300	
	[4] 132	100	Innsbruck to/from New York.
	[4] 96	300	
	[4] 142	100	Instanbul to/from New York.
	[4] 104	300	
	[4] 138	100	Kristiansand to/from New York.
	[4] 101	300	
	[4] 132	100	Linz to/from New York.
	[4] 96	300	
	[4] 125	100	Lisbon to/from New York.
	[4] 87	300	
	[4] 125	100	London to/from New York.
	[4] 87	300	
	[4] 127	100	Luxembourg to/from New York.
	[4] 91	300	
	[4] 127	100	Madrid to/from New York.
	[4] 91	300	
	[4] 133	100	Malmo to/from New York.
	[4] 97	300	
	[4] 125	100	Manchester to/from New York.
	[4] 87	300	
	[4] 131	100	Milan to/from New York.
	[4] 95	300	
	[4] 132	100	Munich to/from New York.
	[4] 96	300	
	[4] 131	100	New York to/from Nice.
	[4] 95	300	
	[4] 132	100	New York to/from Nuremberg.
	[4] 96	300	
	[4] 138	100	New York to/from Oslo.
	[4] 101	300	
	[4] 127	100	New York to/from Paris.
	[4] 91	300	
	[4] 132	100	New York to/from Prague.
	[4] 96	300	
	[4] 133	100	New York to/from Rome.
	[4] 97	300	
	[4] 121	100	New York to/from Shannon.
	[4] 84	300	
	[4] 138	100	New York to/from Stavanger.
	[4] 101	300	
	[4] 138	100	New York to/from Stockholm.
	[4] 101	300	
	[4] 131	100	New York to/from Stuttgart.
	[4] 95	300	
	[4] 133	100	New York to/from Vienna.
	[4] 97	300	
	[4] 133	100	New York to/from Warsaw.
	[4] 97	300	
	[4] 133	100	New York to/from Zagreb.
	[4] 97	300	
7119	[4] 80	1,000	Amsterdam to/from New York.
	[4] 80	1,000	Barcelona to/from New York.
	[4] 85	1,000	Belgrade to/from New York.
	[4] 85	1,000	Bergen to/from New York.
	[4] 83	1,000	Berlin to/from New York.
	[4] 77	1,000	Birmingham to/from New York.
	[4] 82	1,000	Bremen to/from New York.
	[4] 79	1,000	Bristol to/from New York.
	[4] 80	1,000	Brussels to/from New York.
	[4] 79	1,000	Cardiff to/from New York.
	[4] 80	1,000	Cologne to/from New York.
	[4] 82	1,000	Copenhagen to/from New York.
	[4] 79	1,000	Edinburgh to/from New York.
	[4] 82	1,000	Frankfurt to/from New York.
	[4] 77	1,000	Glasgow to/from New York.
	[4] 85	1,000	Gothenburg to/from New York.
	[4] 82	1,000	Hamburg to/from New York.
	[4] 82	1,000	Hanover to/from New York.
	[4] 91	1,000	Helsinki to/from New York.
	[4] 79	1,000	Leeds to/from New York.
	[4] 77	1,000	Lisbon to/from New York.
	[4] 77	1,000	London to/from New York.
	[4] 80	1,000	Luxembourg to/from New York.
	[4] 82	1,000	Lyons to/from New York.
	[4] 80	1,000	Madrid to/from New York.
	[4] 84	1,000	Malmo to/from New York.
	[4] 77	1,000	Manchester to/from New York.
	[4] 82	1,000	Milan to/from New York.
	[4] 83	1,000	Munich to/from New York.
	[4] 79	1,000	Newcastle to/from New York.
	[4] 82	1,000	New York to/from Nice.
	[4] 83	1,000	New York to/from Nuremberg.
	[4] 87	1,000	New York to/from Oslo.
	[4] 80	1,000	New York to/from Paris.
	[4] 84	1,000	New York to/from Rome.
	[4] 78	1,000	New York to/from Shannon.
	[4] 87	1,000	New York to/from Stravanger.
	[4] 87	1,000	New York to/from Stockholm.
	[4] 82	1,000	New York to/from Stuttgart.
	[4] 151	500	New York to Tel Aviv.
	[4] 84	1,000	New York to/from Vienna.
	[4] 85	1,000	New York to/from Warsaw.
	[4] 84	1,000	New York to/from Zagreb.
8282	[4] 165	100	Athens to New York.
	[4] 134	500	
	[4] 112	1,000	
9534	118	500	Milan to New York.
	121	500	Rome to New York.
9003	[4] 111	500	Beirut to New York.
	[4] 315	100	Teheran to New York.

Rates changed under existing commodity descriptions

0007	[4] 110	500	Tunis to New York.
1407	[4] 117	1,000	Amsterdam to New York.
	[4] 117	1,000	Brussels to New York.
1951	[4] 350	1,000	Johannesburg to New York.
2196	[4] 124	100	Lisbon to/from New York.
	[4] 124	100	Santa Maria to/from New York.
9935	[4] 102	1,000	Milan to New York.
9003	[4] 130	500	Beirut to New York.

Rates canceled under existing commodity descriptions

0880		500	Amsterdam to New York.
		500	Brussels to New York.
1407		1,000	Amsterdam to New York.
		1,000	Brussels to New York.
1951		100	Johannesburg to New York.
5858		100	New York to Belfast.
		100	New York to Belgrade.
		500	
		100	New York to Bristol.
		100	New York to Cardiff.
		100	New York to Dublin.
		100	New York to Edinburgh.
		100	New York to Glasgow.
		100	New York to Leeds.
		100	New York to London.
		100	New York to Manchester.
		100	New York to Newcastle.
		100	New York to Prague.
		100	New York to Shannon.
7047		100	Brussels to New York.
		100	London to New York.
		100	Paris to New York.
9512		500	Johannesburg to New York.
9935		200	Brussels to New York.
		200	Frankfurt to New York.

North and Central Pacific

Rates added under existing commodity descriptions

0007	[4] 150	300	Tokyo to Honolulu.
2203	[4] 250	500	Colombo to Los Angeles.
4314	[4] 260	100	Bangkok to Los Angeles.
4427	[4] 280	300	Bombay to Los Angeles.
	[4] 298	250	Bombay to New
	[4] 280	300	York.
	[4] 280	300	Delhi to Los Angeles.
	[4] 280	300	Delhi to New York.
4903	[4] 250	250	Bombay to New
	[4] 250	300	York.
6002	[4] 360	100	Los Angeles to
	[4] 350	100	Bombay.
	[4] 360	100	Los Angeles to Delhi.
9089	[4] 225	500	Bombay to New York.

Rates extended under existing commodity descriptions

1567	311	100	Bangalore to New York.
2865	[4] 208	1,000	Calcutta to Los Angeles.
	[4] 188	1,000	Calcutta to New York.
3302	301	500	Bangalore to New York.
7119	[4] 198	500	Bombay to New York.
	[4] 198	500	Delhi to New York.
9207	[4] 205	500	Bombay to New York.
	[4] 205	500	Delhi to New York.

Rates changed under existing commodity descriptions

6455	223	1,000	Bombay to New York.
	225	1,000	Calcutta to New York.
	223	1,000	Delhi to New York.

Rates canceled under existing commodity descriptions

0185		200	Bombay to New York.
		100	Calcutta to New York.
		200	Do.
1100		100	Bombay to New York.
		100	Calcutta to New York.
		500	
		100	Delhi to New York.
		100	Madras to New York.
		500	
1915		500	Bombay to New York.
		1,000	
		200	

IATA commodity item No.[1]	Specific commodity rate: Cents per kilogram	Specific commodity rate: Minimum weight in kilograms	Market
2195		100	Calcutta to Honolulu.
2700		45	Madras to New York.
		300	
4478		200	Calcutta to New York.
5520		100	Bombay to New York.
7623		200	Do.
9089		300	Do.
9090		200	Do.
		200	Calcutta to New York.
		200	Delhi to New York.

South Pacific

Rates added under existing commodity descriptions

0482	[2] 51	5,000	Nandi to Honolulu.
0651	[2] 70	1,000	Los Angeles to Papeete.
1024	[2] 228	100	Noumea to Los Angeles.
	[2] 134	100	Papeete to Los Angeles.
1400	[2] 213	45	Nandi to Los Angeles.
	[2] 120	500	Papeete to Los Angeles.
6001	[2] 176	100	Auckland to Los Angeles.
6810	[2] 132	1,000	Christchurch to Los Angeles.
8604	[2] 151	1,000	Sydney to Los Angeles.
9202	[2] 130	200	Auckland to Los Angeles.
	[2] 152	200	
9380	[2] 151	1,000	Sydney to Los Angeles.

Rates changed under existing commodity descriptions

0006	[2] 74	5,000	Auckland to Los Angeles.
1439	[2] 182	45	Honolulu to Auckland.

[1] See applicable tariffs for commodity descriptions.
[2] Expires Dec. 31, 1977.
[3] Expired Dec. 31, 1976.
[4] Expires Mar. 31, 1977.
[5] Expires Sept. 30, 1977.
[6] Expires June 30, 1977.

Agreement CAB 26293.—Specific commodity descriptions

IATA commodity item No.	Description
0300	Fish and seafood.[1]
0300	Fish and seafood—excluding fish, live, inedible.[1]
0301	Fish and seafood—excluding caviar.[3]
0301	Fish and seafood—excluding caviar and/or fish, live, inedible.[3]
0326	Fish.[1]
0326	Fish—excluding live, inedible.[1]
0326 R	Fish—frozen.[1]
0356	Fish, crabs and/or shrimps.[3]
0356	Fish, crabs and/or shrimps—excluding fish, live, inedible.[3]
0482	Coconut meat.[1]
0651	Pork and/or chicken—chilled or frozen.[3]
1040	Hares.[1]
1093	Live worms.[1]
1190	Reptile skins.[1]
1409	Ethrogim and lulavim.[3]
1410	Bulbs and/or tubers.[1]
1424	Tulips and hyacinths in pots.[1] [4]
1436	Carnation and chrysanthemum cuttings and gladioli.[1]
1983	Coral.[3]
2075	Silk, yarn and/or thread.[1]
2089	Wool, raw.[1]
2193	Woven bags, wool.[1]
2215	Cloth and/or partly manufactured clothing, including dressmaking supplies.[1]
2411	Shirts and blouses.[1]
2818	Blankets.[1]
3200	Hand tools.[1]
3201	Hand tools—excluding electrically operated.[1] [4]
3409	Kitchen and table utensils (including vases), excluding electrical equipment.[1]
4246	Parts and accessories of self-propelled surface vehicles—excluding marine.[1]
4421	Record players and tape recorders/players.[1]
4704	Machines for manufacturing corrugated boxes.[1] [4]
4705	Food processing machinery.[1]
4707	Dairy machinery.[1]
4765	Water purifiers.[1]
4782	Sewing machines.[1]
4803	Taps and dies.[1]
5330	Table and kitchen glassware.[1]
6227	Pyrethrum extract.[1]
7118	Booklets.[1]
7430	Druggists sundries of rubber.[1]
8100	Dental, surgical and medical instruments, apparatus and supplies—excluding watches and clocks.[2]
8383	Plastic sunglasses.[2]
8604	Electrically operated training aids; namely, alinement devices.[2]
9009	Imitation Jewelry, fancy novelties, personal ornaments—excluding cloth, wearing apparel, textile articles, watches, and clocks.[1]
9202	Toys, games, athletic and sporting goods.[1]
9216	Manufacturing materials for balls; namely, natural or artificial leather plates, bladders, threads, pitch, wax.[2]
9223	Swimming pool equipment and accessories, including ladders, scoops, filters, pumps.[2]
9282	Toys; namely, movie viewers.[1] [4]
9906	Picture hanging kits and/or picture hooks.[1]
9910	Furniture—new and unused.[1]
9982	Articles of Indian manufacture. For exhibition at international trade fairs/exhibitions or for display in the offices of the Government of India mission/agencies. Shipped by Government of India or agencies thereof.[1]

[1] Area of application changed.
[2] Delete.
[3] New description.
[4] Changed description.

[FR Doc.77-2166 Filed 1-25-77;8:45 am]

[Agreements CAB 25606 E-1 through E-4; Docket 28672]

IATA AGREEMENTS

Uniform Commission Rates; Reassignment of Proceeding

This proceeding has been reassigned from Administrative Law Judge Ralph L. Wiser to Administrative Law Judge Katherine A. Kent. Future communications should be addressed to Judge Kent.

Dated at Washington, D.C., January 19, 1977.

HENRY M. SWITKAY,
Acting Chief
Administrative Law Judge.

[FR Doc.77-2539 Filed 1-25-77;8:45 am]

[Docket 27701]

PACIFIC GROUP FARES INVESTIGATION

Postponement of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled proceeding, which was assigned to be held on February 1, 1977 (42 FR 2333, January 11, 1977), is postponed until further notice.

Dated at Washington, D.C., January 19, 1977.

ALEXANDER N. ARGERAKIS,
Administrative Law Judge.

[FR Doc.77-2538 Filed 1-25-77;8:45 am]

[Order 77-1-124; Docket Nos. 29001; 30249; 30258]

SOUTHERN AIRWAYS, INC., ET AL.

Route Exchange Agreement and Certificates of Public Convenience Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of January, 1977.

The route exchange agreement between Southern Airways and Trans World Airlines provides, principally, for the transfer to Southern of TWA's authority to engage in air transportation between Nashville, on the one hand, and St. Louis, Tampa-St. Petersburg-Clearwater ("Tampa"), Ft. Lauderdale and Miami, on the other.[1] By Order 76-12-1 the Board instituted this proceeding to consider:

(1) Whether that route transfer agreement should be approved.

(2) Whether any carrier (including Southern) should be certificated between Nashville, on the one hand, and St. Louis, Tampa, Miami, and/or Ft. Lauderdale, on the other hand; and/or

(3) Whether TWA's authority between Nashville, on the one hand, and Atlanta, St. Louis, Tampa, Miami, and/or Ft. Lauderdale, on the other hand, should be deleted.

The order consolidated into Docket 29001 the applications of Delta and Ozark for authority to serve the markets at issue, to the extent those applications are consistent with the scope of the proceeding as outlined above. The order also provided for the receipt of comparable route applications and motions to consolidate from other carriers.

Braniff subsequently applied for a certificate to engage in air transportation between the terminal point St. Louis, Missouri, the intermediate points Nashville, Tennessee and Tampa-St. Petersburg-Clearwater, Florida and the terminal point Miami/Ft. Lauderdale, Florida, subject to the con-

[1] By its terms the agreement also provides for the transfer of TWA's Nashville-Atlanta authority to Southern. Since Southern already holds nonstop rights in that market, however, Order 76-12-1 noted that "the instant agreement is correctly characterized as contemplating only the deletion of TWA and not the transfer of any [Nashville-Atlanta] authority to Southern."

dition that all flights on the segment which serve St. Louis, Missouri, shall also serve Nashville, Tennessee.[5]

Braniff's motion to consolidate that application into Docket 29001 accompanied the application. No answers to Braniff's motion to consolidate have been filed and we shall grant it.

Southern also has filed a route application[2] and motion to consolidate. Southern's application, however, provides for Atlanta-St. Louis service, via Nashville, along with Nashville-St. Louis/Tampa/Miami/Ft. Lauderdale authority. Eastern opposes grant of Southern's motion to the extent that Southern's application provides for St. Louis-Atlanta service. Eastern argues that the thrust of Order 76-12-1 is to preclude the consideration in this proceeding of additional St. Louis-Atlanta service.

We have concluded that Southern's application in Docket 30258 should be consolidated into this proceeding without the limitation requested by Eastern. For one thing, Southern's 401 application precisely tracks the authority it would obtain were the route transfer approved. More importantly, the language in Southern's application about which Eastern objects—language that purports to give Southern one-stop St. Louis-Atlanta authority via Nashville—adds nothing to the authority Southern could gain in this proceeding even if no reference were made to Atlanta at all. St. Louis-Nashville authority is specifically at issue in this proceeding. And Southern already holds nonstop Nashville-Atlanta rights. Under normal Board rules of construction, the award of St. Louis-Nashville authority to Southern would give that carrier one-stop St. Louis-Atlanta rights absent the imposition of a specific restriction to the contrary.

Eastern will be free at subsequent stages of this proceeding to show why Southern should not be permitted to obtain St. Louis-Atlanta authority via Nashville. But the action Eastern seeks in its answer to Southern's motion to consolidate would not have the effect Eastern seeks. And we see no reason to adopt, on a pretrial basis, a restriction that would preclude one-stop St. Louis-Atlanta authority via Nashville.

As a last matter, we note that Southern's 401 application provides for a closed door restriction on services between Miami/Ft. Lauderdale and Tampa.[4] We recognize that the route transfer agreement provides for just such a restriction. But we sufficiently disfavor restrictions of that nature to conclude that the scope of this proceeding should not be limited by a closed door Miami/Ft. Lauderdale-Tampa pretrial restriction.

Accordingly, it is ordered, That: (1) The motions of Braniff Airways and Southern Airways to consolidate their applications in, respectively, Docket 30249 and Docket 30258 into the proceeding instituted by Order 76-12-1 be and they hereby are granted; and (2) Such proceeding shall hereafter be designated the "TWA-Southern Route Exchange Case."

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-2541 Filed 1-25-77;8:45 am]

[Docket No. 30255]

TRANS-MEDITERRANEAN AIRWAYS, S.A.L.

Foreign Air Carrier Permit; Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference in this proceeding is assigned to be held on February 15, 1977, at 9:30 a.m. (local time), in Room 1003, Hearing Room B, 1875 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge William A. Kane, Jr.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before February 8, 1977.

Ordinary transcript will be adequate for the proper conduct of this proceeding.

Dated at Washington, D.C., January 19, 1977.

HENRY M. SWITKAY,
Acting Chief
Administrative Law Judge.

[FR Doc.77-2727 Filed 1-25-77;8:45 a.m.]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

FREDERICK CANCER RESEARCH CTR.

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00490. Applicant: Frederick Cancer Research Center, P.O. Box B, Frederick, Maryland 21701. Article: Electron Microscope, Model HU-12A. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article is intended to be used in a variety of collaborative research projects ranging from viruses, molecular genetics, cytochemistry, and cell surface markers which include: (a) immunoelectron microscopy of normal and pathologic cells to determine the presence of cross-reactive antigens with different microorganisms used in immunotherapy, (b) ultrastructural studies of animal and human tumors, (c) chronological studies of tissue ultrastructure during invasion of normal tissues by tumor cells, during treatment of the tumor with various chemotherapeutic and immunotherapeutic agents and during regression of the tumor, (d) autoradiography studies at the ultrastructural level of normal and pathologic tissues, (e) studies of cell surfaces as they are modified by physiologic and pathologic agents, (f) studies on viral ultrastructure *in situ* and in isolated preparations, (g) microscopy of critical point dried single cells and thick sections.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the article was ordered (December 26, 1974).

Reasons: This application is a resubmission of Docket Number 75-00362-33-46040 which was denied without prejudice to resubmission April 19, 1976 for informational deficiencies. The foreign article has a specified resolving capability of 3 Angstroms. The most closely comparable domestic instrument available at the time the article was ordered was the Model EMU-4C electron microscope manufactured by the Adam David Company. The Model EMU-4C had a specified resolving capability of 5 Angstroms. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated December 10, 1976 that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used. We, therefore, find that the Model EMU-4C was not of equivalent scientific value to the foreign article for such purposes as the article is intended to be used at the time the article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

RICHARD M. SEPPA,
Director, Special
Import Programs Division.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc.77-2532 Filed 1-25-77;8:45 am]

HARVARD UNIVERSITY ET AL.

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry

[2] Docket 30249.
[3] Docket 30258.
[4] "Southern shall not enplane or deplane passengers at Tampa-St. Petersburg-Clearwater who deplane or enplane at either Ft. Lauderdale or Miami."

of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, on or before February 15, 1977.

Amended regulations issued under cited Act, (15 CFR 301) prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket Number: 77-00064. Applicant: Harvard University, Purchasing Department, 75 Mt. Auburn Street, Cambridge, Massachusetts 02138. Article: Electron Microscope, Model EM-400 with High Tilt Goniometer and accessories. Manufacturer: Philips Electronics Instruments, NVD, The Netherlands. Intended use of article: The article is intended to be used for the study of microscopic samples of nervous tissue from experimental animals, including brain, spinal cord and peripheral nervous system; in particular the synapses, the sites of transmission of information between nerve cells. Experiments will be conducted with the objective of understanding the structural basis of nervous function in a sensory system, and the mechanisms of development. Application received by Commissioner of Customs: December 19, 1976.

Docket Number: 77-00072. Applicant: Rutgers University, Department of Chemistry, 73 Warren Street, Newark, NJ 07102. Article: Mass Spectrometer, Model MS 30 and accessories. Manufacturer: AEI Scientific Apparatus, Inc., United Kingdom. Intended use of article: The article is intended to be used for both high resolution and low resolution mass spectrometry. Natural products will be examined and structural elucidations of steroids, triterpenes, sesterterpenes, and other organic compounds of biological interest will be carried out. Application received by Commissioner of Customs: December 22, 1976.

Docket Number: 77-00074. Applicant: University of California, Biochemistry Department, 401 Biochemistry Building, Berkeley, California 94720. Article: Electron Microscope, Model EM 301 and accessories. Manufacturer: Philips Electronics Instruments NVD, the Netherlands. Intended use of article: The article is intended to be used for the following research projects: (1) Studies of nucleic acids by electron microscopy using protein free spreading techniques for DNA, DNA fragments and DNA-enzyme complexes, (2) Studies of cellular structures (e.g., active transport of amino acids in thin sections of the bacterium *Salmonella typhimurium*, biochemical and morphological changes in the sexual mating reactions of yeast, biosynthesis of the spore coat in wild type and spore defective mutants contractile proteins in cytokinesis and mitosis, bacterial membranes and their flagellar attachment sites), and (3) Structural studies employing unstained or negatively stained preparations viewed in darkfield as well as bright field. The article will also be used for instruction in specimen preparative techniques required for specific research projects and for individual and small group instruction in the operation of the electron microscope and associated techniques. Application received by Commissioner of Customs: December 10, 1976.

Docket Number: 77-00078. Applicant: University of Rochester, 601 Elmwood Avenue, Rochester, NY 14642. Article: Electron Microscope, Model EM 10-A and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for studies of materials and phenomena related directly to the analysis of the mammalian central nervous system and specifically to the ultrastructural correlates of neuroendocrine mechanisms and the fine structural localization of brain hormones. The properties of the material to be investigated for the phenomena relates to the capability of localizing radiolabelled neurohormones releasing factors and neurotransmitters with transmission electron microscopy in the primate central nervous system, that has been embedded in plastic and thin sectioned. Relevant regions of the primate brain including the hypothalamus, brain stem and other circumventricular organs will be analyzed as to their capacity to sequester various radioactive bioactive peptide molecules. The article will also be used for educational purposes in the courses: Anatomy 595, Ph.D. Research; Anatomy 395, Research in Anatomy; Anatomy 500, Techniques in Neuroendocrine Morphology; and Anatomy 596, Ultrastructural Correlates of Neuroendocrine Mechanisms. The objectives of these courses are to instill in students basic fundamental ultrastructural techniques to determine the fine anatomy of the central nervous system and provide advanced training for senior graduate students, postdoctoral fellows and research associates. Application received by Commissioner of Customs: January 7, 1977.

RICHARD M. SEPPA,
Director,
Special Import Programs Division.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc.77-2531 Filed 1-25-77;8:45 am]

TELECOMMUNICATIONS EQUIPMENT TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to Section 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 Telecommunications Equipment Technical Advisory Committee will be held on Friday, February 11, 1977, at 10:00 a.m. in Room 5611, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C.

The Telecommunications Equipment Technical Advisory Committee was initially established on April 5, 1973. On March 12, 1975, the Acing Assistant Secretary for Adminisration approved the recharter and extension of the Committee for two additional years, pursuant to Section 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 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 telecommunications equipment, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls.

The Committee meeting agenda has five parts:

GENERAL SESSION

(1) Opening remarks by the Chairman.

(2) Presentation of papers or comments by the public.

(3) Nomination and election of a new Chairman.

(4) Discussion of draft sections on Findings—Volume I of the annual report.

EXECUTIVE SESSION

(5) Discussion of matters properly classified under Executive Order 11652, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (5), the Acting Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 28, 1976, pursuant to Section 10(d) of the Federal Advisory Committee Act that the matters to be discussed in the Executive Session should be exempt from the provisions of the Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(b)(1), i.e., it is specifically required by Executive Order 11652 that they be kept confidential in the interest of the national security. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under the Executive Order. All Committee members have appropriate security clearances.

Copies of the minutes of the open portion of the meeting will be available

upon written request addressed to the Freedom of Information Officer, Domestic and International Business Administration, Room 3012, 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.

The complete Notice of Determination to close portions of the meetings of the Telecommunications Equipment Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on April 30, 1976 (41 FR 18129).

Dated: January 21, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.77-2533 Filed 1-25-77;8:45 am]

National Oceanic and Atmospheric Administration

CARIBBEAN FISHERY MANAGEMENT COUNCIL

Meeting

Notice is hereby given of a meeting of the Caribbean Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265).

The Caribbean Council will have authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to Puerto Rico and the Virgin Islands. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public hearings.

This is the fifth in a series of organizational meetings of the Council. The meeting will be held Monday through Thursday, February 14 to February 17, 1977, at the Holiday Inn, Road 2, Firm El Tuque, Ponce, Puerto Rico. The meeting will convene at 1 p.m. on February 14 and adjourn at about noon on February 17. Daily sessions will normally start at 9 a.m. and adjourn at 5 p.m., except as otherwise noted. The meeting may be extended or shortened depending on progress on the agenda.

PROPOSED AGENDA

1. Council Organization and Administration Procedures.
2. Technical Organization and Procedures.
3. Organizational Meetings of the Council's Scientific and Statistical Committee and the Advisory Panel.
4. Review of foreign fishing applications, if any.
5. Other management business.

This meeting is open to the public, and there will be seating for a limited number of public members available on a first come, first served basis. Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meeting. To receive information on changes, if any, made to the agenda, interested members of the public should contact on or about February 11, 1977:

Mr. Robert Cummins, Jr., Special Assistant to the Regional Director, National Marine Fisheries Service, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business. Interested members of the public who wish to submit written comments should do so by addressing the Special Assistant to the Regional Director at the above address. To receive due consideration and facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of the Council meeting.

Dated: January 21, 1977.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.77-2534 Filed 1-25-77;8:45 am]

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Meeting

Notice is hereby given of a meeting of the Mid-Atlantic Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265).

The Mid-Atlantic Fishery Management Council will have authority effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public hearings.

This meeting of the Council will be held on February 9 and 10, 1977, from 10 a.m. to 5 p.m., and 9 a.m. to 3 p.m., respectively, at the Holiday Inn of Dover, U.S. Nos. 13 and 113, Dover, Delaware.

Proposed Agenda:

(1) Review of Council management plans.
(2) Review of permit applications, if any.
(3) Personnel matters—staff recruitment and procurement of office space and equipment.
(4) Other management business.

This meeting is open to the public and there will be seating for approximately 30 public members available on a first-come, first-serve basis. Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meeting. Interested members of the public should contact Mr. Donald G. Birkholz, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, State Fish Pier, Gloucester, MA 01930 on or about 10 days before the meeting to receive information on changes in the agenda, if any. At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business. Interested members of the public who wish to provide written comments should do so by submitting them to Mr. Birkholz, at the above address. To receive due consideration and facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of the Council meeting.

Dated: January 21, 1977.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.77-2535 Filed 1-25-77;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

[CP 76-14]

GAS FURNACES

Safety Standards Development; Denial of Petition

This notice announces that the Consumer Product Safety Commission has denied a petition to issue a consumer product safety rule for gas furnaces used in residences.

Section 10 of the Consumer Product Safety Act (CPSA), (15 U.S.C. 2059), provides that any interested person may petition the Consumer Product Safety Commission to commence a proceeding for the issuance of a consumer product safety rule. Section 10 also provides that if the Commission denies such a petition, it shall publish its reasons for denial in the FEDERAL REGISTER.

On July 7, 1976, Michael Smith of Elkgrove Village, Illinois, petitioned the Commission to develop mandatory safety standards for gas furnaces and gas conversion furnaces to reduce the hazard of carbon monoxide fumes (Petition CP 76–14).

The petition states that a number of furnace failures and malfunctions in gas furnaces and furnaces that have been converted to gas from oil have exposed residents of the homes in which such furnaces are installed to unnecessary amounts of carbon monoxide (CO). The petition requests a standard which would keep carbon monoxide out of a residence in the event of a furnace failure or as a result of improper burner adjustment, improper installation, a collapsed chimney, or malfunction of the furnace due to "failure or design failure." The petition suggests that the requested standard should include a requirement for a device to warn residents that they are being exposed to carbon monoxide. The petitioner suggests that the device could be an instrument that could be read or a device that would automatically shut

down the furnace if carbon monoxide concentration exceeded a certain level. It was suggested that the standard could include a requirement that the furnace compartment be isolated in such a way as to force any escaping fumes outside the residence or that the furnace compartment should be isolated from the home in such a way as to make it impossible for escaping fumes to enter.

Information available to the Commission indicates that over 33 million gas furnaces and gas wall furnaces are currently in use in the United States. In reviewing available injury data, it was found that data reported to the National Electronic Injury Surveillance System (NEISS) showed that approximately 425 instances of poisoning or anoxia that were associated with gas furnaces and required hospital emergency room treatment occurred during fiscal year 1976. The Commission has conducted in-depth investigations of seven cases involving carbon monoxide poisoning that occurred between January 1, 1974 and June 30, 1976. Five of these cases involved improper, blocked or damaged vents. One involved a cracked heat exchanger, and one report stated only that the pilot light had gone out. Death certificates were also examined, although they do not ordinarily contain much technical detail concerning incidents of this type. An analysis of the certificates which have been submitted to the Commission for the period January 1, 1974, through December 31, 1975, shows that improper, blocked, or damaged vents were important factors in the 26 carbon monoxide incidents reported, which resulted in 36 deaths. Leaks in furnaces and defective furnaces were mentioned in several incidents.

From the information available to the Commission, it appears that the vast majority of carbon monoxide poisoning cases connected with gas furnaces may result from improperly installed or maintained furnaces or damaged or blocked vents.

The voluntary standards for gas furnaces, issued by the American National Standards Institute (ANSI), include the following:

1. ANSI Z21.47—1973 Gas-Fired Gravity and Forced Air Central Furnaces, plus addenda.
2. ANSI Z21.48—1973 Gas-Fired Gravity and Fan Type Floor Furnaces, plus addenda.
3. ANSI Z21.49—1975 Gas-Fired Gravity and Fan Type Vented Wall Furnaces.
4. ANSI Z21.44—1973 Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces, plus addenda.

New gas furnaces are accompanied by maintenance instructions which state that qualified persons should inspect and service the equipment periodically, preferably once a year at the start of the heating season. The applicable American National Standards require each furnace to be supplied with instructions for its proper installation and safe operation. These instructions are also required to state that the furnace is to be installed in accordance with local building codes or, in the absence of local codes, the American National Standard for Installation of Gas Appliances and Gas Piping, Z21.30–1964 (redesignated as part of the National Fuel Gas Code, ANSI Z223.1–1974). From the information available to the Commission, it appears that the vast majority of furnaces are now provided with appropriate instructions and are installed in accordance with their installation instructions. A study funded by the Commission, Calspan Investigations on Flame-Fired Appliances, did not suggest a need for improved furnace installation instructions.

Additional features in the voluntary standards that also help to reduce the possibility of carbon monoxide poisoning include the following: (1) combustion controls, (2) safety interlocks, (3) cyclic testing of heat exchangers to minimize cracking, (4) use of corrosion resistant materials in areas susceptible to corrosion, and (5) CO limits for tests under normal and abnormal conditions. The Commission has information that the voluntary standards are universally complied with by domestic gas furnace manufacturers.

Because the petitioner, in earlier correspondence with the Commission, had expressed special concern about CO build-up as a result of heat exchanger failure, CPSC sponsored a study of the high incidence of furnace heat exchanger failures in Elkgrove Village, Illinois, by Polytechnic, Inc. (a private research organization). The study indicates that this problem was primarily caused by factors relating to the installation of the furnace rather than by the furnace design. It should be noted, however, that furnace heat exchanger failures seldom result in carbon monoxide problems, because the combustion chamber is generally surrounded by the air that is being heated in the plenum and that is at a higher static pressure than the interior of the combustion chamber. Therefore, any leakage due to a crack or split in the heat exchanger would usually be into the combustion chamber rather than into the air which will be supplied to the residence. A Commission-sponsored study by Unified Industries Inc., dated April 30, 1976, of air samples in homes with known leaks in the heat exchanger found that the CO levels in these homes did not exceed the CO level in the air outside the home. The Commission is aware of four incidents involving suspected CO poisoning from cracked heat exchangers. In two of these, blood tests failed to disclose the presence of CO. In the other two (a telephone complaint and an emergency room visit), the results of blood tests, if any, are not available.

From the Commission's analysis of the information available to it, it appears that while the consequences of exposure to high levels of CO from gas furnaces are severe and occur with a frequency that is not negligible, the principal causes of dangerously high concentrations of CO from gas furnaces do not appear to be correctable through the issuance of a mandatory safety standard.

Since there are many ways in which dangerously high concentrations of CO in residences can come about, the ultimate solution would appear to be, along the lines suggested in the petition, the use of CO detectors (with or without automatic furnace cut-off devices) in residences. However, the Commission believes that a mandatory requirement for such detectors is not practicable or economically feasible at this time. The Commission is aware of no device which could perform this function satisfactorily for an extended period of time without frequent recalibration by trained specialists. Also, equipment with the required degree of sensitivity that might be incorporated into such a device now sells for fifteen hundred to two thousand dollars.

While acknowledging the substantial contribution that the development of a reliable, low cost CO detector could make to consumer safety, the Commission must note that it has neither the statutory nor the resources to undertake the development of such a product. The Commission observes that the development of inexpensive fire and smoke detectors by private industry has disclosed a large, and apparently profitable, market for them. The availability of smoke detectors has even encouraged many municipalities to require their installation in residences. The Commission believes that a similarly attractive market may exist for an inexpensive, reliable CO detector and hope that industry will undertake research and development leading to a commercially viable device.

After careful consideration, the Commission has decided to deny this petition because, based on the information available at this time, the Commission believes (1) that the principal causes of dangerously high concentrations of CO from gas furnaces are not correctable by the issuance of a mandatory standard and (2) the suggested requirement for the mandatory use of a CO detector in conjunction with gas furnaces appears to be premature since reliable, low cost CO detectors are not available at this time.

Copies of the petition and other relevant materials may be seen in or obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, during working hours Monday through Friday.

Dated: January 21, 1977.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.77-2537 Filed 1-25-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 675-4]

AIR PROGRAMS—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Receipt of Application and Approval of Alternative Performance Test Method

On January 26, 1976 (41 FR 3826), the Environmental Protection Agency (EPA) promulgated standards of performance

for new primary aluminum reduction plants under 40 CFR Part 60. The standards limit air emissions of gaseous and particulate fluorides from new and modified primary aluminum reduction plants. The owners or operators of affected facilities are required to determine compliance with these standards by conducting a performance test as specified in Appendix A—Reference Methods, Method 13A or 13B, "Determination of Total Fluoride Emissions from Stationary Sources" published in the FEDERAL REGISTER August 6, 1975 (40 FR 33157). As provided in 40 CFR 60.8(b), (2) and (3), the Administrator may approve the use of an equivalent test method or may approve the use of an alternative method if the method has been shown to be adequate for the determination of compliance with the standard. Method 13A specified that total fluorides be determined by the SPADNS Zirconium Lake colormetric method, and Method 13B specified that this determination be made by the specific ion electrode method.

On September 3, 1976, EPA received written application for approval of equivalency for a third analytical technique from Kaiser Aluminum and Chemical Corporation, Oakland, California. Specifically, the application requested approval of ASTM Method D 3270-73T, "Tentative Method of Analysis for Fluoride Content of the Atmosphere and Plant Tissues," 1974 Annual Book of ASTM Standards—Part 26.

Specific guidelines for the determination of method equivalency have not been established by EPA. However, EPA has completed a technical review of the application and has determined that the ASTM method will produce results adequate for the determination of compliance with the standards of performance for new primary aluminum plants. Therefore, EPA approves the ASTM method as an alternative to the analytical procedures specified in paragraph 7.3 "Analysis" of Method 13A or 13B for aluminum plants, pursuant to 40 CFR 60.8(b)(3).

Dated: January 18, 1977.

ROGER STRELOW,
Assistant Administrator
for Air and Waste Management.

[FR Doc.77-2385 Filed 1-25-77;8:45 am]

[FRL 675-3]

DIAGNOSTIC X RAYS

Radiation Protection Guidance; Invitation for Comment

Notice is hereby given that pursuant to its responsibility to recommend guidance for Federal agencies regarding radiation matters (42 U.S.C. 2021h), the Environmental Protection Agency is considering recommendations for the guidance of Federal agencies in the conduct of radiation protection for uses of x rays for diagnostic purposes in the healing arts. Public participation is invited in the development of these recommendations prior to their transmittal to the President for approval as guidance for Federal agencies. The Agency has been assisted in developing these proposed recommendations by an Interagency Working Group on Medical Radiation which was formed on July 5, 1974. The Interagency Working Group delivered its final report in October 1976, based on information developed in two background reports previously made available for public comment (41 FR 10705 and 27998) and reflects comments received on these reports. The recommendations listed below also reflect further comments received from Federal agencies on the Agency's draft recommendations based upon this final report.

This action is based on Executive Order 10831 (Public Law 86-373, and the President's Reorganization Plan No. 3 of 1970, which defined functions transferred to the Environmental Protection Agency. Under this authority, "The Administrator shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States." In carrying out this responsibility, it is recognized that both the Environmental Protection Agency and the Department of Health, Education, and Welfare (DHEW) have statutory responsibilities which impact upon radiation protection in areas which involve the use of radiation in the healing arts. In particular, DHEW has the major responsibility for national health care policy, including areas in the practice of medicine which involve radiation exposure. For this reason, it is important that the two agencies work together closely so that in the development of radiation guidance, health care impact is properly considered. To this end, the two agencies have recently undertaken to develop a formal working relationship which is expressed in a Memorandum of Understanding now in the final stages of approval. This memorandum will be published in the FEDERAL REGISTER.

BACKGROUND

In developing the recommendations under consideration, the Agency has reviewed information on the use of x rays in medicine, has considered potential controls that could be applied without compromising benefits, and has consulted with scientists and professionals within and outside the government. In this regard, the Agency has completed the contract effort begun by the National Academy of Sciences—National Research Council for the former Federal Radiation Council to examine and report on new knowledge on radiation effects and sources of population exposure. The report of the NAS Committee on Biological Effects of Ionizing Radiation (BEIR) was issued in 1972. One of its principal findings was that "* * * medical diagnostic radiology accounts for at least 90% of the total man-made radiation dose to which the U.S. population is exposed." More importantly, the Committee also concluded "* * * that it appears reasonable that as much as a 50% reduction in the genetically significant dose from medical radiology might be possible through improved technical and educational methods."

It is recognized by medical practitioners, medical physicists, and other scientists concerned with radiation protection that exposure due to medical uses of ionizing radiation represents a significant and growing source of exposure for the U.S. population and is also one that can be reduced by good practice. The National Council on Radiation Protection and Measurements has concluded that whereas "there can be no rational means to * * * limit radiation exposure prescribed for patients for necessary and proper diagnostic or therapeutic purposes * * * steps can be taken to minimize unnecessary or medically unproductive radiation exposure. Advantage should be taken of any new technology or procedure that will significantly reduce unnecessary diagnostic or medical exposure, both in individual examinations and treatments, and in the adoption of group screening practices."

The Interagency Working Group on Medical Radiation determined that it is desirable and possible in Federal facilities to reduce exposure from the diagnostic use of x rays by: (1) eliminating clinically unproductive examinations, (2) assuring the use of optimal technic when examinations are performed, and (3) requiring appropriate equipment to be used. As a result of this consensus a Subcommittee on Prescription of Exposure to x rays was established to examine factors to eliminate clinically unproductive examinations. Another Subcommittee on Technic of Exposure Prevention was formed to examine the second and to some extent the third subject areas. The third area is being regulated by the U.S. Food and Drug Administration which issued x-ray equipment performance standards effective August 1, 1974. The reports of these Subcommittees were made available for comment (41 FR 10705 and 27998) prior to making final the Interagency Working Group report. Comments from interested parties have been considered prior to making these recommendations for guidance to Federal agencies.

Without question the use of x rays in the healing arts provides large benefits to society through improved health care; thus, in developing guidance for uses of diagnostic x rays, the Agency has been careful to assure that the necessary benefits to patients from the use of medical and dental x rays are derived. In this regard, the Agency has consulted with the Department of Health, Education, and Welfare, which is the lead Federal agency for health care policy, and medical personnel in both the Federal and private sectors.

DISCUSSION

The most important factor in reducing radiation exposure is to eliminate the prescription of clinically unproductive examinations. Appropriate prescription of x-ray examinations involves two major considerations: (1) the clinical decision

to order a particular examination, and (2) the minimization of the number of radiographic views required in an examination. In particular, attention should be given to qualifications of those who order examinations, the elimination of unproductive screening programs, and appropriate clinic procedures to assure that unproductive views are eliminated during the performance of the examination.

Although the largest savings in radiation exposure may be to preclude the prescription of an unproductive x-ray examination, patient exposure can also be reduced by assuring that the examination is performed with good technic. The fundamental objective in performing an x-ray examination is to obtain optimum diagnostic information with minimum patient exposure. Achievement of this objective requires: (1) Assurance that equipment is calibrated and properly functioning, (2) operation of equipment is only by competent personnel, (3) the patient is appropriately prepared, and (4) technic factors which will minimize exposure are selected.

It has been demonstrated that the same technic factors used with different x-ray generators may produce widely varying patient exposures. Thus, the performance of x-ray equipment utilized for diagnostic x-ray procedures is an important factor in limiting patient and operator exposure. The Federal Diagnostic X-ray Equipment Performance Standard (21 CFR Subchapter J) requires that x-ray equipment manufactured after August 1, 1974, be certified by manufacturers to comply with radiation safety requirements issued by the U.S. Department of Health, Education, and Welfare pursuant to the Radiation Control for Health and Safety Act of 1968 (PL 90-602). All Federal health care facilities which perform diagnostic x-ray examinations, should, as soon as practicable before the effective date, utilize medical and dental x-ray equipment that conforms to the requirements of 21 CFR Subchapter J.

Recommendations for Federal Guidance

In view of the discussions presented above, the Agency invites comments on the following recommendations which are under consideration as guidance for Federal agencies for reduction of unnecessary radiation exposure due to use of diagnostic x-rays in the healing arts:

1. General radiographic or fluoroscopic examinations should be prescribed only by licensable Doctors of Medicine or Osteopathy; specialized studies should be prescribed only by those physicians with advanced training in the particular specialty. Exception for certain limited procedures may be made for dentists and podiatrists or properly-trained physician assistants, nurse practitioners, and physicians in postgraduate training status.

2. Prescription of an x-ray study should be for the purpose of obtaining diagnostic information, be based on clinical evaluation of the patient, and should state the diagnostic objective and detail relevant medical history.

3. Routine or screening examinations in which no prior clinical evaluation of the patient is made should not be performed; except may be made for identifiable groups on the basis of careful consideration of diagnostic yield, radiation risk, and economic and social factors. In implementation of this recommendation, the Agency recommends that Federal agencies adopt the recommendation by the Interagency Working Group on Medical Radiation that the following examinations should not be routinely performed:

(a) Chest and lower back x-ray examinations in routine physical examinations or as a Federal requirement for employment,

(b) Tuberculosis screening by chest radiography,

(c) Chest x-rays for hospital admission of patients under the age of 40 unless a clinical indication of chest disease exists,

(d) Chest radiography in routine prenatal care,

(e) Mammography examinations for women of an age [1] for which screening has been determined to be nonefficacious and who also do not exhibit symptoms or have a strong family history of breast cancer.

4. Prescription of x-ray examinations of pregnant or possibly pregnant patients should assure that medical consideration has been given to possible fetal exposure and appropriate protective measures are applied.

5. The number, sequence, and types of standard views for an examination should be clinically-oriented and kept to a minimum. Diagnosticians should closely monitor the performance of x-ray examinations and, where practicable, direct examinations to obtain the diagnostic objectives stated by clinicians, through appropriate addition, substitution, or deletion of prescribed views. Technic protocols for performing medical and dental x-ray examinations should detail the operational procedures for all standard radiographic projections, patient preparation requirements, use of technic charts, and image receptor specifications.

6. X-ray equipment used in Federal programs should meet, where practicable, the Federal performance standards (21 CFR Subchapter J) sooner than required or, in the interim, Part F of the "Suggested State Regulations for Control of Radiation." General purpose fluoroscopy units should provide image-intensification; fluoroscopy units for non-radiology specialty use should, when practicable, have electronic image-holding features. Photofluorographic x-ray equipment should not be used for chest radiography.

7. X-ray facilities should have quality assurance programs designed to produce radiographs that satisfy diagnostic requirements with minimal patient exposure; such programs should contain materials and equipment specifications, equipment calibration and preventive maintenance requirements, quality control of image processing, and operational procedures to reduce retake and duplicate examinations.

8. Operation of medical or dental x-ray equipment should be by individuals who have demonstrated proficiency to produce diagnostic quality radiographs with the minimum of exposure required; these individuals should be qualified by didactic training and practical experience identical to, equivalent to, or greater than those programs approved by recognized medical and dental organizations. In implementation of this recommendation, the Agency recommends that Federal agencies adopt the recommendation by the Interagency Working Group on Medical Radiation that such programs be identical to or equivalent to those approved by tthe Council on Medical Education of the American Medical Association or the American Registry of Clinical Radiography Technologists for medical x-ray equipment operators, or for dental equipment operators, the guidelines of the Oral Radiology Section of the American Association of Dental Schools.

9. Proper collimation should be used to restrict the x-ray beam as much as practicable to the clinical area of interest and within the dimensions of the image receptor; shielding should be used to further limit the exposure of the fetus and the gonads (as detailed in 21 CFR Subchapter J) when such exclusion does not interfere with the examination being conducted.

10. Technic appropriate to the equipment and materials available should be used to maintain exposures as low as is reasonably achievable without loss of requisite diagnostic information; Entrance Skin Exposure Guides for nonspecialty examinations should be established for this purpose and measures should be undertaken to evaluate and reduce, where practicable, exposures which exceed such established guides. In implementation of this recommendation, the Agency recommends that Federal agencies adopt the following Entrance Skin Exposure Guides developed by the Interagency Working Group on Medical Radiation:

Examination (projection):	*ESEG (milliroentgens)* [1]
Chest (P/A)	30
Skull (lateral)	300
Abdomen (A/P)	750
Cervical spine (A/P)	250
Thoracic spine (A/P)	900
Full spine (A/P)	300
Lumbo-sacral spine (A/P)	1000
Retrograde pyelogram (A/P)	900
Feet (D/P)	270
Dental (bitewing or periapical)	700

[1] Entrance skin exposure determined by the NEXT program for a patient having the following body part/thickness: head/15 cm, neck/13 cm, thorax/23 cm, abdomen/23 cm, and foot/8 cm.

11. Dental x-ray examinations should be prescribed only by licensable Doctors of Dental Surgery or Dental Medicine or properly supervised postgraduate den-

[1] The Department of Health, Education, and Welfare issued interim findings on August 16, 1976, that asymptomatic women under the age of 50 should not receive mammography as a part of periodic screening for breast cancer; the optimal age range for which mammography screening of asymptomatic women is justified is being reviewed by the Department and should be followed by Federal agencies when issued.

tists on the basis of clinical evaluation or pertinent history; neither a full-mouth series nor bitewing radiographs should be part of routine preventive dental care except for certain forensic purposes.

12. Intra-oral radiography should be performed with long open-ended, shielded, cylindrical position indicating devices and with technic to restrict the x-ray beam as near the size of the image receptor as practicable.

It is expected that each Federal agency will use these recommendations as a basis upon which to develop detailed standards tailored to meet its particular requirements. In developing these proposed recommendations, however, the Agency and the Interagency Working Group on Medical Radiation were aware that information in several specific areas is continually changing. In order that such information as well as recommendations and guidelines isued by various Federal and professional bodies can be appropriately reflected in guidance to Federal agencies, the Agency recognizes a need to review such information, recommendations, and guidelines from time to time in order to provide specific guidance that may be required for appropriate interpretation of these recommendations. The Agency, in cooperation with the Federal agencies, will follow the implementation of these recommendations, will promote the necessary coordination to achieve an effective Federal program, and will initiate procedures to periodically interpret and expand upon each of the recommendations as required to provide new and changing information for use by Federal agencies in their implementation of the recommendations.

ADDRESS

Comments on the foregoing recommendations should be sent by March 1, 1977, to the Director, Criteria and Standards Division (AW–460), Office of Radiation Programs, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Single copies of the report of the Interagency Working Group on Medical Radiation entitled "Radiation Protection Guidance for Diagnostic X Rays" are also available and may also be requested at this same address.

Dated: January 18, 1977.

RUSSELL E. TRAIN,
Administrator.

[FR Doc.77-2386 Filed 1-25-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

ELECTRIC UTILITIES ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat 770), notice is hereby given that the Electric Utilities Advisory Committee will meet Friday, February 18, 1977, at 9 a.m., Room 5041B, FEA Headquarters, 12th & Pennsylvania Avenue, NW., Washington, D.C.

The Committee was established to advise the Administrator, FEA with respect to general electric utilities' aspects of interests and problems related to the policy and implementation of programs to meet the current and continuing national energy shortage.

The agenda for the meeting is as follows:

1. Review of Federal Study Evaluating the Regional Supply and Demand Projections and the Prospect of Shortfalls (ERDA and FEA).
2. Status Report of FEA's Contract Study of State Load-Growth Forecasting.
3. Status Report and Discussion of the Electricity Rate-Reform Study Mandated by Title II of the Energy Conservation and Policy Act of 1976.
4. Remarks from the Floor (10 Minute Rule).

The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lois G. Weeks, Director, Advisory Committee Management, (202) 566–7022 at least 5 days before the meeting and reasonable provision will be made for their appearance on the agenda.

Further information concerning this meeting may be obtained from the Advisory Committee Management Office.

Minutes of the meeting will be made available for public inspection and copying in the FEA Freedom of Information Office, Room 2107, FEA Headquarters, 12th and Pennsylvania Avenue, N.W., Washington, D.C.

Issued at Washington, D.C. on January 21, 1977.

DAVID G. WILSON,
Acting General Counsel.

[FR Doc.77-2569 Filed 1-21-77;4:24 pm]

ISSUANCE OF DECISIONS AND ORDERS BY OFFICE OF EXCEPTIONS AND APPEALS

Week of November 8 Through November 12, 1976

Notice is hereby given that during the week of November 8 through November 12, 1976, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

APPEALS

Laketon Asphalt Refining, Inc.; Evansville, Ind.; FEA–0943; Crude Oil

Laketon Asphalt Refining, Inc. (Laketon) filed an Appeal from a Decision and Order which the FEA issued to the firm on August 13, 1976. *Laketon Asphalt Ref., Inc.*, 4 FEA Par. 83,043 (August 13, 1976). The Appeal, if granted, would retroactively relieve Laketon of its obligation to purchase entitlements for the months of April and May 1976. In considering Laketon's Appeal, the FEA determined that despite ample notification by the FEA in the Federal Register of a filing deadline of May 3, 1976, the firm had failed to file an Application for Exception from the Entitlements Program until June 2, 1976. The FEA therefore concluded that there was no reasonable basis upon which Laketon could have believed that it could submit an application beyond the May 3, 1976 deadline and still qualify for exception relief for April and May 1976. The FEA also concluded that Laketon had failed to demonstrate that it would experience a severe and irreparable hardship in the absence of retroactive exception relief. Accordingly, the firm's Appeal was denied.

Peoples Gas Company, Chicago, Ill.; FEA–0900; Naphtha

The Peoples Gas Company (Peoples) appealed from a Decision and Order in which the FEA denied an Application for Exception which the firm had previously submitted from the provisions of 10 CFR, Part 214 (the Canadian Crude Oil Allocation Program). *People's Gas Co.*, 3 FEA Par. 83,215 (June 11, 1976). People's Appeal, if granted, would result in the issuance of an order permitting the firm to purchase 3,000 barrels per day of Kaybob type condensate produced in Canada for use in a synthetic natural gas (SNG) plant which it operates. In considering Peoples' Appeal, the FEA found that contrary to the firm's claim that the Kaybob condensate was essential to enable it to meet the needs of its customers, the amounts of natural gas and SNG available to Peoples are adequate to satisfy its present supply obligations. The FEA also determined that Peoples had not made a convincing showing that it was likely to experience supply difficulties in the foreseeable future which would warrant approval of the exception relief which it requested. Finally, the FEA found that Peoples could replace the Kaybob condensate feedstock which it had previously been able to purchase from Canada with additional quantities of naphtha which it could obtain from its present supplier. It therefore appeared that Peoples' would be able to operate its SNG plant at full capacity without exception relief and the firm's Appeal was accordingly denied.

Quincy Oil, Inc., Boston, Mass.; FEA–0854; No. 6 Fuel Oil

Quincy Oil, Inc. (Quincy) filed an Appeal from a Decision and Order which was issued to it by the FEA on May 7, 1976. *Quincy Oil, Inc.*, 3 FEA Par. 83,180 (May 7, 1976). In that Order, the FEA denied an exception application in which Quincy requested that it be permitted to charge the Taunton Municipal Lighting Plant prices for No. 6 fuel oil for the period prior to June 1, 1976 which were in excess of the maximum permissible levels specified in 10 CFR 212.93. Quincy's Appeal, if granted, would result in the approval of the exception relief which it originally requested. In considering Quincy's Appeal, the FEA found that in the May 7, 1976 Decision the FEA properly evaluated Quincy's request for prospective exception relief by considering only the effect of the FEA Regulations on the firm's operations for the period subsequent to May 7, 1976, the date of issuance of the Decision to Quincy. With respect to the period of time prior to that date, the FEA found that the criteria regarding applications requsting retroactive exception relief were correctly applied. Since the financial data which Quincy provided did not indicate that the firm would incur any hardship or inequity during the last 24 days of May if prospective exception relief were not provided for that period, the FEA concluded the firm's request for prospective exception

relief had been properly denied. The FEA also concluded that the May 7 Decision was correct in determining that the income which Quincy realized prior to its payment of interest and rent to its parent company more accurately reflected Quincy's actual operating posture for the purpose of the exceptions process. Finally, the FEA found that Quincy failed to demonstrate that the firm would incur a severe, irreparable injury in the absence of retroactive exception relief. In view of these findings the Quincy Appeal was denied.

Standard Oil Company of California; San Francisco, Calif.; FEA–0890; Gasco Gasoline, Inc.; Los Angeles, Calif.; FEA–0891; Terrible Herbst, Inc.; Las Vegas, Nev.; FEA–0892; Ashland Oil Company of California; San Francisco, Calif.; FEA–0897; Motor Gasoline

Standard Oil Company of California (SOCAL), Gasco Gasoline, Inc. (Gasco), Terrible Herbst, Inc. (Herbst), and Ashland Oil Company of California (Ashland) appealed from a Decision and Order issued by the FEA on June 10, 1976, which granted exception relief to Ashland. In the June 10 Order, the Regional Administrator for FEA Region IX was directed to assign a new, lower-priced supplier of motor gasoline to Ashland to replace its base period supplier of motor gasoline for the months of April, May and June 1976. *Ashland Oil Co.*, 3 FEA Par. 83,173 (June 10, 1976).

The exception relief which was granted to Ashland was designed to alleviate a serious financial hardship which the firm was experiencing as a result of its high cost of motor gasoline during the months of April through June 1976. After the Regional Administrator assigned SOCAL to supply motor gasoline to Ashland for this three month period, SOCAL filed its Appeal. Gasco and Herbst purchased motor gasoline from Ashland during the base period. Gasco, Herbst and Ashland contended in their respective Appeals that additional exception relief should have been granted in the June 10 Decision and Order. Since the factual background and legal issues raised in the appeals were similar, the four Appeals were consolidated. In analyzing the arguments presented in the Appeals the FEA determined that there was no merit to the contention that undue administrative delay had preceded the issuance of the June 10 Decision. The FEA found that this issue had been fully considered in the prior proceeding and that Ashland, Gasco and Herbst had advanced no new arguments in their Appeals which would alter the conclusion reached in the prior determination. The FEA also found that the only basis for SOCAL's allegation that Ashland was no longer experiencing high product costs was a report in a trade publication which did not indicate that Ashland's cost of motor gasoline had declined to competitive levels. Moreover, price survey data for motor gasoline in the area in which Ashland markets that product showed that Ashland's selling prices were actually above the average of the prices of its competition. Accordingly, the FEA concluded that SOCAL's contention that Ashland's retail price for motor gasoline had declined to a level point below that of its competitors prices had no merit. Finally, the FEA stated that even if the factual circumstances involving Ashland had changed significantly subsequent to the issuance of the initial exception determination, that factor would not necessarily lead to the conclusion that the prior exception relief should be modified. The FEA noted that the prior relief was designed to alleviate a serious hardship which Ashland had been incurring during a period of time which had already transpired prior to the issuance of the June 10 Decision. The four Appeals were therefore denied.

Sundance Oil Company; Denver, Colo.; FEA–0959; Crude Oil

Sundance Oil Company (Sundance) appealed from a Decision and Order in which the FEA denied an Application for Exception which Sundance submitted from the provisions of 10 CFR, Part 212, Subpart D. *Sundance Oil Co.*, 4 FEA Par. 80,038 (August 6, 1976). The Appeal, if granted, would have resulted in a rescission of the previous Order and the issuance of a further order permitting Sundance to sell at market price levels the crude oil which it produced from the Weigand Lease prior to February 1, 1976. Since the Sundance submission did not even purport to establish that the firm was experiencing a serious hardship or gross inequity as a result of the provisions of Subpart D, the FEA concluded that Sundance had failed to demonstrate that the August 6 Order was erroneous in fact or law. Accordingly the Appeal was denied.

Texaco, Inc.; New York, N.Y.; FEA–0995; Motor Gasoline

Texaco, Inc. (Texaco) appealed from a Decision and Order which the FEA issued to Jones and Murtha Distributing Co., Inc. (J&M) on August 31, 1976. *Jones and Murtha Distributing Co., Inc.* 4 FEA Par. 80,076 (August 31, 1976). In the August 31, 1976 Decision the FEA granted J&M an exception to the provisions of 10 CFR 211.9 on the grounds that adherence to its based period supplier/purchaser relationship with The Oil Shale Corporation resulted in a serious hardship to the firm. Based upon that determination, the Regional Administrator of FEA Region X was directed to assign J&M a new supplier for all of J&M's base period use of motor gasoline during the months of September, October and November 1976. Texaco's appeal, if granted, would result in the issuance of an order vacating or modifying the previous decision so that Texaco would not be assigned (to supply any portion of J&M's base period use of motor gasoline. In considering the Appeal, the FEA observed that the Regional Administrator for Region X has not yet taken any action pursuant to the provisions of the August 31 Decision. The FEA therefore concluded that Texaco had not been aggrieved by the August 31 Decision and the appeal was accordingly denied.

Varibus Corporation, Gulf States Utilities Company; Beaumont, Tex.; FEA–0776; Fuel Oil

Varibus Corporation (Varibus) and Gulf States Utilities Company (Gulf States) filed a joint Appeal from a Decision and Order which the Federal Energy Administration had issued to Varibus. *Varibus Corp.*, 3 FEA Par. 83,092 (January 30, 1976). In the Decision which it issued, the FEA denied an Application for Exception from the provisions of 10 CFR 212.93 which Varibus had filed concerning its sales of fuel oil to Gulf States. If that exception request had been granted, Varibus, a wholly-owned subsidiary of Gulf States, would have been retroactively relieved of the requirement that the prices which it charged Gulf States for fuel oil sold during the period October 1973 through November 1974 be established in accordance with the Mandatory Petroleum Price Regulations. The Appeal, if granted, would have eliminated or reduced the amount of any possible liability for refunds which Varibus would incur as a result of a compliance action which has been initiated by FEA Region VI. In considering the Appeal, the FEA noted that Gulf States had financed the fuel procurement activities of its subsidiary through direct cash advances to Varibus in the form of interest-bearing loans. Under the terms of two agreements entered into between the firms, Varibus was required to charge Gulf States a price for the fuel oil sold which was equivalent to Varibus' actual cost plus actual overhead including the interest which Varibus remitted to Gulf States. After reviewing the detailed nonproduct cost data which the appellants had submitted, the FEA determined that with the exception of the costs claimed for the interest which Varibus paid to Gulf States, the expenses which Varibus incurred in connection with the fuel procurement activities which it performed on behalf of Gulf States were reasonable and necessary. However, the FEA also concluded that the interest expense which Varibus included in the price of the fuel oil sold to Gulf States did not constitute a legitimate nonproduct cost under the FEA reseller regulations. The FEA observed that Gulf States in turn apparently included this interest in the rates which it charged to its electricity customers through fuel adjustment clauses by reflecting it as a component of the cost of the fuel which was used to generate electricity. At the same time however Gulf States also received the same amount in the form of interest payments from Varibus. In view of the fact that Varibus is a wholly-owned subsidiary of Gulf States, the FEA determined that the net result of these transactions was to effectively reduce the cost to Gulf States of the fuel oil obtained through its subsidiary by the amount of the interest paid to Gulf States by Varibus. The FEA therefore concluded that any failure of Varibus to recover the interest expense as a result of the application of the FEA price regulations to the Gulf States transactions did not constitute a serious hardship or a gross inequity or a showing that the January 30, 1976 Decision was erroneous. The Appeal was accordingly denied.

REQUESTS FOR EXCEPTION

Class Exception—Retroactive Application of Subpart K; FEX–0033; Natural Gas Liquids and Natural Gas Liquid Products

On June 17, 1976, the Federal Energy Administration published a Notice in the Federal Register which stated that the agency was considering the issuance of a Supplemental Order to the Class Exception issued by the Office of Exceptions and Appeals of the FEA on August 29, 1975, *Class Exception—Retroactive Application of Subpart K*, 2 FEA Par. 84,901 (August 29, 1975). See also 41 FR 24609 (June 17, 1976). In the August 29, 1975 Class Exception Decision, the FEA noted that, prior to the January 1, 1975 effective date of 10 CFR, Part 212, Subpart K, the FEA regulations applicable to the pricing of natural gas liquids and natural gas liquid products were set forth in Subpart E of the general price regulations applicable to all "refiners." One of the objectives of the August 29 Class Exception was to eliminate certain inequities which were found to have resulted from the application of Subpart E to the pricing of natural gas liquids and natural gas liquid products prior to the adoption by the FEA of Subpart K. In the June 17, 1976 Notice, the FEA stated that it was considering modifying the August 29 Class Exception determination so as to exclude from the scope of the relief approved those firms which are subject to the jurisdiction of the Federal Power Commission or an equivalent regulatory body. The FEA noted that, in exercising jurisdiction over such firms, those regulatory commissions appear to have taken into account the revenues realized by fully regulated firms from their sales of natural gas liquids and natural gas liquid products in determining the overall revenues necessary to permit

the firms to obtain a specified rate of return. In order to facilitate a full examination of the complex issues involved in the proceeding, the FEA requested any interested parties to submit comments with respect to the proposed Supplemental Order. The FEA also held a public hearing at which oral testimony on the matter was received. After considering the evidence submitted in this proceeding, the FEA concluded that the issuance of the proposed Supplemental Order was not warranted. The FEA found that the price levels charged by the fully regulated firms on May 15, 1973 for natural gas liquids and natural gas liquid products were not distinguishable from the price levels charged on that date by all other members of the class to which exception relief was granted in the August 29 Class Exception. Furthermore, the FEA determined that, in considering natural gas rate-making applications submitted by the fully regulated firms involved in this proceeding, the Federal Power Commission and equivalent regulatory bodies have given and continue to give full weight and consideration to the total revenues received by those firms in their sales to natural gas liquids and natural gas liquid products, including any funds realized as a result of the August 29 Class Exception. Since firms which are fully regulated by the Federal Power Commission or an equivalent regulatory body appear to have been as adversely affected by the application of the provisions of Subpart E of the FEA Regulations to their natural gas processing operations prior to January 1, 1975, as all other firms to which exception relief was provided in the August 29 Class Exception, and since the fully regulated firms cannot derive an undue advantage through the relief provided in that Order, the FEA concluded that any further action with respect to this matter is unnecessary and unwarranted. The FEA therefore dismissed the proposed Supplemental Order proceeding.

Sanford P. Fagadau; Dallas, Tex.; FEE–3164; FEE–3165; Natural Gas Liquids

Sanford P. Fagadau (Fagadau) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Fagadau to increase the selling prices for the natural gas liquids produced at his Bluegrove and Maryetta natural gas processing plants to reflect the non-product cost increases which he actually incurred and which were in excess of the $0.00375 per gallon passthrough for natural gas liquids permitted under Section 212.165. In considering the applications, the FEA noted that as a general rule exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $0.005 per gallon passthrough for natural gas liquid products and the $0.00375 per gallon passthrough for natural gas liquids permitted under Section 212.165. The FEA found that Fagadau had made such a showing with respect to his Bluegrove and Maryetta gas plants and therefore granted Fagadau appropriate exception relief for those plants.

GO-tane Service Stations, Inc.; Forest Park, Ill.; FEE–2958; Motor Gasoline

GO-tane Service Stations, Inc. (GO-tane) filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would have resulted in the issuance of orders assigning GO-tane new, lower-priced suppliers for a portion of the firm's total base period use of gasoline to replace the Clark Oil and Refining Corporation (Clark) and the Martin Oil Service Company (Martin). GO-tane specifically requested that the Skelly Oil Company (Skelly), which is also one of the firm's base period suppliers, be assigned to partially replace Clark and Martin and to supply additional quantities of motor gasoline directly to 14 retail sales outlets which GO-tane purchased from Skelly in September 1972. In considering the application, the FEA determined that contrary to GO-tane's allegations, the price which GO-tane would pay its base period suppliers for motor gasoline is only marginally higher than the average of the prices which the firm's competitors are required to pay to their suppliers. The FEA also found that GO-tane is able to offset the marginally higher price of the gasoline received from Clark and Martin with purchases of lower-priced gasoline from other suppliers. As a result, the weighted average price which GO-tane pays for its motor gasoline supplies is not significantly different from the prices which the firm's competitors pay to their suppliers for motor gasoline. The FEA therefore concluded that GO-tane had failed to establish that the maintenance of its base period supplier/purchaser relationship with Clark and Martin resulted in a serious hardship or gross inequity to GO-tane and the firm's exception application was denied in the form submitted. However, the FEA also found that under the current FEA regulations which become effective June 1, 1974, GO-tane is apparently entitled to receive significantly more motor gasoline from Skelly than the amount established by a May 9, 1974 Adjustment Order which was issued by FEA Region V. Under the current FEA regulations, GO-tane's allocation entitlement for each of the 14 outlets which the firm purchased from Skelly in 1972 should be based on the quantity of motor gasoline which Skelly provided to the outlets in 1972, rather than the quantity in inventory at each of the stations at the time of the acquisition. The FEA therefore permited GO-tane 60 days from the issuance of the Order in which to take any necessary steps to determine the base period volume which it is entitled to receive for each of its retail sales outlets and assert its right to receive those quantities of petroleum products from suppliers pursuant to the FEA Mandatory Petroleum Allocation Regulations.

Louisiana Land and Exploration Co.; New Orleans, La.; Fee–2845; Crude Oil

The Louisiana Land and Exploration Company (LL&E) filed an Application for Exception from the provisions of 10 CFR 211.63 which, if granted, would extend the exception relief which the FEA had approved in three previous Decisions and Orders. *Louisiana Land and Exploration Co.*, 2 FEA Par. 83,339 (October 22, 1975); *Louisiana Land and Exploration Co.*, 3 FEA Par. 80,586 (February 26, 1976); and *Louisiana Land and Exploration Co.*, 4 FEA Par. 87,003 (July 23, 1976). In those Decisions the FEA deemed LL&E to be the purchaser on December 1, 1973 of up to 32,719 barrels per day of crude oil produced for it from the Jay-Little Escambia Creek Field in northwestern Florida and relieved the firm of its obligation under 10 CFR 211.63(b) to sell any of that crude oil to the Exxon Company, U.S.A. This relief was designed to permit LL&E to obtain a sufficient quantity of Jay Field crude oil to enable it to continue operating its newly constructed refinery in Mobile, Alabama. On the basis of financial and operating data which LL&E submitted in support of its present exception request, the FEA determined that the conditions which prevailed at the time of the earlier proceedings continue to exist. The FEA found that LL&E had invested in the construction of its Mobile refinery in justifiable reliance on the assumption that it would be able to use its Jay Field crude oil as a feedstock, and LL&E would lack an adequate and reliable supply of crude oil for that refinery if exception relief were denied. Consequently, the firm's refining operation and its investment could be seriously jeopardized in the foreseeable future. The FEA therefore approved an extension of the exception relief previously granted for the six-month period from September 1, 1976 through February 28, 1977.

Omega Oil Co.; Dayton, Ohio; FEE–2718; Motor Gasoline

Omega Oil Company (Omega) filed an Application for Exception from the provisions of 10 CFR 211.12 which, if granted, would result in the issuance of Orders by the FEA (i) increasing the base period use of motor gasoline to nine retail outlets which Omega currently owns and operates and (ii) assigning new suppliers to furnish the additional gasoline to the stations. The purchase by Omega on April 1, 1976 of the nine stations from the Standard Oil Company of Ohio (Sohio) was, in furtherance of a Consent Decree entered into between Sohio and the U.S. Department of Justice in late 1970. *See United States v. The Standard Oil Co.*, CCH Trade Cases, Par. 72,988 (N.D. Ohio 1970). In its Application, Omega stated that each of the nine retail was outlets being converted from a full service station to a high volume/low markup station and will require a substantially increased base period use of gasoline. In considering Omega's exception application, the FEA determined that the firm had submitted no evidence that the demand for motor gasoline in any of the markets served by the nine retail outlets has increased significantly since the base period or that the current demand for motor gasoline in those market areas is greater than the existing supply. The FEA further concluded that Omega has failed to show how the denial of the exception request would significantly frustrate any of the goals set forth in the Emergency Petroleum Allocation Act of 1973, as amended, or that the firm is currently unable to purchase adequate supplies of surplus motor gasoline for the nine retail outlets. The Omega submission also failed to demonstrate the manner in which the denial of the increased allocations would significantly frustrate or prevent the effectuation of the antitrust objectives embodied in the Consent Decree since under the very terms of the divestiture decree Sohio is required to offer each purchaser an opportunity to enter into supply contracts under which Sohio would provide the outlets with the motor gasoline they currently require. The FEA specifically found that while Sohio had made such an offer, the offer was declined by Omega. The FEA therefore determined that Omega had failed to satisfy any of the criteria which were set forth in prior Decisions as the basis for adjusting a firm's base period use of an allocated petroleum product on gross inequity or serious hardship grounds. Omega's exception application was therefore denied.

Standard Oil Co. (Indiana); Chicago, Ill.; FEE–3166 through FEE–3178; FEE–3216; FEE–3217; Natural Gas Liquids and Products

Standard Oil Company (Indiana) (Amoco) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Amoco to increase the prices it charges to reflect non-product cost increases which the firm has incurred in producing the natural gas liquids and natural gas liquid products at 14 of its natural gas processing plants. In considering the applications, the FEA noted that as a general rule exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially

in excess of the $.005 per gallon passthrough for natural gas liquid products and the $.00375 per gallon passthrough for natural gas liquids permitted under Section 212.165. The FEA found that Amoco had made such a showing with respect to 13 of the 15 gas plants and therefore granted Amoco appropriate exception relief for those plants. However, the FEA denied exception relief for the remaining two plants on the grounds that the adjusted non-product unit cost increase experienced by Amoco with respect to the Levelland and Slaughter plants was not materially in excess of the $.005 per gallon.

Union Oil Co. of California; Los Angeles, Calif.; FEE-3113 through FEE-3129; FEE-3161; FEE-3162; Natural Gas Liquid Products

Union Oil Company of California (Union) filed Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit Union to increase the prices it charges to reflect non-product cost increases which the firm has incurred in producing the natural gas liquid products at 19 of its natural gas processing plants. In considering the applications, the FEA noted that as a general rule exception relief will be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since May 1973 have increased substantially in excess of the $.005 per gallon passthrough for natural gas liquid products and the $.00375 per gallon passthrough for natural gas liquids permitted under Section 212.165. The FEA found that Union had made such a showing with respect to 17 of the 19 gas plants and therefore granted Union appropriate exception relief for those plants. However, the FEA denied exception relief for the remaining two plants on the grounds that the adjusted non-product unit cost increase experienced by Union with respect to the Bakke and Stearns plants was not materially in excess of the $.005 per gallon.

REQUEST FOR STAY

Kerr-McGee Corp.; Oklahoma City, Okla.; FES-0882; Covered Products

The Kerr-McGee Corporation (Kerr-McGee) requested that the application to it of certain provisions of the Mandatory Petroleum Price Regulations be stayed pending a decision on an Appeal which the firm filed with the FHA on July 2, 1976. The stay request relates to the determination of maximum allowable prices for covered products which are produced by Kerr-McGee at the Dubach natural gas processing plant (the Dubach Plant) in which the firm owns a 50 percent interest. The Application for Stay, if granted, would permit Kerr-McGee to compute its increased costs and determine its maximum allowable prices at the Dubach Plant separately from the firm's subsidiaries which sell products refined from crude oil. According to the Kerr-McGee submission, stay relief was warranted since the regulatory provisions which govern the computation of increased costs are ambiguous as applied to the Dubach Plant. In considering the stay request, the FEA determined that Kerr-McGee failed to establish that it would experience an irreparable injury in the absence of a stay. The FEA also found that Kerr-McGee had not established in a compelling manner that it would incur a disproportionate burden unless the stay which it requested were approved since the impact of aggregating increased costs at the Dubach Plant with the costs incurred by its other subsidiaries would have only a minimal effect on its firm-wide prices for gasoline. Moreover, the FEA discerned no compelling public policy reasons in this case which warranted the preservations of the *status quo ante* pending a determination of the Kerr-McGee Appeal. The FEA also noted that, contrary to Kerr-McGee's contention that compliance with FEA regulations was impossible, the data which the firm provided indicated that the consolidation of costs on a firm-wide basis including the Dubach Plant was feasible. Since the FEA concluded that Kerr-McGee had satisfied none of the applicable criteria under Section 205.125(b) for the approval of stay relief, the firm's Application for Stay was denied.

REQUEST FOR MODIFICATION OR RESCISSION

Fletcher Oil and Refining Co.; Wilmington, Calif.; FMR-0065; Crude Oil

On September 9, 1976, Fletcher Oil and Refining Company (Fletcher) filed a Request for Modification of a Decision and Order which was issued to the firm on June 18, 1976. *Fletcher Oil and Ref. Co.*, 3 FEA Par. 83,223 (June 18, 1976). The June 18 Order granted Fletcher an exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program) and thereby relieved the firm of any obligation to purchase entitlements during the three month period June 1 through August 31, 1976. Those entitlement purchase obligations related to Fletcher's receipts of old crude oil and crude oil runs to stills during the final month of the firm's fiscal year ended on April 30, 1976, and the two initial months of its 1977 fiscal year. In its Request for Modification Fletcher contended that it did not receive any entitlement exception relief under the June 18 Order which affected its entitlement position for May and June 1976, the initial two months of its 1977 fiscal year. Fletcher therefore requested that the requirement of the June 18 Order that the firm supply certain financial data with respect to its 1977 fiscal year was unnecessary and should be vacated. Fletcher's contentions were sustained in the Decision which the FEA issued in the matter. The FEA determined that Fletcher apparently did not receive any benefit for the exception relief granted with the initial two months of its 1977 fiscal year. Consequently the June 18 Order was amended to eliminate any requirement that Fletcher submit financial data with respect to its 1977 fiscal year.

SUPPLEMENTAL ORDERS

Linden's Propane, Inc.; Lagrange, Ohio; FEX-0103; Propane

On August 31, 1976, the Federal Energy Administration issued a Decision and Order to Linden's Propane, Inc. (Linden) staying the refund provisions of a July 7, 1976 Remedial Order. *Linden's Propane, Inc.*, 4 FEA Par. 85,018 (August 31, 1976). The Stay was granted, however, on the condition that Linden place the disputed funds into an escrow account pending a final determination on the merits of the Appeal which it had filed from the Remedial Order. The Stay was further conditioned upon the submission by Linden of a copy of the required escrow agreement to the Office of Exceptions and Appeals of the FEA within 15 days of receipt of the August 31 Decision. On the basis of its determination that Linden had failed to comply with the express conditions of the August 31 Order, the FEA concluded that the Stay which was approved on August 31, 1976 should be vacated.

Skelly Oil Co.; Tulsa, Okla.; FEX-0097; Catalyst Coke

On October 14, 1976, the Federal Energy Administration issued a Decision and Order to the Skelly Oil Company (Skelly) staying the refund provisions of a September 1, 1976 Remedial Order. *Skelly Oil Co.*, 4 FEA Par. 85,027 (October 14, 1976). The Stay was granted, however, on the condition that Skelly place the disputed funds into an escrow account pending a final determination on the merits of the Appeal which it had filed from the Remedial Order. The Stay was further conditioned upon the submission by Skelly of a copy of the required escrow agreement to the Office of Exceptions and Appeals of the FEA within 15 days of receipt of the October 14 Decision. On the basis of its determination that Skelly had failed to comply with the express conditions of the October 14 Order, the FEA concluded that the Stay which was approved on October 14, 1976 should be vacated.

DISMISSALS

The following submission was dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

State of Alaska; Juneau, Alaska; FEA-0988

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

DAVID G. WILSON,
Acting General Counsel.

JANUARY 21, 1977.

[FR Doc.77-2572 Filed 1-21-77;4:25 pm]

REPORT OF OIL IMPORTS INTO THE UNITED STATES AND PUERTO RICO

Availability of Form

Notice is hereby given that the Federal Energy Administration ("FEA") has available Form FEA P113-M-0 (Report of Oil Imports into the United States and Puerto Rico) and has mailed the form to approximately 700 firms which meet the reporting requirements for this survey.

All companies, including subsidiary or affiliated companies, which import crude oil, unfinished oils and/or finished petroleum products into the United States and Puerto Rico are required to file the FEA P113-M-0 each month beginning with January 1977.

The FEA P113-M-0 will collect data on petroleum imports of crude oil for processing, unfinished oils, finished petroleum products, and residual fuel oil including crude oil to be burned as fuel. A breakdown of imports is required for residual fuel oil imported for sale or consumption in the East Coast Refining District.

The FEA P113-M-0 must be completed and submitted in triplicate not later than 15 working days after the end of each report month. The first report is due at FEA by February 21, 1977, for January 1977 data.

Questions or requests for assistance in completing the FEA P113-M-0 as well as requests for copies of the form, may be referred by mail to the Federal Energy

Administration, Code 2885, Washington, D.C. 20461, or by telephone to FEA at 202/254-8450.

Issued in Washington, D.C., January 21, 1977.

DAVID G. WILSON,
Acting General Counsel.

[FR Doc.77-2472 Filed 1-21-77;2:00 pm]

STRATEGIC PETROLEUM RESERVE; COTE BLANCHE SALT MINE STORAGE SITE

Availability of Final Site-Specific Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C), the Federal Energy Administration (FEA) has prepared a final site-specific environmental impact statement (EIS) for the Cote Blanche salt mine site, one of five storage sites that is being considered for the creation of a Strategic Petroleum Reserve. The Reserve is mandated by Part B of Title I, Energy Policy and Conservation Act, 42 U.S.C. 6231-6242. The Reserve will be created for the storage of approximately 500 million barrels of crude oil and/or petroleum products for use in the event of a Presidential determination of a severe energy supply interruption or a requirement to meet the obligations of the United States under the International Energy Program.

The Cote Blanche salt mine site is located in St. Mary Parish, Louisiana. This site is currently under consideration for use in the Early Storage Reserve, i.e., for the first 150 million barrels of storage capacity. The final Cote Blanche EIS (FES-76/77-7) includes comments received by FEA on the draft EIS for the Cote Blanche site (DES-76-7) and FEA analyses and responses to those comments.

Single copies of the final Cote Blanche EIS may be obtained from the FEA Office of Communications and Public Affairs, Room 3138, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461. Copies of the final Cote Blanche EIS will also be available for public review in the FEA Information Access Reading Room, Room 2107, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, between 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Interested persons are invited to submit data, views or arguments with respect to the final Cote Blanche EIS to Executive Communications, Box KN, Room 3309, Federal Energy Administration, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on the document submitted to FEA Executive Communications with the designation, "Final Cote Blanche EIS." Fifteen copies should be submitted. All comments should be received by FEA by February 18, 1977, in order to receive full consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Issued in Washington, D.C., January 21, 1977.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-2470 Filed 1-21-77;1:59 pm]

Environmental Impact Statement

STRATEGIC PETROLEUM RESERVE; WEEKS ISLAND SALT MINE STORAGE SITE

Availability of Final Site-Specific Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C), the Federal Energy Administration (FEA) has prepared a final site-specific environmental impact statement (EIS) for the Weeks Island salt mine site, one of five storage sites that is being considered for the creation of a Strategic Petroleum Reserve. The Reserve is mandated by Part B of Title I, Energy Policy and Conservation Act, 42 U.S.C., sections 6231-6242. The Reserve will be created for the storage of approximately 500 million barrels of crude oil and/or petroleum products for use in the event of a Presidential determination of a severe energy supply interruption or a requirement to meet the obligations of the United States under the International Energy Program.

The Weeks Island salt mine site is located in Iberia Parish, Louisiana. This site is currently under consideration for use in the Early Storage Reserve, i.e., for the first 150 million barrels of storage capacity. The final Weeks Island EIS (FES-76/77-8) includes comments received by FEA on the draft EIS for the Weeks Island site (DES-76-8) and FEA analyses and responses to those comments.

Single copies of the final Weeks Island EIS may be obtained from the FEA Office of Communications and Public Affairs, Room 3138, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461. Copies of the final Weeks Island EIS will also be available for public review in the FEA Information Access Reading Room, Room 2107, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, between 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Interested persons are invited to submit data, views or arguments with respect to the final Weeks Island EIS to Executive Communications, Box KM, Room 3309, Federal Energy Administration, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on the document submitted to FEA Executive Communications with the designation, "Final Weeks Island EIS." Fifteen copies should be submitted. All comments should be received by FEA by February 18, 1977, in order to receive full consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Issued in Washington, D.C., January 21, 1977.

DAVID G. WILSON,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-2471 Filed 1-21-77;1:59 pm]

FEDERAL POWER COMMISSION

[Docket No. CP77-114]

ARKANSAS OKLAHOMA GAS CORP. ET AL.

Shortening of Notice Period

JANUARY 13, 1977.

On January 4, 1977, Arkansas Oklahoma Gas Corporation, Mississippi River Transmission Corporation, and Arkansas Louisiana Gas Company (Applicants) filed an abbreviated joint application for a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act. In the application, Applicants request that the Commission utilize the shortened procedure pursuant to Section 1.32 of the Commission's Rules.

Notice of the application was issued on January 11, 1977, setting February 1, 1977, as the last date for filing protests or petitions to intervene. In order to expedite consideration of the subject application, notice is hereby given that the period for filing protests and petitions to intervene in this proceeding is shortened to and including January 25, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2427 Filed 1-25-77;8:45 am]

[Docket No. CS75-379]

BENSON-MONTIN-GREER DRILLING CORP.

Notice of Petition for Waiver

JANUARY 14, 1977.

Take notice that Benson-Montin-Greer Drilling Corporation (BMG), (petitioner), 221 Petroleum Center Building, Farmington, New Mexico, filed a petition for waiver of Section 157.40(c) of the Commission's Rules of Practice and Procedure. Applicant requests waiver of Section 157.40(c) to enable it to sell under its small producer certificate in Docket No. CS75-379 natural gas produced from certain properties in Carbon County, Wyoming which it has acquired from Amoco Production Company (Amoco) and Phillips Petroleum Company (Phillips). BMG is willing to accept a condition which would limit its rate for production attributable to the interests acquired from Amoco and Phillips to the applicable large-producer ceiling rate.

BMG has recently drilled and completed a new well on the properties which it acquired under the December 5, 1975 agreement. BMG proposes to sell to

Western under its small producer certificate in Docket No. CS75-379 the gas production attributable to the interests which it acquired from Amoco and Phillips. Such gas will be sold at the applicable national ceiling rate established by the Commission in Opinion Nos. 770 and 770-A.

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.77-2423 Filed 1-25-77;8:45 am]

[Docket No. CP77-118]

COLUMBIA GAS TRANSMISSION CORP. AND COLUMBIA GULF TRANSMISSION CO.

Notice of Application

JANUARY 14, 1977.

Take notice that on January 6, 1977, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP77-118 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Columbia Transmission and Columbia Gulf to transport up to 1,500 Mcf of natural gas per day for General Electric Company (GE), 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 Columbia Gulf would receive up to 1,500 Mcf of natural gas per day at Erath, Vermilion Parish, Louisiana, from Texas Gas Transmission Corporation (Texas Gas) through existing facilities at the tailgate of Texaco's Henry plant and would redeliver such volumes to Columbia Transmission for GE's account in Boyd County, Kentucky, at an existing point of receipt. Columbia Transmission, it is further stated, would transport and redeliver such gas for GE's account to Baltimore Gas and Electric Company (BG&E) at existing points of delivery located near Baltimore, Maryland.

It is asserted that Columbia Gulf's charge for this transportation service would be 29.34 cents per Mcf, and Columbia Gulf would retain for company-use and unaccounted-for gas 2.5 percent of the total volume of gas delivered into its system. It is further asserted that Columbia Transmission would charge 22.21 cents per Mcf and would retain for company-use and unaccounted-for gas 3.1 percent of the total volume of gas delivered into its system by Columbia Gulf. It is also asserted that the transportation obligations of Columbia Gulf and Columbia Transmission would be subject to the limits of their pipeline capacity and customer service obligations.

It is stated that BG&E has notified GE that no gas would be available for its interruptible customers; hence, GE has acquired the option to purchase sellers' interests under certain leases from Texas Crude, Inc. (Texas Crude) and other owners in the Blue Buck Point gas field in Cameron Parish, Louisiana, for a period commensurate with the productive life of the reserves purchased, a period of not less than ten years. It is further stated that the gas to be transported is to be used for Priority 2 and 3 uses at GE's Columbia, Maryland, plant for drycoaters, pickledryers, enamel dryers, counterflow enamel furnaces, phosphate ovens, paint bake ovens, air make-up systems, and one salt bath unit.

Texas Crude states that unless the sale in place of the Blue Buck Point gas reserves to GE is consummated, such reserves would be sold to intrastate gas purchasers.

It is stated that the transportation and delivery of natural gas by Columbia Transmission is dependent upon the ability of BG&E to receive such gas and redeliver it to GE. It is further asserted that the gas transportation agreement between Columbia Gulf and Columbia Transmission and GE is for a term of ten years or until BG&E terminates its agreement to receive the transported gas for the account of GE, whichever first occurs.

Any person desiring to be heard or to make any protest with reference to said application 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) 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 Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary

[FR Doc.77-2424 Filed 1-25-77;8:45 am]

[Docket No. ER76-301]

PENNSYLVANIA ELECTRIC CO.

Order Adopting Settlement

JANUARY 14, 1977.

By order issued December 24, 1975, we accepted Pennsylvania Electric Company's (Penelec) filing of November 26, 1975, and suspended the proposed tariff for two months until February 26, 1976. A pre-hearing conference was held on January 19, 1976, and Staff served its cost of service "top sheets" on August 20, 1976. A settlement conference held between Penelec and the intervenors in this docket on September 16, 1976, resulted in an uncontested settlement agreement which was certificated to us by the Administrative Law Judge on November 15, 1976.

Based on our review of the record in these proceedings, including the settlement agreement itself, the filings, documents and pleadings submitted, 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 certified by the Presiding Judge to the Commission in this docket, should be approved and made effective, as hereinafter ordered.

The Commission orders: (A) The settlement agreement certified by the Presiding Judge in this docket on November 15, 1976, is hereby approved and made effective, and is incorporated herein by reference.

(B) Within 30 days from the date of this order, Penelec shall file with the Commission revised tariff sheets in conformance with the settlement agreement.

(C) Within 30 days after the settlement tariff sheets are accepted for filing, Penelec shall refund amounts collected in excess of the settlement rates based on service rendered after February 25, 1976, together with simple interest computed at 9 percent per annum.

(D) Within 15 days after refunds have been made, Penelec shall file with the Commission a compliance report showing monthly billing determinants and revenues under prior, present and settlement rates; monthly settlement rate increase, monthly rate refund and the

monthly interest computation together with a summary of such information for the total refund period. 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.

(E) This order is without prejudice to any filings or orders which have been made or which will hereafter 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 Penelec or any person or party.

(F) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2422 Filed 1-25-77;8:45 am]

[Docket No. ER76-678]

MAINE ELECTRIC POWER CO.

Order Granting Late Interveniton

JANUARY 14, 1977.

On December 7, 1976, Boston Edison Company, Fitchburg Gas and Electric Light Company, Montaup Electric Company, Newport Electric Corporation, Public Service Company of New Hampshire and Vermont Electric Power Company (the "Petitioners") filed an untimely petition to intervene in the instant proceeding. For the reasons set forth hereinafter the Commission will grant this petition to intervene.

The Petitioners, each a New England utility, have entitlements in power purchased by Maine Electric Power Company (MEPCO) from the New Brunswick Electric Power Commission (New Brunswick). The pertinent contracts, each of which has been filed in this docket, consist of a Unit Participation Agreement dated November 14, 1971 ("Participation Agreement") under which MEPCO buys the power from New Brunswick, and a Power Purchase and Transmission Agreement dated December 1, 1971, ("Purchase Agreement") under which twenty-two New England Utilities, including the Petitioners, buy the power from MEPCO.

By order issued September 15, 1976, the Commission, inter alia, instituted an investigation and hearing regarding the aforementioned agreements. By motion dated November 4, 1976, New England Power Company (NEP) requested that the Presiding Administrative Law Judge proceed to establish procedural dates regarding the aforementioned investigation and hearing to determine appropriate conditions, if any, to be imposed by the Commission upon the importation by MEPCO of power from New Brunswick and upon resale of such power to purchasers under the Power Purchase and Transmission Agreement.

As purchasers under the Power Purchase and Transmission Agreement, the Petitioners state that they will be directly and substantially affected by the Commission's imposition of any condition upon the importation and resale by MEPCO of New Brunswick Power. The Petitioners also state that they became aware that an active effort has been undertaken to impose conditions on the importation of New Brunswick Power only upon receipt of NEP's motion of November 4, 1976. In addition, Petitioners urge that their interests cannot be adequately represented by any of the existing parties and that they may be bound by the Commission's action in this proceeding. The Petitioners assert that they value the interconnection between New England and Eastern Canada as beneficial to each region and desire to see the benefits continued and enlarged. They express concern that if NEP were to obtain the relief it seeks, cooperative Canadian-American endeavor in the electric industry would be severely set back.

Pursuant to a formal Prehearing Conference held on November 9, 1976, in this docket, the Presiding Administrative Law Judge issued a notice dated November 11, 1976, of the contents of NEP's motion to all the signatory parties to the Power Purchase and Transmission Agreement in order to give these parties the opportunity to take such action as they deemed appropriate. A similar notice was published by the Commission in the FEDERAL REGISTER on November 24, 1976.

In light of the foregoing, the Commission concludes that the Petitioners should be permitted to intervene in this proceeding.

The Commission finds: Participation in this proceeding by the Petitioners is in the public interest.

The Commission orders: (A) The Petitioners are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That participation of these companies shall be limited to matters affecting asserted rights and interests as specifically set forth in their petition to intervene; and *Provided, further,* That the admission of these companies shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The intervention granted herein shall not be the basis for delaying or deferring any procedural schedules heretofore established for the orderly and expeditious disposition of this proceeding.

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

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2428 Filed 1-25-77;8:45 am]

[Docket No. E-9530]

PYRAMID LAKE PAIUTE TRIBE OF INDIANS v. SIERRA PACIFIC POWER CO.

Order Providing for Hearing

JANUARY 14, 1977.

On July 1, 1975, the Pyramid Lake Paiute Tribe of Indians (Tribe), through its attorneys, filed a complaint and petition for declaratory order (complaint) respecting four unlicensed hydroelectric projects[1] owned and operated by Sierra Pacific Power Company (Sierra Pacific) on the Truckee River in California and Nevada. The Tribe requests that an order be issued declaring that the operation of the projects is illegal and that Sierra Pacific be ordered to cease operation of the projects until each is licensed by the FPC.

The Tribe alleges that the Floriston Rates[2] were designed to meet the power requirements of Sierra Pacific's four plants. By requiring Sierra Pacific to cease operation of these plants, the Tribe claims that the flow in the Truckee River would be more beneficial to the needs and the requirements of the Tribe for the maintenance and preservation of the Pyramid Lake and Truckee River fisheries.

On October 14, 1975, Sierra Pacific filed a motion to dismiss the complaint and answer. Sierra Pacific claims that licenses are not required for the continued operation and maintenance of the projects. Alternatively, Sierra Pacific requests that if licenses are necessary for the projects that their continued operation be allowed.

Sierra Pacific argues that the complaint should be dismissed because the Tribe is seeking to assert water rights in the Truckee. Sierra Pacific alleges that the Tribe has not shown a reasonable nexus between the water and treaty rights and the licensing of the four hydroelectric plants. Sierra Pacific also argues that the Tribe is barred by the doctrine of laches from bringing complaint, because the Tribe has delayed filing its complaint without justification. Sierra Pacific further claims that the Federal Power Act (Act) does not require it to obtain a license for the continued operation of the plants, because none of the provisions of the Act is applicable. Sierra Pacific alleges that the Truckee River is not navigable.

On December 1, 1975, the Tribe filed a response to Sierra Pacific's motion and answer.

There appears to be a question among the parties as to whether or not the Truckee River is a navigable waterway of the United States as defined by Section 3(8) of the Act.[3] Because we do not have

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[1] The four projects are the Farad Plant near Farad, California; the Fleish and Verdi Plants near Verdi, Nevada; and the Washoe Plant near Mogul, Nevada.

[2] Floriston Rates are the rate of flow in the Truckee River at the head of the diversion penstock at Floriston, California, as measured at the Iceland Gage.

[3] 16 U.S.C. § 796(8).

a factual record before us, we believe that a hearing should be held to determine if the Truckee River is navigable and thus if the Farad, Fleish, Verdi, and Washoe plants are within our licensing jurisdiction. Of course, the parties and Commission staff will not be limited to asserting jurisdiction based solely on navigation, but may rely on any other basis that may be appropriate. Concerning the request of the Tribe that we order Sierra Pacific to cease operating the projects, it would not be appropriate for us to do so because we have not determined that the projects are within our licensing jurisdiction. The hearing that we are providing for by this order will be limited to the issue of Commission jurisdiction over the four plants.

The doctrine of laches does not bar the Tribe from bringing the complaint nor the Commission from instituting any action. The Supreme Court stated that where a governmental interest is held in trust for the public, the public is not to be deprived of that interest by laches. *U.S.* v. *California*, 332 U.S. 19, 39, 40 (1974). Congress has given to the Commission the responsibility of protecting our national resources for the public interest in developing hydroelectric power. *First Iowa Hydro-Electric Cooperative* v. *FPC*, 328 U.S. 152 (1946). The complaint is based on a governmental interest, unauthorized use of our navigable waterways, that is held in trust for the public.

As noted above, Sierra Pacific argues that the Tribe is attempting to use the Commission as a forum for determining treaty and water rights. The Tribe denies this assertion in its answer. While issues such as minimum flows and fish facilities may have a relationship to treaty and water rights, these issues are also relevant to a licensing proceeding.

Public notice of the complaint was given on August 5, 1975. On September 2, 1975, a notice of intervention was filed by the Public Service Commission of Nevada. On October 3 and 14, 1975, petitions to intervene were filed by the Secretary of the Interior and the State of Nevada, respectively. The petitions were granted by order issued November 19, 1975. On August 25, 1975, a letter of protest was filed by the John Webster Brown Civil and Structural Engineers, Inc.

The Commission finds: (1) It is appropriate and in the public interest for the purposes of the Federal Power Act that a hearing be held, as hereinafter provided, on the issue of whether the Farad, Verdi, Fleish, and Washoe plants owned and operated by Sierra Pacific Power Company are within our licensing jurisdiction.

(2) It is appropriate and in the public interest to dismiss all other requests not specifically ruled upon in this order.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly Sections 4 (e), 4(g), and 23(b) thereof, and the Commission's Rules of Practice and Procedure, an initial conference shall be held at 9:30 a.m. on February 23, 1977, in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. respecting jurisdiction of the unlicensed hydroelectric projects on the Truckee River owned and operated by Sierra Pacific Power Company.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to Section 3.5(d) of the Commission's Regulations, 18 CFR § 3.5 (d) (1976), shall preside at the hearing in this proceeding, with authority to establish and change all procedural dates and to rule on all motions with the exceptions of petitions to intervene motions to consolidate and sever, and motions to dismiss, as provided for in the Commission's Rules of Practice and Procedure.

(C) The Commission's Rules of Practice and Procedure shall apply in this proceeding except to the extent that they are modified and supplemented herein.

(D) All requests not specifically ruled upon are hereby denied.

(E) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2421 Filed 1-25-77;8:45 am]

[Docket No. CI76-754]

TENNECO EXPLORATION, LTD.

Notice of Application for Optional Procedure Certification

JANUARY 14, 1977.

Take notice that on November 18, 1976, Tenneco Exploration, Ltd. filed an amendment to its September 3, 1976 application for a certificate of public convenience and necessity filed pursuant to Section 2.56a of the Commission's General Policy and Interpretations. Tenneco Exploration, Ltd. requests certification under Section 2.75 for natural gas produced 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. In addition, Tenneco Exploration, Ltd. seeks pre-granted abandonment authorization, effective at the conclusion of its current 15-year sales contract.

The subject gas will be produced by Tenneco Exploration, Ltd. and sold to Tenneco Oil Company for resale to Tennessee Gas Pipeline Company.

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.77-2426 Filed 1-25-77;8:45 am]

[Docket No. CI76-755]

TENNECO EXPLORATION II, LTD.

Notice of Application for Optional Procedure Certification

JANUARY 14, 1977.

Take notice that on November 18, 1976, Tenneco Exploration II, Ltd. (Exploration II) filed an amendment to its September 3, 1976 application for a certificate of public convenience and necessity filed pursuant to Section 2.56a of the Commission's General Policy and Interpretations. Exploration II requests certification under Section 2.75 for natural gas produced from Eugene Island Block 367, offshore Louisiana, at an initial rate of $2.8037 per Mcf at the end of each contract year. In addition, Exploration II seeks pre-granted abandonment authorization, effective at the conclusion of its current 15-year sales contract.

The subject gas will be produced by Exploration II and sold to Tenneco Oil Company for resale to Tennessee Gas Pipeline Company.

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. PLUM,
Secretary.

[FR Doc.77-2425 Filed 1-25-77;8:45 am]

[Docket No. CP77-123]

ALABAMA-TENNESSEE NATURAL GAS CO.

Application

JANUARY 21, 1977.

Take notice that on January 14, 1977, Alabama-Tennessee Natural Gas Company (Applicant), P.O. Box 918, Florence, Alabama 35630, filed in Docket No. CP77-123 an application pursuant to section 7

(c) of the Natural Gas Act and § 2.79 of the Commission's general policy and interpretations (18 CFR 2.79), for a certificate of public convenience and necessity authorizing the transportation of natural gas on an interruptible basis on behalf of Fruehauf Corporation (Fruehauf), 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 Fruehauf up to 1,800 Mcf of gas per day for use at Fruehauf's Decatur, Alabama, facilities for a period of two years from the date delivery commences.

It is stated that the transportation service is required by Fruehauf to offset curtailments from its supplier, City of Decatur Gas Utility Company (Decatur), which has advised Fruehauf that it anticipates no gas would be available to Fruehauf during the winter months and that there would be severe curtailments during the summer months.

It is stated that the gas to be purchased by Fruehauf and transported by Applicant would be produced from wells wholly owned by Fruekel, the energy subsidiary of Fruehauf, in Tuscarawas and Guernsey Counties, Ohio. It is stated that Fruehauf proposes to have said quantities of natural gas delivered to Applicant by Tennessee Gas Pipeline Company (Tennessee) via Columbia Gas Transmission Company (Columbia) at Tennessee's Barton Sales Delivery Point located in Colbert County, Alabama. Applicant further states that it would transport and deliver such gas to Decatur for the account of Fruehauf at its existing Decatur Sales Delivery Point located in Morgan County, Alabama, to the extent operating conditions permit. It is stated that such deliveries would be made through existing facilities, and Applicant anticipates having available capacity due to curtailments resulting from a supply deficiency on the system of Tennessee, its sole supplier.

Applicant states that its transportation charge for this service would be 12.78 cents per Mcf.

Applicant asserts that it did not consider the subject natural gas supply available for purchase because the well or wells from which the gas to be transported is produced have been exclusively dedicated to Fruekel.

Fruehauf states that the gas to be transported and delivered by Applicant would be used for Priority 2 industrial uses to replace volumes being curtailed by its suppliers, Decatur and Applicant. This curtailment, it is stated, would not only occasion economic hardship in Decatur, where Fruehauf, as one of the city's largest employers, employs 525 people and in 1975 had a total payroll of $3,117,412, but would also adversely affect the manufacturing of transportation equipment and its component parts. It is further stated that a curtailment or shutdown of Fruehauf's Decatur plants would affect 16 other Fruehauf plants in the United States and Canada resulting in employee layoffs and plant shutdowns. It is further asserted that Alumex Corporation which obtains aluminum siding from Fruehauf's Sheet Mill would be adversely affected.

Any person desiring to be heard or to make 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 and 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 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 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.77-2417 Filed 1-25-77;8:45 am]

[Docket No. RP-73-77 (PGA77-4)]

ALABAMA-TENNESSEE NATURAL GAS CO.

Proposed PGA Rate Adjustment

JANUARY 17, 1977.

Take notice that on December 30, 1976, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35630, tendered for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, Twentieth Revised Sheet No. 3-A. This revised tariff sheet is proposed to become effective as of February 1, 1977.

Alabama-Tennessee states that the sole purpose of such revised tariff sheet is to adjust Alabama-Tennessee's rates pursuant to the PGA provisions of Section 20 of the General Terms and Conditions of its tariff to reflect increased rates to become effective on February 1, 1977, to be charged by its sole supplier, Tennessee Gas Pipeline.

The revised tariff sheet provides for the following rates:

Rate schedule:	*20th revised sheet No. 3-A*
G-1:	
Demand	$1.78
Commodity (cents)	111.47
SG-1: Commodity (cents)	124.47
I-1: Commodity (cents)	117.32

Alabama-Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected State regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, 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 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.77-2441 Filed 1-25-77;8:45 a.m.]

[Docket No. ER77-139]

AMERICAN ELECTRIC POWER SERVICE CORP.

Changes in Rates and Charges

JANUARY 18, 1977.

Take notice that American Electric Power Service Corporation (AEP) on January 10, 1977, tendered for filing on behalf of its affiliate, Ohio Power Company (Ohio), Modification No. 8 dated January 1, 1977 to the Operating Agreement dated June 14, 1962, between Ohio and The Cleveland Electric Illuminating Company, designated Ohio Rate Schedule FPC No. 31.

Section 1 of Modification No. 8 provides for an increase in the Demand Charge for Short Term Power from $0.50 to $0.60 per kilowatt per week and section 3 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. 8 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 4 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 3, 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 The Cleveland Electric Illuminating Company and the Public Utilities Commission of Ohio.

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 February 2, 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.77-2445 Filed 1-25-77;8:45 a.m.]

[Docket No. CP66-235]

ATLANTIC SEABOARD CORP.

Petition for Declaratory Order

JANUARY 18, 1977.

Take notice that on December 28, 1976, Columbia Gas Transmission Corporation (Columbia) as successor to Atlantic Seaboard Corporation (Seaboard), 1700 MacCorkle Avenue, S.E. Charleston, West Virginia 25314, filed in Docket No. CP66-235 a petition pursuant to section 16 of the Natural Gas Act and § 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 157.7(c)) for a declaratory order to remove the uncertainty of whether or not Columbia must first secure regulatory approval, specifically, a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act, for future replacements of its 20-inch gas transmission pipeline extending from Flat Top, West Virginia, to Dranesville, Virginia, with like size minimum wall thickness pipe, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Columbia states that on February 20, 1964, representatives of Seaboard met with members of the Commission's Staff for discussion relative to the replacement of Seaboard's 20-inch gas transmission pipeline with like size minimum wall thickness pipe from West Virginia to the Pennsylvania state line, and from this discussion, Seaboard's representatives concluded that the planned replacements of Seaboard's 35-year old 20-inch pipeline would come within the purview of § 2.55(b) of the Commission's Rules of Practice and Procedure (18 CFR 2.55 (b)). Columbia further states that relying upon this conclusion, Seaboard made two replacements: in 1964, 34 miles of 20-inch pipeline between Covington and Lexington, Virginia, were replaced with like diameter pipe; and in 1965, approximately 35 miles of 20-inch pipeline between Waynesboro and Bickers, Virginia, were replaced with like diameter pipe.

It is stated that the Commission's Order to Show Cause in Docket No. CP66-235 issued January 25, 1966 (35 FPC 146), questioned these replacements under Section 2.55(b) of the Commission's Rules and Regulations; which proceeding was terminated by Commission order issued September 13, 1967, in Docket Nos. CP67-167 and CP66-235 (38 FPC 597). Further, it is stated that subsequent replacements have been made pursuant to Commission authorization as follows:

(1) In 1968, 21.5 miles were replaced as authorized in Docket No. CP67-167 (38 FPC 597).

(2) In 1969, 58.0 miles were replaced as authorized in Docket No. CP69-106 (41 FPC 262).

(3) In 1976, 3.7 miles in two sections of 3.1 miles and 0.6 mile, respectively, were replaced as authorized in Docket No. CP76-239 (56 FPC ---------).

Columbia states that the replacements made in 1964, 1965, 1968 and 1969 were part of a planned program to replace the pipeline in systematic large sections, as delineated in the Commission's Show Cause Order in Docket No. CP66-235 (35 FPC 146), so as to increase capacity for its eastern markets, but the replacement program was abandoned in 1970 because of a shortage of gas supply. It is further stated that since 1972 Columbia has had a moratorium on additional sales; the replacement made in 1976 was made because of the condition of the pipe. Columbia asserts that future replacements on this 20-inch pipeline would be made only as required to meet DOT Regulations, class location changes or the condition of the pipe as there is presently no need for increased pipeline capacity.

Columbia states that it could continue to replace small sections of its 20-inch pipeline subsequent to obtaining a certificate of public convenience and necessity from the Commission but finds this method has limited flexibility in effecting minor replacements because of the lead time required to prepare the necessary filings and receive Commission authority. It further states that frequently once the overburden is removed and the pipeline exposed, a different section or length of pipeline is determined to need replacement, thereby requiring further amendment of the originally issued certificate of public convenience and necessity.

Accordingly, Columbia submits, that in view of the foregoing discussion, it would be beneficial and in the public interest for Columbia to possess the flexibility inherent in § 2.55(b) of the Commission's Rules and Regulations in order to effectuate the type replacements contemplated on its 20-inch gas transmission pipeline. It states that the Commission might wish to condition such order to provide for reporting replacement sections at the end of each construction year.

Columbia, therefore, proposes that the Commission issue a Declaratory Order removing any uncertainty as to the availability of § 2.55(b) of the Commission's Rules of Practice and Procedure for future replacement of its 20-inch gas transmission pipeline.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 8, 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2483 Filed 1-25-77;8:45 am]

[Docket No. RI77-21]

BETTIS, BOYLE AND STOVALL (OPERATOR), ET AL.

Petition for Special Relief

JANUARY 17, 1977.

Take notice that on December 29, 1976, Bettis, Boyle and Stovall (Operator), et al., P.O. Box 1168, Graham, Texas 76046, filed a petition for special relief in Docket No. RI77-21 pursuant to Commission Order No. 481.

Petitioner seeks authorization to charge $1.10 per Mcf for the sale of gas to Cities Service Gas Company from a number of leases in the Northwest Knowles Field, Beaver County, Oklahoma. Petitioner states that it has undergone extensive rework of the wells and gathering system pertaining to the wells in the aforesaid leases. Petitioner further states that unless the requested increase is granted, abandonment is imminent. The subject gas is currently being sold at 35 cents per Mcf.

Any person desiring to be heard or to make any protest with reference to said petition 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). 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.77-2499 Filed 1-25-77;8:45 am]

[Docket No. CP77-124]

COLUMBIA GAS TRANSMISSION CORP.

Application

JANUARY 21, 1977.

Take notice that on January 18, 1976, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP77-124 an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's general policy and interpretations (18 CFR 2.79), for a certificate of public convenience and necessity authorizing the transportation of natural gas on an interruptible basis on behalf of Jones & Laughlin Steel Corporation (J&L); 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 J&L up to 2,000 Mcf of gas per day for an initial two-year term, commencing on the first day of delivery, for use at J&L's Aliquippa, Pennsylvania, steel plant in order to minimize the economic impact of curtailments by Applicant.

It is stated that Applicant would receive such natural gas into its Line C-106 in Warren Township, Washington County, Ohio, at a specific point to be mutually agreed upon and would deliver it to Columbia Gas of Pennsylvania, Inc. (Columbia Pennsylvania) at existing points of delivery in Beaver County, Pennsylvania. Applicant states that it would charge J&L 22.21 cents per Mcf for this transportation service and would retain for company-use and unaccounted-for gas 3.1 percent of the volumes received for the account of J&L. Applicant further states that all receipts and deliveries would be effectuated by means of existing facilities, and such transportation service would be subject to the limits of its pipeline capacity and to its service obligations to its CD, WS, SGES, G and SGS customers.

It is asserted that J&L has contracted with David S. Towner dba David S. Towner Enterprises (Towner) to purchase such gas produced from leases in Washington County, Ohio, for a primary term commencing with the first day of delivery and ending on April 30, 1978, with an option to extend the contract through April 30, 1980. Further, it is asserted that J&L would pay Towner $2.30 per Mcf through April 30, 1977, $2.30 per Mcf from May 1 through October 31, 1977, and $2.40 per Mcf from November 1, 1977, through April 30, 1978.

It is stated that J&L's Aliquippa plant, where such gas would be used for Priority 2 or Priority 3 industrial uses, manufacturers steel products in the form of hot and cold rolled and coated sheets and strip, hot rolled and cold finished bars, tubular products, light plates, structural shapes, tin mill products and rod wire products. It is further stated that J&L employs approximately 11,000 people in the Aliquippa plant and has a yearly payroll of approximately $150,000,000, and that a curtailment would have a domino like impact within the plant and throughout Beaver County, Pennsylvania, where it is the largest employer.

Applicant states that it did not consider the subject gas supply available for purchase because the intrastate market is available and marginal gas reserves such as these cannot be developed for the regulated interstate market because of the high cost of development.

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.77-2416 Filed 1-25-77;8:45 am]

[Docket No. ER77-142]

CONNECTICUT LIGHT AND POWER CO.

Purchase Agreement

JANUARY 18, 1977.

Take notice that on January 10, 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) Mansfield Municipal Electric Department (MMED).

CL&P states that the Purchase Agreement provides for a sale to MMED 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 MMED'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 MMED 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 that, in order to permit MMED to receive urgently needed capacity, and in order to allow CL&P and HELCO to receive payment for such capacity, the Commission, pursuant to Section 35.11 of its regulations, waive the thirty-day notice period and permit the rate schedule filed 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 MMED is entitled to receive, reduced to give due recognition of the payments made by MMED for transmission services on intervening systems, and the variable maintenance charge was arrived at through negotiations.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut; HELCO, Hartford, Connecticut; and MMED, Mansfield, 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, 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 February 1, 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.77-2446 Filed 1-25-77;8:45 am]

[Docket No. RP77-7]

CONSOLIDATED GAS SUPPLY CORP.

Proposed Changes in FPC Gas Tariff

JANUARY 14, 1977.

Take notice that Consolidated Gas Supply Corporation (Consolidated) on December 30, 1976 tendered for filing

Twentieth Revised Sheet Nos. 8 and 9 to its FPC Gas Tariff, Second Revised Volume No. 1 to be effective February 1, 1977.

Consolidated states the purpose of this filing is to request that a portion of its general rate increase at Docket No. RP77–7 become effective for the period February 1, 1977 through April 30, 1977 when, after suspension, the increase in Docket No. RP77–7 will become effective.

In its general rate increase, Consolidated demonstrated that among the reasons for the rate change, was a rate filing of Transcontinental Gas Pipe Line Corporation (Transco) at Docket No. RP76–136 who, along with selling natural gas, renders a transportation service to Consolidated. Transco's increase was suspended by the Commission until February 1, 1977. Consolidated states that an increase filed by Columbia Gas Transmission Company (Columbia Gulf) at Docket Nos. RP76–94 and RP76–138, which became effective November 1, 1976, was inadvertently overlooked and has been included herein. Columbia Gulf provides transportation service under Rate Schedules X–9 and X–10. Consolidated contends that if the proposed increase is not allowed to become effective as proposed, Consolidated will be exposed to three months of increased costs without an offsetting increase of its own to recover such costs. The estimated jurisdictional exposure to Consolidated for the three-month period will be approximately $1.0 million of unrecoverable costs unless the Commission approves these proposed tariff sheets.

Consolidated has requested a waiver of the Commission's Rules and Regulations as may be required to permit the filed tariff sheets to become effective as proposed.

Copies of this filing were served upon Consolidated's jurisdictional customers as well as 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, 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 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.77–2420 Filed 1–25–77;8:45 am]

[Docket No. CI77–213]

CONTINENTAL OIL CO.

Application

JANUARY 21, 1977.

Take notice that on January 13, 1977, Continental Oil Company (Applicant), P.O. Box 2197, Houston, Texas 77001, filed in Docket No. CI77–213 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Michigan Wisconsin Pipeline Company (Mich-Wis) from the Cupp D No. 1 Well, S. W. Mayfield Field, Beckham County, Oklahoma, 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 commenced the sale of natural gas to Mich-Wis on January 10, 1977, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and that it proposes to continue said sale for a period of six months from the date of termination of the sixty-day emergency period or until Applicant is able to begin the sale to the alternate and originally intended purchaser, whichever date is earlier.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before 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's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–2414 Filed 1–25–77;8:45 am]

[Docket No. CP74–98]

EL PASO NATURAL GAS CO.

Notice Prescribing Procedures for the Submission of Comments Regarding Issues Presented by Court Remand

JANUARY 18, 1977.

These proceedings involve the question of the allocation of the cost of looping a segment of El Paso Natural Gas Company's Alamogordo, New Mexico, lateral, which serves only customers of Southern Union Gas Company (Southern Union). In *Southern Union Gas Company* v. *FPC*, 536 F. 2d 440 (D.C. Cir., June 18, 1976), the Court found that the Commission had failed adequately to explain its reasons why the cost of these facilities should be borne solely by Southern Union and remanded the record in this proceeding for further development.

The Commission believes that the issues presented on remand can be most efficiently and expeditiously resolved through the submission of written comments. If the comments demonstrate a need for ore formal procedures, we will prescribe such procedures. The Commission requests the parties to this proceeding to address the following questions in their comments:

1. Should the certificate granted to El Paso Natural Gas Company (El Paso) be conditioned to specify the means of payment for the certificated facilities, for example, to require application of the lateral line policy in El Paso's tariff?

2. If the certificate is conditioned on application of El Paso's lateral line policy, should Southern Union be required to bear the entire cost of the lateral?

3. If the certificate is conditioned on application of El Paso's lateral line policy, are there offsetting factors which would relieve Southern Union of the obligation to pay the entire cost of the facilities?

4. If it is determined that El Paso's lateral line policy should not be applied in this case, should be a special facilities charge be imposed on Southern Union since the annual volumetric limitations in El Paso's curtailment plan preclude any system-wide benefit?

5. Since El Paso commenced construction of the lateral without prior Commission authorization, what portion, if any, should be borne by El Paso's shareholders of the costs attributable to this lateral.

In addition, the parties are invited to comment upon other questions which the remand raises but which they feel have not been fully addressed by the foregoing specific questions.

An original and fourteen (14) copies of all initial and reply comments shall be filed with the Secretary of the Federal Power Commission on or before February 3, 1977, and on or before March 3, 1977, respectively. All written submittals shall be single spaced and submitted upon letter size paper (8" by 10½" or 8½" by 11"), and shall state the name, title, mailing address and telephone number of the person or persons to whom communications concerning this proceeding should be addressed. All written submittals will be placed in the Commission's public files and will be available for inspection in the Commission's Office of Public Information at 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours. All statements and submittals in response to this notice shall be under oath, acknowledged by a notary public or comparable official, as follows: "_____ being duly (name) sworn, deposes and says that he is (title and organization, if filing is in a representative capacity), that he has examined the statements contained in the submittal or response, and that all such statements are true and correct to the best of his knowledge, information and belief."

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–2443 Filed 1–25–77;8:45 am]

[Docket No. ER77-85]

INDIANA & MICHIGAN ELECTRIC CO.

Changes in Rates and Charges

JANUARY 18, 1977.

Take notice that American Electric Power Service Corporation (AEP) on January 6, 1976 tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&M), Modification No. 9 dated November 1, 1976 to the Interconnection Agreement dated November 27, 1961 between Illinois Power Company and Indiana & Michigan Electric Company, I&M's Rate Schedule FPC No. 23.

Sections 1 and 3 of Modification No. 9 provide for an increase in the demand charge for Short Term Power and Limited Term Power from $0.50 to $0.60 per kilowatt per week and $2.75 to $3.25 per kilowatt per month respectively. Section 2 and 5 provide for an increase in the Short Term Power and Limited Term Power transmission charges from $0.125 to $0.15 per kilowatt per week and $0.55 to $0.65 per kilowatt per month respectively, both schedules proposed to become effective January 1, 1977. Applicant 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.

Copies of the filing were served upon Illinois Power 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, 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 30, 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.77-2434 Filed 1-25-77;8:45 am]

[Docket No. ER77-144]

KANSAS CITY POWER & LIGHT CO.

Filing of Change in Rate Schedule

JANUARY 18, 1977.

Take notice that on January 11, 1977, Kansas City Power and Light Company (KCPL) tendered for filing a Municipal Wholesale Firm Power Contract dated December 20, 1976, between KCPL and the City of Gardner, Kansas. KCPL requests an effective date thirty (30) days after filing. The Contract terminates the Municipal Wholesale Firm Power Contract, dated November 6, 1967, KCPL Rate Schedule FPC No. 66, and provides for rates and charges for wholesale firm power service by KCPL to the City of Gardner.

KCPL states that the proposed rates are KCPL's rates and charges for similar service under schedules previously filed by KCPL with the Federal Power Commission.

KCPL states that copies of this filing have been served upon the City of Gardner, Kansas and the State Corporation Commission of Kansas.

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 February 3, 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.77-2435 Filed 1-25-77;8:45 am]

[Project No. 2168]

LOWER VALLEY POWER & LIGHT, INC.

Application for Amendment of Transmission Line License

JANUARY 19, 1977.

Public notice is hereby given that an application was filed on March 8, 1976, under the Federal Power Act (16 U.S.C. 791a-825r) by the Lower Valley Power & Light, Inc. (Correspondence to: Mr. Boyd A. Parker, Assistant General Manager, Lower Valley Power & Light, Inc., P.O. Box 118, Afton, Wyoming 83110) for amendment of the license for constructed transmission line Project No. 2168 located in Bonneville County, Idaho and Lincoln County, Wyoming and affecting lands of the United States in Targhee National Forest and other U.S. lands.

Applicant proposes to change the existing 16.5-mile-long single-circuit, wood-pole transmission line from 69 kilovolt capacity to 115-kilovolt capacity. Single pole structures would be replaced by double or triple wood pole, H-frame structures.

All structures would be reinsulated for 115 kilovolts. Except for rerouting of approximately one-third mile in section 23, Township 1 South, Range 45 East, and approximately one-fourth mile in Section 17, Township 1 South, Range 45 East, the existing location of the line will be retained.

Applicant states that the increases in voltage and conductor size are necessary to provide additional transmission line capacity needed for the Lower Valley Power & Light service area. The rerouted line will connect to a 115-kilovolt section of the U.S. Bureau of Reclamation Palisades Dam Substation. Applicant states that it has obtained a new right-of-way at the substation and the rerouting has been coordinated with the U.S. Bureau of Reclamation.

Any person desiring to be heard or to make any protest with reference to said application should 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 such petitions or protests should be filed on or before March 7, 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 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 1.35(b)), (1976), a hearing may be held without further notice before the Commission on its 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 pleaser requests that the shortened procedure of § 1.35(b) be used.

Under the shortened procedure herein provided for, unless otherwise advised, it will not be necessary for applicant or initial pleader to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2436 Filed 1-25-77;8:45 am]

[Docket No. CP74-296]

NATIONAL FUEL GAS SUPPLY CORP.

Extension of Time

JANUARY 18, 1977.

On January 14, 1977, National Fuel Gas Supply Corporation (National Fuel), filed a motion to extend the date within which to accept the Certificate of Public Convenience and Necessity issued to National Fuel by Order issued December 15, 1976, in the above-designated proceeding.

Upon consideration, notice is hereby given that the date within which National Fuel must accept its Certificate is

extended to and including February 14, 1977.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-2437 Filed 1-25-77;8:45 am]

[Docket No. ER77-148]

NEW ENGLAND POWER CO.

Filing

JANUARY 18, 1977.

Take notice that on January 12, 1977, New England Power Company (NEPCO) tendered for filing as an initial rate schedule a System Power—Unreserved Power Contract between NEPCO and the City of Burlington, Vermont, Electric Department (Burlington) dated as of November 15, 1976.

The Power Contract provides for NEPCO's supply to Burlington of various capacity entitlements of System Power—Unreserved, together with related energy during, the period December 1, 1976, through February 28, 1977. "System Power—Unreserved" is electric power supplied by NEPCO without specification as to the source of generation, without reserves, and various percentages of which are made available for delivery only at such times as, and to the extent that, specified NEPCO generating units are generating power on line or available for such generation.

NEPCO requests waiver of the notice requirements so as to permit the Power Contract to become effective as of December 1, 1976, in accordance with its terms.

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 February 4, 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.77-2447 Filed 1-25-77;8:45 am]

[Docket No. ER77-147]

NEW ENGLAND POWER CO.

Filing

JANUARY 18, 1977.

Take notice that on January 12, 1977, New England Power Company (NEPCO) tendered for filing as an initial rate schedule a System Power—Unreserved Power Contract between NEPCO and Green Mountain Power Corporation (G.M.P.C.) dated as of November 15, 1976.

The Power Contract provides for NEPCO's supply to G.M.P.C. of various capacity entitlements of System Power—Unreserved, together with related energy during portions of the period January 1, 1977, through October 31, 1981. "System Power—Unreserved" is electric power supplied by NEPCO without specification as to the source of generation, without reserves, and various percentages of which are made available for delivery only at such times as, and to the extent that, specified NEPCO generating units are generating power on line or available for such generation.

NEPCO requests waiver of the notice requirements so as to permit the Power Contract to become effective as of January 1, 1977 in accordance with its terms.

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 or 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 1, 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.77-2449 Filed 1-25-77;8:45 am]

[Docket No. ER77-146]

NEW ENGLAND POWER CO.

Filing

JANUARY 18, 1977.

Take notice that on January 12, 1977 New England Power Company (NEPCO) tendered for filing as an initial rate schedule a System Power—Unreserved Power Contract between NEPCO and the Town of Braintree, Massachusetts, Electric Light Department (Braintree) dated as of April 1, 1976.

The Power Contract provides for NEPCO's supply to Braintree of a 21,450 KW entitlement of System Power—Unreserved capacity, together with related energy during the period commencing on April 1, 1976, and extending until the earlier to occur of (1) the commercial operation date of Braintree's combined-cycle unit now under construction in Braintree, Massachusetts or (2) March 31, 1977. Said term may be extended from month to month. "System Power—Unreserved" is electric power supplied by NEPCO without specification as to the source of generation, without reserves, and various percentages which are made available for delivery only at such times as, and to the extent that, specified NEPCO generating units are generating power on line or available for such generation.

NEPCO requests waiver of the notice requirement so as to permit the Power Contract to become effective as of April 1, 1976 in accordance with its terms.

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 February 4, 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.77-2444 Filed 1-25-77;8:45 am]

[Docket Nos. E-7638 and E-7647]

PUBLIC SERVICE COMPANY OF INDIANA, INC.

Extension of Time

JANUARY 18, 1977.

In the matter of Public Service Company of Indiana, Inc., Southern Indiana Gas and Electric Company and Public Service Company of Indiana, Inc.

On January 7, 1977, the City of Huntingburg, Indiana, filed a motion to extend the date for filing comments, as set by Commission's notice issued January 4, 1977, on the "Motion to Reaffirm and Ratify the Commission's Prior Findings and Order and Terminate Proceedings", filed December 1, 1976, by Public Service Company of Indiana, Inc., and Southern Indiana Gas and Electric Company, in the above-designated proceedings. The motion states that parties to the proceeding have no objection.

Upon consideration, notice is hereby given that the date for filing protests and petitions to intervene is extended to and including January 31, 1977.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-2438 Filed 1-25-77;8:45 am]

[Docket No. ER77-138]

SOUTHERN CALIFORNIA EDISON CO.

Filing of Initial Rate Schedule and Request for Waiver

JANUARY 18, 1977.

Take notice that Southern California Edison Company (Edison), on January 7, 1977, tendered for filing a December 7, 1976, Agreement with the San Diego Gas and Electric Company providing for the transmission by Edison on an interruptible basis of power purchased on a nonfirm basis by San Diego from two separate sources. Edison will charge San Diego for transmission, dispatching, and

scheduling services, and for losses in delivery of such non-firm energy.

Edison states that San Diego requests that service be initiated at the earliest possible date under this Agreement, and for that reason Edison requests that the notice provisions of the Commission's regulations be waived and the filing be permitted to become effective no later than January 31, 1977.

Copies of this filing were served upon San Diego Gas and Electric Company and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest this 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 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.77-2448 Filed 1-25-77;8:45 am]

[Docket No. ER77-149]

SOUTHERN CALIFORNIA EDISON CO.

Tariff Change

JANUARY 18, 1977.

Take notice that Southern California Edison Company (Edison) on January 12, 1977 tendered for filing a change of rate of interruptible transmission services under the provisions of Edison's agreement with the City of Riverside as embodied in Rate Schedule FPC No. 84. The new rate for these services effective on January 13, 1977, which requires waiver of the notice requirements, is 1.31 mills per kilowatt-hour. This is an increase of .02 mills per kilowatt hour. Said filing is in accordance with terms of the agreement stating that whenever the California Public Utilities Commission (CPUC) finds a new overall rate of return on retail operations to be reasonable for Edison * * * the rate for interruptible transmission service shall be adjusted based on said new rate of return. Said new rate of return was authorized in CPUC Decision 86794.

The Company states that copies of this filing were served upon the City of Riverside, California, and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest this 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 February 3, 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 persons 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.77-2450 Filed 1-25-77;8:45 am]

[Docket No. ER77-150]

SOUTHERN CALIFORNIA EDISON CO.

Tariff Change

JANUARY 18, 1977.

Take notice that Southern California Edison Company (Edison) on January 12, 1977 tendered for filing a change of rate for interruptible transmission services under the provisions of Edison's agreement with the City of Anaheim as embodied in Rate Schedule FPC No. 83. The new rate for these services effective on January 13, 1977, which requires waiver of the notice requirements, is 1.24 mills per kilowatthour. This is an increase of .02 mills per kilowatthour. Said filing is in accordance with terms of the agreement stating that whenever the California Public Utilities Commission (CPUC) finds a new overall rate of return on retail operations to be reasonable for Edison . . . the rate for interruptible transmission service shall be adjusted based on said new rate of return. Said new rate of return was authorized in CPUC Decision 86794.

The Company states that copies of this filing were served upon the City of Anaheim, California, and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capital 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 February 3, 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.77-2442 Filed 1-25-77;8:45 am]

[Docket No. CP77-127]

TENNESSEE GAS PIPELINE CO. AND EAST TENNESSEE NATURAL GAS CO.

Application

JANUARY 21, 1977.

Take notice that on January 18, 1977, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37919, filed in Docket No. CP77-127 a joint application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's general policy and interpretations (18 CFR 2.79), for a certificate of public convenience and necessity authorizing the transportation of natural gas on an interruptible basis for a limited term of two years on behalf of Briggs Division of the Celotex Corporation (Briggs), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to transport up to 850 Mcf of natural gas per days plus volumes for its fuel and use requirements from its Main Line Valve 702 plus 1.95 miles located in Desoto Parish, Louisiana, to East Tennessee for the account of Briggs at its existing Greenbrier Sales No. 2 Delivery Point in Robertson County, Tennessee (Greenbrier). East Tennessee proposes to transport such gas, up to 850 Mcf per day less reductions of volumes used for fuel and use requirements for the account of Briggs of Knoxville Utilities Board (KUB). Such gas, it is stated, would be transported and delivered by KUB to Briggs for its plant located in Knoxville, Tennessee.

It is stated that Briggs proposes to purchase such natural gas from ENERCO Exploration and Management Co. (ENERCO) from the latter's production areas in northern Louisiana for $1.40 per million Btu's in order to offset curtailments presently being imposed on it by KUB. Tennessee states that ENERCO would construct, at its sole cost, the necessary meter station and interconnection with Tennessee's existing pipeline at Tennessee's Main Line Valve 702 plus 1.95 miles.

It is further stated that Briggs would pay Tennessee each month for transportation service: (1) A demand charge to be determined by multiplying $1.27 by the maximum daily quantity, less any demand charge credit provided therein, if applicable; and (2) a volume charge equal to 17.01 cents per Mcf multiplied by (a) the total of the daily volumes delivered during such month or (b) the number of days in said month multiplied by 66⅔ percent of the maximum daily quantity, whichever is greater, less any applicable annual minimum bill credit as provided therein. Further, it is stated that Tennessee would receive 3.28 percent of the daily volume transported for fuel and use requirements. It is also stated that Briggs would pay East Tennessee each month for transportation service a charge to be determined by multiplying the rate of 20.74 cents per Mcf by the volume of natural gas actually transported and delivered by East Tennessee for the account of Briggs, and East Tennessee would retain 0.72 percent of the volume delivered for fuel and use requirements.

Briggs states that the gas to be transported would be for Priority 2 industrial uses at its Knoxville, Tennessee,

plant where Briggs manufactures porcelain enamel fixtures, and any slowdown due to failure to offset recent curtailments would result in the layoff of some 200 employees.

Tennessee and East Tennessee state that they did not consider the subject natural gas supply to be available for purchase because ENERCO has stated that it would sell the gas to one of the intrastate purchasers which has made an offer if the present arrangements are not approved.

It is stated that Tennessee and East Tennessee anticipate having capacity available to perform the subject transportation service because of curtailments resulting from a supply deficiency on their respective systems.

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.77-2415 Filed 1-25-77;8:45 am]

[Docket No. RP71-11 (PGA77-3); RP76-99 (non-consolidated)]

TENNESSEE NATURAL GAS LINES, INC.

Proposed Rate Change Under Tariff Rate Adjustment Provisions

JANUARY 14, 1977.

Take notice that on January 4, 1977, Tennessee Natural Gas Lines, Inc. ("Tennessee Natural") tendered for filing proposed changes to First Revised Volume No. 1 of its FPC Gas Tariff to be effective on February 1, 1977, consisting of the following revised tariff sheets:

Twentieth Revised Sheet No. PGA-1, Fifteenth Revised Sheet No. PGA-2, and Third Revised Sheet No. 4-A.

Tennessee Natural states that the purpose of the instant filing is to make a PGA rate adjustment pursuant to the purchased gas adjustment provisions of Rate Schedule G-1 and SWS-1 of its FPC Gas Tariff to reflect a rate change of its sole supplier, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. ("Tennessee Gas"), proposed to become effective on February 1, 1977, pursuant to such supplier's motion to make rates effective filed on December 20, 1976 in its general rate increase proceeding at Docket No. RP76-137.

Tennessee Natural further advises the Commission that it has discovered that, although the same has operated correctly in the past, in the future due to changed circumstances the PGA provisions of its tariff as applied to its SWS-1 Rate Schedule (for service from its LNG storage facility) may result in Tennessee Natural recovering rate changes of its supplier on a time period basis different than the Commission may have intended; that if such is the case, the PGA provisions of its tariff as applied to its SWS-1 Rate Schedule will have to be changed and that the same will be complex and will require time and study to work out. Tennessee Natural states its belief that the proper forum for working out such problems, if any, would be its general rate proceeding in Docket No. RP76-99. Tennessee Natural states that, in the meantime, it voluntarily agrees that it will collect the PGA increase in the commodity component of its SWS-1 Rate Schedule (Sheet No. PGA-2 tendered for filing) subject to refund and will refund back to the effective date thereof any amounts collected thereunder in excess of the rates it would have collected under any revised PGA clause applicable to its SWS-1 rate schedule which may finally be approved.

Tennessee Natural states that copies of the filing have been mailed to its jurisdictional customer and the affected state regulatory commission.

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 N. 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 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. This notice does not provide for consolidation of the captioned proceedings and any party desiring to protest or intervene in either proceeding should file separately in either docket. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-2418 Filed 1-25-77;8:45 am]

[Docket No. CP77-125]

TEXAS GAS TRANSMISSION CORP.

Application

JANUARY 21, 1977.

Take notice that on January 18, 1977, Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301 (Applicant) filed in Docket No. CP77-125 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing for a term of ten years the transportation of up to 3,750 Mcf of natural gas per day on an interruptible basis for General Electric Company (GE) to be used for Priority 2 and 3 requirements in GE's plants in Louisville, Kentucky, Bloomington, Indiana, and Columbia, Maryland, 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 natural gas for GE pursuant to an agreement dated January 6, 1977, between Applicant and GE. It is stated that Applicant would receive the volumes of gas to be transported from Natural Gas Pipeline Company of America (Natural) through existing facilities at the tailgate of Texaco's Henry plant and redeliver, for the account of GE, up to 2,000 Mcf of gas per day to Louisville Gas and Electric Company (LG&F), up to 250 Mcf of gas per day to Indiana Gas Company, Inc. (Indiana Gas), and up to 1,500 Mcf of gas per day to Columbia Gulf Transmission Company (Columbia Gulf). It is further stated that the gas would be delivered to LG&E and Indiana Gas at existing points of delivery and to Columbia Gulf by a dispatching arrangement with Texaco's Henry plant. It is indicated that deliveries to Columbia Gulf are contingent upon the continuation of the dispatching arrangement with Texaco's Henry plant.

It is stated that the gas to be transported would be produced from the Blue Buck Field, Cameron Parish, Louisiana. It is stated that GE has signed an option agreement with Texas Crude, Inc. (Texas Crude), and other owners, under which GE has acquired the option to purchase in place reserves located in the Blue Buck Field. It is indicated that Texas Crude would sell the gas to an intrastate customer if GE does not buy the gas.

Applicant states that it would collect an initial charge of 20.68 cents per Mcf for volumes delivered to LG&E and 21.32 cents per Mcf for volumes delivered to Indiana Gas. Applicant further states

that no rate would be charged for volumes delivered to Columbia Gulf. Applicant further states that it would retain a volume equal to 8.6 percent of the volumes delivered to LG&E and a volume equal to 9.1 percent of the volumes delivered to Indiana Gas. It is said that no volumes will be retained for gas delivered to Columbia Gulf. It is stated that the retained volumes would be utilized as makeup for compressor fuel and line loss, which percentages were calculated on an incremental basis for pipeline throughout to and within the rate zones in which the deliveries would be made.

Applicant states that no new facilities would be constructed.

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 the 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. 77-2413 Filed 1-25-77;8:45 am]

[Docket No. RP77-25]

TRANSCO GAS SUPPLY CO.

Tariff Filing

JANUARY 17, 1977.

Take notice that Transco Gas Supply Company (Gasco) on December 30, 1976, as corrected on January 6, 1977, tendered for filing First Revised Sheet No. 106 to its FPC Gas Tariff, Original Volume No. 2 with the proposed effective date of February 1, 1977. Transco states that this revised tariff sheet provides for an increase from 14.39% to 15.73% in the percentage applicable to return and income taxes on Gasco's rate base. This percentage increase is occasioned by a rate increase filing to be placed into effect by Transcontinental Gas Pipe Line Corporation (Transco) in Docket No. RP76-136 on February 1, 1977, subject to refund.

Under the terms of Gasco's approved tariff, the percentage applicable to return and income taxes on Gasco's rate base is 14.39% or such other percentage applicable to return and income taxes which is reflected in any rate filing of Transco; provided, however, that if such other percentage is reflected in a rate filing of Transco under which revenues are being collected subject to refund, Gasco shall make such refunds and adjustments as may be required based upon the final determination by the Federal Power Commission of such percentage for Transco.

The Company states that copies of the filing have been mailed to Transco and, for information purposes, to each of Transco's customers and interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (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.77-2440 Filed 1-25-77;8:45 am]

[Docket No. RP77-26]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Tariff Filing

JANUARY 14, 1977.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on December 30, 1976, tendered for filing certain revised tariff sheets to its FPC Gas Tariff Original Volume No. 2.

Transco states that these tariff sheets provide for an increase in the rates charged for the interruptible transportation service rendered by Transco. The proposed effective date of such increased rates is January 31, 1977, and it is requested that the Commission suspend the use of such tariff sheets for one (1) day and provide that the sheets become effective February 1, 1977, subject to refund pending the outcome of the proceedings in Docket No. RP76-136.

Transco also states that its general rate increase filed in the above referenced docket on July 30, 1976, was suspended until February 1, 1977. In that docket Transco did not propose an increase for interruptible transportation service since it believed that the present rates were sufficient to cover the proper share of Transco's cost of service. However, the staff of the Commission in submitting its top sheets in Docket No. RP76-136 allocated greater costs to interruptible service than would be provided under existing rates. Transco, in order that its rates be compensatory in the event the allocation methods utilized by the Staff are found to be proper, further states that it has developed rates for interruptible transportation service utilizing the method of cost allocation as Staff in its top sheets.

The Company states that copies of the filing have been mailed to each of the customers receiving service under the affected schedules.

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.77-2419 Filed 1-25-77;8:45 am]

FEDERAL RESERVE SYSTEM

MARSHALL & ILSLEY CORP.

Acquisition of Bank

Marshall & Ilsley Corporation, Milwaukee, Wisconsin, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Fox Heights State Bank, Green Bay, 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 not later than February 17, 1977.

Board of Governors of the Federal Reserve System, January 19, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2456 Filed 1-25-77;8:45 am]

SPENCER FINANCIAL CORP.

Formation of Bank Holding Company

Spencer Financial Corporation, Spencer, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 66.44 per cent or more of the voting shares of Spencer National Bank, Spencer, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 14, 1977.

Board of Governors of the Federal Reserve System, January 18, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2457 Filed 1-25-77;8:45 am]

SPENCER NATIONAL BANK TRUST

Acquisition of Bank

Spencer National Bank Trust, Spencer, Iowa, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 75.94 per cent of the voting shares of Spencer Financial Corporation, Spencer, Iowa. The factors that are considered in acting on the application are set forth in section 3 (c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 14, 1977.

Board of Governors of the Federal Reserve System, January 18, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-2458 Filed 1-25-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

NATIONAL IMMUNIZATION: POLICY WORK GROUPS

Meetings

Notice is hereby given that as a follow-up to a public meeting on National Immunization Policy held November 12, 13, and 14, 1976, the Assistant Secretary for Health, Department of Health, Education, and Welfare, has entered into a contract with JRB Associates, Inc., 8400 Westpark Drive, McLean, Virginia, to establish and coordinate the activities of six Work Groups with membership from outside the Federal government. Each group is charged with developing a set of recommendations to be used by the Public Health Service in developing national policy relative to immunization. Meetings of these Work Groups are open to the public.

The areas of concern of the six Work Groups and tentative schedules of meetings are as follows:

NATIONAL IMMUNIZATION POLICY

January 25-26, Sheraton O'Hare, Rosemont, Illinois.
February 21-22, Sheraton Motor Inn-Airport, Romulus, Mich.

CONSENT

February 11, February 25, Key Bridge Marriott, Arlington, Virginia.

LIABILITY

January 31, February 13-14, February 28, Crystal City Marriott, Arlington, Virginia.

HEALTH INFORMATION AND PUBLIC AWARENESS

February 12-13, Sheraton Motor Hotel, New Orleans, Louisiana, March 1-2 (Washington, D.C. metropolitan area).

RESEARCH AND DEVELOPMENT

February 5-6, Shamrock Hilton, Houston, Texas.

PRODUCTION AND SUPPLY

(Meeting in conjunction with the Research and Development group) February 5-6, Shamrock Hilton, Houston, Texas.

Policy recommendations developed by the Work Groups will be available after March 15, 1977, and may be obtained from Ms. Marie Curtis (see below).

The schedule of meetings is tentative; time and place of meetings may be confirmed by contacting Ms. Marie Curtis, JRB Associates, Inc., McLean, Virginia, (703) 821-4666.

CHARLES U. LOWE,
Special Assistant for Child Health Affairs.

[FR Doc.77-2464 Filed 1-25-77; 8:45 am]

PUBLIC HEALTH SERVICE REGIONAL OFFICES

Statement of Organization, Functions, and Delegations of Authority

Part HD, Chapter HD, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health, Education, and Welfare entitled Public Health Service (PHS) Regional Offices (39 FR 1468, January 9, 1974, as amended by 42 FR 2123, January 10, 1977) is amended to reflect the transfer of the alcoholism, drug abuse, and mental health functions from the Division of Health Services to the newly established Division of Alcoholism, Drug Abuse, and Mental Health in Region X.

Section HD-B, Organization and Functions, is amended by deleting the title "Division of Alcoholism, Drug Abuse, and Mental Health" (HD2T, HD7T, HD8T, HD9T) and substituting the title "Division of Alcoholism, Drug Abuse, and Mental Health" (HD2T, HD7T, HD8T, HD9T, HDXT). There is no change in the functional statement for this division.

Dated: January 17, 1977.

JOHN OTTINA,
Assistant Secretary for Administration and Management.

[FR Doc.77-2574 Filed 1-25-77;8:45 am]

Office of the Assistant Secretary for Health

HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE

Notice of Rulemaking Procedures

The Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484) enacted on October 12, 1976, amends Title VII of the Public Health Service Act to revise and extend programs which provide student and institutional assistance for training in the health and allied health professions; and assign personnel to provide health services in health manpower shortage areas. The Department of Health, Education, and Welfare has identified the need to develop and publish approximately forty (40) separate Notices of Proposed Rulemaking (NPRM) and approximately forty (40) Final Rule documents no later than September 30, 1978 in order to implement the Act.

The Secretary's regulations policy established on July 25, 1976,[1] provides for the publication of Notices of Intent (NOIs) in addition to the requirements for publishing Notices of Proposed Rulemaking, and Final Rules, in order to increase the opportunity for public involvement early in the rulemaking process. This same policy statement also prescribes a 45 day comment period for Notices of Intent and Notices of Proposed Rulemaking unless a lesser period of 30 days has been justified to and approved by the Secretary.

In recognition of the large volume of rulemaking documents required under this Act, their complexity, and the relatively short time available, the Secretary, after careful consideration, has permitted the following modifications to the Regulatory Policy of July 25, 1976;[2]

1. Authority for issuing Notices of Intent has been delegated to the Assistant Secretary for Health;

2. Notices of Intent will be published covering related clusters of proposed rules, rather than publishing separate Notices of Intent for each proposed regulation; and,

3. A 30-day comment period has been approved for Notices of Intent and Notices of Proposed Rulemaking for implementing Sections 701 and Section 783.

[1] A complete text of the Secretary's Regulations Policy of July 25, 1976, was published in the FEDERAL REGISTER, of August 17, 1976, (41 FR 34811-34812).

[2] These modifications apply only to Rulemaking Procedures for Regulations promulgated under Pub. L. 94-484.

Physicians Assistants and Expanded Function Dental Auxiliaries, and Section 332(b) Health Manpower Shortage Area Criteria.

The Secretary has concluded that these procedural modifications will maintain the integrity of the July 25, 1976 policy, particularly, those aspects designed to allow increased opportunity for early public involvement, yet allow the Department the ability to promulgate the required rulemaking documents by September 30, 1978.

A list of the approximate publication dates of Notices of Intent and the program topics to be covered within each Notice, is provided below:

Subject	Authority [1]
Jan. 28, 1976	
Assistance for construction of teaching facilities	42 U.S.C. 293 sec. 720, 42 U.S.C. 293i sec. 726.
Lister Hill scholarship program	42 U.S.C. 294aa sec. 759.
Education of returning U.S. students from foreign medical schools.	42 U.S.C. 295g-2 sec. 782.
General internal medicine and general pediatrics	42 U.S.C. 295g-4 sec. 784.
Medical school planning costs	42 U.S.C. 295g-8 sec. 788(g).
New medical schools emphasizing family medicine	42 U.S.C. 295g-9 sec. 788(f).
Physicians assistants	42 U.S.C. 292a sec. 701, 42 U.S.C. 295g-3 sec. 783.
Expanded function dental auxiliaries	42 U.S.C. 292a sec. 701, 42 U.S.C. 295g-3 sec. 783.
Health manpower shortage area criteria	42 U.S.C. 254e, sec. 332(b).
Payment for tuition and other educational costs	42 U.S.C. 292k, sec. 711.
Health professions data	42 U.S.C. 292h sec. 708.
Training in emergency medicine	42 U.S.C. 295f-6 sec. 789(a) (enacted by P.L. 94-573).
Feb. 15, 1977	
Establishment of departments of family medicine	42 U.S.C. 295g sec. 780.
Area health education centers	42 U.S.C. 295g-1 sec. 781.
Dental team practice	42 U.S.C.295g-3 sec. 783(a)(3).
Family medicine and general practice of dentistry	42 U.S.C. 295g-6 sec. 786.
Educational assistance to individuals from disadvantaged backgrounds.	42 U.S.C. 295g-7 sec. 787.
Start-up assistance	42 U.S.C. 295g-8 sec. 788(a).
Financial distress	42 U.S.C. 295g-8 sec. 788(b).
Interdisciplinary training	42 U.S.C 295g-8 sec. 788(c).
Health manpower projects and programs	42 U.S.C. 295g-8 sec. 788(d).
Feb. 23, 1977	
Health professions capitation grants	42 U.S.C. 295f sec. 770.
Educational assistance to disadvantaged individuals in allied health.	42 U.S.C. 295h-7 sec. 798.
Allied health special projects grants and contracts	42 U.S.C. 295h-5 sec. 796.
Special projects for schools of public health and graduate programs in health administration.	42 U.S.C. 295h-1 sec. 792.
Grants for graduate programs in health administration.	42 U.S.C. 295h sec. 791.
Feb. 25, 1977	
National Health Service Corps scholarships	42 U.S.C. 294t sec. 751.
Scholarships for first year students of exceptional financial need.	42 U.S.C. 294z sec. 758.
Scholarships for advanced training of allied health personnel.	42 U.S.C. 295h-6 sec. 748.
Traineeships for students in schools of public health.	42 U.S.C. 294r sec. 748.
Traineeships for students in graduate programs in health administration.	42 U.S.C. 294s sec. 749.
HPEA student loans	42 U.S.C. 294 sec. 740.
Loan repayment	42 U.S.C. 294a sec. 741.
Insured loans to health professions students	42 U.S.C. 294 sec. 737.
Feb. 28, 1977	
National Health Service Corps program	Subpart II, Part C, Title III; 90 Stat. 2269; 42 U.S.C. 254, secs. 331, 333, 334, 335, 331(d).
Private practice option for scholarship recipients	Sec. 753, Subpart IV, Part C, Title VII; 90 Stat. 2279; 42 U.S.C. 294v.
Special grants for former corps members to enter private practice.	Sec. 755, Subpart C, Title VII; 90 Stat. 2279; 42 U.S.C. 294x.

[1] All section citations refer to sections of the Public Health Service Act as amended by Public Law 94-484.

Comments regarding these rulemaking procedures or inquiries relative to the process for development and publication of regulations under this Notice may be directed to the Office of the Assistant Secretary for Health, Director, Office of Program Implementation, Room 17A-55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301-443-2873.

Dated: January 18, 1977.

THEODORE COOPER,
Assistant Secretary for Health.

[FR Doc.77-2463 Filed 1-25-77;8:45 am]

Office of the Assistant Secretary for Health

NATIONAL COMMISSION FOR PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH

Meeting

Notice is hereby given that the National Commission for the protection of Human Subjects of Biomedical and Behavioral Research will meet on February 11, 12 and 13, 1977, in Conference Room 6, C Wing, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting will convene at 9:00 a.m. each day and will be generally open to the public, subject to the limitations of available space. Topics identified in the mandate to the Commission under the National Research Act (Public Law 93-348), as amended, and the Health Research and Health Services Amendments of 1976 (Public Law 94-278), including the identification of ethical principles that should underlie the conduct of biomedical and behavioral research involving human subjects, and the disclosure of research information, will be the agenda for this meeting.

Written materials of any length may be submitted to the Commission at any time. Requests for information should be directed to Ms. Anne Ballard (301-496-7776), Room 125, Westwood Building, 5333 Westbard Avenue, Bethesda, Maryland 20016.

Dated: January 17, 1977.

CHARLES U. LOWE,
Executive Director, National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.

[FR Doc.77-2573 Filed 1-25-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 29647, 29648, 29649, 29650, 29651, 29652, 29653, 29654, and 29655]

NEW MEXICO

Notice of Applications

JANUARY 19, 1977.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act

of 1920 (30 U.S.C. 185) as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for nine 4½-inch natural gas pipelines rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 26 N., R. 12 W.,
Sec. 14, SE¼NW¼;
Sec. 34, NE¼NE¼.
T. 28 N., R. 12 W.,
Sec. 7, lots 4 and 6;
Sec. 17, NW¼NW¼;
Sec. 18, lot 1, S½NE¼, NE¼NE¼, and SW¼SE¼;
Sec. 23, NE¼SW¼;
Sec. 32, W½NW¼, NE¼NW¼.
T. 27 N., R. 13 W.,
Sec. 35, NE¼NE¼.
T. 28 N., R. 13 W.,
Sec. 12, SE¼SE¼.

These pipelines will convey natural gas across 2.136 miles of national resource lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc.77-2489 Filed 1-25-77;8:45 am]

[NM 28991]

NEW MEXICO

Notice of Application

JANUARY 17, 1977.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), The Permian Corporation has applied for a water plant site and access road right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 21 S., R. 27 E.,
Sec. 17, NW¼SW¼;
Sec. 18, NE¼SW¼ and N½SE¼.

The water plant site and access road will be used in connection with a saltwater disposal well and will occupy 2.5 acres and 0.743 mile of national resource land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

FRED E. PADILLA,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc.77-2486 Filed 1-25-77;8:45 am]

[OR 12130]

OREGON

Order Providing for Opening of Public Lands

JANUARY 18, 1977.

1. In an exchange of lands made under the provisions of section 8 of the Act of June 28, 1934, 48 Stat. 1269, 1272, as amended and supplemented, 43 U.S.C. 315g (1970), the following lands have been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 30½ S., R. 34 E.,
Sec. 25, lots 1, 2, 3, and 4, SE¼NE¼, S½NW¼, E½SW¼, and E½SE¼;
Sec. 26, lots 1, 2, and 3 and S½NE¼;
Sec. 36, N½ and SW¼.
T. 31 S., R. 34 E.,
Sec. 3, NW¼SE¼;
Sec. 12, lots 1, 2, 3, and 4, SW¼NE¼, E½NW¼, SW¼NW¼, SW¼, and NW¼SE¼;
Sec. 13, lots 1 and 2, W½NE¼, and NE¼NW¼.
T. 32S., R. 34 E.,
Sec. 27, W½SW¼;
Sec. 28, NE¼SW¼ and SE¼;
Sec. 33, E½;
Sec. 34, W½W½.
T. 33 S., R. 34 E.,
Sec. 3, lots 3 and 4, S½NW¼, and E½SW¼;
Sec. 4, lots 1 and 2, S½NE¼, SE¼NW¼, and W½SW¼;
Sec. 5, lots 3, 4, 5, 6, and 7, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8, lot 1, N½NE¼, and NE¼NW¼;
Sec.9, NW¼NW¼, S½N½, E½SW¼, and NW¼SE¼;
Sec. 16, lots 1, 2, 3, and 4;
Sec. 17, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 20, SW¼;
Sec. 28, lot 1, E½NE¼, SW¼NE¼, E½NW¼, and N½SE¼;
Sec. 29, N½NE¼ and W½;
Sec. 30, E½SE¼;
Sec. 31, NE¼NE¼;
Sec. 32, NW¼NW¼ and E½W½.
T. 34 S., R. 34 E.,
Sec. 5, lot 2, SW¼NE¼, and W½SE¼;
Sec. 7, lot 3, SE¼NE¼, NE¼SW¼, and N½SE¼;
Sec. 8, NW¼NE¼, N½NW¼, SW¼NW¼, and N½SW¼.
T. 35 S., R. 34 E.,
Sec. 17, NE¼.
T. 30 S., R. 35 E.,
Sec. 17, W½;
Sec. 18, NE¼NE¼;
Sec. 19, lots 3 and 4 and SE¼SW¼;
Sec. 20, NW¼, NE¼SW¼, NW¼SE¼, and S½SE¼;
Sec. 28, SW¼NW¼ and N½SW¼;
Sec. 29, E½;
Sec. 30, lots 1, 2, and 4, NE¼, E½W½, N½SE¼, and SW¼SE¼;
Sec. 31, lots 2 and 3, W½NE¼, and E½W½;
Sec. 32, E½E½, and NW¼SW¼;
Sec. 33, SW¼, W½SE¼, and SE¼SE¼.
T. 31 S., R. 35 E.,
Sec. 4, lots 1, 2, 5, 6, and 7;
Sec. 5, lots 1, 8, 29, 36, 37, 38, and 39;
Sec. 6, lots 32, 33, and 40;
Sec. 7, lots 3 and 4;
Sec. 18, lot 1 and NE¼NW¼.
T. 32 S., R. 35 E.,
Sec. 6, SW¼NE¼, W½SE¼, and SE¼SE¼;
Sec. 7, lots 2, 3, 4, and 5, NW¼NE¼, and NE¼NW¼.

The areas described aggregate 10,003.37 acres in Harney County.

2. All the minerals in the following described lands were and continue to be in United States' ownership and open to operation of the mining laws (Ch. 2, Title 30 U.S.C.) and the mineral leasing laws:

WILLIAMETTE MERIDIAN

T. 30; S., R. 34 E.,
Sec. 25, W½NW¼ and E½SW¼;
Sec. 26, lots 1, 2, and 3, and S½NE¼.
T. 31 S., R. 34 E.,
Sec. 3, NW¼SE¼;
Sec. 12, lots 3 and 4, E½SW¼, and NE¼SE¼;
Sec. 13, lot 2 and SW¼NE¼.
T. 32 S., R. 34 E.,
Sec. 27, E½SW¼,
Sec. 28, NE¼SW¼ and SE¼;
Sec. 33, NW¼NE¼;
Sec. 34, W½N¼ and SW¼SW¼.
T. 33 S., R. 34 E.,
Sec. 3, lot 4 and SW¼NW¼;
Sec. 4, SW¼NE¼, SE¼NW¼, and W½SW¼;
Sec. 5, lots 3 and 4, SE¼NW¼, N½SE¼, and SE¼SE¼;
Sec. 8, NE¼NE¼;
Sec. 9, SW¼NE¼ and W½NW¼;
Sec. 17, SW¼NE¼, SE¼NW¼, E½SW¼, and W½SE¼;
Sec. 20, N½SW¼ and SW¼SW¼;
Sec. 28, lot 1, NE¼NE¼, S½NE¼, E½NW¼, and N½SE¼;
Sec. 29, W½NW¼ and NW¼SW¼;
Sec. 30, E½SE¼;
Sec. 31, NE¼NE¼;
Sec. 32, E½W½ and NW¼NW¼.
T. 34 S., R. 34 E.,
Sec. 5, lot 2, SW¼NE¼, and W½SE¼;
Sec. 7, lot 3, SE¼NE¼, NE¼SW¼, and N½SE¼;
Sec. 8, NW¼NE¼, N½NW¼, SW¼NW¼, and N½SW¼.
T. 30 S., R. 35 E.,
Sec. 17, NE¼NW¼ and E½SW¼;
Sec. 20, NE¼, NE¼SW¼, NW¼SE¼, and S½SE¼;
Sec. 28, SW¼NW¼;
Sec. 29, NE¼ and SW¼SE¼;
Sec. 33, SW¼, W½SE¼, and SE¼SE¼.
T. 31 S., R. 35 E.,
Sec. 4, lots 2, 5, 6, and 7;
Sec. 5, lots 1, 8, 29, 36, 37, 38, and 39;
Sec. 6, lots 32, 33, and 40;
Sec. 7, lots 3 and 4.

3. The subject lands are located along the eastern side of Steens Mountain approximately 50 to 80 miles southeast of the City of Burns. Elevation ranges from 5,800 to 7,000 feet above sea level, and the topography varies from gently sloping meadows and basins to steep rocky bluffs. Vegetation consists primarily of sagebrush, native grasses, and juniper. In the past, the lands have been used for livestock grazing purposes. The lands will be managed, together with adjoining national resource lands, for multiple use.

4. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 hereof are hereby open (except as already provided in paragraph 2 hereof) to operation of the public land laws, including the mining laws (Ch. 2, Title 30 U.S.C. and the mineral leasing laws. All valid applications received at or prior to 10 a.m. February 23, 1977, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

HAROLD A. BERENDS,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-2488 Filed 1-25-77;8:45 am]

Bureau of Land Management

OUTER CONTINENTAL SHELF OFFICE

Availability of Official Protraction Diagrams

1. Notice is hereby given that, effective with this publication, the following OCS Official Protraction Diagrams, last approved on the dates indicated, are available, for information only, in the New Orleans Outer Continental Shelf Office, Bureau of Land Management, New Orleans, Louisiana. In accordance with Title 43, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic areas they represent.

2. For the benefit of interested parties and in the public interest, and for their convenience, this publication constitutes a composite list of all official protraction diagrams now covering the Gulf of Mexico OCS. Prior purchasers of any of these diagrams should determine if they are current by comparing their respective approval dates with the approval dates listed herein.

Outer Continental Shelf official protraction diagrams

Description		Latest approval date
NG 14-3	Corpus Christi	Jan. 27, 1976
NG 14-6	Port Isabel	Do.
NG 15-1	East Breaks	Do.
NG 15-4	Alaminos Canyon	Mar. 26, 1976
NG 15-2	Garden Banks	Dec. 2, 1976
NG 15-5	Keathley Canyon	Do.
NH 15-12	Ewing Bank	Do.
NG 15-3	Green Canyon	Do.
NG 15-6	Walker Ridge	Do.
NH 16-4	Mobile	Oct. 10, 1972
NH 16-7	Viosca Knoll	Dec. 2, 1976
NH 16-10	Mississippi Canyon	Do.
NG 16-1		Do.
NG 16-4		Do.
NH 16-5	Pensacola	Do.
NH 16-8	Destin Dome	Do.
NH 16-11	De Soto Canyon	Do.
NG 16-2		Do.
NG 16-5		Do.
NH 16-9	Apalachicola	Jan. 15, 1976
NH 16-12	Florida Middle Ground	Dec. 2, 1976
NG 16-3	The Elbow	Do.
NG 16-6		Do.
NH 17-7	Gainesville	Jan. 27, 1976
NH 17-10	Tarpon Springs	Dec. 2, 1976
NG 17-1	St. Petersburg	Do.
NG 17-4	Charlotte Harbor	Do.
Louisiana Map No. 1	West Cameron area	July 22, 1954
Louisiana Map No. 1A	West Cameron area west addition	Jan. 30, 1957
Louisiana Map No. 1B	West Cameron area south addition	Sept. 8, 1959
Louisiana Map No. 2	East Cameron area	Aug. 1, 1973
Louisiana Map No. 2A	East Cameron area south addition	Sept. 8, 1959
Louisiana Map No. 3	Vermilion area	July 22, 1954
Louisiana Map No. 3A	South Marsh Island area	Aug. 7, 1959
Louisiana Map No. 3B	Vermillion area south addition	Sept. 8, 1959
Louisiana Map No. 3C	South Marsh Island area south addition	Do.
Louisiana Map No. 3D	South Marsh Island area north addition	Jan. 18, 1972
Louisiana Map No. 4	Eugene Island area	July 22, 1954
Louisiana Map No. 4A	Eugene Island area south addition	Sept. 8, 1959
Louisiana Map No. 5	Ship Shoal area	June 8, 1954
Louisiana Map No. 5A	Ship Shoal area south addition	Sept. 8, 1959
Louisiana Map No. 6	South Timbalier, South Pelto, and Bay Marchand areas	Dec. 9, 1954
Louisiana Map No. 5A	South Timbalier area south addition	July 22, 1968
Louisiana Map No. 7	Grand Isle area	June 8, 1954
Louisiana Map No. 7A	Grand Isle area south addition	Mar. 7, 1961
Louisiana Map No. 8	West Delta area	June 8, 1954
Louisiana Map No. 8A	West Delta area south addition	Nov. 24, 1961
Louisiana Map No. 9	South Pass area	May 11, 1973
Louisiana Map No. 9A	South Pass area south and east addition	Sept. 8, 1959
Louisiana Map No. 10	Main Pass and Breton Sound areas	July 22, 1954
Louisiana Map No. 10A	Main Pass area south and east addition	Sept. 8, 1959
Louisiana Map No. 11	Chandeleur area	July 22, 1954
Louisiana Map No. 11A	Chandeleur area east addition	Sept. 8, 1959
Texas Map No. 1	South Padre Island area	July 16, 1954
Texas Map No. 1A	South Padre Island area east addition	May 6, 1965
Texas Map No. 2	North Padre Island area	July 16, 1954
Texas Map No. 2A	North Padre Island area east addition	May 6, 1965
Texas Map No. 3	Mustang Island area	Oct. 30, 1961
Texas Map No. 3A	Mustang Island area east addition	Jan. 23, 1967
Texas Map No. 4	Matagorda Island area	July 16, 1954
Texas Map No. 5	Brazos area	Do.

Description		Latest approval date
Texas Map No. 5B	Brazos area south addition	Sept. 24, 1959
Texas Map No. 6	Galveston area	July 16, 1954
Texas Map No. 6A	Galveston area south addition	Sept. 24, 1959
Texas Map No. 7	High Island area	Aug. 19, 1955
Texas Map No. 7A	High Island area east addition	Jan. 23, 1967
Texas Map No. 7B	High Island area south addition	Sept. 24, 1959
Texas Map No. 7C	High Island area east addition south extension	Do.

3. Copies of these diagrams are for sale as follows:

(a) Outer Continental Shelf Official Leasing Maps—Texas Nos. 1 through No. 7C. These maps are arranged in two sets (Nos. 1 through 4—7 maps and Nos. 5 through 7C—8 maps) which will sell for $5.00 per set.

(b) Outer Continental Shelf Official Leasing Maps—Louisiana Nos. 1 through 11A. This is a set of 26 maps, which sells for $15.00.

(c) All other maps may be purchased individually for $2.00 each.

All of these protraction diagrams may be purchased from the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, Suite 841, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130. Checks or money orders should be made payable to the Bureau of Land Management.

JOHN L. RANKIN,
Manager, New Orleans Outer Continental Shelf Office.

[FR Doc.77-2309 Filed 1-25-77;8:45 am]

OUTER CONTINENTAL SHELF; ALASKA

Oil and Gas Lease Sale No. C1; February 23, 1977

Correction

In FR Doc. 1632 appearing at page 3804 in the issue for Wednesday, January 19, 1977, the following corrections should be made:

1. On page 3804, in the first column, paragraph designated No. 4, the second line should read, "in a sealed envelope must be submitted".

2. On page 3807, in the 3rd column, under Stipulation 6, the 16th line should read, "any major colonies or rookeries discov-".

3. On page 3808, in the 3rd column, paragraph designated No. 17, the 2nd line should read, "In the case of joint bids, each joint bid-".

[Wyoming 57956]

WYOMING

Application

JANUARY 17, 1977.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Northwest Pipeline Corporation of Salt Lake City, Utah, filed an application for a right-of-way to construct a cathodic protection station for the purpose of maintaining protection and safe operation of their natural gas pipeline system across the following described National Resource Lands:

SIXTH PRINCIPAL MERIDAN, WYOMING

T. 27 N., R. 114 W.
Sec. 13, SW¼SW¼.

The cathodic protection station will be used for the protection and safe operation of their natural gas pipeline system located in sec. 13, T. 27 N., R. 114 W., Sublette County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-2487 Filed 1-25-77;8:45 am]

Fish and Wildlife Service

DEVELOPMENT OF STANDARDS FOR TRANSPORT OF ENDANGERED WILDLIFE AND PLANT SPECIMENS

Public Hearing

The Director, U.S. Fish and Wildlife Service, hereby issues notice of an informal public hearing on February 16, 1977, 9:30 a.m. at 1717 H Street, N.W., Room 430, in accordance with provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-43).

The purpose of the hearing is to solicit information and public comment on guidelines for the proper and humane shipment of live plant and wildlife specimens in international commerce. This information will aid the U.S. Fish and Wildlife Service in adopting such guidelines to meet the requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. That Convention requires the Service, as U.S. Management Authority, be "* * * satisfied that any living specimen (for which an export permit is to be issued) will be so prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment; * * *"

The Convention came into effect July 1, 1975, when the first ten nations ratified it. Since that time, 24 more nations have become Parties to the Convention. The Parties, at a conference held in Berne, Switzerland, in November 1976, appointed a special committee to develop uniform international guidelines for the shipment of animal and plant specimens under the Convention. The proposed guidelines will be presented at future conferences of the Parties.

Because of probable delays in implementing international guidelines, the U.S. Fish and Wildlife Service believes it is desirable for the United States to establish its own set of guidelines and standards at this time. In order to obtain the widest possible range of opinions and the greatest amount of data, the comment of all public sectors in invited. The Service is particularly interested in obtaining biological and veterinary data on proper standards for shipment of various plant and animal specimens.

The hearing will be informal and may include discussion between the Chairman and various speakers. Summary records will be kept and written statements are invited. The record will remain open until February 23, 1977, for the submission of further written comments which may be submitted to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240.

LYNN A. GREENWALT,
Director, U.S. Fish and Wildlife Service.

JANUARY 14, 1977.

[FR Doc.77-2408 Filed 1-25-77;8:45 am]

EMERGENCY CLOSURE OF SPECIAL SCAUP SEASON

Acting under the authority of 50 CFR 20.26 pertaining to the emergency closure of migratory bird seasons, I have determined, on January 20, 1977, not to permit the opening on January 21, 1977, of the Special Scaup Season in Virginia as described in the FEDERAL REGISTER of September 30, 1976 (41 FR 43176) under §20.105(h) because to do so would constitute an imminent threat to the safety of canvasback and redhead populations wintering in the designated Special Scaup Season area of Virginia.

This notification in the FEDERAL REGISTER is subsequent to the announcement of this action to the general public in the affected area via local radio, television and newspaper media.

Dated: January 21, 1977.

LYNN A. GREENWALT,
Director, U.S. Fish and Wildlife Service.

[FR Doc.77-2545 Filed 1-25-77;8:45 am]

Geological Survey

COLORADO

Coal Land Classification Order No. 139

Pursuant to authority under the Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), and as delegated to me by Departmental Order 2563, May 2, 1950, under authority of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), the following described lands, insofar as title thereto remains in the United States, are hereby classified as shown:

SIXTH PRINCIPAL MERIDIAN, COLORADO

COAL LANDS

T. 8 S., R. 90 W.,
Sec. 13, S½;
Sec. 14, NE¼SW¼, S½SW¼, SE¼;
Sec. 18, W½NW¼;
Sec. 19, S½S½;
Sec. 22, NE¼NE¼, S½NE¼, SE¼SW¼, SE¼;
Secs. 23 to 26, inclusive;
Sec. 27, E½E½W½;
Secs. 30 and 31;
Sec. 32, SW¼NW¼, W½SW¼;
Sec. 34, E½, E½NW¼, SE¼SW¼;
Secs. 35 and 36.

T. 8 S., R. 91 W.,
Sec. 2, W½SW¼;
Secs. 3 to 10, inclusive;
Sec. 11, SW¼NE¼, W½, W½SE¼;
Secs. 13 to 18, inclusive;
Sec. 19, lots 1 to 3, inclusive, E½, E½NW¼, NE¼SW¼;
Secs. 20 to 29, inclusive;
Sec. 30, NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Secs. 32 to 36, inclusive.

T. 8 S., R. 92 W.,
Sec. 1;
Sec. 2, lots 1 and 2, S½NE¼, N½SE¼, SE¼SE¼;
Sec. 12, N½, E½SW¼, SE¼;
Sec. 13, NE¼, N½SE¼, SE¼SE¼;
Sec. 24, NE¼NE¼.

T. 9 S., R. 90 W.,
Secs. 1 and 2;
Sec. 3, N½NE¼, SE¼NE¼, E½SE¼;
Sec. 5, W½, W½SE¼, SE¼SE¼;
Secs. 6 to 8, inclusive;
Sec. 9, W½NW¼, S½;
Sec. 10, S½SW¼, SW¼SE¼;
Sec. 11, E½, N½NW¼, SE¼NW¼, NE¼SW¼, S½SW¼;
Sec. 12 to 18, inclusive;
Sec. 19, N½, N½SE¼, SE¼SE¼;
Secs. 20 to 28, inclusive;
Sec. 29, N½, E½SW¼, NW¼SW¼, SE¼;
Sec. 30, E½NE¼;
Sec. 32, NE¼, NE¼NW¼, SE¼;
Secs. 33 to 36 inclusive.

T. 9 S., R. 91 W.,
Secs. 1 to 3, inclusive;
Sec. 4, lots 1 to 5, inclusive, SW¼NW¼, E½SW¼, SE¼;
Sec. 5, lot 1, SE¼NE¼;
Sec. 9, lot 1, that part of H.E.S. 168, in the NE¼NE¼;
Sec. 10, lots 1 to 7, inclusive, NE¼NE¼, SW¼NE¼, NW¼SE¼, S½SE¼, that part of the H.E.S. 168 lies in W½NW¼;
Secs. 11 to 13, inclusive;
Sec. 14, lots 1 to 8, inclusive, NE¼NE¼, that part of H.E.S. 65 that lies in S½NW¼, N½SW¼, and W½SE¼, that part of H.E.S. 214 that lies in S½SE¼;
Sec. 15, N½NE¼, SE¼NE¼;
Sec. 24, lots 1 to 4, inclusive, NE¼NE¼, that part of H.E.S. 218 and 219 that lies on the N½; and H.E.S. 169, 178, 216, 217, 220, 222, 225, 226, and 236.

T. 9 S., R. 94 W.,
Sec. 30, lots 3 and 4;
Sec. 31, lots 1 to 4, inclusive, SE¼SW¼.

T. 10 S., R. 90 W.,
Sec. 4;
Sec. 5, NE¼, SW¼SW¼, E½SW¼, SE¼;
Sec. 8, N½, E½SW¼, SE¼;
Secs. 9 and 16;
Sec. 17, NE¼, NE¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, SE¼;
Sec. 20, NE¼, E½NW¼, NE¼SW¼, SE¼;
Secs. 21 and 28;
Sec. 29, N½NE¼, SE¼NE¼, NE¼SE¼;
Sec. 31, NE¼SE¼, S½SE¼, that part of H.E.S. 268 that lies in the NE¼SE¼;
Sec. 32, S½, that part of H.E.S. 268 that lies in the W½S½;
Sec. 33.

T. 10 S., R. 94 W.:
Sec. 6, lots 3 to 7, inclusive, SE¼NW¼;
Sec. 7, lots 1 to 4, inclusive, E½W½, SW¼SE¼;
Sec. 18, lots 1 to 3, inclusive, E½, E½W½;
Sec. 19, N½NE¼, SW¼NE¼.

T. 11 S., R. 90 W.

T. 11 S., R. 91 W.,
Sec. 2, SW¼SW¼;
Sec. 10, S½NE¼, that part of H.E.S. 281 in SE¼NE¼, SE¼NW¼, E½SW¼, that part of H.E.S. 279 in SE¼SW¼, SE¼;
Sec. 11, SW¼NE¼, NW¼NW¼, that part of H.E.S. 281 in NW¼NW¼, S½NW¼, S½;
Sec. 12, E½, W½SW¼;
Sec. 13;
Sec. 14, and that part of H.E.S. 128 in W½;
Sec. 15, NE¼, SE¼NW¼, NE¼SW¼, SE¼, that part of H.E.S. 128 in E½, and that part of H.E.S. 128 in SE¼NW¼;
Sec. 22, NE¼NE¼, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼;
Secs. 23 to 25, inclusive;
Sec. 26, N½, E½SW¼, SE¼;
Sec. 27, NE¼NE¼;
Sec. 29, S½SW¼, that part of H.E.S. 347 in SW¼SW¼;
Sec. 30, S½NE¼, that part of H.E.S. 347 and 348 in S½NE¼, SE¼SW¼, SE¼, that part of H.E.S. 347 in E½SE¼, and that part of H.E.S. 348 in SE¼;
Sec. 31, E½, E½W½, SW¼SW¼;
Sec. 32, S½NE¼, NW¼, S½;
Sec. 33, SW¼NW¼, S½;
Sec. 34, S½S½;
Sec. 35, E½, NE¼NW¼, S½SW¼;
Sec. 36;
H.E.S. 64, 124, 126, 127, 130, 155, 157, 158, 159, 349, 373.

T. 12 S., R. 90 W.,
Secs. 1 to 18, inclusive;
Sec. 19, NE¼;
Sec. 20, N½;
Sec. 21, N½;
Sec. 22, N½;
Sec. 23, N½;
Sec. 24, N½;
H.E.S. 135, 136, 253.

RECLASSIFIED COAL LAND FROM NONCOAL LAND

Prior classification of the following subdivisions as noncoal is hereby revoked and the land is reclassified as coal land:

T. 6 S., R. 92 W.,
Sec. 34, SE¼SE¼;
Sec. 35, S½;
Sec. 36, S½NW¼, SW¼, S½SE¼.

T. 7 S., R. 91 W.,
Sec. 6, lots 4 and 5, SE¼SW¼, SW¼SE¼;
Sec. 7, lots 1 to 4, inclusive, W½NE¼, E½NW¼;
Sec. 16, SW¼SW¼;
Sec. 17, S½;
Sec. 18, lots 1 to 4, inclusive, W½NE¼, SE¼NE¼, E½W½, SE¼;
Secs. 19 to 21, inclusive;
Sec. 27, W½, W½SE¼, SE¼SE¼;
Secs. 28 to 33, inclusive;
Sec. 34, W½E½, W½.

T. 7 S., R. 92 W.,
Secs. 1 and 2;
Sec. 3, lot 1, E½SW¼, SE¼;
Secs. 10 to 14, inclusive;
Sec. 15, E½, E½W½;
Sec. 22, NE¼, N½SE¼, SE¼SE¼;
Secs. 23 to 26, inclusive;
Sec. 27, E½E½;
Sec. 35, E½, N½NW¼, SE¼NW¼, E½SW¼;
Sec. 36.

T. 7 S., R. 96 W.,
Sec. 33, lots 5 to 8, inclusive, SE¼SE¼;
Sec. 34, lots 1 and 5, SW¼NE¼, SW¼W½SE¼.

T. 8 S., R. 89 W.,
Sec. 4, lot 4, SW¼NW¼, W½SW¼;
Sec. 5, lots 1 to 3, inclusive, S½NE¼, NE¼SE¼;
Sec. 8, SE¼NE¼, E½SE¼;
Sec. 9, W½W½;
Sec. 16, W½W½;
Sec. 17, E½NE¼, S½SW¼, NE¼SE¼, S½SE¼;
Sec. 18, lots 3 and 4, SE¼SW¼; S½SE¼;
Secs. 19 and 20;
Sec. 21, W½W½;
Sec. 28, W½W½;
Secs. 29 to 32, inclusive;
Sec. 33, W½W½.

T. 8 S., R. 96 W.,
Sec. 3, lots 2 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 4, lots 1, 2, 3, and 5, S½N½, S½;
Sec. 5, lots 6 to 10, inclusive, lots 13 and 14, SE¼;
Sec. 7, lots 4 to 8, inclusive, SE¼SW¼, NE¼SE¼, S½SE¼;
Secs. 8 and 9;
Sec. 10, W½NE¼, NW¼, S½;
Sec. 14, NW¼SW¼, S½SW¼;
Secs. 15 to 22, inclusive;
Sec. 23, SW¼NE¼, W½, W½SE¼;
Sec. 26, NW¼NW¼, SW¼SW¼;
Sec. 27, N½NE¼, SW¼NE¼, NW¼, S½;
Secs. 28 to 33, inclusive;
Sec. 34, NE¼, NE¼NW¼, W½SW¼, E½SE¼;
Sec. 35, W½.

T. 8 S., R. 97 W.,
Sec. 13, that part south of Colorado River;
Sec. 23, that part south of Colorado River;
Sec. 24, that part south of Colorado River;
Secs. 25 and 26;
Sec. 27, that part south of Colorado River;
Sec. 28, that part south of Colorado River;
Sec. 33, that part east and south of the Colorado River;
Secs. 34 to 36, inclusive.

T. 9 S., R. 89 W.,
Sec. 4, lots 3 and 4, S½NW¼, SW¼, SW¼SE¼;
Secs. 5 to 8, inclusive;
Sec. 9, W½E½, W½;
Sec. 16, W½NE¼, W½;
Secs. 17 to 19, inclusive;
Sec. 20, N½, NW¼SW¼;
Sec. 21, lots 1 and 2;
Sec. 30, lots 7 to 10, inclusive, lots 15 and 16.

T. 9 S., R. 95 W.,
Sec. 16, SW¼SW¼;
Sec. 17, SW¼SW¼, SE¼SE¼;
Sec. 18, SE¼SW¼, SE¼;
Secs. 19 and 20;
Sec. 21, lots 1 to 4, inclusive, N½NW¼;
Sec 22, lots 3 to 5, inclusive, NW¼;
Sec. 23, SW¼NW¼, W½SW¼, SE½SW¼;
Sec. 24, SE¼SW¼, SW¼SE¼;
Sec. 25, NW¼NE¼, S½NE¼, SW¼, S½;
Secs. 26 to 36, inclusive;
Tracts 37 to 49, inclusive.

T. 9 S., R. 96 W.,
Sec. 2, lots 3 and 4;
Sec. 3, lots 1 and 4;
Secs. 4 to 9, inclusive;
Sec. 10, E½NE¼, W½NW¼, SW¼;
Sec. 11, W½NW¼;
Sec. 13, lots 3 and 4, SW¼SE¼;
Sec. 14, SE¼SW¼;
Sec. 15, W½NW¼;
Sec. 16, NE¼, W½, NW¼SE¼, S½SE¼;
Secs. 17 to 20, inclusive;
Sec. 21, NW¼NE¼, S½NE¼, W½, and SE¼;
Sec. 22, NE¼, E½NW¼, SW¼NW¼, S½;
Sec. 23, SW¼NE¼, NW¼, S½;
Sec. 24, lots 1 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Secs. 25 to 36, inclusive.

T. 9 S., R. 97 W.,
Secs. 1 and 2;
Sec. 3, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 10, E½NE¼, NE¼SE¼;
Secs. 11 to 14, inclusive;
Sec. 23, N½, E½SW¼, SE¼;
Secs. 24 and 25;

Sec. 26, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 35, NE¼NE¼;
Sec. 36, N½, NE¼SW¼, N½SE¼, SE¼SE¼.
T. 10 S., R. 95 W.,
Secs. 1 to 22, inclusive;
Sec. 23, N½, SW¼, W½SE¼;
Sec. 24, N½NW¼, SW¼NW¼;
Sec. 26, W½NE¼, W½;
Secs. 27 to 33, inclusive;
Sec. 34, N½, NW¼SW¼, NE¼SE¼;
Sec. 35, NW¼, NW¼SW¼.
T. 10 S., R. 96 W.
T. 10 S., R 97 W.,
Sec. 36, SE¼SW¼, SE¼.
T. 11 S., R. 95 W.,
Sec. 2, SW¼SW¼;
Sec. 3, lots 18 to 23, inclusive, SW¼NE¼, S½NW¼, S½;
Sec. 4, lots 17 to 27, inclusive, S½NE¼, SE¼NW¼, E½SW¼, E½SE¼;
Secs. 5 and 6;
Sec. 7, lots 5 to 7, inclusive, E½SW¼, N½SE¼, SW¼SE¼;
Sec. 8, lots 1 to 4, inclusive, S½N½, SW¼, W½SE¼;
Sec. 9, NE¼NE¼;
Sec. 10, N½NW¼;
Sec. 17, NW¼NE¼, NE¼NW¼.
T. 11 S., R. 96 W.,
Secs. 1 to 10, inclusive;
Sec. 11, lots 1 to 11, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 12, lots 1 to 5, inclusive, SW¼NW¼;
Sec. 14, lots 1 to 8, inclusive;
Secs. 15 to 22, inclusive;
Sec. 23, W½W½;
Sec. 26, NW¼NW¼, SW¼SW¼;
Sec. 27, N½NE¼, SW¼NE¼, W½, W½SE¼, SE¼SE¼;
Secs. 28 to 30, inclusive;
Sec. 31, lots 5 to 10, inclusive, lots 12 to 15, inclusive, NE¼, E½NW¼, NE¼SW¼, N½SW¼;
Sec. 32;
Sec. 33, N½, N½SW¼, NE¼SE¼;
Sec. 34;
Sec. 35, lots 1 to 3, inclusive, SW¼NE¼, NW¼, N½SW¼, NW¼SE¼.
T. 11 S., R. 97 W.,
Sec. 1, lots 17, 24, 25, 32, 33, 34, 37, and 38, W½SE¼;
Sec. 12, lots 1 to 4, inclusive, W½E½, E½W½, SW¼SW¼;
Sec. 13;
Sec. 14, SE¼NE¼, E½SE¼;
Sec. 23, E½NE¼;
Sec. 24;
Sec. 25, lots 1 to 4, inclusive, W½E½, N½NW¼, SE¼NW¼, NE¼SW¼;
Sec. 36, lots 1 and 2, NW¼NE¼.
T. 12 S., R. 91 W.,
Secs. 1 to 5, inclusive;
Sec. 6, lots 1 to 4, inclusive, lots 6 to 14, inclusive, S½NE¼, SE¼;
Secs. 7 to 12, inclusive;
Sec. 13, lots 1 and 2, that part of H.E.S. 140 and 139 in N½N½;
Sec. 14, lots 1 to 3, inclusive, NW¼NE¼, that part of H.E.S. 140, 37, 58 in N½N½;
Sec. 15, lots 1 and 2, NW¼NE¼, NE¼NW¼, SW¼NW¼, that part of H.E.S. 57 and 58;
Sec. 16, lots 1 and 2, W½NE¼, NW¼, that part of H.E.S. 57 in E½NE¼;
Sec. 17, N½, N½SW¼, NW¼SE¼;
Sec. 18, lots 1 to 11, inclusive, NE¼, N½SE¼;
H.E.S. 56, 126, 153, 154, 284.
T. 12 S., R. 92 W.,
Sec. 1, SE¼NE¼, NE¼SE¼, S½SE¼;
Sec. 7, S½;
Sec. 8, NE¼SW¼, S½SW¼, SW¼SE¼;
Sec. 12, E½, E½NW¼, NE¼SW¼;
Sec. 13, E½E½, SW¼SW¼, W½SE¼;
Sec. 14, S½S½;
Sec. 15, SW¼SW¼;
Sec. 16, SW¼, S½SE¼;
Secs. 17 to 22, inclusive;
Sec. 23, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 24, NW¼NE¼, NW¼;
Sec. 30, NW¼NE¼, N½NW¼.
T. 12 S., R. 93 W.,
Sec. 5, S½SW¼, SE¼SE¼;
Sec. 6, S½S½;
Secs. 7 and 8;
Sec. 9, W½W½;
Sec. 12, lot 4, S½SW¼, SW¼SE¼;
Sec. 13;
Sec. 14, NE¼, E½NW¼, SW¼NW¼, S½;
Sec. 15, SW¼NW¼, SW¼, S½SE¼;
Sec. 16, S½NE¼, NW¼, N½S½;
Sec. 17, N½;
Sec. 18, N½;
Sec. 22, N½NE¼, SE¼NE¼;
Sec. 23, N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 24;
Sec. 25, lot 1, NW¼NE¼, N½NW¼;
Sec. 26, NE¼NE¼.
T. 12 S., R. 94 W.,
Sec. 1, SW¼NW¼, SW¼, S½SE¼;
Sec. 2, SE¼;
Sec. 7, lots 6 to 16, inclusive, S½NE¼, SE¼;
Sec. 8, SW¼NE¼, NW¼NW¼, S½NW¼, S½;
Sec. 9, NW¼SW¼, S½S½;
Sec. 10, NE¼SW¼, S½SW¼, SE¼;
Secs. 11 and 12;
Sec. 13, N½;
Sec. 14, N½;
Sec. 15, N½, N½S½;
Sec. 16, N½, N½S½, S½SW¼;
Sec. 17;
Sec. 18, lots 5 to 13, inclusive, lots 18 to 21, inclusive, NE¼, N½SE¼.
T. 12 S., R. 95 W.,
Sec. 2, SW¼SW¼;
Sec. 3, S½SE¼;
Sec. 8, S½SE¼;
Sec. 9, S½NE¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 10;
Sec. 11, S½NE¼, W½, SE¼;
Sec. 12, NW¼NE¼, S½N½, S½;
Sec. 13, N½, N½S½;
Sec. 14, N½, N½S½;
Sec. 15, N½, N½S½;
Sec. 16;
Sec. 17, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 18, lots 6 to 8, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 19, lots 5 to 8, inclusive, NE¼, E½W½, N½SE¼;
Sec. 20, NE¼NE½, WN¼E¼, NW¼, NW¼SW¼;
Sec. 21, NW¼NW¼.
T. 12 S., R. 96 W.,
Sec. 3, SW¼SW¼;
Sec. 4, lot 8, SW¼, S½SE¼;
Sec. 5, lot 5, NE¼SE¼;
Sec. 9, N½NE¼, SE¼NE¼;
Sec. 10, S½NE¼, NW¼, NE¼SW¼, SE¼;
Sec. 11, SE¼NE¼, S½NW¼, S½;
Sec. 12, SW¼;
Secs. 13 and 14;
Sec. 15, N½NE¼, SE¼NE¼, NE¼SE¼;
Sec. 23, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 24.

NONCOAL LANDS

T. 9 S., R. 90 W.,
Sec. 3, SW¼NE¼, W½, W½SE¼;
Sec. 4;
Sec. 5, NE¼, NE¼SE¼;
Sec. 9, NE¼, E½NW¼;
Sec. 10, N½, N½S½, SE¼SE¼;
Sec. 11, SW¼NW¼, NW¼SW¼;
Sec. 19, SW¼, SW¼SE¼;
Sec. 30, W½NE¼, W½, SE¼;
Sec. 31;
Sec. 32, W½NW¼, SE¼NW¼, SW¼.
T. 10 S., R. 90 W.,
Sec. 5, NW¼, NW¼SW¼;
Secs. 6 and 7;
Sec. 8, W½SW¼;
Sec. 17, NW¼NW¼, SW¼SW¼;
Secs. 18 and 19;
Sec. 20, W½W½, SE¼SW¼;
Sec. 29, SW¼NE¼, W½, W½SE¼, SE¼SE¼;
Sec. 30;
Sec. 31, N½, SW¼, NW¼SE¼;
Sec. 32, N½.

The area classified totals 306,580 acres, more or less, of which 106,703 acres are coal land, 190,411 acres which were formerly classified as noncoal are reclassified as coal land, and 9,466 acres are classified as noncoal land.

Dated: January 19, 1977.

W. A. RADLINSKI,
Acting Director.

[FR Doc.77-2492 Filed 1-25-77;8:45 am]

[Outer Continental Shelf Order No. 2]

GULF OF MEXICO AREA

Request for Comments

The Geological Survey hereby announces that written comments on revisions to OCS Order No. 2 for the Gulf of Mexico Area will be accepted until March 1, 1977. Proposed revisions to this document were published in the FEDERAL REGISTER on January 10, 1977 (42 FR 2137); however, the due date for comments was inadvertently omitted.

Written comments should be sent to the Acting Chief, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 600, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

W. A. RADLINSKI,
Acting Director.

[FR Doc.77-2387 Filed 1-25-77;8:45 am]

UTAH

Coal Land Classification Order No. 118

Coal Land Classification Order No. 118 Pursuant to authority under the Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), and as delegated to me by Departmental Order 2563, May 2, 1950, under authority of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), the following described lands, insofar as title thereto remains in the United States, are hereby classified as shown:

SALT LAKE MERIDIAN

COAL LANDS

T. 17 S., R. 15 E., unsurveyed:
Secs. 5 to 8, inclusive;
Secs. 17 to 19, inclusive;
Sec. 20, W½NE¼, W½;
Sec. 29, W½;
Secs. 30 and 31;
Sec. 32, W½.
T. 18 S., R. 14 E., partly unsurveyed:
Sec. 1, lots 1 to 6, inclusive;
Sec. 12, N½.
T. 18 S., R. 15 E.,
Sec. 5, W½W½;
Secs. 6 and 7;
Sec. 8, W½W½;
Sec. 17, W½W½;
Sec. 18, N½, E½SW¼, and SE¼.

The area described aggregates 9,174 acres, more or less, of which all are classified as coal.

Dated: January 19, 1977.

W. A. RADLINSKI,
Acting Director.

[FR Doc.77-2491 Filed 1-25-77;8:45 am]

WYOMING

Phosphate Land Classification Order No. 22

Pursuant to authority under the Act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), and as delegated to me by Departmental Order 2563, May 2, 1950, under authority of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), the following described lands, insofar as title thereto remains in the United States, are hereby classified as shown:

SIXTH PRINCIPAL MERIDIAN, WYOMING

PHOSPHATE LANDS

T. 39 N., R. 116 W., partly unsurveyed,
Sec. 28, NW¼NW¼, SW¼;
Sec. 33, lot 2, NE¼NE¼;
Sec. 33, NW¼NW¼.

NONPHOSPHATE LANDS

T. 39 N., R. 116 W., partly unsurveyed,
Sec. 3, SE¼NW¼ (west part of lot 4), SW¼NW¼, SW¼;
Sec. 4, NW¼NE¼, S½NE¼, NW¼, S½;
Secs. 5 to 9, inclusive;
Sec. 10, W½;
Sec. 14, W½;
Secs. 15 to 22, inclusive;
Sec. 23, W½NW¼;
Sec. 27, lot 5, W½NE¼, NW¼, N½SW¼, SW¼SW¼;
Sec. 28, NE¼, NE¼NW¼, S½NW¼, SE¼;
Secs. 29 and 30;
Sec. 31, W½NE¼, W½, W½SE¼;
Sec. 32, lot 1, NW¼NE¼, NE¼NW¼;
Sec. 33, E½W½;
Sec. 34.

The area described aggregates 13,458 acres, more or less, of which about 317 acres are classified phosphate lands and about 13,141 acres are classified nonphosphate lands.

Dated: January 19, 1977.

W. A. RADLINSKI,
Acting Director.

[FR Doc.77-2490 Filed 1-25-77;8:45 am]

Mining Enforcement and Safety Administration

NATIONAL MINE HEALTH AND SAFETY ACADEMY

Fees for Training and Use of Space

A notice of the proposed schedule of fees to be charged in connection with the training and use of the National Mine Health and Safety Academy, Beckley, West Virginia, was published in the FEDERAL REGISTER on November 2, 1976 (41 FR 48139). Interested persons were given until November 30, 1976, in which to submit comments in writing regarding the proposed fees. No written comments have been received and the proposed schedule of fees is hereby adopted without change, effective January 26, 1977.

Persons, other than employees of the Department of the Interior, permitted to attend training at the Academy under existing Federal statutes will be admitted on a reimbursable basis in accordance with the fees set forth in this Notice. The Secretary of the Interior may waive, in whole or in part, payments from, or in behalf of, State and local governments for the costs of their employees training at the Academy (42 U.S.C. 4222, 4742).

The daily fees, which are payable upon registration, are based upon identifiable actual costs for food, housekeeping, linens, utilities and miscellaneous expendable materials furnished by the Academy to students. These fees do not include depreciation of facilities and salaries which accrue whether the students attend the Academy or not (31 U.S.C. 483a and OMB Circular A-25). Daily fees will range from $2.35 per day for students who do not room and board at the Academy to $10.00 per day for students who will room and board at the Academy. The daily fee schedule is as follows:

Food	$5.90
Housekeeping	[1] 1.40
Linens	.35
Utilities	1.12
Miscellaneous expendable materials	[2] 1.23

[1] $0.70 per student if double occupancy.
[2] Routine supplies, materials, services and textbooks.

The cost of providing services will be reviewed periodically and fee adjustments will be made as necessary. Information on future adjustments will be published in the Academy's General Catalog.

The Secretary of the Interior may also permit the use of facilities at the Academy for meetings or performances, not directly related to the functions of Federal agencies or activities of employee groups, on a reimbursable actual cost basis provided such use does not adversely affect the interest of the Government (41 CFR Subpart 101-20.7).

Interested persons may write or call the National Mine Health and Safety Academy, P.O. Box 1166, Beckley, West Virginia 25801 (telephone 304-255-0451).

Dated: January 19, 1977.

HARRY C. MCKITTRICK,
Acting Assitant Secretary of the Interior.

[FR Doc.77-2461 Filed 1-25-77;8:45 am]

National Park Service

ENVIRONMENTAL ASSESSMENT ON THE GENERAL MANAGEMENT PLAN FOR GREAT SMOKY MOUNTAINS NATIONAL PARK

Notice of Availability and Public Meetings

An Environmental Assessment considering alternatives for visitor use, development and resource management of Great Smoky Mountains National Park is available for inspection at courthouses and libraries in communities near the park, both in North Carolina and Tennessee; and at National Park Service Regional Offices in Philadelphia, Pennsylvania; Omaha, Nebraska; Washington, D.C.; Boston, Massachusetts; Seattle, Washington; Denver, Colorado; Atlanta, Georgia; Santa Fe, New Mexico; and San Francisco, California. (Consult your local telephone directory for addresses and telephone numbers.)

In addition copies are located at the National Park Service Headquarters in Washington, D.C. and at the following field offices: Field Assistant to Regional Director, Room 10-G-3 Fritz G. Lanham Federal Center, 819 Taylor Street, Fort Worth, Texas 76102; Gateway National Recreation Area Headquarters, Building 69, Floyd Bennett Field, Brooklyn, New York 11234; Great Smoky Mountains National Park, Gatlinburg, Tennessee 37738; and Assistant to Regional Director, Chicago Field Office, National Park Service, 2510 Dempster Street, Suite 214, Des Plaines, Illinois 60016.

In addition, as part of the Service's program for public participation in planning, public meetings will be held at 7 p.m. on February 7, 1977, at Southwestern Technical Institute on Webster Road, in Sylva, North Carolina; at 7 p.m. on February 8, 1977, at Asheville High School, 419 McDowell Street, in Asheville, North Carolina; at 7 p.m. on February 9, 1977, at the Sevier County High School, Sevierville, Tennessee; and at 7 p.m. on February 10, 1977, at the Second Presbyterian Church, 2829 Kingston Pike, Knoxville, Tennessee.

In addition to the alternatives, the assessment considers the nature of the resources, impacts of the various alternatives, mitigating measures to soften the effect of an alternative on the human environment and adverse effects that cannot be avoided should an alternative be implemented. Public comments on the assessment and the alternatives are solicited. Written and oral comments on the assessment and other planning alternatives will be received for consideration at the meetings. Written comments will be received at the Southeast Regional Office, National Park Service, 1895 Phoenix Boulevard, Atlanta, Georgia 30349, and Great Smoky Mountains National Park, Gatlinburg, Tennessee 37738 until March 14, 1977.

Dated: December 28, 1976.

L. BOYD FINCH,
Acting Regional Director, Southeast Region.

[FR Doc.77-2392 Filed 1-25-77;8:45 am]

NATIONAL CAPITAL MEMORIAL ADVISORY COMMITTEE

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Advisory Committee will be held at 1:30 p.m. on Monday, February 14, 1977, in Room 234 at the National

Capital Region Headquarters, 1100 Ohio Drive, SW., Washington, D.C.

The Committee was established for the purpose of preparing and recommending to the Secretary broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended) through the media of monuments, memorials, and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary with respect to site location on Federal land in the National Capital Region and to serve as an information focal point for those seeking to erect memorials on Federal land in the National Capital Region.

The members of the Committee are as follows:

Mr. Gary E. Everhardt (Chairman), Director, National Park Service, Washington, D.C.
Mr. George M. White, Architect of the Capitol, Washington, D.C.
General Mark W. Clark, Chairman, American Battle Monuments Commission, Washington, D.C.
Mr. J. Carter Brown, Chairman, Fine Arts Commission, Washington, D.C.
Mr. David Childs, Chairman, National Capital Planning Commission, Washington, D.C.
Honorable Watler E. Washington, Mayor of the District of Columbia, Washington, D.C.
Mr. Nicholas, Panuzio, Commissioner, Public Buildings Service, Washington, D.C.

The purpose of this meeting is to consider:

1. Pedestal design for the memorial to Bernardo de Galvez.

2. Site locations for the American Legion Freedom Bell.

The meeting will be open to the public. Any person may file with the Committee a written statement concerning the matters to be discussed. Persons who wish to file a written statement or who want further information concerning the meeting may contact Mr. Richard L. Stanton, Associate Regional Director, Cooperative Activities, National Capital Region, at area code 202–426–6715. Minutes of the meeting will be available for public inspection 2 weeks after the meeting at the Office of National Capital Region, Room 208, 1100 Ohio Drive, SW., Washington, D.C.

Dated: January 14, 1977.

MANUS J. FISH, JR.,
Regional Director,
National Capital Region.

[FR Doc.77-2391 Filed 1-25-77;8:45 am]

Office of Hearings and Appeals

[Docket No. M 77-79]

REPUBLIC STEEL CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Republic Steel Corporation has filed a petition to modify the application of 30 CFR 75.1710 to its Republic Mine, located in Pike County, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710–1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973 shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5)(i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner requests modification of 30 CFR 75.1710–1 for its electric face equipment in the following areas of its Republic Mine:

A. The Lower Elkhorn Seam, specifically all areas driven under the boney coal. Coal heights are 42–48 inches.

B. The Upper Elkhorn Seam, specifically all areas driven after 1969. Coal heights are up to 53 inches.

C. The Clintwood Seam (a.k.a. Lick Creek Section), all areas. Coal heights are 37–44 inches.

2. The equipment to be used in the affected areas includes:

Lee Norse 285 continuous miner.
Joy 14 CM continuous miner.
Lee Norse 35Y continuous miner.
21 SC Joy shuttle cars.
No. 48 Torkar National Mine Service shuttle cars.
14 BU–10 Joy loading machine.
Lokar National Mine Service shuttle car.
Model UAT7Y Uni Trac battery scoop.
Model LTDO Fletcher roof bolter.
Model SDME Fletcher roof bolter.
Model DM Fletcher roof bolter.

3. Petitioner seeks to have application of 30 CFR 75.1710–1 modified so that cabs or canopies would not be required on the above-described equipment which is used in the specific areas of the Lower Elkhorn, Upper Elkhorn and Clintwood Seams.

4. Petitioner proposes as an alternative a continued strict compliance with applicable roof control plans and personal protective device regulations.

5. This modification is being requested because use of cabs or canopies on such equipment in the specific sections of the Mine results in a diminution of safety to the miners. The placing of a cab or canopy on any of the various pieces of equipment raises the height of such equipment to the point where the cab or canopy strikes the roof or roof supports. This striking against the roof or roof supports can cause weakening and/or collapse of such areas of the roof and this results in a diminution of safety to the miners.

6. The cab or canopy also causes a diminution of safety to the miners due to the blocked vision of the equipment operator. Due to the limited heights within the specific areas of the mine, the canopy not only blocks the operators' vision directly but also prevents him from moving to a position where he can better see. Obstructed vision increases the chances that the operator will run into or over miners, equipment ribs or walls, thus causing injury to miners or damage to equipment or property.

7. The cab or canopy further diminishes the safety of the miners by limiting the working quarters of the equipment operators. This causes premature fatigue and discomfort to the operator and increases the likelihood of unsafe practices.

8. Petitioner requests that this modification be granted and that it be allowed to operate electric face equipment in the specified areas of its Republic Mine without cabs or canopies as provided in 30 CFR 75.1710–1.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77-2494 Filed 1-25-77;8:45 am]

[Docket No. M 77-61]

ART COAL COMPANY, INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c)

(1970), Art Coal Company Inc., has filed a petition to modify the application of 30 CFR 75.1710 to its No. 4 Mine, located in Pike County, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with § 75.1710 is specified by 30 CFR 75.1710–1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner operates a mine in the No. 1 seam of coal located at Little Branch. The coal height is 48–50 inches. Canopies block vision and create a dangerous condition. Petitioner's employees are refusing to operate the equipment simply because they cannot work under them in a cramped position. They are afraid they will either be injured or run over some of the other employees.

2. Without relief, Petitioner will have to close its mine. Petitioner has six employees.

REQUEST FOR HEARING COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77–2495 Filed 1–25–77;8:45 am]

[Docket No. M 77–73]

CARBON FUEL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Carbon Fuel Company has filed a petition to modify the application of 30 CFR 75.902 to its Morton Mine, located in Kanawha County, West Virginia.

30 CFR 75.902 provides:

On or before September 30, 1970, low- and medium-voltage resistance grounded systems shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the Secretary or his authorized representative to assure such continuity, except that an extension of time, not in excess of 12 months, may be permitted by the Secretary on a mine-by-mine basis if he determines that such equipment is not available. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

75.902–1—The maximum voltage used for such ground check circuits shall not exceed 40 volts.

75.902–2—Ground check systems not employing pilot check wires will be approved only if it is determined that the system includes a fail safe design causing the circuit breaker to open when ground continuity is broken.

75.902–4—In grounding equipment frames of all stationary, portable or mobile equipment receiving power from resistance grounded systems separate connections shall be used when practicable.

The substance of Petitioner's statement is as follows:

1. The coal mined in Petitioner's mine is transported from the working faces to a slope bottom area ("bin") where the coal is fed onto a belt which carries the coal up the slope and out of the mine. The slope bottom or bin area is constructed of steel columns, beams, struts, etc. All of the electrical equipment necessary for operation of the machinery in the bin area is mounted on the steel structure.

2. The entire steel structure on which all electric equipment is mounted in the bin area is grounded in three ways as shown in Exhibit A [1] and is described as follows:

a. A conduit runs from the power center to a control panel which is mounted on the steel frame. A piece of copper wire connects the power center to the steel structure. This copper wire provides a grounding medium for current to return to the neutral grounding resistor which is located in the power center.

b. A backup system is a ground current transformer around the ground resistor ground wire. If a ground fault occurs, this system operates and opens the contacts of a 50G relay which de-energizes the control power to all circuit breaker undervoltage releases.

c. A voltage relay is provided across the terminals of the grounding resistors. The relay has normally closed contacts but if a ground fault occurs, the contacts will open and de-energize the undervoltage releases on all circuit breakers. If the grounding resistor opens so there is not continuity, the voltage relay operates under fault condition opening the control circuit to the undervoltage releases.

3. On November 16, 1976, Federal Mine Inspector Roy A. Gray issued to Petitioner a "Notice" for an alleged violation of 30 CFR 75.902, a copy of which notice is attached hereto as Exhibit B.[2] Such notice requires that Petitioner provide a fail-safe ground check system to continuously monitor the grounding circuit for motors located at the slope bottom bin. The alleged violation is to be totally abated by 8:00 a.m. on December 31, 1976.

4. After a thorough investigation by Petitioner, it has been determined that its present grounding system as described above is an alternative method which achieves the same results of 30 CFR 75.902 and at all times guarantees no less than the same measure of protection afforded the miners of the Morton Mine by 30 CFR 75.902.

5. No danger is involved. Petitioner requests that in lieu of the mandatory standard contained in 30 CFR 75.902, that it be permitted to continue to ground the electric equipment in the slope bottom bin area in the manner described herein.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77–2496 Filed 1–25–77;8:45 am]

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[1] The enclosed Exhibit is available for inspection at the address listed in the last paragraph of this notice.

[2] The enclosed Exhibit is available for inspection at the address listed in the last paragraph of this notice.

[Docket No. M 77-62]

LYNN COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Lynn Coal Company has filed a petition to modify the application of 30 CFR 75.1101 to its No. 32 Mine, located in Boone County, West Virginia.

30 CFR 75.1101 provides:

Deluge-type water sprays or foam generators automatically actuated by rise in temperature, or other no less effective means approved by the Secretary of controlling fire, shall be installed at main and secondary belt-conveyor drives.

The substance of Petitioner's statement is as follows:

1. Petitioner's mine uses a blowing ventilation system. Therefore, air will be traveling down the belt entry to the surface.

2. A fire sensor will be placed over the drive.

3. The mine will be no less safe than if the mandatory safety standard is applied.

4. Freezing problems would prevent the use of deluge type systems (presently on hand).

5. All other regulations will be complied with (fire sensors, fire resistant belt, belt control switches, etc.).

6. A self-explanatory map is enclosed.[1]

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77-2497 Filed 1-25-77;8:45 am]

[Docket No. M77-70]

TUNNELTON MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Tunnelton Mining Company has filed a petition to modify the application of 30 CFR 75.802(a) to its Marion Mine, located in Indiana County, Pennsylvania.

30 CFR 75.802 provides:

(a) Except as provided in paragraph (b) of this section, high-voltage circuits extending underground and supplying portable, mobile, or stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from that circuit.

(b) Notwithstanding the requirements of paragraph (a) of this section, the Secretary or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electric equipment if:

(1) Such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length; or,

(2) The voltage of such circuits is nominally 2,400 volts or less phase-to-phase and the cables used in such circuits are equipped with metallic shields around each power conductor, and contain one or more ground conductors having a total cross sectional area of not less than one-half the power conductor; and,

(3) Upon a finding by the Secretary or his authorized representative that the use of the circuits described in paragraph (b) (1) and (2) of this section does not pose a hazard to the miners.

(c) Within 100 feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the Secretary or his authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he determines, based on existing physical conditions, that such installation will be more accessible at a greater distance and will not pose any hazard to the miners.

The substance of Petitioner's statement is as follows:

1. The 7.2 KV system was installed at Petitioner's Mine prior to 1969. The source transformers are owned by the West Penn Power Company and are located about 4,300 feet by straight line away from the mine. The 7.2 KV distribution line from the source transformer to the mine is owned and maintained by the West Penn Power Company. The source transformers are located 4.3 miles by road (20 minutes by vehicle) away from the mine.

2. Petitioner proposes the use of an oil circuit recloser to disconnect the entire surface load (less the primary fan) for any phase to ground fault on the entire 7.2 KV system originating from the West Penn transformers.

3. Petitioner further proposes as a modification the following system:

(a) Two separate ground beds with impedance less than 2 ohms each. One ground bed will be for the underground system and will be connected to the ground side of the neutral resistor. The other ground bed will be separated at least 25 feet from the previous ground bed and will be connected to the West Penn skywire, all surface equipment grounds and frames, and all surface lightning arrestor installations.

(b) An oil circuit recloser (OCR) will be added to the 7.2 KV circuit immediately after the primary fan transformer and before any other mine surface load. The OCR will have appropriate load carrying and interrupting rating.

(c) A phase to ground fault sensing and indicating scheme will be added to sense a grounded phase and trip the OCR.

(d) The OCR will be tripped for all phase to ground faults on the surface 7.2 KV system. Tripping will be delayed slightly to coordinate with the ground fault protection on the underground breaker.

(e) A ground fault indicating light will be added at the OCR to indicate a ground fault anywhere on the 7.2 KV system.

(f) With the exception of (c) above, all operations of the OCR will be manual.

(g) The grounding conductor from the ground resistor will not serve as grounding medium for the surface high-voltage equipment frames; it will be the grounding medium for the underground high-voltage equipment frames and the resistor will not be at the source transformers.

(h) The underground high-voltage ground will not be connected to the frame of the high-voltage equipment supplying power to the system but the frames will be effectively grounded.

(i) All frames of surface high-voltage equipment shall be effectively grounded at the utilization point by both a local ground rod and be connected to the surface system ground wire.

(j) The neutral resistor ground conductor will not be connected to the surface high-voltage equipment frames; these frames will be effectively grounded to limit frame voltages to safe levels under fault conditions.

4. If Petitioner's existing system were modified to comply with Section 75.802, the entire surface load would become a delta ungrounded system.

5. Petitioner maintains that its proposed alternates system will be as safe as, or safer than the present system as required by 30 CFR 75.802(a) in that phase to ground faults on the surface systems will be cleared before a dual phase to ground fault can occur.

6. If Petitioner's modification is granted, the installation of the oil circuit recloser will not result in a diminution of safety to the miners at Petitioner's mine.

REQUEST FOR HEARINGS OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77-2498 Filed 1-25-77;8:45 am]

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[1] The enclosed map is available for inspection at the address listed in the last paragraph of this notice.

[Docket No. M77-71]

TUNNELTON MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Tunnelton Mining Company has filed a petition to modify the application of 30 CFR 75.811 to its Marion Mine, located in Indiana County, Pennsylvania. 30 CFR 75.811 provides:

Frames, supporting structures, and enclosures of stationary, portable or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage ground.

The substance of Petitioner's statement is as follows:

1. The 7.2 KV system was installed at Petitioner's mine prior to 1969. The source transformers are owned by the West Penn Power Company and are located about 4,300 feet by straight line away from the mine. The 7.2 KV distribution line from the source transformer to the mine is owned and maintained by the West Penn Power Company. The source transformers are located 4.3 miles by road (20 minutes by vehicle) away from the mine.

2. Petitioner proposes the use of an oil circuit recloser to disconnect the entire service load (less the primary fan) for any phase to ground fault on the entire 7.2 KV system originating from the West Penn transformers.

3. Petitioner further proposes as a modification the following system:

(a) Two separate ground beds with impedance less than 2 ohms each. One ground bed will be for the underground system and will be connected to the ground side of the neutral resistor. The other ground bed will be separated at least 25 feet from the previous ground bed and will be connected to the West Penn skywire, all surface equipment grounds and frames, and all surface lightning arrestor installations.

(b) An oil circuit recloser (OCR) will be added to the 7.2 KV circuit immediately after the primary fan transformer and before any other mine surface load. The OCR will have appropriate load carrying and interrupting rating.

(c) A phase to ground fault sensing and indicating scheme will be added to sense a grounded phase and trip the OCR.

(d) The OCR will be tripped for all phase to ground faults on the surface 7.2 KV system. Tripping will be delayed slightly to coordinate with the ground fault protection on the underground breaker.

(e) A ground fault indicating light will be added at the OCR to indicate a ground fault anywhere on the 7.2 KV system.

(f) With the exception of (c) above, all operations of the OCR will be manual.

(g) The grounding conductor from the ground resistor will not serve as grounding medium for the surface high-voltage equipment frames; it will be the grounding medium for the underground high-voltage equipment frames and the resistor will not be at the source transformers.

(h) The underground high-voltage ground will not be connected to the frame of the high-voltage equipment supplying power to the system but the frames will be effectively grounded.

(i) All frames of surface high-voltage equipment shall be effectively grounded at the utilization point by both a local ground rod and be connected to the surface system ground wire.

(j) The neutral resistor ground conductor will not be connected to the surface high-voltage equipment frames; these frames will be effectively grounded to limit frame voltages to safe levels under fault conditions.

4. If Petitioner's existing system were modified to comply with 30 CFR 75.802, the entire surface load would become a delta ungrounded system.

5. Petitioner maintains that its proposed alternate system will be as safe as, or safer than the present system as required by 30 CFR 75.811 in that phase to ground faults on the surface systems will be cleared before a dual phase to ground fault can occur.

6. If Petitioner's modification is granted, the installation of the oil circuit recloser will not result in a diminution of safety to the miners at Petitioner's mine.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77-2409 Filed 1-25-77;8:45 am]

[Docket No. M77-72]

TUNNELTON MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Tunnelton Mining Company has filed a petition to modify the application of 30 CFR 75.802 to its Marion Mine, located in Indiana County, Pennsylvania.

30 CFR 75.802 provides:

(a) Except as provided in paragraph (b) of this section, high-voltage circuits extending underground and supplying portable, mobile, or, stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from that circuit.

(b) Notwithstanding the requirements of paragraph (a) of this section, the Secretary or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electric equipment if:

(1) Such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length; or,

(2) The voltage of such circuits is nominally 2,400 volts or less phase-to-phase and the cables used in such circuits are equipped with metallic shields around each power conductor, and contain one or more ground conductors having a total cross sectional area or not less than one-half the power conductor; and,

(3) Upon a finding by the Secretary or his authorized representative that the use of the circuits described in paragraph (b) (1) and (2) of this section does not pose a hazard to the miners.

(c) Within 100 feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the Secretary or his authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he determines, based on existing physical conditions, that such installations will be more accessible at a greater distance and will not pose any hazard to the miners.

The substance of Petitioner's statement is as follows:

1. The 7.2 KV system was installed at Petitioner's mine prior to 1969. The source transformers are owned by the West Penn Power Company and are located about 4,300 feet by straight line away from the mine. The 7.2 KV distribution line from the source transformer to the mine is owned and maintained by the West Penn Power Company. The source transformers are located 4.3 miles by road (20 minutes by vehicle) away from the mine.

2. Petitioner proposes the use of an oil circuit recloser to disconnect the entire surface load (less the primary fan) for any phase to ground fault on the entire 7.2 KV system originating from the West Penn transformers.

3. Petitioner further proposes as a modification the following system:

(a) Two separate ground beds with impedance less than 2 ohms each. One ground bed will be for the underground system and will be connected to the ground side of the neutral resistor. The other ground bed will be separated at least 25 feet from the previous ground bed and will be connected to the West Penn skywire, all surface equipment grounds and frames, and all surface lightning arrestor installations.

(b) An oil circuit recloser (OCR) will be added to the 7.2 KV circuit immediately after the primary fan transformer

and before any other mine surface load. The OCR will have appropriate load carrying and interrupting rating.

(c) A phase to ground fault sensing and indicating scheme will be added to sense a grounded phase and trip the OCR.

(d) The OCR will be tripped for all phase to ground faults on the surface 7.2 KV system. Tripping will be delayed slightly to coordinate with the ground fault protection to the underground breaker.

(e) A ground fault indicating light will be added at the OCR to indicate a ground fault anywhere on the 7.2 KV system.

(f) With the exception of (c) above, all operations of the OCR will be manual.

(g) The grounding conductor from the ground resistor will not serve as grounding medium for the surface high-voltage equipment frames; it will be the grounding medium for the underground high voltage equipment frames and the resistor will not be at the source transformers.

(h) The underground high-voltage ground will not be connected to the frame of the high-voltage equipment supplying power to the system but the frames will be effectively grounded.

(i) All frames of surface high-voltage equipment shall be effectively grounded at the utilization point by both a local ground rod and be connected to the surface system ground wire.

(j) The neutral resistor ground conductor will not be connected to the surface high-voltage equipment frames; these frames will be effectively grounded to limit frame voltages to safe levels under fault conditions.

4. If Petitioner's existing system were modified to comply with 30 CFR 75.802, the entire surface load would become a delta ungrounded system.

5. Petitioner maintains that its proposed alternate system will be as safe as, or safer than the present system as required by 30 CFR 75.802 in that phase to ground faults on the surface systems will be cleared before a dual phase to ground fault can occur.

6. If Petitioner's modification is granted, the installation of the oil circuit recloser will not result in a diminution of safety to the miners at Petitioner's mine.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments by February 25, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: January 14, 1977.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

[FR Doc.77-2500 Filed 1-25-77;8:45 am]

Office of the Secretary

LIVESTOCK GRAZING ON PUBLIC LANDS

Schedule of Fees, 1977

Pursuant to the Taylor Grazing Act of 1934 and the Federal Land Policy and Management Act of 1976, notice is hereby given of the schedule of fees for the 1977 fee year beginning March 1, 1977, and ending February 28, 1978, for livestock grazing on the public lands.

For the purpose of establishing charges, one animal unit month (AUM) shall be considered equivalent to grazing use by one cow, five sheep, or one horse for one month. The charge for one horse is at twice the rate for one cow.

Bills shall be issued in accordance with the rates prescribed in this notice.

INSIDE STATUTORY GRAZING DISTRICTS

Pursuant to Departmental regulations (43 CFR 4115.2-1(k)), as amended January 4, 1977 (FR 778), fees within districts, except as otherwise provided herein, shall be $1.51 per AUM of which 50 percent is credited to the range betterment account.

Exceptions to the above rates are hereby set as follows for certain LU project lands (Bankhead-Jones Title III lands) in order to continue the basis of fees that has heretofore been established:

Arizona. For the San Simon project (Cienega area) transferred to the Department by Executive Order 10322, the fees shall be $1.88 per AUM.

Colorado. For the Great Divide project transferred to the Department by Executive Order 10046, the fees shall be $1.62 per AUM.

Montana. For all LU lands within districts transferred to the Department by Executive Order 10787, the fees shall be $1.62 per AUM.

New Mexico. For the Hope Land project transferred to the Department by Executive Order 10787, the fees shall be $1.58 per AUM. The San Simon project (Cienega area) transferred to the Department by Executive Order 10322, the fees shall be $1.88 per AUM.

OUTSIDE STATUTORY GRAZING DISTRICTS (EXCLUSIVE OF ALASKA)

Pursuant to Departmental regulations (43 CFR 4125.1-1(m)), as amended January 4, 1977 (FR 778), the rate for grazing leases, except as otherwise provided herein, shall be $1.51 per AUM of which 50 percent is credited to the range betterment account.

Exceptions to the above rate are hereby set as follows for certain LU project lands and for all O&C (Revested Oregon and California Railroad), CBWR (Reconveyed Coos Bay Wagon Road Grant), and intermingled public domain lands in western Oregon in order to continue the basis of fees that has heretofore been established:

Montana. For those Milk River Land project lands outside districts transferred to the Department by Executive Order 18787, the fee shall be $1.62 per AUM.

Wyoming. For the northeast Wyoming project transferred to the Department by Executive Order 10046 and amended by Executive Order 10175, the fee shall be $1.62 per AUM.

Western Oregon. For western Oregon, the fee shall be $1.62 per AUM. Receipts from O&C and CBWR lands are not subject to the range betterment program account provisions of the Federal Land Policy and Management Act of 1976.

JACK O. HORTON,
Assistant Secretary
of the Interior.

JANUARY 19, 1977.

[FR Doc.77-2460 Filed 1-25-77;8:45 am]

ALVIN F. BAAL

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: December 20, 1976.

ALVIN F. BAAL, III.

[FR Doc.77-2501 Filed 1-25-77;8:45 am]

HARLEY L. COLLINS

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: December 17, 1976.

HARLEY L. COLLINS.

[FR Doc.77-2502 Filed 1-25-77;8:45 am]

WINSTON M. COOPER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: December 20, 1976.

WINSTON M. COOPER.

[FR Doc.77-2503 Filed 1-25-77;8:45 am]

LESTER E. GARLINGHOUSE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

Purchased:
(1) Gould Incorporated (9-30-76).
(2).
(3).
(4).

This statement is made as of January 1, 1977.

Dated: January 4, 1977.

LESTER E. GARLINGHOUSE.

[FR Doc.77-2504 Filed 1-25-77;8:45 am]

BILL M. GUTHRIE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 28, 1977.

Dated: December 16, 1976.

BILL M. GUTHRIE.

[FR Doc.77-2505 Filed 1-25-77;8:45 am]

KENNETH M. HALE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1).
(2) No change from status previously submitted.
(3).
(4).

This statement is made as of January 1, 1977.

Dated: December 20, 1976.

KENNETH M. HALE.

[FR Doc.77-2506 Filed 1-25-77;8:45 am]

WILLIAM P. HENNE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 11, 1977.

Dated: December 16, 1976.

WILLIAM P. HENNE.

[FR Doc.77-2507 Filed 1-25-77;8:45 am]

BILL C. HULSEY

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 28, 1977.

Dated: December 20, 1976.

BILL C. HULSEY.

[FR Doc.77-2508 Filed 1-25-77;8:45 am]

MAURICE H. KENT

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: December 17, 1976.

MAURICE H. KENT.

[FR Doc. 77-2509 Filed 1-25-77;8:45 am]

LEON LOVELESS

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: December 16, 1976.

LEON LOVELESS.

[FR Doc.77-2510 Filed 1-25-77;8:45 am]

ROBERT J. MARCHETTI

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: January 6, 1977.

ROBERT J. MARCHETTI.

[FR Doc. 77-2511 Filed 1-25-77;8:45 am]

JOHN A. McMAHON

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: December 31, 1976.

JOHN A. McMAHON.

[FR Doc.77-2512 Filed 1-25-77;8:45 am]

S. RIGGS SHEPPERD

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) None.
(2) None.
(3) None.
(4) None.

This statement is made as of January 12, 1977.

Dated: January 6, 1977.

RIGGS SHEPPERD.

[FR Doc.77-2513 Filed 1-25-77;8:45 am]

KEITH E. SPENCER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) None.
(2) None.
(3) None.
(4) None.

This statement is made as of January 1, 1977.

Dated: December 16, 1976.

KEITH E. SPENCER.

[FR Doc. 77-2514 Filed 1-25-77;8:45 am]

FRED M. TREFFINGER

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 1, 1977.

Dated: January 6, 1977.

FRED M. TREFFINGER.

[FR Doc.77-2515 Filed 1-25-77;8:45 am]

CHARLES N. WHITMIRE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) None.
(2) Delete Marcor; add Mobil.
(3) None.
(4) None.

This statement is made as of January 28, 1977.

Dated: December 20, 1976.

CHARLES N. WHITMIRE.

[FR Doc.77-2517 Filed 1-25-77;8:45 am]

ROBERT W. WINFREE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past six months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of January 11, 1977.

Dated: December 16, 1976.

ROBERT W. WINFREE.

[FR Doc.77-2518 Filed 1-25-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

GOVERNMENT IN THE SUNSHINE

Amendment of Meeting

In its notice for the meeting of February 1, 1977, the Commission indicated that its discussion of reorganization (agenda item No. 3) would be in open session. Such discussion will be in open session to the extent that the discussion does not involve selections of personnel to fill positions under the reorganization. The portion of the discussion under item No. 3 which concerns selections of personnel to fill positions under the reorganization will be held in closed session.

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 this portion of the discussion 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.
Charles R. Ramsdale, Acting Director, Personnel.
Norma H. Warbis, Personnel Management Specialist (if Mr. Ramsdale is not available).
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 discussion of reorganization 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(e). 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 21, 1977.

RUSSELL N. SHEWMAKER,
General Counsel.
KENNETH R. MASON,
Secretary.

[FR Doc.77-2546 Filed 1-25-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Amendment of Meeting

In its notice for the meeting of February 3, 1977, the Commission indicated that its discussion of reorganization (agenda item No. 1) would be in open session. Such discussion will be in open session to the extent that the discussion does not involve selections of personnel to fill positions under the reorganization. The portion of the discussion under item No. 1 which concerns selections of personnel to fill positions under the reorganization will be held in closed session.

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 t hold this portion of the discussion with respect to item No. 1 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.
Charles R. Ramsdale, Acting Director, Personnel.
Norma H. Warbis, Personnel Management Specialist (if Mr. Ramsdale is not available).
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 discussion of reorganiza-

tion 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(e). 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 21, 1977.

RUSSELL N. SHEWMAKER,
General Counsel.
KENNETH R. MASON,
Secretary.

[FR Doc.77-2547 Filed 1-25-77;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

CARLTON TURNER

Registration as Importer of Controlled Substances

By Notice dated November 18, 1976, and published in the FEDERAL REGISTER on November 29, 1976; (41 FR 52345), Carlton Turner, Department of Pharmacognosy, School of Pharmacy, University of Mississippi, University, MS 38677, made application to the Drug Enforcement Administration to be registered as an importer of marihuana, a basic class of controlled substance listed in Schedule I.

No comments or objections having been received, and, pursuant to section 1008(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and in accordance with 21 CFR 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: January 17, 1977.

DONALD E. MILLER,
Acting Deputy Administrator, Drug Enforcement Administration.

[FR Doc.77-2519 Filed 1-25-77;8:45 am]

KNOLL PHARMACEUTICAL CO. PRODUCTION CO.

Application for Manufacture of Controlled Substances

Section 303(a)(1) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 823(a)(1)) states:

"The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;"

Pursuant to § 1301.43 of Title 21 of the Code of Federal Regulations (CFR), notice is hereby given that on November 22, 1976, Knoll Pharmaceutical Company Production Department, 30 North Jefferson Road, Whippany, NJ 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of hydromorphone, a basic class of controlled substance in schedule II.

Pursuant to Section 301 of the Controlled Substances Act (21 U.S.C. 821), and in accordance with 21 CFR 1301.43 (a), notice is hereby given that the above person has made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substance indicated, and any other such person, and any existing registered bulk manufacturer of hydromorphone, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on the application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than February 24, 1977.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration, Room 1203, 1405 Eye Street, N.W., Washington, D.C. 20537.

Dated: January 17, 1977.

DONALD E. MILLER,
Acting Deputy Administrator, Drug Enforcement Administration.

[FR Doc.77-2520 Filed 1-25-77;8:45 am]

Law Enforcement Assistance Administration

ARMORED CAR COMMITTEE

Meeting

Notice is hereby given that the Armored Car Committee of LEAA's Private Security Advisory Council (PSAC) will meet Thursday and Friday, February 10 and 11, 1977. The meeting will convene at 9:30 a.m., February 10 at the Fort Lauderdale Hilton Hotel, Verde Room, 4060 Galtoceanmile Drive, in Fort Lauderdale, Florida. The meeting is scheduled to adjourn by 1:00 p.m., February 11.

Discussion at this meeting will focus on standards for personnel selection, training, equipment and performance for armored car and armed courier services. The meeting will be open to the public.

For further information, please contact: Mr. James Hagerty, Program Manager, Standards and Goals, Office of Regional Operations, Law Enforcement Assistance Administration, U.S. Department of Justice, 633 Indiana Avenue, N.W., Room 700, Washington, D.C. 20530. (202) 376-3550.

JAY A. BROZOST,
Attorney-Advisor, Office of General Counsel.

[FR Doc.77-2536 Filed 1-25-77;8:45 am]

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

MEETING

JANUARY 24, 1977.

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 the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a two-day meeting on Monday and Tuesday, February 14-15, 1977. The sessions will be open to the public and will be held in Room 4830 of the U.S. Department of Commerce Building, 14th Street between Constitution Avenue and E Street, N.W. Washington, D.C. beginning at 9:00 a.m. on both days.

The Committee, consisting of 25 non-Federal members appointed by the President from State and local governments, industry, science and other appropriate areas, was established by Congress by Public Law 92-125, on August 16, 1971, as amended. Its duties are to (1) undertake a continuing review of national ocean policy, coastal zone management and the progress of the marine and atmospheric science and service programs of the United States, (2) submit a comprehensive annual report to the President and to the Congress setting forth an overall assessment of the status of the Nation's marine nad atmospheric activities on or before 30 June of each year, and (3) advise the Secretary of Commerce with respect to the carrying out of the purpose of the National Oceanic and Atmospheric Administration.

The general agenda includes the following topics:

FEBRUARY 14, 1977—MORNING—0900-1200

Induction of new members—Agency briefings on Coastal Zone Management Merchant Marine Issues.

AFTERNOON—1300-1700

Agency briefings on Ocean Engineering Working groups on marine transportation, ocean engineering, marine education, National Weather Service emergency operations, air pollution monitoring, national goals and objectives.

FEBRUARY 15, 1977—MORNING—0900-1330

World Oil and Gas Outlook. NACOA work in progress, plans for the future. Mr. E. H. Clark, NACOA, NACOA Members, Dr. William J. Hargis, Jr.

Adjournment at approximately 1330.

The public is welcome at these sessions and will be admitted to the extent of the seating available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting.

The Chairman retains the perogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Dr. Douglas L. Brooks, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, Department of Commerce Building, Room 5225, Washington, D.C. 20230. The telephone number is 377-3343.

DOUGLAS L. BROOKS,
Executive Director.

[FR Doc.77-2642 Filed 1-25-77;8:45 a.m.]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 18, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF DEFENSE

Departmental and Other, Army Advertising Awareness and Attitude Survey, single time, nonprior service males age 17-21, National Security Division, Maria Gonzalez, 395-4734.

Policy Development Research, U.S. Navy Paid Broadcast Media Mix and Media Weight Attitude and Awareness Study, single time, nonprior service males age 17-21, National Security Division, Maria Gonzalez, 395-4734.

DEPARTMENT OF THE INTERIOR

Bureau of Mines, Underground Coal Mining Recovery, 6-PI 12, single time, coal mining companies, C. Louis Kincannon, 395-3211.

DEPARTMENT OF TRANSPORTATION

Departmental and Other, Preliminary Plan for Collecting Data on Transit Patrols Security Perceptions and Needs, single time, potential urban transit patrols, Strasser, A., 395-5867.

REVISIONS

DEPARTMENT OF LABOR

Employment and Training Administration, CETA Forms Preparation Handbook—Titles I, II, III and VI,MA 2-202,203 319,220, MA-5-134-136 145,145A, Other (see SF-83), State and local agencies, Caywood, D. P., Strasser, A., 395-3443.

Labor Management and Service Administration, Surety Company Annual Report, LMSA S-1, annually, surety companies which issue bonds under the LMRDA, Caywood, D. P., 395-3443.

EXTENSIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary, Third Wave Survey: Vietnam Resettlement Operation Feedback Survey, OS-13-76, single time, Vietnamese refugees, Sunderhauf, M. B., 395-6140.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Management, Monthly Operating Summary for Insured Subsidized Multifamily Housing Projects, HUD 9808, monthly, owners of projects with insured of HUD-held mortgages, Tracey Cole, 395-5870.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-2654 Filed 1-25-77;8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 17, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Pretest: Survey of Consumer Demand for Arts and Cultural Services in the South, singletime, National Family Opinion, Inc. Pre-volunteer Panel, Maria Gonzalez, 395-6132.

DEPARTMENT OF DEFENSE

Department of the Army (excluding Defense Civil Preparedness Agency), Great Lakes Shoreline Property Damage, on occasion, shoreline property owners, Caywood, D. P., 395-3443.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development, Evaluation of the Process of Mainstreaming Handicapped Children Into Head Start, singletime, teachers, administrators, parents, health professionals, Human Resources Division, Reese, B. F., 395-3532.

Social Security Administration, Survey of Physicians' Practice Costs, SSA-3462, annually, physicians in 18 specialties, Richard Eisinger, 395-6140.

Office of Human Development, Evaluation of CDA Competency-Based Training Programs Surveys, other (see SF-83), HSST/CDA project managers, field supervisors, H.S. grantees, Human Resources Division, Reese, B. F., 395-3532.

DEPARTMENT OF TRANSPORTATION

Coast Guard, Reception Facility Survey, single time, companies, Strasser, A. 395-5867.

Federal Railroad Administration, Regulations Governing Proposed Transactions Submitted to the Secretary of Transportation Under Section 5(3)(F) of the Interstate Commerce Act, single time, common carrier by rail, Economics and General Government Division, Lowry, R. L., 395-3451.

REVISIONS

DEPARTMENT OF COMMERCE

Bureau of Census, Flat Glass Report, MQ-32A, quarterly, flat glass plants, Peterson, M. O., 395-5631.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration, Locomotive Inspection and Repair Report, FRA F 6180, selmannually, railroads, Warren Topelius, 395-5872.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Forest Service, Application for Permit—Non-Federal Commercial Use of Special Service Roads (Forest Service Lands), 7700-40, on occasion, non-Federal Commercial haulers, Marsha Traynham, 395-4529.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Inpatient Admission and Billing, SSA-1453, on occasion, hospitals and skilled nursing facilities, Tracey Cole, 395-5870.

Health Resources Administration, National Survey of Family Growth, Cycle II; Main Field Work, NCHS 0910, single time, subsample of main survey nonrespondents, Richard Eisinger, 395-6140.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-2655 Filed 1-25-77;8:45 am]

OHIO RIVER BASIN COMMISSION

WABASH RIVER BASIN COMPREHENSIVE COORDINATED JOINT PLAN

Availability of Report

Pursuant to Section 204(3) of the Water Resources Planning Act of 1965 (Pub. L. 89-80), the Ohio River Basin Commission has completed a report summarizing the current Comprehensive Coordinated Joint Plan (CCJP) for the Wabash River Basin portion of the Ohio River Basin. The Report currently is being reviewed by the Governors and the head of each Federal agency, and each

interstate agency, from which a member of the Commission has been appointed.

Views, comments and recommendations on the CCJP are requested by April 14, 1977. Copies are available on request to the Ohio River Basin Commission, 36 E. Fourth Street, Suite 208–220, Cincinnati, Ohio 45202.

FRED E. MORR,
Chairman.

[FR Doc.77-2530 Filed 1-25-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[License No. 03/03-5126]

PROFESSIONAL CAPITAL CORP.

Issuance of License to Operate as a Small Business Investment Company

On December 1, 1976, a notice was published in the FEDERAL REGISTER (41 FR 52737) stating that Professional Capital Corporation, 1121 Arlington Boulevard, Suite 59, Arlington, Virginia 22209 has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1976) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business December 16, 1976, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued license No. 03/03-5126 to Professional Capital Corporation on January 6, 1977.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: January 17, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-2521 Filed 1-25-77;8:45 am]

[License No. 05/05-0113]

FOURTH STREET CAPITAL CORP.

Issuance of a Small Business Investment Company License

On December 2, 1976, a notice was published in the FEDERAL REGISTER (41 FR 52929) stating that an application had been filed by Fourth Street Capital Corp., 508 Dixie Terminal Building, Cincinnati, Ohio 45202 with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1976)) for a license as a small business investment company.

Interested parties were given until close of business December 17, 1976, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0113 on January 12, 1977 to Fourth Street Capital Corp., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: January 18, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-2522 Filed 1-25-77;8:45 am]

DEPARTMENT OF STATE

[Public Notice CM-7/21]

GOVERNMENT ADVISORY COMMITTEE ON INTERNATIONAL BOOK AND LIBRARY PROGRAMS

Meeting

The Government Advisory Committee on International Book and Library Programs will meet on Thursday, February 17, 1977 in open session.

The meeting will be divided into two separate parts: a morning session and an afternoon session.

The morning session will be a joint meeting with the U.S. Advisory Commission on International Educational and Cultural Affairs. It will be held in the Charles Suite of L'Enfant Plaza Hotel, 480 L'Enfant Plaza East, S.W., Washington, D.C. from 9:00 a.m. until 12:00 noon. There will be one item on the agenda: a discussion of U.S. implementation of the provisions of Basket III of the "Final Act" of the Conference on Security and Cooperation in Europe (the Helsinki agreement), with particular emphasis on the desirability of reinstituting a currency convertibility program to encourage the sales abroad of U.S. cultural materials.

The afternoon session will also be held in the Charles Suite from approximately 2:00 p.m. until 4:30 p.m.

The agenda will include:

1. Discussions on U.S. participation in international book fairs and U.S.-U.S.S.R. book and library exchanges.
2. Reports:
a. On the November 1976 UNESCO General Conference.
b. On the January 1977 Cairo International Book Fair.

Visitors to either session will be accommodated up to the capacity of the conference room; therefore, anyone wishing to attend either session must advise the Executive Secretary of the Committee by 5:30 p.m., February 15, 1977. Telephone: (202) 632-2841.

Dated: January 13, 1977.

CAROL M. OWENS,
Executive Secretary.

[FR Doc.77-2524 Filed 1-25-77;8:45 am]

[Public Notice CM-7/20]

U.S. ADVISORY COMMISSION ON INTERNATIONAL EDUCATIONAL AND CULTURAL AFFAIRS

Meeting

The United States Advisory Commission on International Educational and Cultural Affairs will meet in open session on Thursday, February 17, 1977.

The meeting will be divided into two separate parts: A morning session and an afternoon session.

The morning session will be a joint meeting with the Government Advisory Committee on International Book and Library Programs. It will be held in the Charles Suite of L'Enfant Plaza Hotel, 480 L'Enfant Plaza East, S.W., Washington, D.C. from 9:00 a.m. until 12:00 noon. There will be one item on the agenda: A discussion of U.S. implementation of the provisions of Basket III of the "Final Act" of the Conference on Security and Cooperation in Europe (the Helsinki agreement), with particular emphasis on the desirability of reinstituting a currency convertibility program to encourage the sales abroad of U.S. cultural materials.

The afternoon session will be held in the Marquette Salon of L'Enfant Plaza Hotel, from approximately 2:00 p.m. until 4:30 p.m. There will be the following subjects on the agenda, in addition to any old or new business which any member may wish to raise.

1. Briefing by State Department representative on exchanges between U.S. and Canada.
2. Reports:
a. By the Chairman and Mr. Smith on their trip to the Middle East.
b. By the Chairman on his talks with President Ford, Congressman Slack, and Secretary-designate Vance.
c. By Staff Director on financial status of Commission.
3. Old Business.
a. Assignment of an economic professor to Japan under the Fulbright Program.
b. New concepts for a North-South Center.

Visitors to either session will be accommodated up to the capacity of the conference rooms; therefore, anyone wishing to attend either session must advise the Staff Director of the Commission by 5:30 PM, February 15, 1977. He can be reached by telephone at (202) 632-2764.

Dated: January 13, 1977.

W. E. WELD, Jr.,
Staff Director, Commission Secretariat.

[FR Doc.77-2525 Filed 1-25-77;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

INEDIBLE GELATIN AND ANIMAL GLUE FROM THE FEDERAL REPUBLIC OF GERMANY

Antidumping Proceeding

On December 23, 1976, information was received in proper form pursuant to Sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27),

from counsel acting on behalf of Darling & Company, Chicago, Illinois; Milligan & Higgins Corporation, West Orange, New Jersey; and the Peter Cooper Corporation, Gowanda, New York, indicating a possibility that inedible gelatin and animal glue from the Federal Republic of Germany are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act").

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States. This evidence indicates that imports from the Federal Republic of Germany have increased during the past year and that these imports are substantially underselling the domestic product. Available evidence further indicates that domestic prices, production, employment and capacity utilization may have suffered declines during the past year as a result of less than fair value imports from the Federal Republic of Germany.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of price information received from all sources is as follows: the information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to Section 153.30 of the Customs Regulations (19 CFR 153.30).

Dated: January 19, 1977.

JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

[FR Doc.77-2412 Filed 1-25-77;8:45 am]

INEDIBLE GELATIN AND ANIMAL GLUE FROM THE NETHERLANDS

Antidumping Proceeding

On December 23, 1976, information was received in proper form pursuant to Sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Darling & Company, Chicago, Illinois; Milligan & Higgins Corporation, West Orange, New Jersey; and the Peter Cooper Corporation, Gowanda, New York, indicating a possibility that inedible gelatin and animal glue from the Netherlands are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act").

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States. This evidence indicates that imports from the Netherlands have increased during the past year and that these imports are substantially underselling the domestic product. Available evidence further indicates that domestic prices, production, employment and capacity utilization may have suffered declines during the past year as a result of less than fair value imports from the Netherlands.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of price information received from all sources is as follows: the information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to Section 153.30 of the Customs Regulations (19 CFR 153.30).

Dated: January 19, 1977.

JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

[FR Doc.77-2410 Filed 1-25-77;8:45 am]

INEDIBLE GELATIN AND ANIMAL GLUE FROM SWEDEN

Antidumping Proceeding

On December 23, 1976, information was received in proper form pursuant to Sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Darling & Company, Chicago, Illinois; Milligan & Higgins Corporation, West Orange, New Jersey; and the Peter Cooper Corporation, Gowanda, New York, indicating a possibility that inedible gelatin and animal glue from Sweden are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 USC 160 et seq.) (referred to in this notice as "the Act").

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States. This evidence indicates that imports from Sweden have increased during the past year and that these imports are substantially underselling the domestic product. Available evidence further indicates that domestic prices, production, employment and capacity utilization may have suffered declines during the past year as a result of less than fair imports from Sweden.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of price information received from all sources is as follows: the information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to Section 153.30 of the Customs Regulations (19 CFR 153.30).

Dated: January 19, 1977.

JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

[FR Doc.77-2411 Filed 1-25-77;8:45 am]

INEDIBLE GELATIN AND ANIMAL GLUE FROM YUGOSLAVIA

Antidumping Proceeding

On December 23, 1976, information was received in proper form pursuant to Sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Darling & Company, Chicago, Illinois; Milligan & Higgins Corporation, West Orange, New Jersey; and the Peter Cooper Corporation, Gowanda, New York, indicating a possibility that inedible gelatin and animal glue from Yugoslavia are being, or are likely to be (sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 USC 160 et seq.) (referred to in this notice as "the Act").

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States. This evidence indicates that imports from Yugoslavia have increased during the past year and that these imports are substantially underselling the domestic product. Available evidence further indicates that domestic prices, production, employment and capacity utilization may have suffered declines during the past year as a result of less than fair imports from Yugoslavia.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29), and having determined as a result thereof that there are grounds for so doing, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of price information received from all sources is as follows: The information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the constructed value, as reflected by the prices at which such or similar merchandise is sold for consumption in the home market of certain other European countries.

This notice is published pursuant to Section 153.30 of the Customs Regulations (19 CFR 153.30).

Dated: January 19, 1977.

JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

[FR Doc.77-2409 Filed 1-25-77;8:45 am]

[Public Debt Series No. 1-77]

TREASURY NOTES OF SERIES L-1979

Interest Rates

JANUARY 21, 1977.

The Secretary of the Treasury announced on January 19, 1977, that the interest rate on the notes described in Department Circular—Public Debt Series No. 1-77, dated January 13, 1977, will be 5⅞ percent per annum. Accordingly, the notes are hereby redesignated 5⅞ percent Treasury Notes of Series L-1979. Interest on the notes will be payable at the rate of 5⅞ percent per annum.

DAVID MOSSO,
Fiscal Assistant Secretary.

[FR Doc.77-2548 Filed 1-25-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 311]

ASSIGNMENT OF HEARINGS

JANUARY 21, 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 1 Sub 7, Eschenbach & Rodgers Trucking, Inc. now being assigned March 23, 1977 (3 days) at Philadelphia, Pennsylvania in a hearing room to be later designated.

MC 134958 Sub 9, Hams Express, Inc. now being assigned March 21, 1977 (2 days) at Philadelphia, Pennsylvania in a hearing room to be later designated.

MC-F 13016, Delta California Industrits—Control—I-5 Freightline, Inc. and Delta Lines, Inc.—Merge—I-5 Freightline, Inc., FD 28330, Delta California Industries-Notes and FD 28331, Delta Lines, Inc.—Assumption of Notes now being assigned March 15, 1977 (7 days) at Portland, Oregon and March 24, 1977 (2 days) for continued hearings at Medford, Oregon in hearing rooms to be later designated.

MC-F 12875, Delta Lines, Inc.—Purchase (Portion)—Ringsby Truck Lines, Inc., and Ringsby Pacific Ltd., FD 28245, Ringsby-Pacific Ltd., FD 28238, Ringsby Truck Lines, Inc. and FD 28337, North Pacific Forwarders, Inc. now being assigned March 15, 1977 (7 days) at Portland, Oregon and March 24, 1977 (2 days) for continued hearings at Medford, Oregon in hearing rooms to be later designated.

AB 31 (Sub-No. 3), Grand Trunk Western Railroad Company Abandonment between Imlay City and Caseville in Lapeer, Tuscoal and Huron Counties, Michigan now assigned January 31, 1977, at Cass City, Michigan will be held at the Culture Center, 6429 Main Street instead of Culture Center, 6737 Church Street.

NC 142107 (Sub-No. 1), H & M Trucking Co., now assigned January 25, 1977, at Chicago, Ill. is canceled and application dismissed.

MC 142174, Loiselle Transport Limited, now assigned February 8, 1977, at Helena, Mont., is canceled and application dismissed.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2564 Filed 1-25-77;8:45 am]

BALTIMORE AND OHIO RAILROAD CO.

Exemption Under Mandatory Car Service Rules

[Ex Parte No. 241; Twenty-second Revised Exemption No. 90]

It appearing, That the railroads named below own numerous 50-ft. plain boxcars; that under present conditions there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 401, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1, 2(a), and 2(b).

The Baltimore and Ohio Railroad Company.
Reporting Marks: BO.
Cadiz Railroad Company.[1]
Reporting Marks: CAD.
The Chesapeake and Ohio Railroad Company.
Reporting Marks: CO-PM.
Elgin, Joliet and Eastern Railway Company.
Reporting Marks: EJE.
Green Mountain Railroad Corporation.
Reporting Marks: GMRC.
Greenville and Northern Railway Company.
Reporting Marks: GRN.
Louisville and Wadley Railway Company.
Reporting Marks: LW.
Louisville, New Albany & Corydon Railroad Company.
Reporting Marks: LNAC.
Missouri-Kansas-Texas Railroad Company.
Reporting Marks: BKTY-MKT.
New Jersey, Indiana & Illinois Railroad Company.
Reporting Marks: NJII.
Norfolk and Western Railway Company.
Reporting Marks: N&W-ACY-NKP-P&WV-WAB.
Ogdensburg Bridge and Port Authority.
Reporting Marks: NSL.
Pearl River Valley Railroad Company.
Reporting Marks: PRV.
The Pittsburgh and Lake Erie Railroad Company.
Reporting Marks: P&LE.
Raritan River Rail Road Company.
Reporting Marks: RR.
Sacramento Northern Railway.
Reporting Marks: SN .
St. Johnsbury & Lamoille County Railroad.
Reporting Marks: SJL.
Sierra Railroad Company.
Reporting Marks: SERA.
Tidewater Southern Railway Company.
Reporting Marks: TS.
Toledo, Peoria & Western Railroad Company.
Reporting Marks: TPW.
Vermont Railway, Inc.
Reporting Marks: VTR.
WCTU Railway Company.
Reporting Marks: WCTR.
Western Maryland Railway Company.
Reporting Marks: WM.
Yreka Western Railroad Company.
Reporting Marks: YW.

Effective January 15, 1977, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., January 10, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-2561 Filed 1-25-77;8:45 am]

[1] Addition.

At a Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D.C., on January 21, 1977.

[Ex Parte No. MC-64; General Temporary Order No. 10]

EMERGENCY MOTOR CARRIER SERVICES UNDER SEVERE WINTER CONDITIONS

Order

The Interstate Commerce Commission having under consideration the urgent need for motor carrier services due to severe winter weather conditions, the national transportation policy, the public interest, and, among others, sections 202(a), 204(a)(6), and 210(a) of the Interstate Commerce Act, and

It appearing, That due to freezing temperatures, certain carriers are unable to transport passengers and property tendered to them; and that an emergency exists in all sections of the United States requiring immediate action on the part of the Commission to make provision for adequate transportation of essential commodities, including but not limited to those listed below, in

the interest of the public and the national defense:

Food or kindred products, canned, preserved or otherwise prepared, including fresh, frozen or chilled meats and poultry; fresh eggs and milk; fresh or frozen fruits and vegetables; fresh or frozen fish and shell fish; feeds for animals and fowls.
Hospital and sick room supplies and equipment, including diagnostic devices and essential support utilities.
Pharmaceuticals, biologicals, surgical textiles and instruments.
Medical laboratory supplies and equipment.
Professional dental supplies and equipment.
Fuels required for the production of electric power and those used directly for heating residences and institutions essential for the public welfare.
Electrical power and communication systems repair materials and equipment required for the continued supply of essential electric power and communications.
Essential supplies and materials directly related to exploration, development and construction of energy-producing systems.
Material moving on Government or commercial bills of lading specifically certified as essential by Department of Defense, Energy Research and Development Administration or General Services Administration contract administrators.
All material moving on Government bills of lading issued by transportation officers of the military services.
U.S. mail in accordance with emergency orders issued by the Postmaster General.
Water and sewage processing and handling supplies and equipment, including chlorine, alum, lime, sulphate of iron, soda ash, and similar chemicals and equipment essential to the continuity of operation of water and sewage installations.
Items necessary to the continued smooth functioning of the financial system, i.e., movement of checks, currency and coins.
Federal Government personnel on agency-designated essential travel orders and non-Federal Government personnel on self-designated essential travel in support of items contained in this priority list.

It further appearing, That there exists an immediate and urgent need for additional motor carrier service to supplement temporarily the transportation facilities of the Nation for the movement of military and other freight, and passengers;

And it further appearing, That the present transportation emergency and immediate need for maximum utilization of motor carrier facilities, equipment, and service have made it necessary for the Commission to provide and authorize a more flexible method whereby motor carriers, and other persons, may obtain temporary authorizations to render the required motor service necessary in the public interest and to the national defense.

It is ordered, That pursuant to section 210a(a) of the Interstate Commerce Act (49 U.S.C. 310a(a)), all persons who shall apply to any regional operations director, assistant regional operations director, district supervisor, or their designees, of the Commission's Bureau of Operations are hereby granted temporary authority to transport passengers or property by motor vehicle for a period of not more than 30 days to the extent and scope that such regional operations director, assistant regional operations director, district supervisor, or their designees, shall certify that due to the existing transportation emergency, there is an immediate and urgent need for the service applied for, and there is no available carrier service capable of meeting such need;

It is further ordered, That the grant of such temporary authority be, and it is hereby, conditioned upon satisfying the said regional operations director, assistant regional operations director, district supervisor, or their designees, of full compliance by the grantee with all applicable statutory and Commission requirements concerning tariff publications, evidence of security for the protection of the public, and designation of agents for service of process, and further conditioned upon such tariff publications quoting rates, fares, and charges no lower than those of existing rail, water, or motor carriers in the territory in which the operations are to be authorized;

It is further ordered, That service performed under temporary authority granted pursuant to this order shall in no way constitute evidence or a showing warranting future issuance of a certificate of public convenience and necessity or permit, as provided in Section 207(a) of the Act (49 U.S.C. 307(a)) and section 209(b) of the Act (49 U.S.C. 309(b)).

It is further ordered, That temporary authority granted pursuant to this order shall expire as of the first midnight after the issuance of an order by this Commission revoking General Temporary Order No. 10 except as to passengers and property, the transportation of which was begun prior to that time;

It is further ordered, That this order shall become effective on the 22d of January, 1977, at 12:01 a.m.

And it is further ordered, That notice of this order shall be given to motor carriers, other parties of interest, and to the general public by depositing a copy thereof in the Office of the Secretary of the Commission, Washington, D.C., and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission, Division 1, Commissioners Murphy, Gresham and MacFarland.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2565 Filed 1-25-77;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 21, 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 within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

FSA No. 43308—*Fibreboard, Paperboard and Pulpboard Between North Coast Points and Group 19 (Los Angeles, California)*. Filed by Pacific Southcoast Freight Bureau, Agent, (No. 270), for and on behalf of the Union Pacific Railroad. Rates on fibreboard, paperboard, and pulpboard, in carloads, as described in the application, between North Coast points, and Group 19 (Los Angeles, California).

Grounds for relief—Market competition, rate relationship.

Tariff—Supplement 36 to Pacific Southcoast Freight Bureau, Agent, tariff 315-A, I.C.C. No. 1974. Rates are published to become effective on February 20, 1977.

By the Commission

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-2563 Filed 1-25-77;8:45 am]

[I.C.C. Order No. 17; Service Order No. 1252]

CHESAPEAKE AND OHIO RAILWAY CO.

In the opinion of Joel E. Burns, Agent, The Chesapeake and Ohio Railway Company is unable to transport traffic requiring movement through Bison Yard, located at Buffalo, New York, because of congestion caused by an accumulation of snow.

It is ordered, That: (a) *Rerouting traffic.* The Chesapeake and Ohio Railway Company, being unable to transport traffic requiring movement through Bison Yard, located at Buffalo, New York, because of congestion caused by an accumulation of snow, is hereby authorized to divert or reroute such traffic over any available route to expedite the movement.

(b) *Concurrence of receiving road to be obtained.* The Chesapeake and Ohio Railway Company, in rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* The Chesapeake and Ohio Railway Company, when rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference

to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 8 a.m., January 14, 1977.

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 18, 1977, unless otherwise modified, changed or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as Agent of all railroads, subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the FEDERAL REGISTER.

Issued at Washington, D.C., January 14, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-2562 Filed 1-25-77;8:45 am]

federal register

WEDNESDAY, JANUARY 26, 1977

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

Social and Rehabilitation Service

■

LIFE SAFETY REQUIREMENTS

Proposed Regulations

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 405]

[Reg. No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Medicare Standards for Hospitals and Skilled Nursing Facilities, Life Safety Code

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553), that the amendments to the regulations set forth in tentative form below, are proposed by the Commissioner of Social Security with the approval of the Secretary of Health, Education, and Welfare. The proposal, which does not have major program significance, would change the current requirement that skilled nursing facilities and hospitals participating in the Medicare and Medicaid programs must meet the fire safety provisions of the 1967 Life Safety Code of hte National Fire Protection Association. They would instead have to meet the fire safety provisions of the newer 1973 version of the Code. The 1973 version reflects the current scientific and technical approach to fire safety for institutional occupancies which places a stronger reliance on better systems for detecting and extinguishing fire and less emphasis on building construction requirements. The proposal, implementing Public Law 94-182 of December 31, 1975 as to skilled nursing facilities, and amending the conditions of participation for hospitals to conform to those for skilled nursing facilities, would also allow those providers which, at the specified time, met the 1967 Code requirements, or met State codes approved by the Secretary, to continue to participate in these programs by continuing to meet those pre-amendment reqiurements. The proposed amendments are of a technincal nature and, with respect to skilled nursing facilities, update the regulations to conform to the statutory enactment (Pub. L 94-182). With respect to hospitals they conform the requirements for hospitals to those mandated for skilled nursing facilities in the interests of unifrom administration. It is believed publication of this notice requesting comments will provide ample and adequate opportunity for participation of all interested individuals and organizations. This is in keeping with the spirit and intent of the Secretary's regulation development policies announced on July 25, 1976. Interested parties are invited to submit comments within 45 days of this publication and any comments received on this proposal will be given consideration before the proposal is published as final regulations.

Specifically, the proposed amendments are intended to update the respective conditions of participation dealing with life safety from fire applicable to skilled nursing facilities and hospitals participating in the Medicare/Medicaid programs. With respect to skilled nursing facilities, the proposed changes implement section 106 of Pub. L. 94-182 (enacted December 31, 1975) which amends section 1861(j)(13) of the Social Security Act to require skilled nursing facilities to comply with the 1973 Edition of the Life Safety Code of the National Fire Protection Association, rather than the 1967 Edition of the Code currently specified in regulations. With respect to hospitals, current regulations require hospitals to meet the 1967 Edition of the Life Safety Code; and the proposed changes would require them to meet the 1973 Edition, in order to conform the life safety requirements for hospitals to those for skilled nursing facilities. The purpose of the proposal is to maintain consistency in the application of life safety requirements to all inpatient health care facilities in the Medicare program. A notice of proposed rule making and proposed amendments to 45 CFR Part 249 that would incorporate similar life safety requirements for intermediate care facilities participating in the Medicaid program are published by the Social and Rehabilitation Service elsewhere in this issue of the FEDERAL REGISTER.

Skilled nursing facilities that met the requirements of the 1967 Life Safety Code on May 31, 1976 (the day preceding the statutory effective date for imposition of the new standard), by compliance (subject to the provisions of § 405.1907 of Subpart S of Regulations No. 5, if applicable) or by waiver of specific requirements of the Life Safety Code will be considered to be in compliance with the provisions of section 1861(j)(13) of the Social Security Act for so long as the facilities continue to meet the requirements of the 1967 Life Safety Code. Also, skilled nursing facilities that met, on May 31, 1976, applicable requirements of a State fire and safety code imposed by State law and approved by the Secretary for use instead of the Life Safety Code prescribed herein, in accordance with the law and regulations, will be considered in compliance with the provisions of section 1861(j)(13) of the Act, for so long as such requirements of such State code are met. With respect to hospitals, the proposal contains similar provisions, but specifies the day before the effective date of final regulations as the date on which the hospital must be in compliance with the 1967 Code, or a State code approved by the Secretary, in order to be considered in compliance with the applicable requirement relating to life safety from fire.

These exceptions (whereby hospitals and skilled nursing facilities in compliance with the former life safety requirement are exempted from meeting the new requirements) are applicable to institutions that submitted acceptable plans of correction (with respect to the life safety requirement) prior to June 1, 1976, in the case of skilled nursing facilities, and prior to the effective date of this regulation in the case of hospitals, and are in the process of correcting, or have corrected, the deficiencies noted, so long as compliance with applicable requirements is achieved and maintained.

With respect to blind, ambulatory, or physically handicapped patients in skilled nursing facilities, the proposed amendments clarify the provisions of § 405.1134(a)(3) to conform to the 1967 and 1973 editions of the Life Safety Code. Specifically, the amendments add the words "fully sprinklered" as a requirement for buildings of 1-hour protected noncombustible construction where these patients are housed above the street floor.

If there are any questions about these amendments, you may contact Mrs. Janet Harryman, Branch Chief, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-9712. Mrs. Harryman will respond to questions but will not accept comments on these amendments.

Prior to the final adoption of the proposed amendments to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203, on or before March 14, 1977.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, Independence Avenue, SW., Washington, D.C. 20201.

(Sec. 106 of Pub. L. 94-182, 89 Stat. 1052; sections 1102, 1861(e)(9) and (j)(13), and 1871 of the Social Security Act, 49 Stat. 647, as amended, 79 Stat. 314 and 318, as amended, 79 Stat. 331 (42 U.S.C. 1302, 1395x(e)(9) and (j)(13), and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged, Hospital Insurance.)

It is hereby certified that this proposal has been screened pursuant to Executive Order 11821, and does not require an Inflation Impact Evaluation.

Dated: September 15, 1976.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: January 11, 1977.

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

Part 405 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 405.1022(b) is revised to read:

§ 405.1022 Condition of participation—physical environment.

* * * * *

(b) *Standard: Life safety from fire.*

(1) The hospital meets such provisions of the Life Safety Code of the National Fire Protection Association, 1973 Edition (23rd Edition, 1973) as are applicable to hospitals, except that:

(i) The Secretary may waive, after consideration of State survey agency findings and recommendations, if any, for such periods as deemed appropriate, specific provisions of such Code which, if rigidly applied, would result in unreasonable hardship upon a particular hos-

pital, but only if such waiver will not adversely affect the health and safety of the patients;

(ii) The provisions of the Life Safety Code applicable to hospitals shall not apply in any State if the Secretary makes a finding that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in hospitals;

(iii) Any hospital (or part of a hospital) which on (*the day before the effective date of final regulations*) complied (subject to the provisions of § 405.1907) with the applicable provisions of the Life Safety Code, 21st Edition, 1967, with or without waivers of specific provisions, or complied with the applicable provisions of a fire and safety code imposed by State law where the Secretary had made a finding that such fire and safety code adequately protected patients in hospitals, shall, so long as such compliance is achieved and maintained, be considered in compliance with this paragraph (b)(1).

(2) With respect to those hospitals subject to the provisions of paragraph (b)(1)(iii) of this section:

(i) The hospital is equipped with a grounding system, in conjunction with an isolation transformer in each anesthetizing location, adequate to minimize the difference in potential which can occur between any conductive surfaces that the patient or a person touching the patient can contact. This difference in potential, under conditions of the first fault between either isolated conductor and ground, shall be less than 5 millivolts. Anesthetizing areas where flammable anesthetics are used, shall have conductive flooring which complies with the provisions of section 252 of the National Fire Protection Association Standard No. 56A, Standard for the Use of Inhalation Anesthetics (1971); and

(ii) To the extent that inhalation therapy is provided and nonflammable medical gas systems such as oxygen and nitrous oxide are, or have been, installed, the hospital complies with the applicable provisions of National Fire Protection Association Standard No. 56B, Standard for the Use of Inhalation Therapy (1968), and National Fire Protection Association Standard No. 56F, Nonflammable Medical Gas Systems (1970).

(3) The hospital maintains written evidence of regular inspection and approval by State or local fire control agencies.

(4) The hospital has procedures for the proper routine storage and prompt disposal of trash.

(5) Written fire control plans contain provisions for prompt reporting of all fires; extinguishing fires; protection of patients, personnel, and guests; evacuation; and cooperation with firefighting authorities.

* * * * *

2. Section 404.1134(a) is revised to read:

§ 405.1134 Condition of participation—physical environment.

* * * * *

(a) *Standard: Life safety from fire.* (1) The skilled nursing facility meets such provisions of the Life Safety Code, 1973 Edition (23rd Edition, 1973) of the National Fire Protection Association as are applicable to nursing homes; except that:

(i) In consideration of a recommendation by the State survey agency, the Secretary may waive, for such periods as deemed appropriate, specific provisions of such Code which, if rigidly applied, would result in unreasonable hardship upon a skilled nursing facility, but only if such waiver will not adversely affect the health and safety of the patients;

(ii) The provisions of such Code shall not apply in any State if the Secretary finds, in accordance with applicable provisions of section 1861(j)(13) of the Social Security Act, that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in skilled nursing facilities;

(iii) Any skilled nursing facility (or part of a skilled nursing facility) which on May 31 1976, complied (subject to the provisions of § 405.1907) with the applicable provisions of the Life Safety Code, 21st Edition, 1967, with or without waivers of specific provisions, or complied with the applicable provisions of a fire and safety code imposed by State law where the Secretary had made a finding that such fire and safety code adequately protected patients in skilled nursing facilities, shall, so long as such compliance is achieved and maintained, be considered in compliance with this paragraph (a)(1).

(2) With respect to those skilled nursing facilities subject to the provisions of paragraph (a)(1)(iii) of this section, to the extent that inhalation therapy is provided and nonflammable medical gas systems such as oxygen and nitrous oxide are, or have been, installed, the skilled nursing facility complies with the applicable provisions of National Fire Protection Association Standard No. 56B, Standard for the Use of Inhalation Therapy (1968), and National Fire Protection Association Standard No. 56F, Nonflammable Medical Gas Systems (1970).

(3) Where a skilled nursing facility is housed in an existing building of two or more stories which is not of at least 2-hour fire-resistive construction and waiver of this construction requirement is granted where appropriate, blind, nonambulatory, or physically handicapped patients are not housed above the street level floor unless the building is one of the following types:

(i) Fully sprinklered 1-hour protected noncombustible construction (as defined in National Fire Protection Association Standard No. 220);

(ii) Fully sprinklered 1-hour protected ordinary construction; or

(iii) Fully sprinklered 1-hour protected wood frame construction.

* * * * *

[FR Doc.77-2153 Filed 1-25-77;8:45 am]

Social and Rehabilitation Service

[45 CFR Part 249]

MEDICAL ASSISTANCE PROGRAM

Life Safety Code Requirement for Intermediate Care Facilities

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare.

The purpose of these amendments is to update fire safety regulations with respect to intermediate care facilities, conforming them to the provision adopted for application to skilled nursing facilities under the Medicare and Medicaid programs published elsewhere in this issue. The changes would require, effective 30 days following the date of final publication, the use of the 1973 Life Safety Code of the National Fire Protection Association in the certification of intermediate care facilities.

However, the following exceptions would be made:

1. Intermediate care facilities that meet, with or without waivers, the provisions of the 1967 Life Safety Code on the day preceding the effective date of these regulations would not be required to meet any additional requirements of the 1973 Code.

2. A skilled nursing facility already certified as meeting the provision of the 1967 Code, which on or after the effective date of these regulations applies for certification also as an intermediate care facility, can be certified on the basis of the 1967 Code.

3. Intermediate care facilities with approved plans of correction under the 1967 Code prior to the effective date of these regulations will be exempt from application of the 1973 edition of the Code as long as compliance with the 1967 Code is achieved and maintained.

The following exceptions are in existing regulations and would be unchanged by the proposed regulations:

1. Specified facilities of 15 beds or less may meet the provisions of the Lodging or Rooming Houses section rather than the institutional provisions of the Code.

2. Specific provisions of the Code which would result in unreasonable hardship upon a facility may be temporarily waived.

3. Certified facilities that meet, on the day preceding the effective date of these regulations, applicable provisions of a State fire and safety code imposed by State law and approved by the Secretary, in accordance with law and regulation, will be considered in compliance with the

Medicaid fire safety requirements under the intermediate care facility program.

The change to the use of the 1973 Code from the 1967 Code with respect to skilled nursing facilities was mandated by section 106 of Public Law 94–182, December 31, 1975, and is being adopted by regulation for intermediate care facilities to maintain consistency in the application of fire safety requirements for long-term care facilities under the Medicaid program.

The basis for this proposal is the Secretary's belief that it is appropriate to apply the updated version of the Code to all long-term care facilities entering the Medicaid program on or after the effective date of this regulation.

Since a considerable number of institutions participate as both skilled nursing and intermediate care facilities under the Medicaid program, it would be unnecessarily complex for governing Federal regulations to provide different editions of the Life Safety Code for application of the same requirements under both programs. Also, confusion would be created for the State survey teams which inspect and certify both types of facilities against a standard which has always been uniform. No disadvantage for intermediate care facilities will result from the updated requirement since those facilities participating in the program prior to the effective date of the regulation may continue to be certified under the provisions of the 1967 edition of the Code.

Prior to the adoption of the proposed regulations, consideration will be given to written comments, suggestions, or objections thereto which are received by the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, P.O. Box 2366, Washington, D.C. 20013, on or before March 14, 1977. In order to assure prompt handling of comments, please refer to MSA–184–P. Agencies and organizations are requested to submit their comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 5225 of the Department's offices at 330 C Street, S.W., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (202–245–0950). Answers to specific questions may be obtained by calling Robert Silva (202–245–0425).

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

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

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: January 10, 1977.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: January 11, 1977.

MARJORIE LYNCH,
Acting Secretary.

Part 249, Chapter II, Title 45 of the Code of Federal Regulations is amended as set forth below:

1. Sections 249.12 (a)(5) and (a)(6)(ix) are revised to read as follows:

§ 249.12 Standards for intermediate care facilities.

(a) Standards for an intermediate care facility (as defined in § 249.10(b)(15) of this part) which are specified by the Secretary pursuant to section 1905 (c) and (d) of the Social Security Act and are applicable to all intermediate care facilities are as follows. The facility:

* * * * *

(5)(i) Meets such provisions of the Life Safety Code of the National Fire Protection Association, 1973 edition, as are applicable to institutional occupancies; except that:

(A) For facilities of 15 beds or less, the State survey agency may apply the Lodging or Rooming Houses section of the residential occupancy requirements of the Code for institutions for the mentally retarded or persons with related conditions and intermediate care facilities primarily engaged in the treatment of alcoholism and drug abuse, all of whose residents are currently certified by a physician or in the case of an institution for the mentally retarded or persons with related conditions by a physician or psychologist as defined in paragraph (c)(3)(i) of this section, as:

(*1*) Ambulatory;

(2) Engaged in active programs for rehabilitation which are designed to and can reasonably be expected to lead to independent living, or in the case of an institution for the mentally retarded or persons with related conditions, receiving active treatment; and

(3) Capable of following directions and taking appropriate action for self-preservation under emergency conditions;

(B) In accordance with criteria issued by the Secretary, the State survey agency may waive the application to any such facility of specific provisions of such Code, for such periods as it deems appropriate, which provisions if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver will not adversely affect the health and safety of the residents;

(C) The Life Safety Code shall not apply in any State if the Secretary makes a finding that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents in intermediate care facilities;

(D) Any certified intermediate care facility which complied with the provisions of the 1967 Code on (the day preceding the effective date of these revisions) shall be considered to be in compliance with this standard for so long as such compliance is maintained. Compliance is maintained by meeting the applicable provision of the 1967 Code, with or without waivers of specific provisions, by implementing an approved plan of correction, or by meeting the applicable provision of a fire and safety code imposed by State law as provided for in paragraph (a)(5)(i)(C) of this section; and

(E) A skilled nursing facility certified in accordance with 20 CFR 405.1134(a) as meeting the provisions of the 1967 Code, which applies for certification as an intermediate care facility on or after (the effective date of these revisions) may be certified as an intermediate care facility on the basis of meeting the provisions of the 1967 Code.

(ii) In an existing facility of two or more stories which is not of at least 2-hour fire resistive construction, blind, nonambulatory or physically handicapped residents are not housed above the street level floor unless the facility is of fully sprinklered 1-hour protected non-combustible construction (as defined in National Fire Protection Association Standard #220), fully sprinklered 1-hour protected ordinary construction or fully sprinklered 1-hour protected wood frame construction.

* * * * *

2. Section 249.33(a)(2)(v) is amended to read as follows:

§ 249.33 Standards for payment for skilled nursing facility and intermediate care facility services.

(a) *State plan requirements.* A State plan for medical assistance under title XIX of the Social Security Act must:

* * * * *

(2) Provide that the single State agency will, prior to execution of an agreement with any facility (including hospitals and skilled nursing facilities) for provision of intermediate care facility services and making payments under the plan, obtain certification from the agency designated pursuant to § 250.100 (c) of this chapter that the facility meets the definition set forth under § 249.10(b)(15); except that in the case of an intermediate care facility determined to have deficiencies under the requirements for environment and sanitation (§ 249.12(a)(6)) or of the Life Safety Code (§ 249.12(a)(5)) it may be recognized for certification as an intermediate care facility in accordance with subparagraph (4)(iii) of this paragraph for a period not exceeding 2 years following the date of such determination provided that:

* * * * *

(v) At the completion of the period allowed for corrections, the intermediate care facility is in full compliance with the Life Safety Code requirements set forth under § 249.12(a)(5), and the requirements for environment and sanitation set forth under § 249.12(a)(6), except for any provisions waived in accordance with § 249.12.

[FR Doc.77–2154 Filed 1–25–77;8:45 am]

federal register

WEDNESDAY, JANUARY 26, 1977

PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development

■

HEAD START PROGRAM

Identification and Reporting of Child Abuse and Neglect; Policy Instruction

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development

HEAD START PROGRAM

Identification and Reporting of Child Abuse and Neglect; Policy Instruction

The Proposed Policy Instruction on Identification and Reporting of Child Abuse and Neglect was published in the FEDERAL REGISTER on January 20, 1976, prescribing instructions on the identification and the reporting of child abuse and neglect for Head Start and delegate agencies.

Interested persons and organizations were invited to submit comments on or before March 26, 1976. Eight-two (82) comments were received from thirty-seven (37) individuals and organizations in regard to the Proposed Policy Instruction. Of thirty-seven (37) individuals and organizations, thirty-five (35) concurred with the proposed policy, accompanied by some recommendations and comments. The other two (2) opposed the proposed policy on the grounds that child abuse was rare and that reporting of child abuse or neglect cases could jeopardize the trust relationship between Head Start staff and parents. Comments and recommendations were generally thoughtful and helpful and they covered primarily the following:

A. The definition of child abuse and neglect should be separated and distinguished considering the definition of child abuse as a "willful" act, while neglect is often an outcome of environmental or educational circumstances.

B. "Suspected" child abuse should be recognized as justifiable for reporting.

C. Head Start has already been playing a significant role in preventing and alleviating the problems of child abuse and neglect, and the proposed policy does not fully recognize this fact.

D. There is a concern over personal protection from physical or mental harassment that could occur as a result of reporting.

E. The admission of already "eligible" children on the grounds of abuse or neglect does not serve the purpose that the admission of "ineligible" children on these grounds would.

F. Parents and communities need to be made aware of the seriousness of child abuse and neglect, educated on laws governing it, as well as informed about agencies that are available to them to help prevent child abuse and the services Head Start offers in this area.

G. There is a desire and need by the staff and parents for training and education about child abuse and neglect and the laws concerning this issue.

H. When the Head Start program is located within the jurisdiction of an American Indian tribe, the reporting in accordance with tribal code should be accepted on the same basis as reporting in accordance with State law.

It was suggested that the definition of child abuse and neglect be separated and distinguished considering the definition of child abuse as a "willful" act, while neglect is often an outcome of environmental or educational circumstances. The reason for distinguishing the definition of the two seems to be based on an assumption that abuse is a willful act, whereas neglect is not, and that parents or guardians who abuse children are more responsible for their acts than those who neglect children. Yet, neglecting a child can be just as harmful in many instances as abusing a child, in our opinion. This policy requires the Head Start agencies to comply with the State law in identifying and reporting child abuse and neglect. Since many State laws do not distinguish the definitions of the two, it would be confusing to some Head Start agencies. Office of Child Development (OCD) did not revise the policy based on this comment.

It has been a concern to OCD that the reporting of child abuse and neglect may strain the relationship between Head Start and parents. However, this distressing social problem of child abuse and neglect must be dealt with, and it is our hope that it can be done without damaging the trust relationship with parents. We recognize the potential public relations problems inherent in implementing this policy, but must keep in mind the threat which abuse and neglect imposes on children who become victims. If Head Start did not report a child abuse or neglect case to preserve a trust relationship with parents, the credibility and viability of Head Start may be jeopardized with other parents, staff members, and the public. This kind of problem can be minimized or prevented if Head Start agencies provide an orientation session for parents where the nature of the problem, available treatment and resources, and the position of Head Start, can be discussed, accompanied by the social service coordinator's working closely with the parents throughout the year. OCD made no revision based on this comment.

It was pointed out that the admission of already "eligible" children on the grounds of abuse or neglect does not serve the purpose that the admission of "ineligible" children on these grounds would. OCD appreciated this comment. However, if this policy did change the eligibility by allowing Head Start to accept otherwise ineligible children, Head Start would become a child abuse and neglect treatment agency. This raises a series of issues in terms of the local Head Start's resources and working relationship with the State-designated agency as well as legal questions under the Headstart-Follow Through Act. OCD made no revision based on this comment.

While we concur with the desirability of requiring reporting of "suspected" child abuse and neglect, the reporting laws of several States do not mandate or authorize the making of reports on the basis of evidence of abuse and neglect which arouses only a suspicion. In such States the reporting statute would not grant immunity from civil and criminal liability to a reporter who based his report on suspicion. This policy, therefore, even though it requires reports by Head Start agencies and personnel in all cases reportable under State or local laws, whether mandatory or voluntary, does not impose a universal duty to report suspected child abuse and neglect. Thus, the phrase, "child abuse and neglect," as used herein, refers to both the definition of abuse and neglect under applicable State law, and the evidentiary standard required for reporters under applicable State law. OCD made no change based on this comment.

The following changes have been made on the Proposed Policy Instruction based on these comments:

A. "Applicable" is added immediately before "State", and "local" is added immediately after "State", where appropriate, to allow Indian tribes who do not follow the State laws to report in accordance with the tribal code.

B. The last paragraph of Section N–30–356–1–30, Policy—A. *General provisions*, was revised to recognize the role that Head Start has been playing in preventing child abuse and neglect.

C. *Training*, (2) under B. *Special provisions*, was strengthened to make communities aware of the seriousness of child abuse and neglect and to accommodate the needs and wants for training, by the Head Start staff members and parents, in child abuse and neglect.

This policy instruction is published pursuant to the requirements of section 517(d), Title V, Economic Opportunity Act of 1964, as amended by section 8(a) of the Headstart, Economic Opportunity, and Community Partnership Act of 1974.

The National Center on Child Abuse and Neglect has been established in the Office and Child Development to implement the Child Abuse Prevention and Treatment Act ("the Act"), Pub. L. 93–247. Although Head Start is not specially affected by the new child abuse and neglect Act, the establishment of the National Center has increased our awareness of the role that Head Start can end, in fact, has been playing in the effort to prevent and identify child abuse and neglect and find help for the child and his/her family. Thus, the establishment of the Center and increased Federal effort in child abuse and neglect prevention, identification, treatment, and reporting have prompted a careful reexamination of what Head Start has been doing about this most distressing problem and development of specific guidance to assist Head Start programs in dealing with it.

States set different requirements for pre-school and day care staff in reporting suspected child abuse and neglect cases. Twenty-nine (29) States mandate pre-school and day care staff to report suspected child abuse or neglect cases and twenty-five (25) States permit day care staff to report suspected child abuse or neglect cases. Therefore, Head Start agencies need policy guidance in dealing with suspected child abuse and neglect cases. This policy provides that guidance.

Effective date: This policy instruction shall be effective on January 26, 1977.

(Catalogue of Federal Domestic Assistance Programs No. 13,600 Child Development—Head Start.)

Dated: January 18, 1977.

JOHN H. MEIER,
Director,
Office of Child Development.

Approved: January 18, 1977.

STANLEY B. THOMAS, JR.,
Assistant Secretary for
Human Development.

The Chapter N–30–356–1 in the Head Start Policy Manual reads as follows:

N–30–356–1–00 Purpose.
10 Scope.
20 Applicable law and policy.
30 Policy.

AUTHORITY: 80 Stat. 2304 (42 U.S.C. 2928b).

N–30–356–1–00 *Purpose.* This chapter sets forth the policy governing the prevention, identification, treatment, and reporting of child abuse and neglect in Head Start.

N–30–356–1–10 *Scope.* This policy applies to all Head Start and delegate agencies that operate or propose to operate a Full-Year or Summer Head Start program, or experimental or demonstration programs funded by Head Start. This issuance constitutes Head Start policy and noncompliance with this policy will result in appropriate action by the responsible HEW official.

N–30–356–1–20 *Applicable law and policy.* Section 511 of the Headstart-Follow Through Act, P.L. 93–644, requires Head Start agencies to provide comprehensive health, nutritional educational, social and other services to the children to attain their full potential. The prevention, identification, treatment, and reporting of child abuse and neglect is a part of the social services in Head Start. In order for a State to be eligible for grants under the Child Abuse Prevention and Treatment Act (hereinafter called "the Act"), P.L. 93–247, the State must have a child abuse and neglect reporting law which defines "child abuse and neglect" substantially as that term is defined in the regulations implementing the Act, 45 CFR 1340.1–2(b). That definition is as follows:

A. "(b) 'Child abuse and neglect' means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare.

"1. 'Harm or threatened harm to a child's health or welfare' can occur through: Nonaccidental physical or mental injury; sexual abuse, as defined by State law; or neglectful treatment or maltreatment, including the failure to provide adequate food, clothing, or shelter. Provided, however, that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian; however, such an exception shall not preclude a court from ordering that medical services be provided to the child, where his health requires it.

"2. 'Child' means a person under the age of eighteen.

"3. 'A person responsible for a child's health or welfare' includes the child's parent, guardian, or other person responsible for the child's health or welfare, whether in the same home as the child, a relative's home, a foster care home, or a residential institution."

In addition, among other things, the State would have to provide for the reporting of known or suspected instances of child abuse and neglect.

It is to be anticipated that States will attempt to comply with these requirements. However, a Head Start program, in dealing with and reporting child abuse and neglect, will be subject to and will act in accordance with the law of the State in which it operates whether or not that law meets the requirements of the Act. Thus, it is the intention of this policy in the interest of the protection of children to insure compliance with and, in some respects, to supplement State or local law, not to supersede it. Thus, the phrase "child abuse and neglect," as used herein, refers to both the definition of abuse and neglect under applicable State or local law, and the evidentiary standard required for reporters under applicable State or local law.

N–30–356–1–30 *Policy—A. General provisions.* 1. Head start agencies and delegate agencies must report child abuse and neglect in accordance with the provisions of applicable State or local law.

a. In those States and localities with laws which require such reporting by pre-school and day care staff, Head Start agencies and delegate agencies must report to the State or local agencies designated by the State under applicable State or local Child Abuse and Neglect reporting law.

b. In those States and localities in which such reporting by pre-school and day care staff is "permissive" under State or local law, Head Start agencies and delegate agencies must report child abuse and neglect if applicable State or local law provides immunity from civil and criminal liability for goodfaith voluntary reporting.

2. Head Start agencies and delegate agencies will preserve the confidentiality of all records pertaining to child abuse or neglect in accordance with applicable State or local law.

3. Consistent with this policy, Head Start programs will not undertake, on their own, to treat cases of child abuse and neglect. Head Start programs will, on the other hand, cooperate fully with child protective service agencies in their communities and make every effort to retain in their programs children allegedly abused or neglected—recognizing that the child's participation in Head Start may be essential in assisting families with abuse or neglect problems.

4. With the approval of the policy council, Head Start programs may wish to make a special effort to include otherwise eligible children suffering from abuse or neglect, as referred by the child protective services agency.

However, it must be emphasized that Head Start is not nor is it to become a primary instrument for the treatment of child abuse and neglect. Nevertheless, Head Start has an important preventative role to play in respect to child abuse and neglect.

B. *Special provisions*—1. *Staff responsibility.* Directors of Head Start agencies and delegate agencies that have not already done so shall immediately designate a staff member who will have responsibility for:

a. Establishing and maintaining cooperative relationships with the agencies providing child protective services in the community, and with any other agency to which child abuse and neglect must be reported under State law, including regular formal and informal communication with staff at all levels of the agencies;

b. Informing parents and staff of what State and local laws require in cases of child abuse and neglect;

c. Knowing what community medical and social services are available for families with an abuse or neglect problem;

d. Reporting instances of child abuse and neglect among Head Start children reportable under State law on behalf of the Head Start program;

e. Discussing the report with the family if it appears desirable or necessary to do so;

f. Informing other staff regarding the process for identifying and reporting child abuse and neglect. (In a number of States it is a statutory requirement for professional child-care staff to report abuse and neglect. Each program should establish a procedure for identification and reporting.)

2. *Training.* Head Start agencies and delegate agencies shall provide orientation and training for staff on the identification and reporting of child abuse and neglect. They should provide an orientation for parents on the need to prevent abuse and neglect and provide protection for abused and neglected children. Such orientation ought to foster a helpful rather than a punitive attitude toward abusing or neglecting parents and other caretakers.

[FR Doc.77–2284 Filed 1–25–77;8:45 am]

federal register

WEDNESDAY, JANUARY 26, 1977

PART IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development

■

CHILD ABUSE AND NEGLECT, RESEARCH AND DEMONSTRATION GRANTS PROGRAMS

General Information

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development

CHILD ABUSE AND NEGLECT RESEARCH AND DEMONSTRATION GRANTS PROGRAMS

General Information

This announcement contains general information regarding the Office of Child Development's Child Welfare and Child Abuse and Neglect Research and Demonstration Grants Programs, including legislation, regulations, policy and procedures governing the two programs.

A summary of program priorities and estimated funding levels for each fiscal year will be disseminated in separate announcements.

INTRODUCTION

The Office of Child Development (OCD) was established on July 1, 1969 within the Office of the Secretary of the Department of Health, Education, and Welfare to serve as the coordinating agency for Federal programs for children and youth.

In June 1973, the Office became part of the newly-created Office of Human Development, headed by an Assistant Secretary for Human Development.

OCD's functions are carried out through the Office of the Director and its two major bureaus: the Children's Bureau, authorized by the Children's Bureau Act of 1912 to investigate and report "upon all matters pertaining to the welfare of children and child life among all classes of our people," and the Head Start Bureau, which administers Project Head Start.

To accomplish its goals, the Office of Child Development has set for itself three major missions:

(1) To act as an advocate on behalf of children of all ages, and especially those children who are handicapped physically or emotionally, economically deprived, victims of the disruption of the family unit, or of child abuse and neglect, by bringing the needs of these children to the attention of other Government agencies and the public; by promoting beneficial changes in child and family development; and by planning new programs for children and their families;

(2) To coordinate the activities of Federal programs for children and their families as well as all Federal research in early child development;

(3) To ensure high quality services for children through effective administration of such programs as Head Start and Parent-Child Centers and through leadership in the development of standards, policies, and models in child welfare and other child-oriented programs.

TWO RESEARCH AND DEMONSTRATION GRANTS PROGRAMS

One of the significant ways in which the Office of Child Development carries out its objectives is through the support of high quality research and demonstration projects in the areas of child and family development, child welfare, services to children and families, and child abuse and neglect.

OCD is authorized by law to administer two grants programs, the Child Welfare and the Child Abuse and Neglect Research and Demonstration Grants Programs. These are administered jointly by the Research and Evaluation Division, located in the Office of the Director, and the Children's Bureau.

CHILD WELFARE RESEARCH AND DEMONSTRATION GRANTS PROGRAM

This program is authorized by 42 USC 626(a)(1) (A) and (B), (Section 426, Part B, Title IV of the Social Security Act). This legislation provided the Department of Health, Education, and Welfare with responsibility for conducting Child Welfare research, training, and demonstration projects.

Child Welfare services are defined in section 425 as "public social services which supplement, or substitute for, parental care and supervision for the purpose of:

(1) Preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children,

(2) Protecting and caring for homeless, dependent, or neglected children,

(3) Protecting and promoting the welfare of children of working mothers, and

(4) Otherwise protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed, the provision of adequate care of children away from their homes in foster family homes or day care or other child care facilities."

The Child Welfare Research and Demonstration Grants Program is stated in section 426 as follows: "(a) There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine—

(1) For grants by the Secretary—

(A) To public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;

(B) To State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and special types of welfare services."

Within this general legislative authority, the Office of Child Development supports major research and demonstration efforts in selected areas of high impact and national concern where the utilization of findings is expected to make a substantial contribution to the development and welfare of children and their families.

Recent areas to receive support include demonstrations of the provision of comprehensive emergency services to maintain children in their homes in times of crisis, development of comprehensive day care models with an emphasis on child development, education in parenting which combines the study of child development and child care for teenagers with meaningful cross-age experiences, demonstrations to increase the number of adoptive and foster homes, demonstrations of methods to bring about changes in the institutional care of children, research on the impact of television as a socializing agent on the infant, preschool child and family, research on the effects of early intervention programs, research on child/family/institution interaction, and on the child welfare service delivery system.

Through the utilization and dissemination of findings of successful projects, a nationwide program of Education for Parenthood is ongoing in close to 3,000 of the nation's high schools and national voluntary organizations, and Comprehensive Emergency Services projects which have proved successful in maintaining children in their own homes in times of crisis through provision of services such as emergency homemakers are being replicated. Another successful demonstration project currently being replicated is one dealing with children in long-term foster care. Many of these children were returned to their biological homes, while in other cases, the parental relationship was terminated in order to provide nurturing adoptive homes for these children. Other significant ongoing programs are providing information which will lead to the development of a functional national policy on child and family development.

CHILD ABUSE AND NEGLECT RESEARCH AND DEMONSTRATION GRANTS PROGRAM

This program is authorized by 42 U.S. Code 5101, the Child Abuse Prevention and Treatment Act of 1974. The Act created the National Center on Child Abuse and Neglect within the Children's Bureau of the Office of Child Development.

The Act defines "child abuse and neglect" as the physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of eighteen by a person who is responsible for the child's welfare under circumstances which indicate that the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary." The authority of the Secretary has been delegated to OCD, and the program is in the Children's Bureau's National Center on Child Abuse and Neglect. Under paragraphs 2(b)(5) and 2(c), the Children's Bureau is authorized to "conduct research into the causes of child abuse and neglect, and into the prevention, identification, and treatment thereof."

Under section 4(a) of the Act, the Children's Bureau "is authorized to make grants to, and enter into contracts with,

public agencies or nonprofit private organizations (or combinations thereof) for demonstration programs and projects designed to prevent, identify, and treat child abuse and neglect." Demonstrations constitute a major portion of activities conducted under the Act. Suggested areas of activity are: training of professionals and paraprofessionals in various disciplines involved in the prevention, identification, and treatment of child abuse and neglect; the establishment and maintenance of centers which provide a broad range of services related to child abuse and neglect; "and other innovative programs and projects that show promise of successfully preventing or treating cases of child abuse and neglect as the Secretary may approve."

Among the child abuse and neglect activities the Children's Bureau has been supporting under the Act are: demonstrations of the delivery of services to abused children and their families in general and specifically to military, rural, and Native American populations; demonstration resource projects, providing technical assistance and training to service providers through different models; demonstrations by State agencies and professional organizations of the use of the Children's Bureau-developed multidisciplinary staff training curriculum; and research into the causes of child abuse and neglect and into the relationship between drugs or alcohol abuse and child abuse and neglect.

Eligibility

Grants under both the Child Welfare and Child Abuse and Neglect Research and Demonstration Grants Program may be awarded to public or private nonprofit organizations. Grants are not made to individuals even though they may be affiliated with a public or private nonprofit institution. In certain cases, a specific program announcement may further define or limit eligibility. For example, a recent announcement of intent to fund projects dealing with foster care limited eligible applicants to the single State agency or organizational unit responsible for social services to children and families.

Support is available under both of these programs for both research and demonstration projects. Support is not available for the expansion of ongoing programs or services, such as the provision of day care services, or for projects that demonstrate a service that has already been established in other communities and is generally accepted as part of a comprehensive child welfare, child development, or child abuse and neglect program. Under the Child Welfare Research and Demonstration Grants Program, support is not available for staff training.

Research, both basic and applied, and demonstration are defined as follows:

Basic research refers to research directed primarily toward the increase of knowledge, the improvement of understanding, the provision of background information, and the discovery of basic relationships. It is not necessarily applicable to solutions of immediate problems, and may include theory building.

Applied research refers to research in which results are intended to be more directly applicable to immediate problems than basic research. It may be derived from basic research or theory or may be empirical. It may be aimed at showing how existing knowledge can be used in new and useful ways.

Demonstration and/or replication refer to activities designed specifically to show the method of operation or applicability of a research or program model.

How to Apply

Names of individuals and organizations will be added to mailing lists to either or both grants programs on request. Inquiries should be addressed to Research and Evaluation Division, Office of Child Development, P.O. Box 1182, Washington, D.C. 20013. Potential applicants should specify whether the request is related to the Child Welfare or Child Abuse and Neglect Research and Demonstration Grants Program.

Priority statements (program announcements) are disseminated by the Office of Child Development to inform the research community of the types of projects the Agency is most interested in supporting during that fiscal year. When priorities for the current fiscal year become available, they are sent along with an application kit, deadline information, and other pertinent materials, to the organizations and individuals on OCD's mailing list. This information is also published in the FEDERAL REGISTER.

OCD also supports a very small number of projects known as "unsolicited" projects, which while not specifically related to the issues and projects identified in the priority statements, nevertheless show promise of making a substantial contribution to our knowledge regarding the development and welfare of children, as consistent with the stated OCD goals.

All applications must be submitted on the forms supplied and in the manner prescribed by the Office of Child Development. Failure to do so might remove a proposal from consideration.

Review and Award Process

Completed and eligible grant applications go through a series of steps which comprise the review process.

Advisory Committee

Most proposals are reviewed by members of the Child and Family Development Research Review Committee, a 20-member non-Federal Advisory Committee composed of experts in the fields of child development and child welfare. (Proposals submitted by an institution represented by a member of the Committee and therefore subject to a possible conflict of interest if reviewed by the Committee, will usually be reviewed by a non-Federal Ad Hoc Committee representing the same level of professional expertise and utilizing the same evaluation criteria.)

Evaluation Criteria

All proposals reviewed by the Advisory Committee or an Ad Hoc Committee are evaluated at a minimum according to the following elements:

1. Appropriateness of cost to the government in view of anticipated results
2. Qualifications of project personnel and adequacy of organizational facilites and resources
3. Capability of proposed procedures (scientific or otherwise), if well executed, of attaining project objectives
4. Responsiveness to priority statement, i.e., capability of achieving specific program objectives defined in program announcement.

Additional criteria will be used by the Advisory Committee as is appropriate to a particular priority statement. The specific criteria will be published as part of the priority statement.

"Unsolicited" proposals, those which are not submitted in response to OCD priority statements, must meet all the standards of quality of the solicited proposals. They are evaluated on Items 1–3 (above) as well as the following criteria:

The research addresses problems of OCD target populations or identifies a new target group of concern to OCD, e.g., learning-disabled, Oriental-American.

The research is within the long-range goals of OCD.

The research is a new approach to a problem or brings together a new configuration for addressing a problem.

Funding Decisions

The Child and Family Development Research Review Committee and Ad Hoc Committees function in an advisory capacity. They make their recommendations in the form of a numerical score and narrative critique for each proposal to the Director of the Office of Child Development, who makes the final funding decisions. These decisions are based upon the recommendations of the Committee, program priorities, availability of funds, and other relevant factors, such as equitable geographic distribution of funds, as is mandated in the Child Abuse and Neglect Research and Demonstration Grants Program.

Notification of Decision

Notification of final decisions is made in writing to the person designated on the application as the official authorized to obligate the applicant agency. Applicants of approved projects will receive a "Notice of Grant Awarded," (NGA), the official grant award document that notifies the grantee and others of the award of the grant, contains or references all terms and conditions of the grant, and provides the documentary basis for recording the obligation of Federal funds in the Department's accounting system.

Unsuccessful applicants will receive a letter from the Office of Child Development which will include an explanation of the reasons for disapproval or indicate that an explanation may be obtained upon request.

POST AWARD MANAGEMENT OF GRANTS

I. Acceptance by an agency of a grant indicates that the agency agrees to be bound by DHEW, OHD and OCD legislation, regulations, and policies. There are several significant policy documents which the grantee agency should be aware of.

1. Part 205 of Title 42 of the Code of Federal Regulations, (42 CFR Part 205) entitled "Research Projects Relating to Maternal and Child Health Services and Crippled Children's Services, and Research or Demonstration Projects relating to Child Welfare Services," implements the Child Welfare Research and Demonstration Grants Program conducted by the Office of Child Development under section 426 of the Social Security Act.

2. Part 1340 of Title 45 of the Code of Federal Regulations (45 CFR Part 1340), entitled "Child Abuse and Neglect Prevention and Treatment Program," implements the research and demonstration programs conducted under the Child Abuse Prevention and Treatment Act of 1974.

3. Part 74 of Title 45 of the Code of Federal Regulations (45 CFR Part 74), entitled "Administration of Grants," implements for all of DHEW a single consistent body of administrative rules and contains uniform cost principles for all of the classes of grantees eligible to receive funds under the Child Welfare and Child Abuse and Neglect Research and Demonstration Grants Program. The policies of 45 CFR Part 74 supersedes all policy in other regulations cited above where the policies in 45 CFR 74 are not consistent with these other regulations.

4. *Department of Health, Education, and Welfare Staff Manual—Grants Administration (DHEW/GAM) contains* policies binding on grantees. It includes further guidance on the administrative regulations contained in 45 CFR Part 74. The *GAM* also contains additional DHEW policy which speaks to areas of administrative activity not described by regulation.

5. *Office of Human Development—Grants Administration Manual (OHD/GAM)* reflects the *DHEW/GAM* and discusses areas where governing policy for OHD programs varies from standard DHEW policy. These variances are generally due to specific legislative requirements.

6. *Special Conditions.* The Office of Child Development may apply special conditions to a grant prior to the acceptance of that grant. Where such conditions are imposed, they must be met by the grantee.

AVAILABILITY OF RULES AND MANUALS

The regulations implementing the two program authorities, 42 CFR Part 205 and 45 CFR Part 1340 are available on request from the Office of Child Development. Requests should be sent to the Research and Evaluation Division, Office of Child Development, P.O. Box 1182, Washington, D.C. 20013.

The *OHD/GAM* may be obtained from the Division of Grants and Contract Administration, Office of Administration and Management, Office of Human Development, HEW South Portal Building, Room 345F, Washington, D.C. 20013.

Part 74 of Title 45 of the Code of Federal Regulations and the *DHEW/GAM* are available for a reasonable charge from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

DURATION OF SUPPORT

The average duration of support for a project is three years. Generally, when more than one year is required to realize the objectives of a project, the grant is approved at the outset for continued support and the total project period indicated on the "Notice of Grant Awarded." However, applications for continuation of support must be submitted and approved annually. Approval beyond the first year is dependent upon satisfactory progress of the project as indicated in a progress report and by the availability of funds as determined by the Congressional appropriation for the current fiscal year.

PROJECT OFFICER

Each approved project is assigned to a staff member of the Division of Research and Evaluation or Children's Bureau who serves as project officer. The project officer facilitates the operation of the project in meeting its objectives, reviews applications for continuation, and makes site visits and consults with project staff as is appropriate. The project officer should be consulted when questions arise.

(Catalog of Federal Domestic Assistance Numbers 13.608—Child Welfare Research and Demonstration, 13.628—Child Abuse Research and Demonstration.)

Dated: January 19, 1977.

STANLEY B. THOMAS, JR.,
Assistant Secretary for Human Development.

[FR Doc.77-2283 Filed 1-25-77;8:45 am]

federal register

WEDNESDAY, JANUARY 26, 1977

PART V

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

■

INTERNATIONAL AIR TRANSPORTATION POLICY STATEMENT IMPLEMENTATION PLAN

Requests for Public Comment

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice No. 77-1]

INTERNATIONAL AIR TRANSPORTATION POLICY STATEMENT IMPLEMENTATION PLAN

Request for Public Comment

The purpose of this notice is to set forth the Department of Transportation plan for implementing the International Air Transportation Policy Statement and to request public comment. On September 8, 1976, President Ford issued a new Statement of International Air Transportation Policy of the United States. This statement explicitly superseded the 1970 international aviation policy statement. The world of international aviation has changed substantially since 1970, and both the role and the philosophy of the United States have been challenged. The new policy reflects the changes that have taken place and the present U.S. positions.

The primary goal in formulating new policy has been the interest of the U.S. consumer in having available both regularly scheduled passenger and cargo services and low-cost charter service options. Another principal concern is to assure that well-managed, efficient U.S. airlines can earn a reasonable return on investment.

The policies contained in the Statement envision a revitalized U.S. international aviation system. Policies are truly meaningful, however, only when they are implemented. Accordingly, the group of government agencies and departments which developed the Policy Statement have listed the key actions, as shown below, that need to be applied in such areas as routes and competition, fares and rates, roles of scheduled and charter operations, excess capacity, unfair competitive practices, and safety and enviromnental considerations. These actions have been organized under five broad functions (actions before the Civil Aeronautics Board, bilateral negotiations, legislative and regulatory changes, research studies and projects, and coordination with air carriers and other organizations). The lead agency (which is underlined) and other agencies involved in the implementation are listed, as well as dates for action. It is anticipated that the lead agencies ultimately will develop a more definitive treatment of the specific issues and actions involved, as well as more precise timing for action. Actions having a high priority are designated with an asterisk.

There may be other issues which the Executive Branch of the Government should be addressing, or some of the tentative positions may not be the appropriate ones. Thus the need for comment and reactions. Air carriers, air travelers, and other interested parties are invited to comment on the implementation of the Policy Statement. Policy is an evolving process, and the evolution of international aviation policy will depend heavily upon the views, support, and efforts of U.S. airlines, air travelers, and the public. Written comments and requests for copies of the Statement of International Air Transportation Policy should be addressed to:

John B. Flynn, Director, Air Transportation Policy Staff, Department of Transportation, 400 Seventh Street, N.W., Room 10304, Washington, D.C. 20590 (202-426-4428)

Comments received before March 1, 1977, will be considered. Comments received after March 1, 1977, will be considered to the extent practicable.

Issued in Washington, D.C. on January 18, 1977.

WILLIAM T. COLEMAN, JR.,
Secretary of Transportation.

Implementation of the international air transportation policy statement

Actions	Action agencies	Action dates
A. Participation in CAB proceedings:		
1. Routes:		
*Establish and apply commercial (economic) viability standard in international route cases.	DOT	Early 1977.
*Participate in major international route cases, review CAB decisions and assess commercial viability of awards and their impact on the U.S. international route network.	DOT	1977.
Stress importance of new gateways and area service concepts in cases coming before the CAB.	DOT	1977.
Push for more expeditious handling of international route cases, particularly those routes negotiated in the 1974 United States-Canada bilateral agreement.	DOT:DOS	Early 1977.
Support U.S. carriers' applications for domestic fill-up rights.	DOT:DOS	Do.
2. Rates:		
(a) Support:		
*Establishment of cost-related scheduled and charter fares.	DOT:DOC/CIEP	1977.
Establishment of high-weight breaks	DOT:DOC/CIEP	1977.
Full consideration of filings involving part-charter passenger and cargo tariffs.	DOT:DOC	1977.
Concept of off-peak pricing	DOT:DOC	1977.
Full consideration of filings involving intermodality and all-cargo scheduling and routing flexibility.	DOT:DOC	Early 1977.
(b) Review:		
Major tariff filings and call for suspensions of tariffs which appear noncompensatory or attempt to increase the share of cargo moving on specific commodity rates.	DOT:DOC/CIEP	Do.
Administrative Law Judge's pending decision in Transatlantic, Transpacific and Latin American Mail Rates (docket 26487).	DOT	Do.
CAB order 76-10-11 denying temporary international mail rates.	DOT	Do.
3. Other:		
(a) Support:		
Full consideration of blocked-space and equipment interchange agreements.	DOT	1977.
Relaxation of U.S. scheduled carrier off-route charter restrictions in docket 26928 rulemaking proceeding.	DOT	Early 1977.
Carrier establishment of independent commission structure through presentation of exhibits in the Travel Agency Commission Investigation (docket 28072).	DOT	Do.
(b) Review:		
Capacity limitation agreements filed with CAB to determine that they meet the standards called for in the statement.	DOT	1977.
Carrier commission filings to determine full compliance with filing requirements (docket 28460).	DOT	Early 1977.
B. Bilateral negotiations:		
*Strive to prevent erosion of Bermuda principles in negotiations. Implementation includes conduct of economic analyses and exchange of economic papers.	DOS:DOT/DOC/CIEP	1977.
Stress the need to consider fair and equal opportunities to compete for benefits and not just the estimated balance of benefits.	DOS:DOT	1977.
Seek to obtain more liberal charter rights for U.S. carriers consistent with the need to assure that essential levels of scheduled service are maintained, and ensure equitable treatment of U.S. charters.	DOS:DOT	1977.
Avoid government negotiation of fares, but stress the importance of cost-related fares.	DOS:DOT	1977.
C. Changes in legislation and regulations:		
1. Legislation:		
Considered support of legislation similar to H.R. 7917 which would give public at least a 30-d notice of tariff changes.	DOT	Early 1977.
Testify regarding the merits of an anticipated travel agent self-regulation bill which is expected to be introduced during this session of Congress.	DOT	Do.
2. Regulations:		
Propose to CAB elimination of affinity charters and TGC's when it appears that ABC's and OTC's are viable concepts.	DOT	Late 1977.
File a petition for rulemaking with CAB to remove the prohibition against split charters.	DOT	Early 1977.
D. Studies and research projects:		
1. Routes:		
*Develop prototype of an economic and efficient U.S. international route network for guidance in bilateral negotiations.	DOT	Mid-1977.
*Conduct economic analysis to determine U.S. position in bilateral negotiations.	DOT: DOS/CIEP/DOC.	1977.
Determine whether charter services generally should be part of bilateral agreements and ways of preventing foreign charter restrictions.	DOT: DOS/CIEP	1977.
2. Costs: *Develop appropriate cost criteria for scheduled and charter fares and introduce in CAB proceedings.	DOT:DOC	Early 1977.
3. Capacity:		
*Develop criteria for determining what is excess capacity under Bermuda principles and how extensively the public interest requires 5th freedom operations.	DOT:DOS/CIEP	Do.
*Formalize position regarding extensive foreign carrier 6th-freedom capacity, including possible renegotiation of agreements, and implementation of pt. 213 (of CAB economic regulations) actions.	DOS:DOT/CIEP	Do.

	Actions	Action agencies	Action dates
	4. Discrimination:		
	*Complete a review of the facts in serious discrimination cases to determine what action the Secretary of Transportation should take.	DOT:DOC	Do.
	Study the economic impact of discriminatory practices by foreign carriers.	DOT:DOS	1977.
	5. Other:		
	Study the matter of IATA surcharges to adequately reflect currency exchange rates.	DOT:CIEP	Early 1977.
	Develop a report on conclusions and recommendations resulting from an evaluation of a survey of U.S. diplomatic posts concerning airport security in host countries.	DOT:DOS	1977.
	Monitor international airport/airway charges and determine whether to take steps to impose compensatory charges on foreign carriers failing to pay landing fees in home countries.	DOT:DOS	1977.
E.	Coordination with carriers, U.S. Government agencies and international organizations:		
	1. Carriers:		
	*Encourage United States and foreign carriers to reduce any wasteful capacity on a voluntary basis.	DOT:DOS/CIEP	1977.
	Determine with U.S. carriers their need for 5th-freedom traffic.	DOT:DOS/DOC/CIEP.	1977.
	Encourage carrier filings of cost-related fares	DOT	1977
	Meet with U.S. carriers to discuss ways to facilitate the carriage of mail on charters when scheduled capacity is unavailable.	DOT	Early 1977.
	2. U.S. Government agencies:		
	Meet with Postal Service on feasibility of utilizing U.S. charter service for carriage of mail when U.S. scheduled flights are not available.	DOT	1977.
	Consider greater commitment of the military, to the extent practicable, to civilian aircraft cargo shipments.	DOD:DOT	Early 1977.
	3. International organizations:		
	Assist the development of ICAO standards and recommended practices as well as guidance materials pertaining to handling and transport of hazardous materials.	DOT	1977.
	Participate fully with the United Kingdom and France in supporting the proposed ozone monitoring program of ICAO.	DOT	1977.
	Seek agreement through ICAO of international aircraft noise standards which are compatible with U.S. requirements.	DOT	1977.
	Participate in the comprehensive review of ICAO Aviation Security Manual contemplated in 1977.	DOT	1977.

LEGEND.—CIEP, Council on International Economic Policy; DOC, Department of Commerce; DOD, Department of Defense; DOS, Department of State; DOT, Department of Transportation; ICAO, International Civil Aviation Organization.

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WEDNESDAY, JANUARY 26, 1977

PART VI

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

■

REGULATIONS GOVERNING PROPOSED TRANSACTIONS SUBMITTED TO SECRETARY OF TRANSPORTATION UNDER SECTION 5(3) OF THE INTERSTATE COMMERCE ACT

Establishment of Part

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[FRA Economics Doc. 5, Notice 2]

PART 268—REGULATIONS GOVERNING PROPOSED TRANSACTIONS SUBMITTED TO SECRETARY OF TRANSPORTATION UNDER SECTION 5(3) OF THE INTERSTATE COMMERCE ACT

Establishment of Part

The purpose of these regulations is to set forth the procedures to be followed by railroads in preparing and submitting merger and consolidation proposals to the Administrator of the Federal Railroad Administration (the "Administrator") under section 5(3)(f) of the Interstate Commerce Act (the "Act"), 49 U.S.C. 5(3)(f).

Title IV of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended (the "RRRRA"), significantly reformed the merger and consolidation procedural provisions of the Interstate Commerce Act (the "Act"). The existing procedural provisions contained in section 5(2) of the Act were streamlined by section 402 of the RRRRA, and a new expedited consolidation procedure was established in section 403, which added a new paragraph (3) to section 5 of the Act. The Secretary of Transportation (the "Secretary") has delegated his powers and duties under section 403 of the RRRRA to the Administrator.

Common carriers by railroad desiring to use the expedited procedure may propose a transaction to the Commission if, not less than six months prior to such submission, they submit the proposed transaction to the Administrator for evalution. New sections 5(3)(a) and (f) of the Act authorize common carriers by railroad in the period prior to December 31, 1981, to submit to the Administrator for his evaluation, proposals for a railroad merger, consolidation, unification or coordination project, joint use of tracks or other facilities, or acquisition or sale of assets (hereinafter collectively referred to as "consolidation").

Section 5(3) of the Act also permits the Administrator to propose a transaction to the Commission, with the consent of the railroads which are parties to the transaction. These regulations only apply to those proposals being made by railroads to the Commission. The Administrator anticipates promulgating a policy statement concerning proposals which he may initiate under section 5(3), when the Secretary issues his report setting forth the results of his comprehensive study of the rail system, prepared pursuant to section 901 of the RRRRA.

Proposed regulations governing the procedures to be used by railroads in submitting consolidation proposals to the Administrator under section 5(3)(f) of the Act, were published in the FEDERAL REGISTER on October 13, 1976 (41 FR 44954). Interested parties were invited to submit on or before November 12, 1976, their written data, views, or comments on the proposed regulations. The period for comments was extended to November 26, 1976, at the request of the American Association of Railroads (the "AAR") (41 FR 50303).

Several comments were filed in response to the proposed regulations, and each was given due consideration by the Federal Railroad Administration (the "FRA"). As a result of these comments, numerous significant changes have been made in both the format and substantive requirements of the regulations. These regulations are intended to be responsive to the comments received. They are designed to encourage utilization by the railroads of the section 5(3) consolidation procedure, while at the same time permitting the FRA to carry out its statutory responsibilities. Because these regulations represent a considerable restructuring and streamlining of the proposed regulations, the FRA will consider petitions for reconsideration from interested parties who believe there are significant problems with these final regulations. Such petitions should be filed in accordance with the new provisions of 49 CFR 211.29 (41 FR 54181 (1976)).

PUBLIC COMMENTS AND REVISIONS TO THE REGULATIONS

The public comments received in response to the publication of the proposed regulations related to the following general areas: (a) The role of the Administrator in the expedited merger procedure, and the amount and extent of data required to be submitted to the Administrator; (b) Informal public hearings; and (c) Availability to States of the data submitted to the Administrator. Each of these areas is discussed below.

A. THE ROLE OF THE ADMINISTRATOR AND THE DATA REQUIRED TO BE SUBMITTED

1. *Information required to be submitted.* The AAR contended that the Administrator's study and evaluation of a proposed transaction comes at a fairly early stage in the total review process, that his role is confined at this stage to a study and evaluation of the nine enumerated areas set forth in section 5(3)(f)(iv) and that he should, therefore, restrict his requests for data to the nine statutory concerns.

Section 5(3)(f)(iv) provides that each proposed transaction shall be studied with respect to:

(a) The needs of rail transportation in the geographical area affected;

(b) The effect of the proposed transaction on the retention and promotion of competition in the provision of rail and other transportation services in the geographical area affected;

(c) The environmental impact of such proposed transaction and of alternative choices of action;

(d) The effect of such proposed transaction on employment;

(e) The cost of rehabilitation and modernization of track, equipment, and other facilities, with a comparison of the potential savings or losses from other possible choices of action;

(f) The rationalization of the rail system;

(g) The impact of such proposed transaction on shippers, consumers, and railroad employees;

(h) The effect of such proposed transaction on communities in the geographical areas affected and on the geographical areas contiguous to such areas; and

(i) Whether such proposed transaction will improve rail service.

The AAR suggested that the Administrator should require only an abbreviated draft of the applicant's ultimate consolidation application to the Interstate Commerce Commission (the "Commission"). However, simply submitting an abbreviated draft of the formal consolidation application, as suggested by the AAR, would not provide the Administrator with information sufficient to make the nine statutory studies and to perform his other statutory duties. The Administrator has evaluated the AAR's comment, and agrees that the statutorily mandated analysis is based on the nine enumerated areas, and is not identical to the Commission's responsibilities under section 5(3) of the Act. In order to fulfill affirmatively his responsibilities, the Administrator believes a compromise between the AAR's proposal and our own originally proposed regulations is appropriate. The revised requirements are responsive to the AAR comments: They clearly focus on the nine statutory concerns, and are less cumbersome, better organized, and, we believe, within the capability of railroads to comply with.

2. *Conforming submission begins six month period.* The regulations provide that the Administrator reserves the right to reject those submissions which do not conform to the required form, content, and documentation, and that only a submission conforming to these requirements shall be considered a filing for the purpose of computation of the time period prescribed in section 5(3) of the Act. The AAR questioned whether the FRA had authority to delay the start of the six month period until a submission conformed to the requirements of the regulations.

The authority of the Administrator to promulgate such a provision derives from his mandate and obligation under section 5(3)(f) of the Act to evaluate and study all proposed transactions submitted to him. The Administrator must anticipate that he will be restricted to a six-month period within which to perform all of his responsibilities under section 5(3)(f) of the Act. He must be assured of receiving a complete submission in order to (1) publish a summary and detailed account of the proposed transaction, (2) prepare meaningful studies of the nine areas enumerated in section 5(3)(f)(iv), (3) submit a report to the Commission setting forth the results of each study within ten (10) days after an application is submitted to the Commission, and (4) submit the views of the Secretary with respect to the effect of the proposed transaction on the national transportation policy, as enunciated by the Secretary.

3. *The order in which information is required to be submitted.* Subparts A and C of these regulations are, for the most part, the same provisions as those proposed. Subpart B represents a complete reworking of the provisions relating to information required to be submitted to the Administrator. Subpart B delineates the information required to be submitted to the Administrator along the lines of the studies and summary required by section 5(3) of the Act.

Subpart B requests the information required to be submitted to the Administrator in an order different from that found in section 5(3)(f)(iv) of the Act. The nine factors are set up so that the explicit information gathered and findings made for the first six, §§ 268.19 through 268.29 will lead to general summations in the last three, §§ 268.31 through 268.35. The first six factors deal with specific concerns that are highly interactive and provide the foundation for the final three factors, which are intended to provide quantitative summations.

4. *Minimum information required, and additional information.* Section 268.13 clearly states that the requirements of subpart B are the minimum requirements: a filing of data with the Administrator is not effective, and, therefore, the six (6) month period referenced in section 5(3)(b)(ii) does not begin, unless these minimum requirements are met, waived or modified. The FRA is cognizant that numerous kinds of transactions are covered by section 5(3), and that not all information required by §§ 268.19 through 268.35 applies to every transaction that can be proposed, nor can all of the information required by §§ 268.19 through 268.35 always be provided by the submitting parties. Section 268.41 provides a mechanism by which an applicant may request that the Administrator waive or modify any requirement. On the other hand, occasions may also arise where the submission of additional information may be deemed necessary by the Administrator. Section 268.37 provides that the Administrator may require submission of such additional information as he may deem necessary.

Insofar as an applicant seeks the active support of the Secretary in promoting the proposed transaction at the Commission (rather than providing data sufficient to allow the Administrator to comply only with the narrow requirements of the Act), additional information and data may be needed. Applicants wishing such support should note § 268.9 of these regulations which provides that any information submitted which exceeds that required by this part, referred to as supplemental submissions, may be made by any applicant at the time of its initial submission, or at a later date. The Administrator encourages the use of supplemental submissions. The more the initial and supplemental submissions, taken as a whole, resemble the application required by the Commission, the more comprehensive the Administrator's report under section 5(3)(v) can be. If the applicant wants the Administrator to consider any supplemental submissions filed after the initial submission in making his study of the nine statutory factors, then § 268.9 provides for the applicant and the Administrator to agree on a date on which the applicant will file his application with the Commission to enable the Administrator to complete his report prior to that date.

5. *Terminology.* The terminology used in the proposed regulations has been changed so that it is clear that the Administrator does not require submission of the full application ultimately submitted to the Commission. The term "submission" is used to describe the data required to be filed with the Administrator, and the definition of "application" has been amended to refer to the data format required by the Commission. The term "applicant" is defined to refer to any railroad or railroads submitting a consolidation proposal for evaluation by the Administrator and all railroads with properties directly involved in the proposed transaction.

6. *Intent of regulations.* The National Industrial Traffic League filed comments stating that, as a matter of general policy, it supported the adoption of appropriate procedures to expedite the handling of railroad consolidations. The Administrator believes that these revised regulations meet the League's desire to have voluntary consolidations between rail carriers that will strengthen the transportation industry, produce improved service, establish or continue adequate competition in transportation service, and be consistent with the long-range public interest in the maintenance of an adequate common carrier system.

B. INFORMAL PUBLIC HEARINGS

Section 268.11 provides that there will be informal public hearings concerning all material submitted to the Administrator. The AAR suggested that the final regulations should contain a basic outline for participation at the informal hearings, in order to obtain meaningful comments given the short time allotted for the FRA evaluation process. The Administrator finds the comment to be a good one, but would prefer to provide such a basic outline in the notice for each informal hearing. This would afford the type of flexibility which is necessary to accommodate the hearing procedure to the nature of each proposed transaction, and which is implied by the informality of the hearing requirement.

C. AVAILABILITY OF SUBMISSIONS TO STATES

The New York State Department of Transportation recommended that the States receive copies of the submissions filed with the FRA in order to allow them to participate in the public hearings and to assess the effect of a proposed consolidation on the State's economy and transportation network.

The Administrator welcomes New York State's suggestion, and is eager to benefit from any designated State agency's comments concerning the impact of the proposed transaction on the State's economy, transportation system, communities generally, employment, environment, and rail assistance programs. Section 268.7(d) requires each applicant to make a copy of its submission to FRA available to any State Department of Transportation or designated State agency of any State in which any part of the rail facilities of the railroads involved in proposed transaction is situated.

The provision requires the State agency to request a copy of the submission from the applicant, rather than requiring each applicant to automatically file a copy with each affected State, in order to avoid requiring the applicant to duplicate and mail copies of its submission to State agencies that are not interested in studying the entire consolidation proposal. Governors of all States in which any part of the properties of railroads involved in the proposed transaction are situated, receive notice of the filing of the submission, pursuant to section 5(3)(f)(ii) of the Act. A summary and a detailed account of the contents of the proposed transaction will be published in the FEDERAL REGISTER, pursuant to section 5(3)(f)(i) of the Act.

Inflationary Impact Analysis. The Administrator has determined that the issuance of these regulations is not a major proposal under Executive Order 2050.4, February 2, 1976, requiring an inflationary impact evaluation.

Improved Analysis and Review of Regulations. The Administrator has evaluated the adoption of these regulations in accordance with the policies of the Department of Transportation which were stated in the public notice published on April 16, 1976, in the FEDERAL REGISTER (41 F.R. 16200). In response to the public comments received the regulations have been drafted to eliminate, to a substantial degree, the amount of documentation required of applicants. The revised requirements clearly focus on the nine statutory concerns, and are less cumbersome, better organized, and within the capability of railroads to produce. The preparation of the required data will assist applicants in their preparation of formal applications to the Commission, and will assist them and other interested parties in providing information to the Commission regarding factors which the Commission must consider in determining whether to approve the proposed transaction.

Therefore, the Administrator has determined that the adoption of this regulation will have such a minimal cost impact on the private sector, consumers, Federal, state, and local governments that an evaluation of the effects of this regulation is not warranted.

In consideration of the foregoing, 49 CFR Chapter II is amended by adding a new Part 268 to read as follows:

Subpart A—General Provisions

Sec.
268.1 Applicability
268.3 Definitions.
268.5 Eligibility.
268.7 Filing procedure; notice of filing.
268.9 Supplemental submissions; time extension.
268.11 Informal public hearings.

Subpart B—Contents of Submissions

268.13 Form and content of consolidation submission.
268.15 Front covers.
268.17 Introductory statement, summary of proposed transaction, and map of applicant.
268.19 Needs of rail transportation.
268.21 Retention and promotion of competition.
268.23 Rationalization of rail system.
268.25 Cost of rehabilitation and modernization compared to alternative choices.
268.27 Impact on shippers, consumers, and railroad employees.
268.29 Effect on communities.
268.31 Improvement of rail service.
268.33 Effect on employment.
268.35 Environmental impact.
268.37 Administrator's request for additional information.

Subpart C—Miscellaneous Provisions

268.39 Access to information.
268.41 Waivers and modifications.

AUTHORITY: Sec. 5(3) Interstate Commerce Act, 49 U.S.C. 5(3)(f); Department of Transportation Act, 49 U.S.C. 1651 et seq., Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(u).

Subpart A—General Provisions

§ 268.1 Applicability.

This part prescribes the guidelines and procedures governing merger and consolidation proposals submitted to the Federal Railroad Administrator for evaluation pursuant to section 5(3)(f) of the Interstate Commerce Act, 49 U.S.C. 5(3)(f).

§ 268.3 Definitions.

As used in this part:

(a) "Act" means the Interstate Commerce Act, 49 U.S.C. 1 et seq.

(b) "Administrator" means the Federal Railroad Administrator, or the designee of the Administrator.

(c) "Applicant" means any railroad or railroads submitting a merger or consolidation proposal for evaluation by the Administrator pursuant to this part, and all common carriers by railroad subject to Part I of the Act with properties directly involved in the proposed transaction.

(d) "Application" means the form in which the Interstate Commerce Commission requires the proposed transaction to be submitted to it, following evaluation and study of the proposal by the Administrator.

(e) "Commission" means the Interstate Commerce Commission.

(f) "Consolidation" means all transactions subject to section 5(3) of the Act, including merger, consolidation, unification or coordination project (as described in section 5(c) of the Department of Transportation Act), joint use of tracks or other facilities, or acquisition or sale of assets, which involve any common carrier by railroad subject to Part I of the Act.

(g) "Including" means including but not limited to.

(h) "Railroad" means a common carrier by railroad as defined in section 1(3) of Part I of the Act.

(i) "RRRRA" means the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210, as amended.

(j) "Secretary" means the Secretary of the Department of Transportation.

(k) "Submission" means the form and content in which data concerning the proposed transaction is to be submitted to the Administrator for evaluation and study, as set forth in this part.

§ 268.5 Eligibility.

Any railroad may, in the period prior to December 31, 1981, submit to the Administrator a consolidation proposal for evaluation pursuant to this part.

§ 268.7 Filing Procedure.

(a) Each submission shall bear the date of execution, be signed by or on behalf of the applicant, and shall bear the corporate seal in the case of an applicant which is a corporation. Execution shall be by all partners if a partnership, unless satisfactory evidence is furnished of the authority of a partner to bind the partnership, or if a corporation, an association or other similar form of organization, by its president or other executive officer having knowledge of the matters therein set forth. Persons signing the submission on behalf of the applicant shall also sign a certificate in form as follows:

_____ certifies that
(Name of official)
(he) (she) is the _____
(Title of official)
of the _____, authorized
(Name of applicant)
on the part of the applicant to sign and file with the Administrator this submission; that (he) (she) has carefully examined all of the statements contained in such submission relating to the aforesaid _____
(Name of
_____; that (he) (she) has knowl-
applicant)
edge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of (his) (her) knowledge, information, and belief.

_____
(Name of official)

_____
(Date)

(b) The original submission and supporting papers, including any data deemed relevant by the applicant which are not specifically requested by this part, and ten copies thereof for the use of the Administrator shall be filed with the Associate Administrator for Policy and Program Development of the Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself, except to the extent otherwise provided in this part, but the signature on the copies may be stamped or typed.

(c) Each applicant shall file a copy of the submission with each regional office of the Federal Railroad Administration responsible for the area(s) affected by the proposed transaction. The five regional offices, with their locations, are:

Eastern Region, Independence Bldg., Room 1020, 434 Walnut Street, Philadelphia, Pa 19106.
Southern Region, Suite 216B, 1568 Willingham Drive, College Park, Georgia 30337.
Central Region, 536 S. Clark St., Room 210, Chicago, Illinois 60605.
Southwest Region, Room 11A234, Federal Office Building, 819 Taylor Street, Fort Worth, Texas 76102.
Western Region, No. 2 Embarcadero Center, Suite 630, San Francisco, California 94111.

(d) Each applicant shall make available to any state Department of Transportation or similar state agency of any state in which any rail facilities of applicant are located, a copy of its submission under this part upon request by such agency.

(e) Each applicant shall retain a copy of its submission, and shall make the submission available for public inspection in a reasonable manner at the executive offices of the applicant.

(f) The applicant shall submit such additional information to support its submission as the Administrator may request.

(g) The Administrator reserves the right to reject those submissions which do not conform to the regulations prescribed herein regarding the form, content and documentation. Upon the filing of a submission, the Administrator will review the submission and determine whether it conforms with all applicable regulations. If the submission is incomplete, or otherwise defective, the Administrator may reject said submission by written notice to the applicant, specifying the reasons for the rejection, within 30 days from the date of filing of the submission. Thereafter a revised submission may be submitted, and the Administrator will determine whether the resubmitted submission conforms with all prescribed regulations. The resubmission or refiling of a submission shall be considered a de novo filing for the purpose of computation of the time period prescribed in section 5(3) of the Act, provided that such resubmitted submission is deemed complete.

§ 268.9 Supplemental submissions; time extension.

(a) Sections 268.15 through 268.37 inclusive set forth the minimum data requirements, subject to modification or waiver, for filing an effective submission under this part. Supplemental information may be filed along with the initial submission, or at a later time. Applicants are urged to make their supplemental submissions as similar in form and content to the anticipated application to the Commission as is reasonably possible. The Administrator will use any supplemental information submitted in preparing his report for the Commission. To the extent that the supplemental submissions correspond to the filing requirements established by the Commission for section 5(3) applications, the Adminis-

trator will be able to comment to a greater degree on the merits of the entire proposed transaction.

(b) If an applicant decides to make a supplemental submission to the Administrator and wishes the submission to be considered by the Administrator in his findings pursuant to section 5(3)(f)(iv) and (v) of the Act, then the applicant and the Administrator will reach agreement on the date on which the applicant will file his application with the Commission. This provision is designed to afford the Administrator sufficient additional time to study the supplemental submission, to conduct any necessary public hearings, and to prepare his report.

§ 268.11 Informal public hearings.

(a) Informal public hearings will be conducted with respect to all submissions, and may be held with respect to any supplemental submissions made pursuant to § 268.9.

(b) Notice of all informal public hearings, together with a basic outline for participation at the informal hearing, will be published in the FEDERAL REGISTER at least 15 days prior to each hearing.

Subpart B—Contents of Submissions

§ 268.13 Form and content of consolidation submissions.

Each submission shall contain in the order indicated and identified by reference to heading and section numbers, the information required by §§ 268.15 through 268.35. In the event that full responses to the information requirement of one section in Subpart B are contained elsewhere in the submission, the response should reference the portion of the submission where the requested information is contained.

§ 268.15 Front covers.

(a) The front cover shall list—

(1) The full and correct name of the applicant;

(2) The nature of the transaction (e.g., merger, control, coordination project, trackage rights, etc.); and

(3) If a consolidation or merger is proposed, the proposed name of the resulting company.

(b) An inside front cover listing—

(1) The business address of the applicant (street and number, city, county, state and zip code);

(2) The name, title, business address and telephone number of the officer or offices to whom correspondence with respect to the submission should be addressed; and

(3) The name, business address and phone number of the applicant's attorney.

§ 268.17 Introductory statement, summary of proposed transaction, and map of applicant.

Each submission shall contain—

(a) A section, written in a narrative form, entitled "Introductory Statement", describing applicant and including the following information concerning applicant:

(1) Whether applicant is an individual, firm, partnership, corporation, company, association, joint stock company, trustee, receiver, assignee, or other personal representative, and trade name or style, if any, under which applicant is doing business;

(2) Depending upon whether the applicant is a corporation, partnership, or other form of organization or entity, the date and place of incorporation, of partnership formation, of organization, or the name and address of the court, if any, under direction of which applicant is acting, as applicable.

(3) Whether applicant is a railroad subject to Part I of the Act;

(4) If applicant is not a railroad, the type of business in which it is engaged, the length of time so engaged, and particulars of its present activities which are or may be related to transportation subject to the Act;

(5) Whether applicant or any subsidiary is affiliated with a motor or water carrier subject to the Act; also the following information with respect to rail, motor or water operations, where applicable: The date of the certificate, permit, or temporary authority; and the number of the Commission's docket assigned to the application upon which such certificate, permit, or temporary authority was issued or granted; or if application to engage in interstate or foreign commerce has been made but is still pending, the date of the application and the docket number.

(6) Whether applicant is controlled by any other corporation or corporations, and, if so, the name(s) of the controlling corporation(s), the form of control, whether sole or joint, direct or indirect, and its extent;

(7) The measure of control or ownership, if any, now exercised by applicant over any other railroad subject to the Act, or over the properties of such railroad;

(8) Whether there are any intercorporate relationships, not disclosed in responses to prior instructions, through holding companies, ownership of securities, or otherwise, direct or indirect between applicant and any railroad or person affiliated with applicant and any railroad or person affiliated with any railroad, at the time of making the application; if so, the nature and extent of such relationship; and, if applicant owns securities of a railroad corporation or corporations subject to the Act, the name of the corporation, a description of securities, the par value of each class of securities held, and the percentage of total ownership.

(b) The submission shall also contain a narrative summary including—

(1) A description of the general nature of the entire proposed transaction;

(2) A brief description of the line or lines of railroads involved in the transaction, the principal points of interchange, city or county and state location, and major terminals and classification points.

(3) Briefly, the terms and conditions of the contract or agreement pursuant to which the proposed transaction is to be effected, including the manner in which the parties propose to consummate the transaction;

(4) A brief geographical description (including as applicable, route descriptions) of (i) operations sought to be performed and (ii) other operations presently performed;

(5) The state or states in which any part of the properties of the railroads involved in the proposed transaction are situated; and

(6) The public interest factors involved.

(c) At the conclusion of the narrative summary, a general or key map indicating clearly the line or lines of applicant, parts of the line or lines of applicant in their true relation to each other, shortline connections, other rail lines in the territory and the principal geographic points of the region transversed. The map may be drawn using any appropriate scale or key system, so long as it is clear, can be easily reproduced, and effectively presents the required information. Three additional copies of the map shall be furnished, unbound, for the use of the Administrator.

§ 268.19 Needs of rail transportation.

Each submission shall contain—

(a) A discussion and analysis of the present demand for rail transportation, both freight and passenger, in the geographical area affected by the proposed transaction, and how the proposed transaction would better meet such demands or would result in improved rail freight or passenger service. The discussion shall include:

(1) Revenue carload data from true origin station or city to final destination station or city (for the lines affected by the proposed transaction);

(2) The present service patterns from true origin station or city to final destination station or city, and the current routings of the existing traffic described in subsection (1); and

(3) Trends in growth, direction or traffic pattern, and modal split of the existing traffic described in subsection (1), to the best of applicant's knowledge.

(b) A description and analysis of future rail freight and passenger transportation needs that the proposed transaction is designed to meet (such as freight transportation presently handled by other modes, new industries likely to locate in the geographical area affected, new mineral traffic, etc.). If the future rail freight traffic is anticipated to result from anything other than continued growth in existing rail traffic, describe—

(1) The type of traffic (e.g., by commodity);

(2) The anticipated amount of rail freight traffic;

(3) Estimated revenue carload data from true origin station or city to final destination station or city; and

(4) How the proposed transaction enables applicant to meet this need.

(c) A traffic study detailing estimated gains and losses in traffic and revenues expected to result from the consummation of the proposed transaction, for any

changes in freight or passenger usage or traffic flow, etc., as discussed in paragraphs (b)(1) and (2) of this section. Traffic studies are not required in submissions involving the acquisition of a line of a railroad where the line to be acquired has been authorized by the Commission to be abandoned or the line to be acquired connects with no carrier other than the applicant. The traffic study shall be prepared in conformity with the following instructions:

(1) The period covered by the traffic study shall be the latest three calendar years preceding the filing of the submission. A different time period may be used if reasonable under the circumstances of the proposed transaction, so long as the reasons therefor are specifically set forth; and

(2) The traffic studies shall be based upon all data available to applicant in abstract or machine-sensible form. Data for the movements relied upon in the traffic studies shall be totally reproduced, together with all other information relied upon for determining the gains or losses in traffic and revenue. The amount of such gains or losses shall be shown for each movement abstract on which a gain or loss has been determined.

(d) A discussion and analysis of financial strengths and weaknesses of the applicant, including a discussion of—

(1) The improved financial performance expected to be achieved as a result of the proposed transaction; and

(2) The funds that will be available for investment in improvements, as a result of the proposed transaction.

(e) Any additional facts necessary to establish that the proposed transaction will be consistent with the needs of rail transportation in the geographical area affected.

(f) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.22 Retention and promotion of competition.

Each submission shall contain—

(a) A discussion and analysis of the present intermodal competition for the traffic originated and terminated on the lines affected by the proposed transaction, from true origin station or city to final destination station or city of the shipments. Among other factors, this discussion should include:

(1) The extent and scope of motor and water carrier ability to meet the service needs, as compared to the existing railroad network; and

(2) The identification of the motor and water carriers that compete with the applicant and the applicant's best estimate of the tonnage, ton-miles and freight revenues of such carriers.

(b) A discussion and analysis of the present rail competition for the traffic originated and terminated on the lines affected by the proposed transaction, from true origin station or city to final destination station or city of the shipments. Among other factors, this discussion should include the identification of the railroads competing with the applicant for the same traffic from true origin station or city to final destination station or city of that traffic, and the applicant's best estimate of the tonnage, ton-miles and freight revenues of such carriers.

(c) For all transactions involving railroads serving substantially the same geographical area, a listing of all of the communities on lines affected by the proposed transaction which are served by more than one railroad and an estimate of the share of the rail traffic possessed by each railroad. The listing will indicate the following—

(1) Whether the railroads serve the same patrons (i.e., whether some form of competition exists) or whether patrons are isolated on one line;

(2) The effect of the proposed transaction on a reduction or increase in such competition; and

(3) An indication of those points served by more than one railroad that can receive better service by only one railroad, if any.

(d) Applicant's best estimate of the percentage of traffic handled by competitors, if any, which applicant would reasonably expect to attract as a result of the proposed transaction, and a projection of the total rail market share before and after the proposed transaction would take effect, describing the relative market shares of competing modes.

(e) A discussion of any overhead traffic, that is, traffic which neither originates nor terminates on the lines affected by the proposed transaction but which passes over the lines affected by the proposed transaction, if any, including—

(1) The extent and scope of intermodal competition for this traffic;

(2) A discussion of existing railroad competition for this traffic;

(3) A listing of the true origin city and railroad and final destination city and railroad of the overhead traffic, to the best of applicant's ability; and

(4) An explanation of what steps could and are planned to be taken, if any, to enable applicant to originate or terminate such overhead traffic.

(f) Any additional facts necessary to show the effect of the proposed transaction on the retention and promotion of competition in the provision of rail and other transportation services in the geographical areas affected.

(g) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.23 Rationalization of the rail system.

Each submission shall contain—

(a) A discussion and analysis of the proposed transaction in the context of the findings or facts contained in the reports prepared under sections 503, 504, and 901 of the RRRRA, as those reports are issued.

(b) To the extent altered by the proposed transaction, a description of service presently performed. All significant service improvements and downgradings (e.g., changes in scheduling, service frequency, blocking plans, etc.) will be listed. Shippers affected by proposed service improvements and/or downgrading will be listed, and located by point of shipment. For the purposes of this listing, the shippers to be listed will be any that have used rail service in the year preceding the date of submission.

(c) A description of the effect the proposed transaction will have on the total funding needs (Federal, state, and local) of the applicant, examining all programs including those for rail line rehabilitation and improvements, grade crossing needs, highway bridge construction plans, passenger or commuter lines, etc.

(d) An identification of all lines of the applicant in the geographical area affected by the proposed transaction which serve no rail patrons except at junctions with other carriers. A discussion of the practicality of serving all such rail patrons at such points by only one railroad, and a recommendation as to which railroad this should be is required.

(e) An analysis and discussion of the operating savings expected from any service or route changes, following consummation of the proposed transaction, including a breakdown of the significant components of these savings and a discussion of the quantitative effect of these savings on present operating costs.

(f) An estimate of the additional net revenue to be derived as a result of any longer hauls and increased single-line service.

(g) Any additional information necessary to show the effect of the proposed transaction on the achievement of a more efficient or adequate rail system.

(h) A full explanation of the methodology and reasoning used in making estimates and projects called for by this section.

§ 268.25 Cost of rehabilitation and modernization compared to alternative choices.

Each submission shall contain—

(a) For those lines affected by the proposed transaction, a description and analysis of the maintenance and rehabilitation needs, slow orders in effect, class of track, rail facilities subject to deferred maintenance, equipment and other facilities involved in the proposed transaction in the context of the informational findings or facts contained in the reports prepared by the Secretary pursuant to sections 504 and 901 of the RRRRA, when issued.

(b) A discussion of the means by which accelerated maintenance and rehabilitation needs for any lines identified and discussed in subsection (a) are to be met, including—

(1) The amount and availability of private sources of funds, including internally generated fund; and

(2) The availability of public sources of funds from all levels of governments, describing in detail the amounts and timing of any public funds anticipated.

(3) Identification and discussion of possible alternative courses of action available if such maintenance and rehabilitation needs are not met in the amount or time frame proposed, and a projection of the costs of such alternative courses of action.

(4) A description of those lines, or portions thereof, on which maintenance and rehabilitation is to take place, if any, which have shippers located thereon who have service options from connecting or intersecting railroads.

(c) If the applicant has applied or intends to apply for financial assistance under Title V of the RRRRA, full details should be provided regarding the relationship of the request for financial assistance to the proposed transaction, including the nature, amount, timing and purpose of such assistance, and the steps which have been taken to secure such financial assistance. Any applications filed in the last three (3) years or to be filed for state or local assistance should be similarly discussed, to the extent they relate to the proposed transaction, including tax relief, grade crossing programs, etc.

(d) Any additional facts necessary to show the cost of rehabilitation and modernization of track, equipment, and other facilities associated with the proposed transaction with a comparison of the potential savings or losses from other possible choices of action.

(e) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.27 Impact on shippers, consumers, and railroad employees.

Each submission shall contain—

(a) A description of any service improvements on specific lines which would result from the proposed transaction. As a part of the discussion—

(1) All shippers along these lines shall be identified. Identification of such shippers for the purpose of this subsection may be made by group, locality, or other reasonable method of classification.

(2) The type of service improvement (e.g., single-line service, better operating plan, scheduling, rate effects) that would result from the proposed transaction shall be described and an analysis which quantifies the benefits shall be submitted.

(b) A discussion noting any lines which, as a result of the proposed transaction, would handle less through traffic or would be abandoned within the next three (3) years, including—

(1) Identification (as in subsection (a)(1) above) of all shippers located along such lines.

(2) A description of the service effect on these shippers, if any, as a result of the reduction in through traffic. Indicate the existence, if any, of service guarantees made to shippers.

(3) A description of the remaining freight transportation alternatives for shippers, if any, along lines proposed for abandonment.

(4) If an application to abandon a line or discontinue a service is contemplated, describe such lines or services and state the reasons for the contemplated abandonment or discontinuance.

(5) To the extent the proposed transaction leads or will likely lead to abandonments in the geographical area, a statement of the degree of the applicant's commitment to cooperate with the financial assistance mechanisms established in Title VIII of the RRRRA and to meet the rules and regulations established under that statute, and a statement of the commitment of any connecting carrier that could provide subsidized service at a lower cost.

(c) To the extent related to, or directly affected by, the proposed transaction, a listing of any selected rate changes anticipated to result from the proposed transaction over the three years following consummation of the proposed transaction. Explain the consequences of any such rate changes on general consumers. This discussion shall include possible rate and service packages, anticipated frequency of service, distinct service pricing, peak-load pricing, and similar pricing, rate and service concerns.

(d) With regard to rail employees of the applicant—

(1) A description of all projected changes in employment as a result of the proposed transaction.

(2) A list of any increases in rail employment resulting from the creation of any service improvements (e.g., single-line service).

(3) For any projected employment decreases, an explanation of how they will be handled and an estimate of the total costs of labor protection associated with the proposed transaction.

(4) A copy of any agreement or agreements with employee organizations entered into as a result of, or as part of, the proposed transaction.

(5) A discussion regarding the effect, if any, any consolidation of management and personnel that would result from the proposed transaction would have in improving the present and future rail needs of the geographical area affected.

(e) An analysis which quantifies—

(1) The effect of rehabilitation programs, as discussed under section 268.25 on individual shippers.

(2) The amount of rail employment to be derived directly from the proposed rehabilitation program and any secondary rail employment which would result after completion of the proposed rehabilitation program.

(3) The effect of rationalization efforts, as discussed under section 268.23 on the quality of service on individual lines and shippers, addressing upgrading and improved services as well as downgrading or abandonments.

(f) Any additional facts necessary to show the effect of the proposed transaction on shippers, consumers and railroad employees.

(g) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.29 Effect on communities.

Each submission shall contain—

(a) For the lines described in section 268.27, if any, identification of all governing bodies (e.g., states, counties, townships, cities, towns, etc.) on such lines.

(b) A description of the effect of service improvements, downgradings, or abandonments resulting from the proposed transaction, if any, on the communities served and on areas adjacent to those communities.

(c) A description of any new industrial development opportunities or losses resulting from the proposed transaction.

(d) If commuter or other passenger services, Amtrak, Autotrain or the like intercity passenger service are operated over the lines of the applicant, a detailed discussion of any impact anticipated on such services, such as delays which may be occasioned because a line is scheduled to handle increased traffic due to route consolidation or improvements resulting from the rehabilitation or rationalization program.

(e) An identification and location of any existing shops, repair facilities, yards, or major installations facility, whenever such operations are or would become significant employers in the community where they are or would be located as a result of the proposed transaction.

(f) A description of the effect of the proposed transaction on property taxes. Show how the total property taxes relate to net income of applicant. List any branch lines estimated to be unprofitable for which reduction or elimination of property taxes would result in profitability.

(g) Any additional facts necessary to show the effect of the proposed transaction on the communities in the geographical areas affected and on the geographical areas contiguous to such areas.

(h) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.31 Improvement of rail service.

Each submission shall contain—

(a) A narrative discussion of all the factors noted in sections 268.19 through 268.29, qualifying all of the benefits and costs of, and assessing the tradeoffs related to, the proposed transaction, to the extent rail service improvements are anticipated. The discussion will include coverage of the following issues:

(1) Single-line service opportunities met;

(2) Competitive gains and losses;

(3) Rehabilitation and rationalization that would be achieved;

(4) Rail employment gains and losses;

(5) Effect on shippers and communities;

(6) Effect on passenger services; and

(7) Other services improved or lost.

(b) Any additional facts necessary to show whether the proposed transaction will improve rail services.

(c) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.33 Effect on employment.

Each submission shall contain—

(a) A narrative discussion of all the factors discussed in §§ 268.19 through 268.29, estimating the amount of new employment (other than rail employment), both direct and secondary, to be gained or lost as a result of the proposed transaction, and estimating the value to the economy of the geographical area affected by the proposed transaction, of the consummation and implementation of the proposed transaction. The discussion will include coverage of the following issues:

(1) Single-line service opportunities met;

(2) Competitive gains and losses;

(3) Rehabilitation and rationalization that would be achieved;

(4) Effect on shippers and communities;

(5) Effect on passenger services; and

(6) Other services improved or lost.

(b) Any additional facts necessary to show the effect of the proposed transaction on employment in the geographical areas effected by the proposed transaction.

(c) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section.

§ 268.35 Environmental impact.

Each submission shall contain—

(a) A description of the environment in the geographical area to be affected by the proposed transaction, together with a statement of Federal activities in the same geographical area which are known or should be known to the applicant. As part of the description, applicant will—

(1) Include maps which are sufficient to identify the communities and land uses (farm, industry, forest, etc.) adjacent to any affected properties, together with the number of grade crossings in each affected community;

(2) Indicate speed and frequency of current rail traffic and note how long grade crossings are blocked during a typical day on affected lines;

(3) Indicate the air quality in the affected region, as found in the State Implementation Plans to meet ambient air quality standards; and

(4) Indicate derailments and fatalities and/or injuries resulting from accidents involving trains and motor vehicles and/or pedestrians along the affected rights of way, which are reported to the Federal Railroad Administration pursuant to part 225 of Title 49, Code of Federal Regulations, as revised.

(b) A discussion of the relationship of the proposed transaction to any applicable Air Quality Implementation Plan promulgated under the Clean Air Act, 42 U.S.C. 1857. In preparing this discussion, applicant—

(1) Should refer to state air quality agencies or to the Regional Offices of the U.S. Environmental Protection Agency (the "EPA") for guidance.

(2) Document whether the proposed transaction is consistent with any state plans and demonstrate whether the proposed transaction would violate National Ambient Air Quality Standards, as set forth in part 50 of Title 40, Code of Federal Regulations.

(c) A discussion of the proposal's relationship to proposed land use plans, policies, and controls of affected areas. The discussion should consider the impacts of abandonments, increased traffic and new construction, as appropriate.

(d) If the proposed transaction would lead to an application for Federal funding, a statement of any impact on public parks, recreational areas, wildlife refuges, historic sites, and similar areas referenced in section 4(f) of the Department of Transportation Act, 49 U.S.C. 1653(f).

(e) A statement as to whether the proposed transaction (including proposed abandonments) would affect any districts, sites, buildings, structures, or objects that are included in the National Register of Historic Places, or are eligible for including in the National Register of Historic Places, as defined in 36 CFR 800.3(f). The National Register of Historic Places, which is a register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture, is maintained by the Secretary of the Interior under authority of section 2(6) of the Historic Sites Act of 1935 (16 U.S.C. 461) and section 101(a)(1) of the National Historic Preservation Act (16 U.S.C. 470). The National Register is published in its entirety in the Federal Register each year in February, with addenda published on the first Tuesday of each month. 36 CFR 800.3(d). Applicants may consult with officials designated by their Governors to act as State Historic Preservation Officers responsible for state activities under the National Historic Preservation Act. A listing of these state officials may be found at 36 CFR 60.5(d), or may be obtained from the Director, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. The Secretary of the Interior will advise, upon request, whether properties are eligible for the National Register.

(f) A review of all the factors discussed in §§ 268.19 through 268.33 in a narrative form, quantifying the positive and negative effects of the proposed transaction on the environment in the affected communities, including effects on air and water, soil quality, and noise levels, and listing measures which can be taken to mitigate adverse impacts. This discussion should include—

(1) *Impacts.* Examples of impacts are increases in noise, dust, erosion, solid waste disposal, use of herbicides, water pollution, congestion, and delays in the provision of essential services. Traffic impacts might include changes in exposure to noise, changes in level of noise or vibration (as associate with higher speed operations on welded rail), delays in provision of essential services (police, fire, ambulance), congestion of street traffic in adjacent communities; and anticipated changes in accident patterns. In considering noise levels, applicants should note any conflicts between current or projected noise levels from rail operations and HUD standards for noise at sensitive sites, such as schools, hospitals, parks, and residential locations. (U.S. Department of Housing and Urban Development, *Noise Abatement and Control: Department Policy, Implementation Responsibilities, and Standards*, Departmental Circular 1390.2, Chart: External Noise Exposure Standards for New Construction (August 4, 1971)).

(2) *Mitigation measures.* Examples include control of hours of operation, coordination of street blockages with adjacent communities, dust and erosion controls measures, and proposed methods of tie disposal and maintenance of way. Applicants should also refer to the EPA "Levels" document (U.S. Environmental Protection Agency, *Information on Levels of Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety*). This document provides a system of measuring day and night noises on a weighted average.

(g) A description of any alternatives to the proposed transaction that have been enumerated and discussed in §§ 268.23 and 268.25 of this part, with respect to impact on the environment. This discussion should include—

(1) Continuation of rail service without the proposed transaction;

(2) Abandonment of rail service;

(3) Relocation or construction of grade separations at conflict points; and

(4) Costs of such alternatives.

(h) A full explanation of the methodology and reasoning used in making estimates and projections called for by this section. Applicant should reference sources used as the basis for comparisons. For energy comparisons, a possible source is Oak Ridge National Laboratory Report, "Energy Intensiveness of Passenger and Freight Transport Modes" by Dr. Eric Hirst, April, 1973. For analyzing community impacts, the following report may be useful: "The Impacts on Communities of Abandonment of Railroad Service," July, 1975, prepared for the U.S. Railway Association by the Public Interest Economics Center, Washington, D.C. In examining the environmental effects of highway transport as an alternative to rail service, applicants may wish to use the following publication: "A Study of the Environmental Impact of Projected Increases in Intercity Freight Traffic, August, 1971, prepared for the Association of American Railroads by Battelle, Columbus, Ohio.

§ 268.37 Administrator's request for additional information.

Applicant shall submit any additional information which the Administrator may deem necessary concerning a submission filed under this part.

Subpart C—Miscellaneous Provisions

§ 268.39 Access to information.

If an applicant wishes any information filed in a submission or in a supplemental submission not be released by the Administrator upon request from a member of the public, the applicant must so state and must set forth the reasons why such information should not be released, including particulars as to any competitive harm which should result from release of such information. The Administrator will keep such information confidential as permitted by law.

§ 268.41 Waiver or modification.

The Administrator, upon good cause shown, may waive or modify any requirement of this part, or make any additional requirements deemed necessary.

Dated: January 19, 1977.

ASAPH H. HALL,
Administrator, Federal Railroad Administration.

[FR Doc.77-2366 Filed 1-25-77;8:45 am]

federal register

WEDNESDAY, JANUARY 26, 1977

PART VII

FEDERAL COMMUNICATIONS COMMISSION

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COMMERCIAL TELEVISION NETWORK PRACTICES

Notice of Inquiry

FEDERAL COMMUNICATIONS COMMISSION

[FCC 77-53; Docket No. 21049 (RM-2749)]

COMMERCIAL TELEVISION NETWORK PRACTICES

Notice of Inquiry

Adopted: January 14, 1977.

Released: January 14, 1977.

1. Notice is hereby given of the institution of an inquiry into commercial television network practices and policies regarding the acquisition and distribution of television programming. Almost two decades have elapsed since the Commission completed its last overall study of network practices.[1] Developments in recent years suggest that a new inquiry is warranted.

2. This inquiry will encompass a number of subjects surrounding the matter of alleged dominance of the nation's commercial television industry by the three major commercial networks, but will focus most specifically on the relationship between these networks and their affiliated stations. In this regard, the Commission has consistently emphasized that it is the individual licensee who has the right and the responsibility to program his station:

> * * * the Commission in administering the Act and the Courts in interpreting it, have consistently maintained that responsibility for the selection and presentation of broadcast material ultimately devolves upon the individual station licensee and that fulfillment of such responsibility requires the free exercise of his independent judgment. En Banc Programming Policy Report, 20 R.R. 1901, 1911 (1960).

It is clear, furthermore, that this responsibility for the independent exercise of programming judgment cannot be delegated to a network or to any other entity or individual.[2] Accordingly, we propose to carefully examine whether particular network practices may improperly compromise or restrict the programming discretion of the broadcast station licensee.

3. In giving proper consideration to this question, it is not possible to limit our inquiry simply to an examination of the contractual relations which exist directly between a network and its affiliated stations. The networks play a central role in our commercial television industry and their activities have a direct bearing on the entire market relating to the production and distribution of television entertainment programming. Station discretion can be meaningful and effectively exercise only in circumstances where this market is in a healthy, competitive state and is in a position to offer alternative sources of programming. For this reason, our inquiry will encompass the question of whether the networks have maintained anticompetitive policies which unduly restrict the development of other programming sources.

Preliminary Observations

4. This study is prompted, in part, by a rulemaking petition brought before us by Westinghouse Broadcasting Company, Inc. (RM-2749) and by allegations contained in antitrust complaints which the Department of Justice filed against the networks in the Central District of California.[3] The Westinghouse petition called for a "comprehensive inquiry and rulemaking proceeding to review the changing role and function of the three national television networks." Westinghouse Petition in RM-2749, September 3, 1976, p. 1. The Justice Department filed comments in support of this petition but, in a supplemental letter, emphasized that its comments "should not be construed as suggesting that the inquiry encompass those issues now being litigated in the Federal District Court in California," and that neither this letter nor the Department's formal comments were intended "to preclude either the Commission or the Department of Justice from taking any action consistent with its respective responsibilities." Letter from the Honorable Donald I. Baker, Assistant Attorney General, Antitrust Division, December 3, 1976, pp. 1 and 2.

5. We would like to make it clear that, in instituting the present inquiry, we have neither the power nor the desire to foreclose the Department in its antitrust action. While it is inevidentable that thorough inquiry into network practices will encompass many of the questions raised in the antitrust suit, we do not believe that our inquiry should in any way preclude the Department from prosecuting its case or from arranging an appropriate settlement. See *United States* v. *Radio Corporation of America*, 358 U.S. 334 (1958). In concurrently examining similar issues, the Department of Justice has a direct responsibility for the enforcement of the Sherman Act, whereas the Commission's inquiry will focus on public interest questions affecting communications policy pursuant to our responsibilities under the Communications Act of 1934. In this connection, we note that in mid-November 1976 a proposed consent decree was agreed to by the Department and by NBC in one of the three antitrust actions mentioned (Case No. 74-3601—RJK), and is now pending before the Federal District Judge handling the case. See 41 Fed. Reg. 51991 (November 24, 1976). This is discussed below, in connection with the general subject of network-producer relationships.

6. In the discussion of specific topics below, there is extensive reference to allegations raised in the Westinghouse petition, statements in response to that petition filed by public interest groups and other parties, the Department of Justice antitrust complaints, and the proposed NBC consent decree. The networks vigorously oppose most of these allegations, as to their relevance and materiality and in some cases their accuracy. They also advance counter-arguments, both in respects mentioned below and otherwise. We have carefully considered the networks' positions, just as we have carefully noted assertions made by Westinghouse, the Department of Justice, and public interest groups. Given the networks' highly important role in the commercial television industry, allegations regarding abuses of power, and the lapse of 20 years since the last overall network study and investigation, we believe that this Inquiry is appropriate at the present time. This is true not only in connection with consideration of possible Commission regulation by rule or adjudication, but also in connection with possible legislative recommendations to Congress. The Commission hastens to point out, however, that we have not reached any conclusions, even of a tentative nature, regarding these issues discussed below. What we contemplate at this time is solely a fact gathering inquiry designed to provide the Commission with information necessary to a thorough understanding of television networking.

7. The Commission is, of course, cognizant of the vital contributions which the networks have made to the development of the television medium. As pointed out in the 1960 Program Policy Statement, supra, (20 R.R. 1914):

> The programs provided first by "chains" of stations and then by networks has always been recognized by this Commission as of great value to the station licensee in providing a well-rounded community service. The importance of network programs need not be reemphasized as they have constituted an integral part of the well-rounded program service provided by the broadcast business in most communities.

While it is certainly not our intention to adopt any regulatory measures which would impair the ability of the networks to serve the public interest, we must assure ourselves that the networks are not engaging in practices which might unduly encroach on the discretion of our licensees, or unnecessarily restrict the development of new sources of television programming.

8. As a matter of convenience, this Notice has been divided into three sections. (1) background on the role of the networks; (2) questions concerning the relationship between networks and their affiliated stations; and (3) questions concerning the relationships between the networks and program producers and suppliers. It is obvious, of course, that the categories of questions concerning network-affiliate relations and network-

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[1] Between 1955 and 1957, a special network study staff conducted a broad-ranging inquiry into network practices. This study resulted in the release of the "Barrow Report." *Network Broadcasting*, H. Rep. No. 1297, 85th Cong., 2nd Sess. (1958). (Hereinafter cited as the "Barrow Report.")

[2] As also stated in the Programming Policy Report (20 R.R. 1901, 1914), the broadcaster is obligated to provide programming to meet the needs and interests of his local community and this "is a duty personal to the licensee and may not be avoided by delegation of responsibility to others." See also Broadcast Licensees and Public Agreement, 57 FCC 2d 42, 49-51 (1975).

[3] *United States* v. *American Broadcasting Companies, Inc.*, Civil Action No. 74-3600—RJK (C.D. Cal.); *United States* v. *CBS Inc.*, Civil Action No. 74-3599—RJK (C.D. Cal.); *United States* v. *National Broadcasting Company, Inc.*, Civil Action No. 74-3601—RJK (C.D. Cal.).

program supplier relations are far from being mutually exclusive. Developments in one area can and generally do impact on the other. Nevertheless, we believe that this division of questions will be useful for the purposes of discussion and inquiry. Commenting parties should be careful, however, to keep in mind the fact that to a very large extent these categories are inextricably intertwined. The fact that we are studying various particular aspects of commercial television broadcasting does not mean that these are viewed as problem areas. It simply means that information pertaining to these activities is indispensable to a thorough understanding of network practices. In this regard, our inquiry addresses the identification of problems, not the consideration of possible remedies for any abuses that may be identified.

Background: The Role of the Networks

9. Ever since the demise of the Dumont Network in the mid-1950's, there have been only three "national" television networks: the American Broadcasting Companies, Inc. (ABC), Columbia Broadcasting System, Inc. (CBS) and National Broadcasting Company, Inc. (NBC). Recent years have witnessed the development of a number of specialized networks offering sports or movies, but the pre-eminent position of the three national networks remains unchallenged. Their affiliates number well over 75% of all U.S. commercial television stations (approximately 600 out of slightly more than 700) and, outside the major markets, network affiliation is virtually indispensable to successful station operations.[4] As discussed below, it appears that about sixty percent of the broadcast programs currently presented by affiliates are supplied directly by their network. In addition to their ability to reach nearly all American households through their affiliated stations, all three networks own VHF stations in each of the nation's three largest television markets (New York, Los Angeles and Chicago), and two in other major markets (ABC, Detroit and San Francisco, the 6th and 7th markets; CBS, Philadelphia and St. Louis, the 4th and 12th markets; and NBC, Cleveland and Washington, the 8th and 9th markets). Each of these 5-station "owned and operated" (O and O) groups reaches about 22 percent of the U.S. audience.[5] The networks are actively involved as brokers or middlemen connecting the program producers and national advertisers with local stations and their viewers. It is, therefore, not surprising that the networks play a very important role in the development, selection, and distribution of television programming.

10. This role, with respect to program development and selection, has not remained unchanged. Twenty years ago, more than half of the programs carried by the networks were either produced or purchased by major advertisers who acquired the necessary amount of network time to broadcast their programs. Today, for a variety of economic reasons, virtually all regularly scheduled network programs are either obtained by the networks directly from an independent producer or produced by themselves. With this development, the ability to determine what types of television programming will be made available to the American public has largely shifted from the advertising community to the networks.

11. This change is largely attributable to increases in the costs of producing programming as well as the costs of network advertising time. Between 1960 and 1976, the average cost of a single half-hour episode of a new prime-time program increased by about 237 percent from nearly $49,000 to approximately $165,000.[6] Network program expenditures reflected this trend, rising from $376,948,000 in 1960 to $1,273,241,000 in 1975, an increase of 238 percent. The average cost of a thirty-second network TV advertising spot rose by 153 percent during the same period. Cost increases have also been accompanied by a general recognition that shorter commercial messages are, for the most part, more cost effective than longer TV advertisements. That is, a 20 or 30-second spot, in many instances, is thought to be as nearly effective as a 60-second spot besides being less expensive. Given these developments, it is not surprising that advertisers have become increasingly inclined to spread their commercials over a larger number of programs. Consequently, they no longer produce their own regularly scheduled programming but, rather, purchase a number of commercial spots which are usually placed in a variety of programs. While this development has shifted almost exclusive control over the development and selection of programs to the networks, it has also permitted more businesses, particularly smaller ones, to use television as an advertising medium.

12. Network control over access to the medium has also coincided with rather extraordinary increases in profits. Between 1960 and 1975, total combined network expenditures rose from $461 million to $1,465 million, for an average annual increase of 13.6 percent. Total net broadcast revenues, on the other hand, increased more rapidly; from $495 million in 1960 to $1,673 million in 1975, which was equivalent to an average annual increase of 15 percent. Net income (total combined profits before taxes) earned by the networks has risen at an annual rate of 32 percent; increasing from $33.6 million in 1960 to $208 million in 1975. According to the Internal Revenue Service, pretax profits accruing to all businesses in the United States increased at an average anual rate of approximately 12 percent between 1960 and 1974.[7]

13. Westinghouse alleges that increases in network profits have partially resulted from expanded program schedules and relative reductions in station compensation payments. It is stated that between 1960 and 1976 the networks increased the length of their program schedules from 434 to 516 half-hours, or by 19 percent.[8] It is further argued that these increases occurred at the expense of local station time which has declined by 25 percent since 1960. Additionally, Westinghouse maintains that network programming currently occupies up to two-thirds of the available time on affiliated stations. The networks, it is claimed, have also reduced the proportion of their total revenues devoted to station compensation which, of course, has also enhanced their profits. Westinghouse further maintains that between 1964 and 1975, station payments as a percent of network revenues declined from 23.1 to 13.4 percent. Similarly, it is contended that station compensation payments as a percent of station receipts decreased from 19.8 to 10.7 percent during the same period. It is suggested that these and related developments have adversely affected the ability of affiliated stations to meet their public service responsibilities.

14. When the allegations of Westinghouse and other parties are considered against this background of significant change in the commercial television industry, it appears that an inquiry is warranted. In order to protect the interest of the public in receiving the best possible programming service, the Commission must take a careful look at the question of whether the networks may have engaged in conduct which hampers the independent judgment of the affiliated station, and which restricts effective competition in the programming market.

Network-Affiliate Relations

15. In the paragraphs which follow, we will briefly discuss three areas of network-affiliate relationships which appear to be particularly pertinent in connection with this inquiry, and as to which comments are specifically invited, although, of course, parties may wish to discuss others. These are: (1) clearance of network programming and the

[4] There are only ten commercial independent stations (in the conterminous U.S.) outside the top 50 markets.

[5] In terms of "ADI households" (households located in the market stations' "area of dominant influence") the figure was 22.82% for ABC, 22.76% for CBS and 21.91% for NBC. See Broadcasting Yearbook 1976, p. B-80, American Research Bureau (ARB) estimates for 1975-76.

[6] The average cost of a prime time network episode was obtained from Arthur D. Little, Television Program Production, Procurement, Distribution and Scheduling, (April 21, 1969) p. 41. Production costs are based on individual program production fees published in Variety, September 15, 1976, pp. 50-54.

[7] According to the Statistics Division of the Internal Revenue Service, net income earned by proprietorships, partnerships and corporations increased from $79,809 million in 1960 to $225,120 million in 1974. Statistics are not available for 1975.

[8] "Clearance" of network programs by affiliate stations is usually very high; ABC shows it as 95% or more for prime time and Monday-Friday daytime programming (though less in other parts of the week).

expansion of network program schedules, (2) previewing of network programming by affiliated stations, and (3) the relationship between station compensation plans and the independence of affiliate stations. While we are confident that larger licensees will supply comments, we particularly urge affiliates in smaller markets and independent stations to provide us with their views. With respect to each of these matters, we would hope that commenting parties will support their arguments, as completely as is possible, with relevant statistics and other factual information. This will facilitate our assessment of the merits of these arguments as well as assist the staff in its fact-finding efforts.

16. *Clearance of Network Programs and the Expansion of Network Schedules.* Westinghouse has estimated that, in 1960, network schedules filled only about one-half of the total hours broadcast by affiliate stationss, but that today network programs occupy approximately two thirds of these hours. It is argued that this increase has caused a corresponding decrease in the opportunities for independent programming decisions by station licensees. Implicit in this argument is an assumption that affiliated stations really do not wish to clear additional network programming, but that circumstances compel them to accept these programs anyway. In response to these claims, the networks argue that the overall figures on network program expansion are misleading and that regardless of the amount of increase, affiliates have supported and benefited from the additional programs.[9] We specifically invite comments on the extent to which such clearances are other than voluntary and the nature of any contractual provisions or other economic relationships which might serve to undermine the independent judgment of the station licensee.[10]

17. In addition, we seek comments on the likelihood of further expansion of network schedules and whether this would impact on the financial performance of local stations as well as their ability to serve the interests of the local community.[11] We invite additional comments regarding any relationships between the length of network schedules, and the supply and demand for syndicated programming, particularly first-run material, available to affiliated and independent stations. With regard to the latter questions, we have noted various reports indicating that the networks, at some time in the near future, may increase the total amount of available commercial minutes per hour in prime time. We ask for comments on whether this would significantly impede the development of additional networks, specialized networks, and other syndicated program offerings in competition with network programming.

18. *Previewing of Network Programs by Affiliate Stations.* Westinghouse has also alleged that the networks do not afford affiliated stations a reasonable opportunity to review network programming before it is shown to local audiences, thereby making it difficult for station licensees to exercise independent judgment concerning the suitability of particular episodes for their communities. With regard to this issue, it is suggested that audiences will become confused or angered if a program is cancelled after it has been promoted over-the-air or has been published as part of an announced program listing. Westinghouse contends that prescreening opportunities are commonly delayed until after this promotional material has been provided to the public. Network comments in response to the Westinghouse petition contain extensive descriptions of present (in the case of NBC, recently amended) procedures for informing affiliates in advance of network program content, procedures which the networks claim are "adequate."[12] We invite comments on the nature and adequacy of the information which is presently provided to affiliates concerning up-coming programs, and the extent to which improvements may be needed so as to allow the effective exercise of licensee discretion. We also invite comments on the cost and inconvenience which may be associated with the provision of additional, or more timely, program information. Finally, we encourage comments regarding the extent to which affiliates currently prescreen network programs as well as their willingness to make use of additional prescreening opportunities if made available.

19. *Station Compensation Plans.* Traditionally, the networks have paid their affiliated stations for clearing network programming, or more precisely, for clearing the network commercials which are associated with that programming. While the methods used to determine these payments are rather complicated, they are directly related to the size of a station's audience and constitute an important ingredient contributing to the financial health of affiliated stations. While the Commission is not concerned with the earnings of stations per se, we do become interested when financial arrangements detract from the ability of these stations to live up to their responsibilities as public trustees. In 1963, for example, we found that a proposed CBS compensation plan would discourage affiliates from rejecting network programs which they believed to be unsatisfactory or contrary to the public interest. CBS Network Compensation Plan, 24 R.R. 520a; 1 RR 2d 696 (1963). In this instance, the Commission stated that:

> Any graduated payment plan wherein the average hourly rate of compensation varies greatly with or is heavily influenced by the number of hours taken and which as a practical matter, requires an affiliate to take the majority of its programs from the same network without regard to the merits of the programming offered, is barred by our rules.

Id. at 698.[13] We invite comments on the extent to which the networks' present compensation plans are consistent with this principle. These contracts variously call for affiliates to carry up to an equivalent of 24 hours of prime time programming per month without compensation or for dollar discounts which amount in substance to roughly the same thing. We are specifically interested in the effect these provisions have on the independent discretion of our licensees and on the ability of syndicators and other program suppliers to compete with the networks by dealing directly with affiliated stations.[14] We are further interested in (1) whether and to what extent uncompensated prime time represents a

[9] It is further argued that these increases are largely attributable to ABC which accounted for more than half of the overall expansion of combined network schedules since 1960. Moreover, the networks maintain that the expansion was part of a "long process of building ABC into a fully competitive network." CBS and NBC, on the other hand, only expanded their schedules by 9 and 5 percent, respectively. Furthermore, the new network material has largely been late night, early morning (cleared, ABC and CBS note, by only about 80 percent of their affiliates) and weekend sports programming which has meant increased station compensation and/or made possible station broadcasts at times when the affiliates were previously off the air.

[10] Westinghouse has also suggested that the lack of joint efforts by affiliates in dealing with their network with respect to program clearances and other matters may have impeded their ability to serve the public. Some parties may wish to comment on the need for, legality, and propriety of such joint efforts.

[11] With regard to this specific question, Westinghouse has estimated that an expansion of network news to one hour would cost affiliate stations a total of $75 million annually and would increase total network income (including 0 and 0's) to 50 percent of all industry income.

[12] All three networks provide affiliates with written materials summarizing future programs. Policies on allowing actual previews of programs are: ABC—up to 15 hours per week (9 on the average), including all programs which carry a parental guidance advisory; CBS—no hour per week figures, but provides programs of particular interest "virtually on a daily basis" and theatrical movies approximately 4 weeks in advance where practical; NBC—up to 20 hours per week (series episodes, theatrical and made-for-television movies, specials), programs with parental guidance adivsories and any available program requested by in affiliate ABC and NBC both refer to their program standards departments as one way of insuring that programs are "acceptable" to affiliates (although Westingthouse points out that licensees must determine acceptability based on local, not national standards). Other network policies in this area include showing pilot programs to affiliates at annual meetings and during the preceding season and permitting affiliates to invite newspaper television critics to previews. Finally, it is said that there are practical problems in providing affiliates with programs 4 weeks in advance, as Westinghouse reqeusts—production schedules and editing, MPAA classifications and dealing with the creative community.

[13] Aside from this concept, network control over a station's network rate has the potential for use by the network to influence the station's clearance decisions and also the level of its national spot advertising rates. See American Broadcasting Company, 17 R.R. 458, 462–463; Columbia Broadcasting System, Inc., 17 R.R. 447, 449; National Broadcasting Company, Inc., 17 R.R. 449, 452–453 (all 1958).

[14] A brief discussion of this issue may be found in the "Barrow Report," supra. pp. 463–66.

justifiable means of sharing the overhead expenses associated with network program procurement and (2) the extent to which the average amount of compensation for each half hour of network programming cleared by a station varies depending on the total amount of network programming cleared by that station.

20. In its petition, Westinghouse states that between 1964 and 1975 the net income of the networks increased by 246%, whereas compensation payments to stations increased only 20%. It is argued that, by virtue of their powerful economic position, the networks have been able to limit compensation payments and thus realize a rather dramatic increase in their profits. This argument suggests that the advantages of networking, as opposed to syndication, are very substantial. That is, in the absence of anti-competitive practices, artificially depressed levels of station compensation would be expected to provide a fertile opportunity for entry by non-network program sources. We are most interested in comments on the question of whether the economic picture painted by Westinghouse is complete and accurate and, if so, what factors exist which discourage vigorous competitive activities by syndicators or the creation of a "fourth network." Comments are also invited on the effects which various changes in compensation plans might have on the health and viability of networking and the viability of networking and the ability of the networks to contribute to programming in the public interest. We would encourage comments, particularly from our licensees, regarding relationships between compensation payments and expenditures to serve local programming needs (including locally produced material) as well as their ability to compete effectively with networks for national spot advertising. With regard to the latter two questions, it is alleged that relative decreases in compensation have forced stations to increase prices for national spots, while at the same time, permitting the networks to reduce commercial rates charged to national advertisers. This, according to Westinghouse, has afforded the networks a substantial competitive advantage which has adversely impacted on station revenues and on the quantity and quality of local service. Finally, parties are free to comment on any other aspect of network compensation plans or contractual relations which may be inconsistent with legitimate public interest objectives. We stress again, however, our unwillingness to become involved in the amount of station compensation per se i.e., without reference to practices which are anti-competitive or contrary to the public interest).

NETWORK-PROGRAM SUPPLIER RELATIONS

21. Our discussion of the relationships between the networks and program producers and suppliers is divided into the following six categories: (1) network interests in syndicated programs produced by independent suppliers, (2) network produced entertainment programming, (3) contractual tying agreements relating to production facilities and program options, (4) exclusive exhibition rights to new programs, (5) exhibition rights to network reruns, and (6) relations between network owned and operated stations and program suppliers. Once again, parties are free to comment on other matters which may be relevant to this Inquiry. All parties are urged, however, to make every effort to support their arguments with factual information.

22. *Network Interests in Syndicated Programs Produced by Independent Suppliers.* The proposed NBC consent decree contains terms prohibiting NBC from acquiring distribution rights or profit shares in programs produced by outside producers, and from engaging in syndication of such programs anywhere, and from all syndication in the U.S. These particular terms appear virtually identical to rules adopted by the Commission in 1970 (§ 73.658(j)), prohibiting such activities, including the acquisition of any interest in a program produced by an outside party beyond the right to network exhibition. We invite interested parties to comment on the adequacy of our present rules and to propose alternatives if that appears to be warranted. Parties may wish to comment, particularly, on programs such as the current Dinah program—created originally by CBS, produced for its 5 owned and operated stations by an outside entity, and syndicated nationally by a different company but often, according to Westinghouse, carried by CBS-affiliated stations. Westinghouse and NAITPD claim that this violates the spirit if not the letter of the 1970 rules, particularly in light of Dinah Shore's other contractual relations with CBS.[15]

23. *Network "In-House" Production of Entertainment Programs.* Although most network entertainment programs are acquired from outside producers, a small number have been and are produced entirely by the networks themselves. This was one subject of the Department of Justice's antitrust action. The Department's position (as set forth in its competitive impact statement filed with the NBC consent decree) is that, just as with programs produced by others but in which the network acquires subsidiary rights, there arises a network predisposition to use such material regardless of its merit, and independent producers are thus unduly excluded from the network program market. Other parties have alleged that the unlimited network potential for producing their own entertainment programs can be used to obtain first-run programming at unreasonably low prices. While we are not concerned with the profits of program producers as such, we are interested in the question of whether this factor gives the networks an anti-competitive advantage over potential competitors, and whether the advantage works to limit the supply of independently produced programs. Parties addressing the possibility of Commission regulation in this area should attempt to assess the possible effects of such restrictions on: (1) network programming schedules, as to quality and type of programming; (2) prices paid for network exhibition rights; and (3) the cost and supply of syndicated programming available to local stations.

24. *Contractual Tying Agreements Relating to Production Facilities and Program Options.* Independent production companies have periodically maintained that the networks agree to purchase a particular program on the condition that the producer grant the networks other rights or interests which are not incidental to network exhibition of that program. These interests, it is said, sometimes include a commitment to use network-owned production facilities to produce the program. We suggest that commenting parties address themselves to the question of whether such arrangements to the extent that they exist, may affect competition in the offering of program production facilities. We are further interested in obtaining information regarding the following questions: (1) what proportion of all network programs are produced using network owned facilities or that of other networks, (2) how does the cost of leasing these facilities compare with the cost of leasing facilities owned by others, (3) what percentage of total production costs is attributable to the cost of leasing facilities, and (4) does that percentage vary by type of program?

25. It is also alleged that the networks commonly demand options on exhibition rights for as much as five to seven years following the development of a script or program pilot, thereby precluding competition in bidding for the rights to a program which develops into a highly successful series. We invite comments on the effects which such practices could have on competition, and, more specifically, on the supply of programs available to local stations through the syndication market, and also on the extent to which these clauses may limit the life expectancy of a first-run series. Comment is also invited on (1) the extent to which extended options may be necessary to cover a network's heavy expenses in developing and promoting program series, (2) whether the terms and conditions of options differ for various types of programs, (3) their impact on the profitability of an investment by a producer in independently produced entertainment series, (4) the relationship between program options and the life expectancy of a new series and the subsequent availability of that series in the syndication markets and (5) the extent to which changes in program options would or could affect station compensation payments.

26. *Exclusive Exhibition Rights for Program Pilots.* In a given year, the networks typically purchase exhibition rights to a far greater number of new programs than they can possibly use.

[15] Westinghouse also mentions the fact that the program is produced by CBS facilities (see para. 25, below). While not mentioned by Westinghouse, other pertinent factors in this connection could be: (1) the proportion of guests on the show which are CBS "talent"; and (2) whether or not CBS advanced financing for the program.

In large measure, such purchases are necessary to enable the network to select an attractive line-up of programs and to replace those which generate relatively small audiences. Nevertheless, we believe that it is appropriate to seek comments on whether some present practices unduly restrict the release of a significant number of pilots for further development and thereby limit the amount of first-run material available for syndication, and whether this programming might, in some instances, provide viable competition to network offerings. More specifically we invite comments regarding (1) the extent to which networks have eventually used programs which were initially rejected for regularly scheduled distribution; (2) the amount of elapsed time between initial rejection and eventual acceptance of these programs during the past 10 television seasons; and (3) any differences in the duration of exclusive rights to new series which depend on the type of program (e.g. prime-time series as opposed to daytime, situation comedy as opposed to drama etc.). Finally, parties are invited to comment on whether these rights influence the diversity of network schedules or the availability of first-run syndicated programs.

27. *Exhibition Rights to Network Reruns.* The Department of Justice has raised a question as to whether limitations should be placed on the ability of networks to secure exclusive rights to rebroadcast episodes originally shown in a previous television season. Specifically, the consent decree contains a provision that negotiations for exhibition rights to repeats, originally broadcast in a preceding season, must be separated from negotiations for rights to first-run exhibition. We invite comments regarding the need for such restrictions and their effect on (1) the cost of repeats to the network and local stations, (2) network use of repeats in day-time, prime-time and fringe hours, (3) investment opportunities in new first-run network and syndicated programming and (4) the demand for new as well as repeated syndicated material available to local stations. Parties are invited to comment on any other aspect of this issue which warrants our attention. It is not our wish to reopen here the issues regarding same-year repeat episodes which were dealt with in the Commission's inquiry concerning the networks' use of reruns in prime-time entertainment programming (Docket No. 20203, 37 RR 2d 1435).

28. *The Relations Between Network Owned and Operated Stations and Program Suppliers.* The networks also participate in the programming market as station owners. It has been alleged by Westinghouse that certain practices used by the networks in acquisition of programming for the owned and operated stations have adversely influenced the quantity and quality of syndication offerings. It would be helpful to the Commission to know the extent of block buying of programming for each network owned station group (i.e., the purchase of the same programs for exhibition on all of the stations in that group.) The Commission is also interested in whether any relationship exists between the purchase of first-run programs for O and O exhibition and the leasing of network owned facilities for the production of those programs. Comments are invited on whether a "network deal" in the form of a contract for exhibition on an O and O group is a prerequisite for the success of a first-run program sold in the syndication market. Parties are also free to address other issues concerning the impact which network practices with respect to owned and operated stations may have on the programming market and, in particular, the impact which such practices might have on the successful syndication of programming in direct competition with network offerings. While this inquiry concerns the business practices of the networks as they may impact on industry competition, and while attention, thus, must be paid to network practices with respect to the O and O's, we wish to make it clear that this is not a multiple or "group" ownership proceeding.

29. *The Nature of this Proceeding.* Comments and other information filed in connection with this inquiry will be evaluated by a special staff composed of economists, attorneys, and others with relevant experience and expertise. This staff will be under the direct supervision of the full Commission.[16] The staff's analysis of the comments and reply comments may be followed by the issuance of questionnaires or inquiries designed to provide a complete factual record. If at any point it appears that these procedures are inadequate, the special staff will be authorized to initiate compulsory processes under Section 403 of the Act. It is hoped that a report concluding this inquiry can be completed within one year following receipt of the comments.

30. *It is ordered,* That the petition for inquiry, rule making and immediate temporary relief, filed September 3, 1976, by Westinghouse Broadcasting Company, Inc. IS GRANTED to the extent indicated herein and IS DENIED in all other respects.

31. Authority for the institution of this proceeding is contained in sections 4(i), 303 (g), (i) and (r) and 403 of the Communications Act of 1934, as amended. Pursuant to applicable procedures set out in § 1.430 of the Commission's Rules, interested persons may file comments on or before May 2, 1977 and reply comments on or before June 1, 1977. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken herewith. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice. We recognize that some parties may wish to file comments which include confidential financial information or other material which they may be reluctant to make public. In a manner consistent with the Freedom of Information Act (5 U.S.C. 552) we will consider requests for confidential treatment made under § 0.459 of our Rules. As set forth in that section such requests may be made in advance.

32. In accordance with the provisions of § 1.419 of the Rules, an original and 5 copies of all comments, replies pleadings, briefs, and other documents shall be furnished the Commission. Material filed will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,[17]
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-2338 Filed 1-25-77;8:45 am]

[16] The special staff which conducted the 1955-57 inquiry was under the supervision of a committee of four Commissioners. In the present instance, however, we see no need for the establishment of such a committee.

[17] Separate Statement of Commissioner Joseph R. Fogarty, filed as part of the original document.

federal register

WEDNESDAY, JANUARY 26, 1977

PART VIII

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

■

TAXATION OF LARGE CIGARS

Title 27—Alcohol, Tobacco Products and Firearms

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

[T.D. ATF-40; Reference No. 305]

LARGE CIGAR

Taxation; Revision of Procedures

On December 3, 1976, there was published in the FEDERAL REGISTER (41 FR 53055) a notice of proposed rulemaking setting forth proposed amendments to the above-captioned regulations. The purpose of the amendments is to revise procedures relating to the taxation of large cigars (cigars weighing more than three pounds per thousand). The amendments are required by section 2128 of Pub. L. 94-455 (Tax Reform Act of 1976), which was approved on October 4, 1976. Section 2128 changed the basis for taxation of large cigars from seven tax classes, divided according to retail price, to a percentage tax based on the wholesale price. The new tax rate is 8½ percent of the wholesale price, with a maximum rate of $20 per thousand cigars.

Interested persons have been afforded an opportunity to participate in the making of these amendments by submission of views, comments, and suggestions. Due consideration has been given to all these expressions of public opinion. Some suggestions have been adopted; others have not. The reasons for the Bureau's decisions in each instance are discussed below. Except as specifically discussed in this document, the amendments as adopted are the same as those contained in the notice.

(1) *Editorial changes.* The statutory citation following § 275.81 has been amended to conform to FEDERAL REGISTER standards. The definitions of "ATF officer", "regional regulatory administrator", and "region", have been modified where they appear in §§ 270.11, 275.11, 290.11, 295.11, and 296.72 as part of a program to standardize these definitions throughout regulations of the Bureau of Alcohol, Tobacco and Firearms. Other minor editorial and conforming changes have also been made.

(2) *TSUSA schedules.* The proposals contained a definition in § 275.11 of "TSUS" (Tariff Schedules of the United States), but the U.S. International Trade Commission has informed us that this should be "TSUSA" (Tariff Schedules of the United States Annotated). Accordingly, this change has been made. Furthermore, the Commission indicated that it will amend these schedules to add new items 170.7225 through 170.7290, corresponding to the new ATF statistical classes A through H. This will remove the necessity of providing for a combination, under certain circumstances, of classes G and H, in § 297.37. Section 275.37 is therefore changed to reflect this development.

(3) *Determination of wholesale price.* A number of comments were received, from both government and industry, regarding the proposed rules for determination of wholesale price in §§ 270.22 and 275.39. Some minor changes have been made as a result of these comments. In paragraph (a) of each of these sections, the next-to-last sentence is re-worded for improved clarity. In paragraph (f), the second sentence is made into a separate paragraph (g) entitled "Removals for sales to retailers only". Paragraphs (g) and (h) are accordingly re-numbered as paragraphs (h) and (i).

One comment from industry, relating to the paragraph entitled "Change in wholesale price", suggested that the wholesale price tax base should not change until the actual effective date of the price change. If the change proposed by this comment were to be adopted, a manufacturer or importer would be able to remove and taxpay a large quantity of cigars during the period immediately preceding an intended wholesale price increase, thereby taking advantage of the lower tax rate. The cigars could then be sold after the effective date of the price increase, and the manufacturer or importer would obtain a tax advantage. Another industry suggestion with respect to this issue proposed that the tax rate should change as of the date a price change is announced, with an exception for cigars "removed to a distribution warehouse, controlled by the manufacturer, in anticipation of the change". This suggestion avoids some difficulties of the other suggestion discussed above, but it is still unacceptable because it would in effect permit the manufacturer to unilaterally determine the time of change in tax rate. The Bureau believes that the intent of Pub. L. 94-455 (and the predecessor statutory provisions) is that large cigars be taxed on the basis of the taxable price at which they will in fact be sold, to the best of the taxpayer's ability to determine or predict that price at the time of the taxable removal. Under the regulations as proposed and adopted, cigars removed even before the announcement or effective date of an intended price change, which the manufacturer or importer has reason to know will not be sold to retailers until after the effective date, are taxed according to the new wholesale price. The Bureau feels that the rule as adopted is in harmony with the intent of Congress and adequately protects the public revenue while not imposing any unusual administrative burden on the taxpayer. Furthermore, the rule as adopted is patterned after Revenue Ruling 69-470 (Internal Revenue Cumulative Bulletin 1969-2, 274), which provided a similar rule regarding retail price changes under the former system of taxation.

Another industry comment was made that the rule as proposed was unclear and therefore "legally defective under the 'void for vagueness' doctrine". The Bureau disagrees with this contention. As mentioned above, a basically similar rule has been in effect since 1969, under Revenue Ruling 69-470, without any known difficulties of interpretation by either government or industry. Nevertheless, in the interest of maximum public understanding, this paragraph has been re-written in what is hoped will be perceived as clearer language.

(4) *Marks on packages.* Several industry comments objected to the requirement that wholesale price be marked on the cigar packages. The most significant objection was that the cost of this requirement would be excessive to industry without corresponding benefits to the government. The Bureau feels that more time will be required to study the industry claims. Consequently, the effective date of the price marking requirements in §§ 270.214, 275.73, 290.186, 290.253, and 295.44 will be postponed for at least six months. If the Bureau decides, after thorough study, to make these requirements effective, notification in the FEDERAL REGISTER will be published at least 90 days prior to the effective date. In the interim period, manufacturers and importers will be permitted to use up existing stocks of packaging materials imprinted with the previously required information, without any additional package markings. Consequently, after February 1, 1977, and until further notice, no wholesale price information will be required on packages. During the next three or four months, the Bureau will conduct a study to determine what problems are experienced without such package information, and the relative significance of the problems in relation to operational problems and costs of including wholesale price information on the packages. Additional input from interested members of the public which would be useful to this study is solicited. Because a notice of proposed rulemaking has already been published, and because the present document in effect extends the public comment period with respect to this subject, no additional notice of proposed rulemaking will be published unless the Bureau decides to propose requirements that are substantially different from those published in the notice of December 3, 1976.

(5) *Manufacturers' records.* A manufacturer of cigars commented that, because of multiple wholesale prices, the record of removals subject to tax set forth in § 270.183(e) would present a significant burden for him. He stated that many of his sales are of private label cigars to retailers, and it would be relatively easy for him to calculate the total billing price for each day, but it would not be so easy to compute the number of cigars removed at each wholesale price. Part of this complexity he attributes to the myriad of private brand cigars and variations he produces. Consequently, he suggested as an alternative to the proposed requirement that only the total wholesale price of each day's removals be required to be shown in the record. The Bureau recognizes that record-keeping under the new system of taxation may be more detailed for some manufacturers because there will be more wholesale prices than there were tax classes under the former system. However, it is not felt that there is sufficient basis at present for a major change in record-keeping procedure such as the one proposed. The requirement for removals to be shown separately by wholesale price is expected to be important for auditing purposes, and is essential if

statistics in the proposed form are to be provided. On the other hand, this industry comment does call attention to a possible simplification for manufacturers which should receive further consideration. If study indicates that a change such as the one proposed is practical and would be beneficial, a notice of proposed rulemaking on this subject may be published in the future. Public comments which would be helpful in this study are solicited.

Another industry comment pointed out that in § 270.183(e), the exception to permit cigars with a wholesale price of more than $235.294 per thousand to be shown without further price breakdown, was omitted. This omission was deliberate. The purpose of requiring exact wholesale price in this instance is to facilitate audit of records, since it is expected that commercial records of removals will indicate exact wholesale prices. The situation in § 270.183(i) is different, since in that case package markings without specific information for wholesale prices above $235.294 per thousand may be the only source of the required information. During the period of suspension of package marking requirements, as discussed above, only the total number of tax determined large cigars need be shown under § 270.183(i). Section 270.183(i) is amended accordingly.

(6) *Claims by manufacturers and importers.* Because of the period of suspension of package marking requirements, claims by manufacturers and importers for refund or credit of tax on large cigars withdrawn from the market must be for the lowest tax rate on that brand and size of cigar established during the record retention period (three to four years), unless a higher amount can be clearly demonstrated by specific documentation. This provision will cover situations when the absence of package markings indicating wholesale price may make it impossible to determine the exact amount to be refunded or credited. Sections 270.311, 275.170, and 275.172 are amended to include this new provision.

(7) *Export warehouses.* During the period of suspension of package marking requirements, the records, reports, and inventories under §§ 290.142, 290.143, and 290.147 need only show the total number of large cigars. Wholesale price need not be shown, since the absence of packag emarkings may make it impossible to determine the applicable wholesale price. Section 290.143 is amended because it contains a specific reference to wholesale price. When it is necessary for export warehouse proprietors to establish tax liability on large cigars, the liability will be at the maximum rate of $20 per thousand unless a lower tax liability can be clearly demonstrated. This provision applies to completion of Form 2150 and to establishment of tax liabilities on shortages and losses. Section 290.67 is amended to include this new provision.

(8) *Wholesale price of imported cigars.* The U.S. Customs Service pointed out that there might be procedural problems under the proposed § 275.39, as it related to liquidation of import entries. Consequently, slight modifications have been made in § 275.39(i) as adopted.

(9) *Effective date.* Several industry comments stressed the need for a minimum of thirty days between publication and effective date, in order to comply with anticipated package marking requirements. Since these package marking requirements are being suspended for at least another six months, this objection to a February 1 effective date is no longer relevant. The proposed amendments not related to package markings are being adopted in virtually the same form as published in the FEDERAL REGISTER on December 3, 1976. All interested parties have had constructive notice of the amendments since that time, and the Bureau believes that most interested persons have had actual notice. Since the amendments are necessary to implement section 2128 of Pub. L. 94-455, which permits the cigar industry to take advantage of the reduced tax rate effective February 1, 1977, it is found that there is good cause, within the meaning of 5 U.S.C. 553(d)(3), for making the amended regulations effective less than thirty days from the date of publication. Accordingly, these regulations shall become effective on February 1, 1977, which is the effective date of section 2128 of Pub. L. 94-455.

The following regulations are issued under the authority contained in 28 U.S.C. 7805 (68A Stat. 917).

PART 270—MANUFACTURE OF CIGARS AND CIGARETTES

PARAGRAPH A. The regulations in 27 CFR, Part 270 are amended as follows:

1. Section 270.11 is amended (1) to reflect the change in taxation of large cigars, (2) to improve clarity, and (3) to reflect the establishment of the Bureau of Alcohol, Tobocco and Firearms. Definitions of "wholesale price", "Assistant Director (Regulatory Enforcement)", "regional regulatory administrator", and "ATF officer" are added; the introductory language is re-worded; the definitions of "Commissioner" and "regional commissioner" are deleted; and the definitions of "assistant regional commissioner", "determined or determination", "Director", "internal revenue officer", and "region" are revised. As amended, § 270.11 reads as follows:

§ 270.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

ATF officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

* * * * *

Cigarette. * * *

Determined or determination. When used with respect to the tax on cigars and cigarettes, determined or determination means that the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes) of cigars and cigarettes and wholesale price of large cigars to be removed subject to tax have been established as prescribed by this part so that the tax payable with respect thereto may be calculated.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C.

* * * * *

Internal revenue officer. An ATF officer as defined in this section.

* * * * *

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

* * * * *

Wholesale price. The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652, but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement), as provided in § 270.22(i).

2. Section 270.21 is amended to reflect the new large cigar tax rate of 8½ percent of the wholesale price, which replaces the old system of tax classes based on the retail price. As amended, § 270.21 reads as follows:

§ 270.21 Cigar tax rates.

(a) *Present rates.* On cigars, manufactured in or imported into the United States, the following taxes are imposed by law:

(1) *Small cigars.* 75 cents per thousand.

(2) *Large cigars.* 8½ percent of the wholesale price, but not more than $20 per thousand.

Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale, are taxed at the same rate as similar cigars removed for sale.

(b) *Previous rates for large cigars.* Prior to February 1, 1977, the following tax rates were in effect for large cigars:

(1) If removed to retail at not more than 2½ cents each, $2.50 per thousand;

(2) If removed to retail at more than 2½ cents each and not more than 4 cents each, $3 per thousand;

(3) If removed to retail at more than 4 cents each and not more than 6 cents each, $4 per thousand;

(4) If removed to retail at more than 6 cents each and not more than 8 cents each, $7 per thousand;

(5) If removed to retail at more than 8 cents each and not more than 15 cents each, $10 per thousand;

(6) If removed to retail at more than 15 cents each and not more than 20 cents each, $15 per thousand; and

(7) If removed to retail at more than 20 cents each, $20 per thousand.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1414, as amended by sec. 2128, Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5701).)

3. Section 270.22 is completely revised to set out rules for properly determining the wholesale price of large cigars. As revised, § 270.22 reads as follows:

§ 270.22 Determination of wholesale price of large cigars.

(a) *General rule.* All cigars of the same brand, size, and packaging are taxed at the same rate except where otherwise specifically provided. When the manufacturer establishes a suggested delivered price to retailers (wholesale price), he shall do so according to the principles in the definition of "wholesale price" in § 270.11 and in this section. "Suggested delivered price" is the price at which the manufacturer intends for the cigars to be sold to retailers, and based on which the manufacturer's price to distributors and wholesalers is established through the usual trade discount. The price at which a cigar is in fact usually sold to retailers in transactions at arm's length from the manufacturer is the best evidence of whether the manufacturer's suggested delivered price is properly set. While it is not expected that a manufacturer will exercise any control over the prices actually paid by retailers in transactions with independent distributors, it is the manufacturer's responsibility to exercise reasonable care to assure that his suggested price to retailers (wholesale price) used as the basis for tax determination is consistent with prices actually paid by retailers. (Where there is no suggested delivered price adequately supported by actual sales to retailers, see paragraph (i) of this section).

(b) *Pricing for different packaging.* If different bona fide wholesale prices are applicable to different types of packaging (e.g., boxes of 25 and boxes of 50), then the cigars in each type of packaging are taxed on the basis of their respective wholesale prices.

(c) *Pricing of seconds.* If some of an otherwise identical cigar brand and size (1) Are distinctive from other such cigars because of physical imperfections, (2) Are offered to the consumer through clear labeling as "imperfects", "seconds", "throw-outs", or a comparable commonly understood term, and (3) The manufacturer has a separate wholesale price for such cigars, then they are taxed on the basis of this separate wholesale price.

(d) *Combination packages.* If a manufacturer has a wholesale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination wholesale price. If there is no wholesale price for the combination, then the cigars are taxed based on their individual wholesale prices.

(e) *Promotional pricing.* Special promotional pricing arrangements, whether applicable to all or only a part of removals, do not alter the taxable wholesale price of large cigars. For the purposes of applying this rule, any temporary reduction in price is presumed to be for promotional purposes.

(f) *Removals for another person.* If a manufacturer makes taxable removals of a brand and size of cigar only for distribution by others who establish the suggested delivered price to retailers (wholesale price), then the tax is based on such wholesale price irrespective of the fact that it is not directly established by the manufacturer making the taxable removals.

(g) *Removals for sale to retailers only.* If a manufacturer makes taxable removals of a brand and size of cigars for arm's length sales to retailers only, the tax is based on the manufacturer's selling price, applying the principles of inclusion and exclusion contained in the definition of "wholesale price" in § 270.11.

(h) *Change in wholesale price.* When a manufacturer decides to change the wholesale price of a brand and size of large cigars, there may be some of these cigars which were removed before the price change decision and were tax determined on the basis of the old wholesale price, which in fact are later sold to retailers under the new wholesale price. In this situation, the cigars will be considered to have been properly tax determined, unless at the time of removal the manufacturer had reason to believe that the cigars would be sold under the new wholesale price, considering all information which was or should have been available to him. After the price change decision, cigars may properly be removed and tax determined on the basis of the old wholesale price if the manufacturer has reason to know, at the time of removal, that they will be sold to retailers before the new wholesale price is effective. Conversely, cigars removed after a price change decision which can reasonably be expected to be sold to retailers under the new wholesale price must be tax determined on the basis of the new wholesale price, even if the removal takes place before the new wholesale price is announced or becomes effective. A price change decision is held to be made at the earliest time during the price change considerations when it might reasonably be concluded that the decision to change the price had in fact been reached.

(i) *Determination of wholesale price by Assistant Director (Regulatory Enforcement).* The Assistant Director (Regulatory Enforcement) will determine the wholesale price for tax purposes where the manufacturer has no suggested delivered price to retailers as contemplated by the definition of "wholesale price" in § 270.11 and as discussed in paragraph (a) of this section. Listings of such wholesale prices and their comparable retail prices will be published as necessary in the official Bulletin of the Bureau of Alcohol, Tobacco and Firearms for use by manufacturers in properly determining the tax on removals of large cigars for which there is no suggested delivered price to retailers. If a manufacturer has cigars which are not covered by the existing published listing, and for which he has no suggested delivered price to retailers, the manufacturer shall submit a written request to the Assistant Director (Regulatory Enforcement) for a determination of the wholesale price applicable to such cigars for tax purposes. If any of these cigars are removed before such determination, the manufacturer shall ascertain the wholesale price to the best of his ability based on the prices which are included in the published listing and other pertinent information available to him, and shall use that price for calculation and payment of the tax and for other tax purposes under this part, pending the determination by the Assistant Director (Regulatory Enforcement). If the wholesale price used by the manufacturer for tax payment differs from that subsequently determined by the Assistant Director (Regulatory Enforcement) to be the wholesale price for tax purposes, then the manufacturer shall make an adjustment in his tax return to correct the amount of tax paid. Any tax adjustment shall be made on the return covering the date on which notification of the wholesale price determination was received from the Assistant Director (Regulatory Enforcement).

4. Section 270.162 is amended to show that the tax on large cigars is now based on the wholesale price rather than the tax class, with a maximum tax of $20 per thousand on cigars with a wholesale price of more than $235.294 per thousand. A change in terminology is also made which reflects the establishment of the Bureau of Alcohol, Tobacco and Firearms. The amended portions of § 170.162 read as follows:

§ 270.162 Semimonthly tax return.

(a) *Requirement for filing.* Every manufacturer of tobacco products shall file, for each of his factories, a semimonthly tax return on Form 3071, in triplicate, with the district director of the internal revenue district in which the factory is located, for each return period, including any period during which a manufacturer begins or discontinues business. He shall file the return at the time specified in § 270.165 regard-

less of whether cigars or cigarettes are removed or whether tax is due for that particular return period. However, where the manufacturer requests by letter, in duplicate, and the regional regulatory administrator grants specific authorization, the manufacturer need not during the term of such authorization file a tax return for any period for which tax is not due or payable. The manufacturer shall retain the receipted copy of each tax return transmitted to him by the district director.

(b) *Information to be included.* The manufacturer shall show on the return (1) His employer identification number, (2) The numbers of small cigarettes, large cigarettes, and small cigars removed subject to tax during the return period, (3) The number and the total wholesale price of all large cigars with a wholesale price of not more than $235.294 per thousand which were removed subject to tax during the return period, (4) The number of large cigars with a wholesale price of more than $235.294 per thousand which were removed subject to tax during the return period, and (5) The tax due. The manufacturer shall serially number each return on Form 3071, commencing with the number "1" on the first return filed in any calendar year, and shall make a written declaration that the return is made under penalties of perjury.

* * * * *

(Sec. 202, Pub. L. 85-859, 72 Stat. 1417 (26 U.S.C. 5703); sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741).)

5. Section 270.183 is amended to require that large cigars be recorded by wholesale price rather than by the former tax classes, and to provide a breakdown of products removed for "export purposes" to show the respective quantities removed for export directly from the factory and transferred to export warehouses. During the suspension of package marking requirements, only the total number of large cigars on which the tax has been determined need be shown. As amended, § 270.183 reads as follows:

§ 270.183 Record of cigars and cigarettes.

The record of a manufacturer of tobacco products shall show the date and total quantity of all cigars and cigarettes, by kind (small cigars—large cigars; small cigarettes—large cigarettes):

(a) Manufactured;
(b) Received in bond by—
(1) Transfer from other factories,
(2) Release from customs custody, and
(3) Transfer from export warehouses;
(c) Received by return to bond;
(d) Disclosed as an overage by inventory;
(e) Removed subject to tax (by wholesale price for large cigars):
(f) Removed, in bond, for—
(1) Export,
(2) Transfer to export warehouses,
(3) Transfer to other factories,
(4) Use of the United States,
(5) Experimental purposes off factory premises;
(g) Otherwise disposed of, without determination of tax, by—
(1) Consumption by employees on factory premises,
(2) Consumption by employees off factory premises, together with the number of employees to whom furnished,
(3) Use for experimental purposes on factory premises,
(4) Loss,
(5) Destruction, and
(6) Reduction to tobacco;
(h) Disclosed as a shortage by inventory; and
(i) On which the tax has been determined (by wholesale price for large cigars, except that those over $235.294 per thousand may optionally be shown as if the wholesale price were $236 per thousand) and which are—
(1) Received, and
(2) Disposed of.

However, due to the suspension of requirements for wholesale price to be shown on packages of large cigars (see § 270.214(d)), the record under paragraph (i) of this section relating to large cigars on which the tax has been determined need only show the total number of these cigars, until notification in the FEDERAL REGISTER.

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741).)

6. Section 270.184 is amended to require the records supporting removals of large cigars subject to tax to show the wholesale price, rather than the tax class under the former system of taxation. As amended, § 270.184 reads as follows:

§ 270.184 Record in support of removals subject to tax.

Every manufacturer of tobacco products shall keep a supporting record of cigars and cigarettes removed from his factory subject to tax and shall make entries in the record at the time of removal. The supporting record shall show, with respect to each removal, the date of removal, the name and address of the person to whom shipped or delivered, and the kind and quantity of cigars or cigarettes removed. In the case of large cigars the wholesale price shall also be shown, except that if the price is more than $235.294 per thousand, an indication in the supporting record to that effect will suffice. Where the cigars or cigarettes are delivered within the factory directly to the consumer, the name and address of the person to whom delivered need not be shown. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section. Such invoices or other commercial records which do not show specifically the tax classification of cigars or cigarettes (including wholesale price of large cigars) will be acceptable if they contain adequate information to readily enable an ATF officer to ascertain the applicable tax.

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741).)

7. A new § 270.187 is added to require that manufacturers keep records of the wholesale prices of large cigars. The new § 270.187 reads as follows:

§ 270.187 Record of large cigar wholesale prices.

Every manufacturer of tobacco products who removes large cigars from his factory shall keep the records required by this section.

(a) *Basic record of wholesale prices.* The manufacturer shall keep a record to show each wholesale price (suggested delivered price to retailers or wholesale price as determined by the Assistant Director (Regulatory Enforcement) under § 270.22(h)), which is applicable to large cigars removed. No later than the tenth business day in January of each year the manufacturer shall prepare such a record to show the wholesale price in effect on the first day of that year for each brand and size of his large cigars. However, for the year 1977 the record shall be prepared no later than the tenth business day in February, to show the prices in effect as of February 1, 1977. The manufacturer shall thereafter enter in the record the wholesale price and its effective date for any large cigar removed which was not previously entered in the record, and any change in a price from that shown in the record, within ten business days after such removal or change in price. The record shall be a continuing one for each brand and size of cigar (and type of packaging, if pertinent), so that the taxable price on any date may be readily ascertained.

(b) *Copies of price announcements.* The manufacturer shall retain a copy of each general announcement which he issues within his organization or to the trade about establishment or change of large cigar wholesale prices. If the copy does not show the actual date when issued it shall be annotated to show that information, and it shall also be annotated to show the date on which a copy was submitted to the Assistant Director (Regulatory Enforcement) in accordance with § 270.202(b).

8. The existing material in § 270.202 is designated as paragraph (a), and a new paragraph (b) is added to require reports concerning wholesale prices of large cigars. As revised, § 270.202 reads as follows:

§ 270.202 Reports.

(a) *Monthly report.* * * *

(b) *Report of wholesale prices for large cigars.* Every manufacturer of tobacco products who removes large cigars from his factory, and who issues announcements such as those described in this paragraph, shall make a report of each establishment or change of wholesale price (suggested delivered price to retailers) for large cigars. The report shall consist of a copy of each general announcement that the manufacturer issues within his organization or to the trade about establishment or changes of wholesale prices. Only one copy of an announcement need be submitted even if it relates to cigars removed subject to

tax from more than one factory. If this copy does not show the actual date when the announcement was issued, or identify the factory or factories from which removals of the cigars covered by the announcement are made, then the copy shall be annotated to show this information. The factory or factories shall be identified either by permit number(s) or by name, city and state. If an intra-organizational announcement involves a forthcoming price change or new product which at the time of issuance is to remain confidential until a later date, the manufacturer may include a statement to this effect on the copy submitted. The copy shall be submitted to the Assistant Director (Regulatory Enforcement), Attn: Industry Control Division, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, within five business days after the day issued.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5722).)

9. A new § 270.203 is added to provide statistical classes of large cigars, based on wholesale prices, which will replace the former tax classes based on retail prices. New § 270.203 reads as follows:

§ 270.203 Statistical classification of large cigars.

Large cigars are divided into eight classes for statistical purposes, according to the wholesale price. The eight classes are as follows:

(a) *Class A.* large cigars with a wholesale price of not more than $33.00 per thousand.

(b) *Class B.* large cigars with a wholesale price of more than $33.00 per thousand but not more than $51.00 per thousand.

(c) *Class C.* large cigars with a wholesale price of more than $51.00 per thousand but not more than $66.00 per thousand.

(d) *Class D.* large cigars with a wholesale price of more than $66.00 per thousand but not more than $105.00 per thousand.

(e) *Class E.* large cigars with a wholesale price of more than $105.00 per thousand but not more than $120.00 per thousand.

(f) *Class F.* large cigars with a wholesale price of more than $120.00 per thousand but not more than $154.00 per thousand.

(g) *Class G.* Large cigars with a wholesale price of more than $154.00 per thousand but not more than $235.294 per thousand, and

(h) *Class H.* Large cigars with a wholesale price of more than $235.294 per thousand.

10. Section 270.214 is revised to include requirements that packages of large cigars show information relating to wholesale price. However, application of these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document. As amended, § 270.214 reads as follows:

§ 270.214 Notice for cigars.

(a) *General requirement.* Every package of cigars shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars", the quantity of such product contained therein, and the classification of the product for tax purposes, i.e., for small cigars, either "small" or "little", and for large cigars, the wholesale price.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than $235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were $236 per thousand. Such price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0; and in either case shall be preceded by the identifying letters "MP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of $80.00 per thousand the wholesale price would be expressed as "MP80" or as "MPHK"; for a cigar with a wholesale price of $65.20 per thousand, the wholesale price would be expressed as "MP65.20" or as "MPFE.BK"; and for a cigar with a wholesale price for $450 per thousand, the wholesale price would be expressed as either "MP450," "MPDEK", "MP236", or "MPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 270.22(d)), the numbers of cigars at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of $80 per thousand and 20 Panatelas with a wholesale price of $100 per thousand, the wholesale price would be shown as "30 Blunts—MP80, 20 Panatelas—MP100", or "30 Blunts—MPHK, 20 Panatelas—MPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85-895, 72 Stat. 1422 (26 U.S.C. 5723).)

10a. Section 270.311 is amended to indicate that during the suspension of package marking requirements (see § 270.214(d)), the schedule of products on Form 3069, as well as claims filed on the basis of this schedule, must show large cigars at the lowest wholesale price for that brand and size of cigar established during the record retention period, unless a higher amount can be clearly demonstrated by specific documentation. The existing material is designated as paragraph (a), and the new material is contained in a new paragraph (b). As amended, § 270.311(b) reads as follows:

§ 270.311 Action by claimant.

(a) * * *

(b) After February 1, 1977, information on large cigar packages will not adequately evidence the amount of tax paid on the contents, because of the suspension of package notice requirements as provided in § 270.214(d), and because packages indicating the former tax classes may continue to be removed without alteration. Consequently, refund or credit of tax on large cigars withdrawn from the market after February 1, 1977, will be limited to the minimum amount applicable to that brand and size of cigar during the required record retention period (see § 270.185) except where the manufacturer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market the manufacturer shall include a certification on either ATF Form 3069, ATF Form 2635, or IRS Form 843, to read as follows: "The amounts claimed relating to large cigars are based on the lowest wholesale prices applicable to such cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid."

(Sec. 202, Pub. L. 85-859, 72 Stat. 1419, as amended (26 U.S.C. 5705).)

PART 275—IMPORTATION OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

PAR. B. The regulations in 27 CFR Part 275 are amended as follows:

1. Section 275.11 is amended (1) to reflect the change in taxation of large cigars, (2) to improve clarity, and (3) to reflect changes in Customs Service organization and the establishment of the Bureau of Alcohol, Tobacco and Firearms. Definitions of "wholesale price", "Assistant Director (Regulatory Enforcement)", "ATF officer", "Chief, Puerto Rico Operations", "regional regulatory administrator", and "TSUSA" are added; the introductory language is re-worded; and the definitions of "assistant regional commissioner", "collector of customs", "computation or computed", "determination or determined", "internal revenue officer", and "regional director" are modified. As amended, § 275.11 reads as follows:

§ 275.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice

versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

ATF officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

* * * * *

Chief, Puerto Rico Operations. The primary representative in Puerto Rico of the Bureau of Alcohol, Tobacco and Firearms.

* * * * *

Collector of customs. A district director of customs as defined in this section.

Computation or computed. When used with respect to the tax on cigars and cigarettes of Puerto Rican manufacture, computation or computed shall mean that the bonded manufacturer has ascertained the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes) of cigars and cigarettes and wholesale price of large cigars being shipped to the United States; that the payment, in Puerto Rico, of the tax on such products is to be deferred under Subpart G of this part; that the tax imposed on such products by 26 U.S.C. 7652(a) has been calculated, that the bonded manufacturer has executed an agreement to pay the internal revenue tax which will become due with respect to such products, as provided in this part; and that an ATF officer has verified and executed a certification of such calculation.

Determined or determination. When used with respect to the internal revenue tax on cigars, cigarettes, and cigarette papers and tubes, determined or determination shall mean that the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes) of cigars and cigarettes and wholesale price of large cigars, or the number of books or sets of cigarette papers of each different numerical content, or the number of cigarette tubes, to be removed subject to internal revenue tax, has been established as prescribed by this part so that the internal revenue tax payable with respect thereto may be calculated.

* * * * *

Internal revenue officer. An ATF officer as defined in this section.

* * * * *

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional director. A regional regulatory administrator as defined in this section.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

* * * * *

TSUSA. The Tariff Schedules of the United States Annotated, as published by the United States International Trade Commission.

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Wholesale price. The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652, but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement) under § 275.39(i).

2. Section 275.31 is amended to reflect the new tax rate on large cigars, which is 8½ percent of the wholesale price. The old system of tax classes has been changed by statute. As amended, § 275.31 reads as follows:

§ 275.31 Cigars.

(a) *Present rates.* On cigars imported or brought into the United States, the following internal revenue taxes are imposed by law:

(1) *Small cigars.* 75 cents per thousand.

(2) *Large cigars.* 8½ percent of the wholesale price, but not more than $20 per thousand.

Cigars not exempt from tax under this part which are removed but not intended for sale are taxed at the same rate as similar cigars removed for sale.

(b) *Previous rates for large cigars.* Prior to February 1, 1977, the following tax rates were in effect for large cigars:

(1) If removed to retail at not more than 2½ cents each, $2.50 per thousand;

(2) If removed to retail at more than 2½ cents each and not more than 4 cents each, $3 per thousand;

(3) If removed to retail at more than 4 cents each and not more than 6 cents each, $4 per thousand;

(4) If removed to retail at more than 6 cents each and not more than 8 cents each, $7 per thousand;

(5) If removed to retail at more than 8 cents each and not more than 15 cents each, $10 per thousand;

(6) If removed to retail at more than 15 cents each and not more than 20 cents each, $15 per thousand; and

(7) If removed to retail at more than 20 cents each, $20 per thousand.

(68A Stat. 907, as amended (26 U.S.C. 7652); sec. 202, Pub. L. 85-859, 72 Stat. 1414, as amended by sec. 2128, Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5701).)

3. Section 275.37 is revised to provide statistical classes of large cigars, based on wholesale prices, which will replace the former tax classes based on retail prices. Also, the center heading above § 275.37 is modified to reflect the change from tax classes to statistical classes. As amended, the center heading and § 275.37 read as follows:

CLASSIFICATION OF LARGE CIGARS AND CIGARETTES

§ 275.37 Statistical classification of large cigars.

Large cigars are divided into eight classes for statistical purposes, according to the wholesale price. The eight classes are as follows:

(a) *Class A.* Large cigars with a wholesale price of not more than $33.00 per thousand,

(b) *Class B.* Large cigars with a wholesale price of more than $33.00 per thousand but not more than $51.00 per thousand,

(c) *Class C.* Large cigars with a wholesale price of more than $51.00 per thousand but not more than $66.00 per thousand,

(d) *Class D.* Large cigars with a wholesale price of more than $66.00 per thousand but not more than $105.00 per thousand,

(e) *Class E.* Large cigars with a wholesale price of more than $105.00 per thousand but not more than $120.00 per thousand,

(f) *Class F.* Large cigars with a wholesale price of more than $120.00 per thousand but not more than $154.00 per thousand,

(g) *Class G.* Large cigars with a wholesale price of more than $154.00 per thousand but not more than $235.294 per thousand, and

(h) *Class H.* Large cigars with a wholesale price of more than $235.294 per thousand.

4. A new § 275.39 is added to set out rules for properly determining the wholesale price of large cigars. New § 275.39 reads as follows:

§ 275.39 Determination of wholesale price of large cigars.

(a) *General rule.* All cigars of the same brand, size, and packaging are taxed at the same rate except where otherwise specifically provided. When the importer establishes a suggested delivered price to retailers (wholesale price), he shall do so according to the principles in the definition of "wholesale price" in § 275.11 and in this section. "Suggested delivered price" is the price at which the importer intends for the cigars to be sold to retailers and based on which the importer's price to distributors and wholesalers is established through the usual trade discount. The price at which a cigar is in fact usually sold to retailers in transactions at arm's length from the importer is the best evidence of whether the importer's suggested delivered price is properly set. While it is not expected that an

importer will exercise any control over the prices actually paid by retailers in transactions with independent distributors, it is the importer's responsibility to exercise reasonable care to assure that his suggested price to retailers (wholesale price) used as the basis for tax determination is consistent with prices actually paid by retailers. (Where there is no suggested delivered price adequately supported by actual sales to retailers, see paragraph (i) of this section.)

(b) *Pricing for different packaging.* If different wholesale prices are applicable to different types of packaging (e.g., boxes of 25 and boxes of 50), then the cigars in each type of packaging are taxed on the basis of their respective wholesale prices.

(c) *Pricing of seconds.* If some of an otherwise identical cigar brand and size (1) Are distinctive from other such cigars because of physical imperfections, (2) Are offered to the consumer through clear labeling as "imperfects", "seconds", "throw-outs", or a comparable commonly understood term, and (3) The importer has a separate wholesale price for such cigars; then they are taxed on the basis of this separate wholesale price.

(d) *Combination packages.* If an importer has a wholesale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination wholesale price. If there is no wholesale price for the combination, then the cigars are taxed based on their individual wholesale prices.

(e) *Promotional pricing.* Special promotional pricing arrangements, whether applicable to all or only a part of removals, do not alter the taxable wholesale price of large cigars. For the purposes of applying this rule, any temporary reduction in price is presumed to be for promotional purposes.

(f) *Removals for another person.* If an importer makes taxable removals of cigars for exclusive distribution by others who establish the suggested delivered price to retailers (wholesale price), then the tax is based on such wholesale price irrespective of the fact that it is not directly established by the importer making the taxable removals.

(g) *Removals for sales to retailers only.* If an importer makes taxable removals of cigars exclusively for arm's length sales to retailers only, the tax is based on the importer's selling price applying the principles of inclusion and exclusion contained in the definition of "wholesale price" in § 275.11.

(h) *Change in wholesale price.* When an importer decides to change the wholesale price of a brand and size of large cigars, there may be some of these cigars which were removed before the price change decision and were tax determined on the basis of the old wholesale price, which in fact are later sold to retailers under the new wholesale price. In this situation, the cigars will be considered to have been properly tax determined, unless at the time of removal the importer had reason to believe that the cigars would be sold under the new wholesale price, considering all information which was or should have been available to him. After the price change decision, cigars may properly be removed and tax determined on the basis of the old wholesale price if the importer has reason to know, at the time of removal, that they will be sold to retailers before the new wholesale price is effective. Conversely, cigars removed after a price change decision must be tax determined on the basis of the new wholesale price, even if the removal takes place before the new wholesale price is announced or becomes effective. A price change decision is held to be made at the earliest time during the price change considerations when it might reasonably be concluded that the decision to change the price had in fact been reached.

(i) *Determination of wholesale price by Assistant Director (Regulatory Enforcement).* The Assistant Director (Regulatory Enforcement) will determine the wholesale price for tax purposes where the importer has no suggested delivered price to retailers as contemplated by the definition of "wholesale price" in § 275.11 and as discussed in paragraph (a) of this section. Listings of such wholesale prices and their comparable retail prices will be published as necessary in the official Bulletin of the Bureau of Alcohol, Tobacco and Firearms for use by importers in properly determining the tax on removals of large cigars for which there is no suggested delivered price to retailers. If an importer has cigars which are not covered by the existing published listing, and for which he has no suggested delivered price to retailers, the importer shall submit a written request to the Assistant Director (Regulatory Enforcement) for a determination of the wholesale price applicable to such cigars for tax purposes. If any of these cigars are removed before such determination, the importer shall ascertain the wholesale price to the best of his ability based on the prices which are included in the published listing and other pertinent information available to him, and shall use that price for calculation and payment of the tax and for other tax purposes under this part pending the determination by the Assistant Director (Regulatory Enforcement). On each entry document on which the importer so estimates the tax, he shall include a conspicuous statement on all copies as follows: "Request this entry not be liquidated until ATF has ruled on the taxable wholesale price of these cigars." If the wholesale price used by the importer for taxpayment differs from that subsequently determined by the Assistant Director (Regulatory Enforcement) to be the wholesale price for tax purposes, then the importer shall pay any additional amount due or make claim for overpayment by advising the district director of customs of the additional amount due or overpaid, in accordance with customs procedure. If the wholesale price used by the importer is the same as that determined by the Assistant Director (Regulatory Enforcement), the importer shall so notify the district director of customs and request that liquidation of the entry proceed. The importer shall take the appropriate action within fifteen calendar days following the date on which notification of the wholesale price determination was received from the Assistant Director (Regulatory Enforcement).

5. Section 275.73 is received to include requirements that packages of large cigars show information relating to wholesale price. However, application of these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document. As amended, § 275.73 reads as follows:

§ 275.73 Notice for cigars.

(a) *General requirement.* Every package of cigars, except as provided in § 275.75, shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars", the quantity of such product contained therein, and the classification of the product for tax purposes, i.e., for small cigars, either "small" or "little", and for large cigars, the wholesale price.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than $235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were $236 per thousand. Such price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0; and in either case shall be preceded by the identifying letters "IP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of $80.00 per thousand the wholesale price would be expressed as "IP80" or as "IPHK"; for a cigar with a wholesale price of $65.20 per thousand, the wholesale price would be expressed as "IP65.20" or as "IPFE.BK"; and for a cigar with a wholesale price of $450 per thousand, the wholesale price would be expressed as either "IP450", "IPDEK", "IP236", or "IPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 275.39(d)), the number of cigars at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of $80 per thousand and 20 Panatelas with a wholesale price of $100 per thousand, the wholesale price would be shown as "30 Blunts—IP80, 20

Panatelas—IP100", or "30 Blunts—IPHK, 20 Panatelas—IPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

6. Section 275.81(c)(4) is amended to require importers to show, on the customs entry form, information about the wholesale price of large cigars which is necessary for computation of the internal revenue tax. As amended, § 275.81(c)(4) reads as follows:

§ 275.81 Taxpayment.

* * * * *

(c) *Required information.* * * *

* * * * *

(4) *For cigars.* The importer will show:

(i) The number imported under each TSUSA item number;

(ii) For large cigars with a wholesale price of not more than $235.294 per thousand, the number and total wholesale price of such cigars;

(iii) For large cigars with a wholesale price of more than $235.294 per thousand, the number of such cigars;

(iv) The applicable tax rate ($0.75 per thousand for small cigars, 8½ percent of the wholesale price for large cigars with a wholesale price of not more than $235.294 per thousand, and $20.00 per thousand for large cigars with a wholesale price of more than $235.294 per thousand); and

(v) The tax due.

* * * * *

(68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 202, Pub. L. 85-859, 72 Stat. 1417 (26 U.S.C. 5703).)

7. Section 275.105 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to make nomenclature changes to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.105 reads as follows:

§ 275.105 Prepayment of tax.

To prepay, in Puerto Rico, the internal revenue tax imposed by 26 U.S.C. 7652(a), on cigars, cigarettes, and cigarette papers and tubes of Puerto Rican manufacture which are to be shipped to the United States, the shipper shall file, or cause to be filed, with the Officer-in-Charge, a tax return, Form 3073, in triplicate, with full remittance of tax which will become due on such cigars, cigarettes, and cigarette papers and tubes. The Officer-in-Charge will present a receipted copy of the return to the person filing the return and paying the tax, retain one copy, and forward the remaining copy to the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, New York, N.Y. The person who filed the return and prepaid the tax shall present the receipted copy of the return to the ATF officer assigned by the Chief, Puerto Rico Operations, to inspect the cigars, cigarettes, and cigarette papers and tubes to be shipped to the United States. Such officer will endorse the receipted copy of the return to show release of the cigars, cigarettes, and cigarette papers and tubes, or, if less than the quantity of cigars, cigarettes, and cigarette papers and tubes covered by the return is released, to show (a) The numbers of small cigarettes, large cigarettes, and small cigars, (b) The number and total wholesale price of large cigars with a wholesale price of not more than $235.294 per thousand, (c) The number of large cigars with a wholesale price of more than $235.294 per thousand, (d) The number of books or sets of cigarette papers of each different numerical content, and (e) The number of cigarette tubes, in fact released and will return such copy to the taxpayer.

(68A Stat. 907, as amended (26 U.S.C. 7652); sec. 202, Pub. L. 85-859, 72 Stat. 1417 (26 U.S.C. 5703).)

8. Section 275.106 is amended to replace the detailed instructions for completion, by the ATF officer, of Form 3074 (including an instruction for "class of large cigars") with a simplified instruction for completion of "other information required by that form." Preparation of Form 3075 will be required of the shipper, rather than the ATF officer, although the ATF officer must still certify that the tax has been prepaid. Nomenclature changes are also made to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.106 reads as follows:

§ 275.106 Inspection of shipment and certification of prepayment by ATF officer.

The ATF officer, assigned to inspect Puerto Rican cigars, cigarettes, and cigarette papers and tubes to be shipped to the United States in accordance with § 275.105, will prepare, for each shipping container, a statement on Form 3074 that the tax has been prepaid, and show the other information required by that form. The shipper shall affix the completed Form 3074 to the outside of each shipping container in which the articles are packed. Such statement, Form 3074, shall be affixed to the outer container used in the shipment of freight in bulk (crate, packingbox, van, trailer, etc.) and not on the individual cartons, cases, etc., included in such outer container. In addition, the shipper will prepare Form 3075, in quintuplicate, identifying the cigars, cigarettes, and cigarette papers and tubes released in each shipment, for certification by the ATF officer that the tax has been prepaid thereon. The ATF officer will then (a) Present one copy to the taxpayer for attachment to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the district director of customs at the port of entry; (b) Promptly mail two copies to the district director of customs at the port of entry; (c) Mail one copy to the regional regulatory administrator of the region wherein the customs collection headquarters is located; and (d) Retain the remaining copy. Noncommercial mail shipments of cigars, cigarettes, and cigarette papers and tubes to the United States are exempt from the provisions of this section, except that the ATF officer in Puerto Rico receiving a payment of internal revenue tax on mail shipments of such articles will prepare a certificate to be affixed to the container stating that the United States internal revenue tax has been prepaid on the articles contained therein.

9. Section 275.107 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to make nomenclature changes reflecting changes in Customs Service organization and the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.107 reads as follows:

§ 275.107 Procedure at port of entry.

The district director of customs at the port of entry will inspect the shipment to determine whether the quantity specified on the Form 3075 is contained in the shipment. He will then execute his certificate on the three copies of the Form 3075 in his possession, and indicate on each copy any exceptions found at the time of release. The statement of exceptions shall identify each shipping container which sustained a loss; the cigars, cigarettes, and cigarette papers and tubes reported shipped in such container; and the cigars, cigarettes, and cigarette papers and tubes lost from such container. Losses occurring as the result of missing packages, cases, or shipping containers shall be listed separately from losses caused by damage. Where the statement is made on the basis of cigars, cigarettes, or cigarette papers or tubes missing or damaged, the district director of customs shall show (a) The numbers of small cigarettes, large cigarettes, and small cigars, (b) The number and total wholesale price of large cigars with a wholesale price of not more than $235.294 per thousand, (c) The number of large cigars with a wholesale price of more than $235.294 per thousand, (d) The number of books or sets of cigarette papers of each different numerical content, and (e) The number of cigarette tubes. If the district director of customs finds that the full amount of the tax has not been prepaid, he will require the difference due to be paid to him prior to release of the cigars, cigarettes, and cigarette papers and tubes. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the district director of customs, the shipment may be released.

10. Section 275.110 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to

make nomenclature changes reflecting the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.110 reads as follows:

§ 275.110 Computation of tax and execution of agreement to pay tax.

Where cigars or cigarettes are to be shipped to the United States on computation of internal revenue tax in Puerto Rico (involving deferred taxpayment), the bonded manufacturer shall calculate the tax and shall prepare an original and six copies of Form 2987. He shall enter on such form under the penalties of perjury (a) The numbers of small cigarettes, large cigarettes, and small cigars to be shipped, (b) The number and total wholesale price of large cigars with a wholesale price of not more than $235.294 per thousand to be shipped, (c) The number of large cigars with a wholesale price of more than $235.294 per thousand to be shipped, (d) The amount of the tax to be paid on such products under the provisions of this subpart, and (e) The name and address of the consignee in the United States to whom such products are being shipped; and shall date and execute the agreement to pay the amount of tax which shall be computed on such products covered by the Form 2987. The Form 2987 shall be serially numbered by the bonded manufacturer beginning with the number "1" on January 1 of each year. The bonded manufacturer shall then request the Chief, Puerto Rico Operations, to assign an ATF officer to inspect the cigars and cigarettes, verify the tax calculation with respect to such products, and release such products for shipment in accordance with § 275.111. The bonded manufacturer shall present all copies of the prepared Form 2987 to the ATF officer assigned. The date of certification of Form 2987 by the ATF officer shall be treated as the date of computation of tax. Cigars and cigarettes may be released for shipment to the United States in accordance with the provisions of this section only after computation of tax.

11. Section 275.111 is amended to rephrase the instructions for completion, by the ATF officer, of Form 2989. The phrase, "quantity and kind of cigars and cigarettes and class of large cigars" is replaced with the simpler phrase, "other information required by that form." Nomenclature changes are also made to reflect changes in Customs Service organization and the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.111 reads as follows:

§ 275.111 Inspection of shipment and certification by ATF officer.

On receipt of the original and six copies of the Form 2987 completed and executed by the bonded manufacturer in accordance with § 275.110, an ATF officer will inspect the cigars and cigarettes covered by the form, verify the tax calculation made with respect to such products, date and execute the certification on such form, and release the cigars and cigarettes for shipment to the United States. Such officer will then promptly distribute the certified Form 2987 by (a) Mailing the original to the Officer-in-Charge; (b) Mailing two copies to the district director of customs at the port of entry; (c) Mailing one copy to the regional regulatory administrator of the region wherein the customs collection headquarters is located; (d) Returning two copies to the bonded manufacturer who will attach one copy to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the district director of customs at the port of entry; and (e) Submitting one copy to the Chief, Puerto Rico Operations. The ATF officer will also prepare, for each shipping container, a statement on Form 2989 that the tax on the cigars and cigarettes to be shipped to the United States has been computed and show the name and address of the bonded manufacturer, date of tax computation, and the other information required by that form. The bonded manufacturer shall affix the completed Form 2989 to the outside of each shipping container in which the products are packed. Such statement, Form 2989, shall be affixed to the outer container used in the shipment of freight in bulk (crate, packing box, van, trailer, etc.) and not on the individual cartons, cases, etc., included in such outer container.

12. Section 275.112 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to make nomenclature changes reflecting the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.112 reads as follows:

§ 275.112 Tax return.

The internal revenue taxes imposed by 26 U.S.C. 7652(a), with respect to cigars and cigarettes manufactured in Puerto Rico and shipped to the United States on computation of tax under the provisions of this subpart shall be paid on the basis of a semimonthly tax return. The bonded manufacturer of such products shall file with the Officer-in-Charge a tax return, Form 2988, in triplicate, for each semimonthly return period. The bonded manufacturer shall show on the return (a) The serial numbers of all Forms 2987 certified during the return period, (b) The numbers of small cigarettes, large cigarettes, and small cigars upon which the tax has been computed during the return period, (c) The number and total wholesale price of large cigars with a wholesale price of not more than $235.294 per thousand upon which the tax has been computed during the return period, (d) The number of large cigars with a wholesale price of more than $235.294 per thousand upon which the tax has been computed during the return period, and (e) The tax due. The bonded manufacturer shall execute the return, Form 2988, under the penalties of perjury. He shall file a return for each return period at the time specified in § 275.113, regardless of whether tax is due for that return period. However, where the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, New York, N.Y., grants specific authorization, the bonded manufacturer need not file a tax return during the term of such authorization for any period in which tax liability was not incurred under the provisions of this subpart.

13. Section 275.117 is amended to replace "class of large cigars" with the information about wholesale price required by the new system of taxation, and to make nomenclature changes reflecting the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 275.117 reads as follows:

§ 275.117 Procedure at port of entry.

The district director of customs at the port of entry will inspect the shipment to determine whether the quantity specified on the Form 2987 is contained in the shipment. He will then execute his certificate on the three copies of the Form 2987 in his possession, and indicate on each copy any exceptions found at the time of release. The statement of exceptions shall identify each shipping container which sustained a loss, the cigars and cigarettes reported shipped in such container, and the cigars and cigarettes lost from such container. Losses occurring as the result of missing packages, cases, or shipping containers shall be listed separately from losses caused by damage. Where the statement is made on the basis of cigars and cigarettes missing or damaged, the district director of customs shall show (a) The numbers of small cigarettes, large cigarettes, and small cigars, (b) The number and total wholesale price of large cigars with a wholesale price of not more than $235.294 per thousand, and (c) The number of large cigars with a wholesale price of more than $235.294 per thousand. If the district director of customs finds that the full amount of tax due has not been computed, he will require the difference due to be paid to him prior to release of the cigars and cigarettes. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the district director of customs, the shipment may be released.

14. Section 275.139 is amended to replace "class" of large cigars with "wholesale price", and to add a qualification that if the wholesale price is more than $235.294 per thousand, it may be shown as if it were $236 per thousand. During the suspension of package marking requirements (see § 275.73(d)), only the total number of large cigars received need be shown. As amended, § 275.139 reads as follows:

§ 275.139 Records.

Every manufacturer of tobacco products and cigarette papers and tubes in the United States who receives cigars, cigarettes, or cigarette papers or tubes of Puerto Rican manufacture, without payment of internal revenue tax, under his bond, shall keep a separate record which will show the date and quantity and kind of cigars and cigarettes, the wholesale price of large cigars (if not more than $235.294 per thousand; if more than this, the wholesale price may be

shown as if it were $236 per thousand), the date and number of books or sets of cigarette papers of each different numerical content, and the number of cigarette tubes: (a) Received, (b) Removed subject to tax, (c) Removed for tax-exempt purposes, and (d) Otherwise disposed of. However, due to the suspension of requirements for wholesale price to be shown on packages of large cigars (see § 275.73(d)), the record under (a) of large cigars received need only show the total number of these cigars, until notification is given in the FEDERAL REGISTER.

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741).)

15. A new § 275.153 is added to require that proprietors of customs class 6 manufacturing warehouses, who remove large cigars for consumption in the United States, keep records and submit reports concerning the wholesale prices for such cigars. As added, § 275.153 reads as follows:

§ 275.153 Records and reports.

A proprietor of a customs bonded manufacturing warehouse, class 6, who removes cigars for sale or consumption in the United States, shall keep records and make reports as prescribed in §§ 275.181–183.

15a. Section 275.170 is amended to indicate that during the suspension of package marking requirements (see § 275.73(d)), the schedule of products on Form 3069, as well as claims filed on the basis of this schedule, must show large cigars at the lowest wholesale price for that brand and size of cigar established during the record retention period, unless a higher amount can be clearly demonstrated by specific documentation. The existing material is designated as paragraph (a), and the new material is contained in a new paragraph (b). As amended, § 275.170 reads as follows:

§ 275.170 Destruction or reduction to tobacco, action by taxpayer.

(a) * * *

(b) After February 1, 1977, information on large cigar packages will not adequately evidence the amount of tax paid on the contents, because of the suspension of package notice requirements as provided in § 275.73(d), and because packages indicating the former tax classes may continue to be removed without alteration. Consequently, refund or credit of tax on large cigars withdrawn from the market after February 1, 1977, will be limited to the minimum amount applicable to that brand and size cigar during the required record retention period (see § 275.22) except where the importer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069, ATF Form 2635, or IRS Form 843, to read as follows: "The amounts claimed relating to large cigars are based on the lowest wholesale prices applicable to such cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid."

(Sec. 202, Pub. L. 85-859, 72 Stat. 1419, as amended (26 U.S.C. 5705).)

15b. Section 275.172 is amended to indicate that during the suspension of package marking requirements (see § 275.73(d)), the schedule of products on Form 3069, as well as claims filed on the basis of this schedule, must show large cigars at the lowest wholesale price for that brand and size of cigar established during the record retention period, unless a higher amount can be clearly demonstrated by specific documentation. The existing material is designated as paragraph (a), and the new material is contained in a new paragraph (b). As amended, § 275.172 reads as follows:

§ 275.172 Return to nontaxpaid status, action by taxpayer.

(a) * * *

(b) After February 1, 1977, information on large cigar packages will not adequately evidence the amount of tax paid on the contents, because of the suspension of package notice requirements as provided in § 275.73(d), and because packages indicating the former tax classes may continue to be removed without alteration. Consequently, refund or credit of tax on large cigars withdrawn from the market after February 1, 1977, will be limited to the minimum amount applicable to that brand and size of cigar during the required record retention period (see § 275.22) except where the importer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069, ATF Form 2635, or IRS Form 843, to read as follows: "The amounts claimed relating to large cigars are based on the lowest wholesale prices applicable to such cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid."

(Sec. 202, Pub. L. 85-859, 72 Stat. 1419, as amended (26 U.S.C. 5705).)

16. A new Subpart J is added immediately following § 275.174, to require that importers of large cigars keep records and submit reports concerning the wholesale prices and taxpayment of large cigars imported for sale within the United States. As added, the new Subpart J reads as follows:

Subpart J—Records and Reports

Sec.

275.181 Records of large cigars.
275.182 Availability of records.
275.183 Report of wholesale prices for large cigars.

Subpart J—Records and Reports

§ 275.181 Records of large cigars.

Every person who imports large cigars for sale within the United States shall keep the records required by this section.

(a) *Basic record of wholesale prices.* The importer shall keep a record to show each wholesale price (suggested delivery price to retailers or wholesale price as determined by the Assistant Director (Regulatory Enforcement) under § 275.39(i)), which is applicable to large cigars removed (entered or withdrawn). No later than the tenth business day in January of each year the importer shall prepare such a record to show the wholesale price in effect on the first day of that year for each brand and size of his large cigars. However, for the year 1977 the record shall be prepared no later than the tenth business day in February, to show the prices in effect as of February 1, 1977. The importer shall thereafter enter in the record the wholesale price and its effective date for any large cigar removed (entered or withdrawn) which was not previously entered in the record, and any change in a price from that shown in the record, within ten business days after such removal or change in price. The record shall be a continuing one for each brand and size of cigar (and type of packaging, if pertinent), so that the taxable price on any date may be readily ascertained.

(b) *Copies of price announcements.* The importer shall retain a copy of each general announcement which he issues within his organization or to the trade about establishment or change of large cigar wholesale prices. If the copy does not show the actual date when issued it shall be annotated to show this information, and it shall also be annotated to show the date on which a copy was submitted to the Assistant Director (Regulatory Enforcement) in accordance with § 275.183.

(c) *Copies of entry and withdrawal forms.* The importer shall keep a copy of each customs entry or withdrawal form on which internal revenue tax for large cigars is declared pursuant to § 275.81.

(d) *Alternative record.* If an importer has so few import transactions and/or brands and sizes of large cigars that retention of an appropriate copy of each entry and withdrawal form required under paragraph (c) of this section will provide an adequate record of wholesale prices, then the record required under paragraph (a) of this section need not be kept. In such case the entry and withdrawal forms must identify the brands and sizes of cigars covered and show the corresponding quantity and wholesale price for each. If such information was not originally entered on the form it may be included by annotation. Whenever the regional regulatory administrator finds that alternative records being kept pursuant to this paragraph are inadequate for the intended purpose, he may so notify the importer in writing, after which time the importer shall keep the record required under paragraph (a) of this section.

§ 275.182 Availability of records.

The records required under § 275.181 shall be kept by the importer at his usual place of business unless otherwise authorized in writing by the regional regulatory administrator, and shall be made

available for inspection by any ATF officer upon his request. (For retention period, see § 275.22.)

§ 275.183 Report of wholesale prices for large cigars.

Every person who imports large cigars for sale within the United States and who issues announcements such as those described in this section shall make a report of each establishment or change of wholesale price (suggested delivered price to retailers) for large cigars. The report shall consist of a copy of each general announcement that the importer issues within his organization or to the trade about establishment or change of wholesale prices. If this copy does not show the actual date when issued, it shall be annotated to show this information. If an intraorganizational announcement involves a forthcoming price change or new product which at the time of issuance is to remain confidential until a later date, the importer may include a statement to this effect on the copy submitted. The copy shall be submitted to the Assistant Director (Regulatory Enforcement), Attn: Industry Control Division, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, within five business days after the day issued. (See § 275.181 for requirement to keep records of large cigar wholesale prices.)

PART 290—EXPORTATION OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

PAR. C. The regulations in 27 CFR Part 290 are amended as follows:

1. The Table of Contents is amended to delete §§ 290.12 through 290.54 and to group all definitions into a single section, § 290.11. The amended portion of the Table of Contents reads as follows:

* * * * *

Subpart B—Definitions

Sec.
290.11 Meaning of terms.

Subpart C—General

* * * * *

§§ 290.12–290.54 [Deleted]

2. Sections 290.12 through 290.54 are deleted. The definitions are grouped together into one section, § 290.11, for the sake of conformity to other regulations. Further, the definitions of "assistant regional commissioner", "Director, Alcohol, Tobacco and Firearms Division", "director of customs" and "internal revenue officer" are modified and the definition of "regional commissioner" is dropped to reflect changes in Customs Service organization and the establishment of the Bureau of Alcohol, Tobacco and Firearms. Definitions of "Assistant Director (Regulatory Enforcement)", "ATF officer", "district director of customs", "regional regulatory administrator", and "wholesale price" are added. As amended, § 290.11 reads as follows:

§ 290.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

ATF officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF), authorized to perform any function relating to the administration or enforcement of this part.

Cigar. Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the definition of "cigarette" given in this section).

Cigarette. (a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(b) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of the section.

Cigarette paper. Paper, or other material except tobacco, prepared for use as a cigarette wrapper.

Cigarette papers. Taxable books or sets of cigarette papers.

Cigarette tube. Cigarette paper made into a hollow cylinder for use in making cigarettes.

Customs warehouse. A customs bonded manufacturing warehouse, class 6, where cigars are manufactured of imported tobacco.

Director, or Director, Alcohol, Tobacco and Firearms Division. The Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226

Director of customs. A district director of customs as defined in this section.

District director of customs. The district director of customs at a headquarters port of the district (except the district of New York, N.Y.); the area directors of customs in the district of New York, N.Y.; and the port director at a port not designated as a headquarters port.

Exportation or export. A severance of cigars, cigarettes, or cigarette papers or tubes from the mass of things belonging to the United States with the intention of uniting them to the mass of things belonging to some foreign country. For the purposes of this part, shipment from the United States to Puerto Rico, the Virgin Islands, or a possession of the United States, shall be deemed exportation, as will the clearance from the United States of cigars, cigarettes, and cigarette papers and tubes for consumption beyond the jurisdiction of the internal revenue laws of the United States, i.e., beyond the 3-mile limit or international boundary, as the case may be.

Export warehouse. A bonded internal revenue warehouse for the storage of cigars, cigarettes, and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

Factory. The premises of a manufacturer of cigars, cigarettes, or cigarette papers and tubes in which he carries on such business.

Foreign-trade zone. A foreign-trade zone established and operated pursuant to the Act of June 18, 1934, as amended.

In bond. The status of cigars, cigarettes, and cigarette papers and tubes, which come within the coverage of a bond securing the payment of internal revenue taxes imposed by 26 U.S.C. 5701 or 7652, and in respect to which such taxes have not been determined as provided by regulations in this chapter, including (a) Such articles in a factory or an export warehouse, (b) Such articles removed, transferred, or released, pursuant to 26 U.S.C. 5704, and with respect to which relief from the tax liability has not occurred, and (c) Such articles on which the tax has been determined, or with respect to which relief from the tax liability has occurred, which have been returned to the coverage of a bond.

I.R.C. The Internal Revenue Code of 1954, as amended.

Internal revenue officer. An ATF officer as defined in this section.

Manufacturer of cigarette papers and tubes. Any person who makes up cigarette paper into books or sets containing more than 25 papers each, or into tubes, except for his own personal use or consumption.

Manufacturer of tobacco products. Any person who manufactures cigars or cigarettes, except that such term shall not include (a) A person who produces cigars or cigarettes solely for his own personal consumption or use; or (b) A proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Package. The container in which cigars, cigarettes, or cigarette papers or tubes are put up by the manufacturer and offered for sale or delivery to the consumer.

Person. An individual, partnership, association, company, corporation, estate, or trust.

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

Removal or remove. The removal of cigars, cigarettes, or cigarette papers or

tubes from either the factory or the export warehouse covered by the bond of the manufacturer or proprietor.

State. "State" shall, for the purposes of this part, be construed to include the District of Columbia.

Tobacco products. Cigars and cigarettes. The term does not include smoking tobacco, chewing tobacco, or snuff.

United States. "United States" when used in a geographical sense shall include only the States and the District of Columbia.

U.S.C. The United States Code.

Wholesale price. The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652 but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement).

Zone operator. The person to whom the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board created by the Act of June 18, 1934, as amended.

2a. Section 290.67 is amended to provide that, during the suspension of package marking requirements (see §§ 290.186 (d) and 290.253(d)), tax liability on large cigars must be based on the maximum tax rate of $20 per thousand, unless a lower rate can be clearly demonstrated. The existing material in § 290.67 is redesignated as paragraph (a), and the new provision is placed in a new paragraph (b). As amended, § 290.67 reads as follows:

§ 290.67 Payment of tax.

(a) * * *

(b) After February 1, 1977, information on large cigar packages will not adequately evidence the amount of tax liability on the contents, because of the suspension of package notice requirements as provided in §§ 290.186(d) and 290.253 (d), and because packages indicating the former tax classes may continue to be used without alteration. Consequently, the amount of tax liability shall be based on the maximum tax rate of $20 per thousand unless the person liable for the tax establishes that a lower tax rate is applicable.

2b. Section 290.143 is amended to replace "taxable class" with "wholesale price" in relation to large cigars, and to change terminology to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. During the suspension of package marking requirements (see §§ 290.186(d) and 290.253(d)), only the total number of all large cigars held need be shown. As amended, § 290.143 reads as follows:

§ 290.143 General.

Every export warehouse proprietor shall make a true and accurate inventory on Form 3373 to the regional regulatory administrator, of the numbers of (a) Small cigars, (b) Large cigars at each wholesale price of not more than $235.294 per thousand, (c) Large cigars with a wholesale price of more than $235.294 per thousand, (d) Small cigarettes, (e) Large cigarettes, (f) Cigarette papers, and (g) Cigarette tubes held by him at the times specified in this subpart. Due to the suspension of requirements for wholesale price to be shown on packages (see §§ 290.186(d) and 290.253(d)), only the total number of large cigars held need be shown on the inventory, until notification is given in the FEDERAL REGISTER. This inventory shall be subject to verification by an ATF officer. A copy of each inventory shall be retained by the export warehouse proprietor for 2 years following the close of the calendar year in which the inventory is made and shall be made available for inspection by any ATF officer upon his request.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5721))

3. Section 290.181 is amended to change "class designation" to "tax classification", reflecting the change in taxation of large cigars now that the tax is based on the wholesale price rather than on the retail price class. As amended, § 290.181 reads as follows:

§ 290.181 Packages.

All cigars, cigarettes, and cigarette papers and tubes shall, before removal, be put up by the manufacturer in packages which shall bear the label or notice, tax classification, and mark, as required by this subpart.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

4. Section 290.186 is amended to include requirements that packages of large cigars show information relating to wholesale price. However, application of these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document. As amended § 290.186 reads as follows:

§ 290.186 Tax classification for cigars.

(a) *General requirement.* Every package of cigars shall, before removal from a factory under this subpart, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars", the quantity of such product contained therein, and the classification of the product for tax purposes. For small cigars such classification shall be either "small" or "little", and for large cigars, the wholesale price applicable to similar cigars removed for taxable purposes in the United States.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than $235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were $236 per thousand. Such price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0; and in either case shall be preceded by the identifying letters "MP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of $80.00 per thousand, the wholesale price would be expressed as "MP80" or as "MPHK"; for a cigar with a wholesale price of $65.20 per thousand, the wholesale price would be expressed as "MP65.20" or as "MPFE.BK"; and for a cigar with a wholesale price of $450 per thousand, the wholesale price would be expressed as "MP450", "MPDEK", "MP 236", or "MPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 270.22(d) of this chapter), the numbers of cigars at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of $80 per thousand and 20 Panatelas with a wholesale price of $100 per thousand, the wholesale price would be shown as "30 Blunts—MP80, 20 Panatelas—MP100", or "30 Blunts—MPHK, 20 Panatelas—MPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

5. Section 290.248 is amended to replace "class designation" with "tax classification" to reflect the different taxation of large cigars now that the tax is based on the wholesale price rather than on the retail price class. As amended, § 290.248 reads as follows:

§ 290.248 Packages.

Cigars shall, before withdrawal under this part, be put up by the customs warehouse proprietor in packages which shall bear the label or notice, tax classification, and mark, as required by this subpart.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

6. Section 290.253 is amended to include requirements that packages of large cigars show information relating to wholesale price. However, application of

these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document. As amended, § 290.253 reads as follows:

§ 290.253 Tax classification for cigars.

(a) *General requirement.* Every package of cigars shall, before withdrawal from a customs warehouse under this subpart, have adequately imprinted thereon or on a label securely affixed thereto the designation "cigars", the quantity of such product contained therein, and the classification of the product for tax purposes. For small cigars, such classification shall be either "small" or "little", and for large cigars, the wholesale price applicable to similar cigars removed for taxable purposes in the United States.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than $235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were $236 per thousand. The price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0, and in either case shall be preceded by the identifying letters "IP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of $80.00 per thousand, the wholesale price would be expressed as "IP80" or as "IPHK"; for a cigar with a wholesale price of $65.20 per thousand, the wholesale price would be expressed as "IP65.20" or as "IPFE.BK"; and for a cigar with a wholesale price of $450 per thousand, the wholesale price would be expressed as "IP450", "IPDEK", IP236", or "IPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 275.39(d) of this chapter), the numbers of cigars at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of $80 per thousand and 20 Panatelas with a wholesale price of $100 per thousand, the wholesale price would be shown as "30 Blunts—IP80, 20 Panatelas—IP100", or "30 Blunts—IPHK, 20 Panatelas—IPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

PART 295—REMOVAL OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES

PAR. D. The regulations in 27 CFR Part 295 are amended as follows:

1. Section 295.11 is amended to improve clarity and to reflect the change in taxation of large cigars and the establishment of the Bureau of Alcohol, Tobacco and Firearms. Definitions of "Assistant Director (Regulatory Enforcement)", "ATF officer", "regional regulatory administrator" and "wholesale price" are added; the definitions of "Commissioner" and "regional commissioner" are deleted; the introductory language is rephrased; and the definitions of "assistant regional commissioner", "Director", "internal revenue officer", and "region" are modified. As amended, § 295.11 reads as follows:

§ 295.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

* * * * *

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

ATF officer. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

* * * * *

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.

* * * * *

Internal revenue officer. An ATF officer as defined in this section.

* * * * *

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

* * * * *

Wholesale price. The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652, but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement).

2. Section 295.44 is amended to include requirements that packages of large cigars show information relating to wholesale price. However, application of these new requirements for large cigars is suspended pending further notification in the FEDERAL REGISTER. Other requirements of this section, not related to wholesale price markings, are effective as of the effective date of this document.

As amended § 295.44 reads as follows:

§ 295.44 Notice for cigars.

(a) *General requirement.* Every package of cigars shall, before removal under this part, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "cigars," the quantity of such product contained therein, and the classification of the product for tax purposes, i.e., for small cigars, either "small" or "little", and for large cigars, the wholesale price.

(b) *Expression of wholesale price.* The price to be shown is the wholesale price for each thousand cigars, except that for cigars with a wholesale price of more than $235.294 per thousand the wholesale price may be either specifically expressed or expressed as if it were $236 per thousand. Such price shall be expressed either in arabic numerals or according to the code: A=1, B=2, C=3, D=4, E=5, F=6, G=7, H=8, J=9, K=0; and in either case shall be preceded by the identifying letters "MP". If the wholesale price is in even dollars then no decimal or cents information need be shown. Thus, for a cigar with a wholesale price of $80.00 per thousand, the wholesale price would be expressed as "MP80" or as "MPHK"; for a cigar with a wholesale price of $65.20 per thousand, the wholesale price would be expressed as "MP65.20" or as "MPFE.BK"; and for a cigar with a wholesale price of $450 per thousand, the wholesale price would be expressed as either "MP450", "MPDEK", "MP236", or "MPBCF".

(c) *Packages with cigars of more than one price.* If a combination package includes large cigars of more than one wholesale price and they are taxable on the basis of the individual wholesale prices of the cigars and not on the basis of an established wholesale price for the combination package (see § 270.22(d) of this chapter), the numbers of cigars

at each wholesale price and a brief description of those cigars shall be shown with the applicable wholesale price information. For example, if a package contained 30 Blunts with a wholesale price of $80 per thousand and 20 Panatelas with a wholesale price of $100 per thousand, the wholesale price would be shown as "30 Blunts—MP80, 20 Panatelas—MP100", or "30 Blunts—MPHK, 20 Panatelas—MPAKK".

(d) *Application of wholesale price regulations.* The application of regulations in this section relating to the imprinting, on packages of large cigars, of information relating to wholesale price is suspended until notification in the FEDERAL REGISTER. This notification shall be published in the FEDERAL REGISTER not less than 90 days prior to the date when the wholesale price marking regulations shall begin to apply.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723).)

3. Section 295.51 is amended to change "class" of large cigars to "wholesale price," and to change "internal revenue officer" to "ATF officer." As amended, § 295.51 reads as follows:

§ 295.51 Supporting record.

Every manufacturer who removes cigars, cigarettes, and cigarette papers and tubes under this part shall, in addition to the records kept under Part 270 of this chapter, keep a supporting record of such removals and shall make appropriate entries therein at the time of removal. The supporting record shall show, with respect to each removal, the date of removal, the name and address of the Federal agency to which shipped or delivered, the quantity and, with respect to large cigars, wholesale price for tax purposes. Appropriate entries shall also be made in the supporting record of any cigars, cigarettes, or cigarette papers or tubes removed under this part which are returned to the factory. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section. The supporting record shall be retained by the manufacturer for 3 years following the close of the year covered therein and shall be made available for inspection by any ATF officer upon his request.

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741).)

PART 296—MISCELLANEOUS REGULATIONS RELATING TO CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

PAR. E. The regulations in 27 CFR Part 296 are amended as follows:

1. Section 296.72 is amended to rephrase the introductory language, to delete the definition of "Commissioner", to add definitions of "wholesale price", "region", and "regional regulatory administrator", and to modify the definitions of "assistant regional commissioner" and "Commissioner of Customs" to reflect the change in the name of the U.S. Customs Service and the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 296.72 reads as follows:

§ 296.72 Meaning of terms.

When used in this subpart, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

* * * * *

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director, Bureau of Alcohol, Tobacco and Firearms.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

* * * * *

Commissioner of Customs. The Commissioner of Customs, U.S. Customs Service, the Department of the Treasury, Washington, D.C.

* * * * *

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal regional official responsible for administering regulations in this part.

* * * * *

Wholesale price. The manufacturer's or importer's suggested delivered price, at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652 but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement).

2. Section 296.74 is amended to replace "tax class" of large cigars with "wholesale price," to change the examples to reflect the new tax structure imposed by legislation, and to make terminology changes to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 296.74 reads as follows:

§ 296.74 Execution and filing of claims.

Claims under this subpart shall be executed on Internal Revenue Service Form 843 in accordance with the applicable instructions on the form, and filed with the regional regulatory administrator of the region in which the cigars, cigarettes, or cigarette papers or tubes were lost, rendered unmarketable, or condemned, within 6 months after the date on which the President makes the determination that the disaster has occurred. The claim shall state all the facts on which the claim is based, and shall set forth the numbers of small cigars, large cigars (itemized separately as to taxable wholesale price), small cigarettes, large cigarettes, cigarette papers, and cigarette tubes, as the case may be, and the rate of tax and the amount claimed with respect to each article set forth, substantially in the form as shown in the example below.

Example

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	$0.75 per thousand.	$15.00
1,000	Large cigars—Wholesale price $100 per thousand.	8½ pct of wholesale price.	8.50
500	Large cigars—Wholesale price $236 per thousand.	$20 per thousand.	10.00
10,000	Small cigarettes	$4 per thousand.	40.00
5,000	Large cigarettes	$8.40 per thousand.	42.00
2,000 sets	Cigarette papers—50 each set.	$0.005 per set.	10.00
1,000 sets	Cigarette papers—100 each set.	$0.01 per set.	10.00
1,000	Cigarette tubes	$0.01 per 50 tubes.	.20
Total claimed			135.70

The claimant shall certify on the claim to the effect that no amount of internal revenue tax or customs duty claimed therein has been or will be otherwise claimed under any other provision of law or regulations.

Signed: January 14, 1977.

REX D. DAVIS,
Director.

Approved: January 19, 1977.

JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

[FR Doc.77-2407 Filed 1-21-77;11:02 am]

federal register

WEDNESDAY, JANUARY 26, 1977

PART IX

FEDERAL ENERGY ADMINISTRATION

■

DOMESTIC CRUDE OIL ALLOCATION PROGRAM

Entitlement Notice for November 1976

FEDERAL ENERGY ADMINISTRATION

DOMESTIC CRUDE OIL ALLOCATION PROGRAM

Entitlement Notice for November 1976

In accordance with the provisions of 10 CFR §211.67 relating to FEA's domestic crude oil allocation program the monthly notice specified in § 211.67(i) is hereby published.

Based on reports submitted to FEA by refiners and other firms as to crude oil receipts, crude oil runs to stills and eligible product imports for November 1976, imported naphtha utilized as a petrochemical feedstock in Puerto Rico, application of the entitlement adjustment for residual fuel oil production for sale in the East Coast market provided in § 211.67(d)(4), and application of the entitlement adjustment for small refiners provided in § 211.67(e), the national domestic crude oil supply ratio for November 1976 is calculated to be .273071.

In accordance with § 211.67(b)(2), to calculate the number of barrels of deemed old oil included in refiner's adjusted crude oil receipts for the month of November 1976, each barrel of old oil is equal to one barrel of deemed old oil and each barrel of upper tier crude is equal to .177464 of a barrel of deemed old oil.

The issuance of entitlements for the month of November 1976 to refiners and other firms is set forth in the Appendix to this notice. The Appendix lists the name of each refiner or other firm to which entitlements have been issued, the number of barrels of deemed old oil included in each such refiner's adjusted crude oil receipts, the number of entitlements issued to each such refiner or other firm, and the number of entitlements required to be purchased or sold by each such refiner or other firm.

Pursuant to 10 CFR 211.67(i)(4), FEA hereby fixes the price at which entitlements shall be sold and purchased for the month of November 1976 at $7.90, which is the exact differential as reported for the month of November between the weighted average per barrel costs to refiners of old oil and of imported and exempt domestic crude oil, less the sum of 21 cents.

In accordance with 10 CFR 211.67(b), each refiner that has been issued fewer entitlements for the month of November 1976 than the number of barrels of deemed old oil included in its adjusted crude oil receipts is required to purchase a number of entitlements for the month of November 1976 equal to the difference between the number of barrels of deemed old oil included in those receipts and the number of entitlements issued to and retained by that refiner. Refiners which have been issued a number of entitlements for the month of November 1976 in excess of the number of barrels of deemed old oil included in their adjusted crude oil receipts for that month and other firms issued entitlements shall sell such entitlements to refiners required to purchase entitlements. In addition, certain refiners are required to purchase or sell entitlements to effect corrections for reporting errors for the months September 1975 through October 1976 pursuant to 10 CFR 211.67(j)(1).

Pursuant to § 211.67(j)(2), the November 1976 installments of the amounts representing corrections for reporting errors for months prior to September 1975 are shown in a separate column in the listing and these installments will continue to be shown in entitlement notices through the notice for February 1977. As set forth in the revised special correction notice issued on September 21, 1976, the total dollar amounts of the special corrections have been divided into eight substantially equal installments for reflection in each firm's entitlement position for each of the months July 1976 through February 1977, based on the particular month's entitlement price.

The listing of refiners' old oil receipts contained in the Appendix reflects any adjustments made by FEA pursuant to §211.67(h).

The listing contained in the Appendix identifies in a separate column additional entitlements issued to refiners pursuant to relief granted by FEA's Office of Exceptions and Appeals. Also set forth in this column are the adjustments for relief granted by the Office of Exceptions and Appeals for 1975, which adjustments are being reflected in monthly installments commencing with the September 1976 entitlement notice. The number of installments is dependent on the magnitude of the adjustment to be made. For a full discussion of the issues involved, see *Beacon Oil Company*, et al, 4 FEA par. 87,024 (November 5, 1976).

The listing in the Appendix does not reflect an entitlement obligation of $379,965.42 (or 48,097 entitlements) of Delta Refining Company for the month November 1976 that is attributable to adjustments for exception relief received by Delta in 1975. This obligation has been temporarily stayed by the United States District Court for the District of Columbia until 10 days from the date of issuance of a final order in Case No. FXA-1052.[1] FEA will reflect, in the earliest practicable entitlement notice, the entitlement obligation as determined by the final order.

For purposes of the adjustments to refiners' crude run volumes under § 211.67(d)(4), total production of residual fuel oil for sale in the East Coast market (in excess of the first 5,000 barrels per day thereof for each refiner reporting such production) was 16,597,963 barrels for November 1976. For that month, imports of residual fuel oil eligible for entitlement issuances totaled 35,062,448 barrels.

The total number of entitlements required to be purchased and sold under this notice is 21,809,856.

Payment for entitlements required to be purchased under 10 CFR 211.67(b) for November 1976 must be made by January 31, 1977.

On or prior to February 10, 1977, each firm which is required to purchase or sell entitlements for the month of November 1976 shall file with FEA the monthly transaction report specified in 10 CFR 211.66(i) certifying its purchases and sales of entitlements for the month of November. FEA has mailed the monthly transaction report forms for the month of November to reporting firms. FEA requests that firms which have been unable to locate other firms for required entitlement transactions by January 31, 1977 contact FEA at 202-254-6296 to expedite consummation of these transactions. For firms that have failed to consummate required entitlement transactions on or prior to January 31, 1977, FEA may direct sales and purchases of entitlements pursuant to the provisions of 10 CFR 211.67(k).

This notice is issued pursuant to Subpart G of FEA's regulations governing its administrative procedures and sanctions, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with FEA's Office of Exceptions and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before February 25, 1977.

Issued in Washington, D.C. on January 21, 1977.

DAVID G. WILSON,
Acting General Counsel.

[1] This supersedes the statement in last month's notice regarding the implementation of the Court's order. It remains the intent of FEA to exclude the obligation from the entitlements list solely during the effective period of the Court's order. The matter of interest on such obligations is subject to the terms of the Court's order.

APPENDIX

ENTITLEMENTS FOR DOMESTIC CRUDE OIL

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
A-JOHNSON	0	126,345	790	0	-5,988	0	126,345
AGWAY	0	-23	0	0	-23	23	0
ALLIED	46,188	136,171	0	0	-66	0	89,983
AMER-PETROFINA	1,657,467	1,603,368	0	0	61,280	54,099	0
AMERADA-HESS	1,877,938	4,258,074	0	106,138	-29,741	0	2,380,136
AMOCO	11,032,227	8,225,591	0	19,312	-16,773	2,806,636	0
APCO	380,220	456,296	0	0	-1,355	0	76,076
APEX	0	-9	0	0	-9	9	0
ARCO	5,860,443	5,304,926	4,785*	0	-141,179	555,517	0
ARIZONA	63,573	55,496	17,899	0	345	8,077	0
ASAMERA	163,455	186,242	0	0	262	0	22,787
ASHLAND	1,396,640	2,748,193	0	0	-23,374	0	1,351,553
ASIATIC	0	199,417	0	202,290	-2,873	0	199,417
ATLANTIC-CEMENT	0	195	0	0	195	0	195
AUGSBURY	0	-4	0	0	-4	4	0
BAYOU	43,138	50,356	0	0	57	0	7,218
BEACON	223,524	172,836	6,623	0	-5,177	50,688	0
BELCHER	0	149,734	0	150,207	-473	0	149,734
BLUE-RIDGE	0	11,334	0	11,640	-306	0	11,334
C&H	-113	146,492	0	0	-13	0	146,605
CALUMET	171,515	137,033	0	0	-210	34,482	0
CANAL	79,027	61,978	0	0	-1,342	17,049	0
CARIBOU	88,567	102,327	0	0	103	0	13,760
CASTLE	0	21,649	0	21,911	-262	0	21,649
CENTRAL	0	6,435	0	6,622	-187	0	6,435
CHAMPLIN	1,877,916	1,078,823	0	0	12,693	799,093	0
CHARTER	758,074	546,994	28,559	0	12,263	211,080	0
CIRILLO	0	28,790	0	29,812	-1,022	0	28,790
CITGO	3,457,564	2,210,797	0	0	-4,169	1,246,767	0
CLAIBORNE	20,487	44,200	0	0	17,583	0	23,713
CLARK	303,729	843,510	0	0	-2,389	0	539,781
COASTAL	263,422	1,223,676	0	0	26,566	0	960,254
COLONIAL	0	23,930	0	24,306	-376	0	23,930
CON-ED	0	-2,183	0	0	-2,183	2,183	0

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
CON-REF	0	55	0	0	55	0	55
CONOCO	2,994,999	2,914,634	0	48,106	8,518	80,365	0
CONSUMERS-POWER	0	-446	0	0	-446	446	0
CORCO	0	1,062,348	0	218,775	-3,855	0	1,062,348
CRA-FARMLAND	423,272	575,253	0	0	-2,387	0	151,981
CROSS	15,769	152,959	0	0	2,931	0	137,190
CROWN	342,951	707,021	0	0	-2,119	0	364,070
CRYSTAL-OIL	195,571	187,144	0	0	-12,285	8,427	0
CRYSTAL-REF	522	44,884	0	0	-536	0	44,362
DEEPWATER	0	-90	0	0	-90	90	0
DELTA	333,013	315,520	0	0	801	17,493	0
DEMENNO	30,145	75,297	0	0	0	0	45,152
DETROIT-ED	0	734	0	0	734	0	734
DIAMOND	580,170	493,326	0	0	4,094	86,844	0
DILLMAN	20,965	21,070	5,311	0	0	0	105
DORCHESTER	8,098	13,209	0	0	-56	0	5,111
DOW	47,249	178,271	0	0	134	0	131,022
E-SEABOARD	0	70,364	0	71,341	-977	0	70,364
ECO	118,950	108,091	0	0	0	10,859	0
EDDY	35,961	145,815	0	0	67	0	109,854
EDGINGTON-OIL	0	-10,332	-10,858	0	526	10,332	0
EDGINGTON-OXN	0	-5	0	0	-5	5	0
ELM	0	-322	0	0	-322	322	0
ENERGY-COOP	0	559,250	0	0	0	0	559,250
ENTERPRISE	0	-38	0	0	-38	38	0
EVANGELINE	46,420	26,512	0	0	51	19,908	0
EXXON	11,316,835	11,084,719	0	738,883	-4,006	232,116	0
EZ-SERVE	74,355	54,310	0	0	0	20,045	0
F-FLETCHER	0	1	0	0	1	0	1
FAMARISS	220,169	332,015	3,733	0	-41	0	111,846
FARMERS-UN	227,705	388,642	0	0	-224	0	160,937
FLETCHER	58,772	77,859	-9,843	0	13,311	0	19,087
FLINT	9,377	8,853	0	0	-8	524	0
FLORIDA-POWER	0	671	0	0	671	0	671

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
GARY	27,086	73,196	0	0	-71	0	46,110
GEN-PORTLAND	0	-16	0	0	-16	16	0
GETTY	945,656	649,101	0	0	-4,298	296,555	0
GIANT	12,595	92,446	0	0	-183	0	79,851
GIBBS	0	-370	0	0	-370	370	0
GIBSON	107	0	0	0	0	107	0
GLACIER-PARK	53,692	32,190	0	0	0	21,502	0
GLADIEUX	42,702	187,597	0	0	252	0	144,895
GOLDEN-EAGLE	33,954	169,869	0	0	-2,591	0	135,915
GOLDEN-EAGLE-NY	0	2,155	0	0	2,155	0	2,155
GOOD-HOPE	47,400	256,149	-574	0	-439	0	208,749
GREAT-NORTHERN	0	-125	0	0	-125	125	0
GUAM	0	306,076	0	0	-2,230	0	306,076
GULF	8,258,236	7,337,673	0	40,816	-12,323	920,563	0
GULF-STS	89,181	130,597	0	0	72	0	41,416
HIRI	0	452,460	0	0	2,011	0	452,460
HOWARD	0	65,220	0	66,672	-1,452	0	65,220
HOWELL	629,535	329,066	0	0	1,147	300,469	0
HUNT	186,872	250,458	0	0	-500	0	63,586
HUSKY	633,043	633,486	225,120	0	443	0	443
INDEPENDENT-REF	84,623	98,743	0	0	0	0	14,120
INDIANA-FARM	43,735	243,641	0	0	-463	0	199,906
INTL-PAPER	0	73	0	0	73	0	73
IRVING	0	319	0	381	-62	0	319
J&W	41,168	39,858	14,570	0	-1,310	1,310	0
K-H-WHITE	0	-35	0	0	-35	35	0
KAISER	0	10,117	0	10,117	0	0	10,117
KENTUCKY	1,985	5,184	0	0	-29	0	3,199
KERN	426,281	426,281	216,116	0	0	0	0
KERR-MCGEE	1,658,555	1,415,061	0	0	27,448	243,494	0
KOCH	296,420	771,783	0	0	-2,167	0	475,363
LA-WATER	0	7,288	0	0	7,288	0	7,288
LAGLORIA	436,294	164,449	0	0	-73,240	271,845	0
LAKESIDE	14,558	98,360	0	0	-240	0	83,802

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
LAKETON	113,094	112,432	2,171	0	-6,354	662	0
LITTLE-AMER	1,205,499	1,034,785	470,380	0	324	170,714	0
LOUISIANA-LAND	174,251	355,563	0	0	0	0	181,312
MACMILLAN	34,123	188,152	0	0	-3,488	0	154,029
MARATHON	3,604,102	3,719,352	0	0	-5,637	0	115,250
MARION	169,809	239,165	0	0	-792	0	69,356
MID-AMER	7,155	9,032	0	0	-322	0	1,877
MID-TEX	1,092	82,286	0	0	175	0	81,194
MIDLAND	32,313	213,413	-11,159	0	-116	0	181,100
MOBIL	7,994,023	6,342,210	36,612	80,092	-199,473	1,651,813	0
MOHAWK	429,212	424,627	104,191	0	846	4,585	0
MONSANTO	-130,796**	330,427***	0	0	-628	0	461,223
MORRISON	8,724	119,274	0	0	2	0	110,550
MOUNTAINEER	5,297	5,590	0	0	4	0	293
MURPHY	834,264	813,473	0	0	210	20,791	0
N-AMER-PETRO	77,198	160,383	13,290	0	-2,107	0	83,185
NARRAGANSETT	0	-115	0	0	-115	115	0
NATL-COOP	362,733	508,088	0	0	369	0	145,355
NAVAJO	359,256	360,334	39,331*	0	-1,817	0	1,078
NEW-EDGINGTON	617,624	382,149	156,992	0	0	235,475	0
NEW-ENGL-PETRO	0	293,974	0	297,650	-3,676	0	293,974
NEW-ENGL-POWER	0	-72	0	0	-72	72	0
NEWHALL	129,434	149,438	-6,633	0	94	0	20,004
NEWMAN	0	-64	0	0	-64	64	0
NORCO	0	62	0	0	62	0	62
NORTHEAST-PETRO	0	19,028	0	19,937	-909	0	19,028
NORTHLAND	37,489	89,776	0	0	-51	0	52,287
NORTHVILLE	0	20,500	0	21,277	-777	0	20,500
OIL-SHALE	1,974,840	1,456,931	1,011	0	-2,537	517,909	0
OKC	252,260	290,492	22,806	0	1,994	0	38,232
ORANGE&ROCKLAND	0	64	0	0	64	0	64
OXNARD	42,290	108,937	0	0	0	0	66,647
PASCO	0	-43,709	-48,395	0	4,686	43,709	0
PATCHOGUE	0	20,235	0	20,527	-292	0	20,235

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	EXCEPTIONS AND APPEALS	ENTITLEMENT POSITION PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
PENNZOIL	864,995	511,646	0	0	-449	353,349	0
PEPCO	0	-962	0	0	-962	962	0
PETRO-HEAT-CT	0	5,798	0	6,378	-580	0	5,798
PETRO-HEAT-PA	0	-327	0	0	-327	327	0
PG&E -	0	-472	0	0	-472	472	0
PHILLIPS	2,303,945	2,317,374	0	0	100,410	0	13,429
PHILLIPS-PR	0	293,638	0	293,638	0	0	293,638
PIONEER	17,823	144,023	0	0	-5	0	126,200
PITTSTON	0	177,553	0	178,661	-1,108	0	177,553
PLACID	206,207	384,790	0	0	-1,297	0	178,583
PLATEAU	120,404	155,419	0	0	-480	0	35,015
POWERINE	279,345	410,275	0	0	272	0	130,930
PRIDE	125,085	210,749	0	0	-334	0	85,664
PRINCETON	0	57,164	0	0	0	0	57,164
PRULEASE	0	-873	0	0	-873	873	0
QUAKER-ST	30,952	260,089	0	0	-1,818	0	229,137
REMINGTON	0	-89	0	0	-89	89	0
RICHARDS	521	1,472	0	0	0	0	951
RICO	—0	-48	0	0	-48	48	0
ROAD-OIL	576	40,961	0	0	-7	0	40,385
ROCK-ISLAND	369,880	383,723	-27,870	0	542	0	13,843
ROYAL	0	-138	0	0	-138	138	0
SABER-TEX	21,562	150,055	0	0	-7,616	0	128,493
SABRE-CAL	58,834	58,712	26,449	0	-122	122	0
SAGE-CREEK	2,432	5,623	0	0	-7	0	3,191
SAN-JOAQUIN	167,296	219,470	65,697	0	-1,527	0	52,174
SEARS	0	13,980	0	14,011	-31	0	13,980
SEMINOLE	0	136,800	0	0	-2,983	0	136,800
SHELL	12,030,977	8,711,823	0	15,568	342,745	3,319,154	0
SIGMOR	42,741	155,478	0	0	1,799	0	112,737
SKELLY	1,016,024	647,993	0	0	794	368,031	0
SO-HAMPTON	63,961	224,514	0	0	968	0	160,553
SOCAL	7,273,670	9,069,641	0	30,256	-5,762	0	1,795,971
SOCALEDISON	0	-87	0	0	-87	87	0

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
SOHIO	1,293,373	3,420,639	0	0	19,691	0	2,127,266
SOMERSET	18,710	50,360	0	0	-307	0	31,650
SOUND	90,265	129,777	1,013	0	-151	0	39,512
SOUTHLAND	380,961	315,772	89,356	0	199	65,189	0
SOUTHWESTERN	6,209	8,863	4,568	0	0	0	2,654
SPRAGUE	0	83,485	0	83,485	0	0	83,485
STEUART	0	28,933	0	29,820	-887	0	28,933
SUNLAND	323,794	230,406	101,035	0	6,230	93,388	0
SUNOCO	5,244,802	4,008,949	0	0	-74,082	1,235,853	0
SWANN	0	61,465	0	61,931	-466	0	61,465
TARRICONE	0	-120	0	0	-120	120	0
TAUBER	0	-83	0	0	-83	83	0
TENNECO	816,531	714,797	0	0	-51,150	101,734	0
TESORO	1,196,119	964,797	157,219	0	3,440	231,322	0
TEXACO	11,867,282	8,264,467	0	403,976	40,361	3,602,815	0
TEXAS-ASPH	48,903	137,432	-7,062*	0	-7,066	0	88,529
TEXAS-CITY	468,901	429,786	0	0	-28,883	39,115	0
THAGARD	204,183	199,508	103,080	0	-5	4,675	0
THE-REFINERY	0	-2,608	0	0	-2,608	2,608	0
THRIFTWAY	19,499	31,901	0	0	-107	0	12,402
THUNDERBIRD	112,192	174,214	0	0	-292	0	62,022
TONKAWA	22,552	68,418	0	0	-192	0	45,866
TOTAL-LEONARD	195,616	417,433	0	0	-1,891	0	221,817
TRANS-OCEAN	0	90,313	0	0	0	0	90,313
UCC-CARIBE	0	140,293	0	140,293	0	0	140,293
UNION-OIL	5,137,053	3,725,106	0	0	79,020	1,411,947	0
UNION-TEXAS	1,520	226	0	0	226	1,294	0
UNTD-IND	0	97,280	0	0	54	0	97,280
UNTD-REF	153,548	399,084	0	0	-14,443	0	245,536
US-OIL	18,791	194,921	0	0	-483	0	176,130
USA-PETROCHEM	22,673	170,484	0	0	0	0	147,811
VEN-FUEL	0	-89	0	0	-89	89	0
VICKERS	279,153	567,591	0	0	668	0	288,438
VULCAN	126,043	226,425	0	0	-123	0	100,382

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	EXCEPTIONS AND APPEALS	ENTITLEMENT POSITION PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
WALLACE	0	12,124	0	12,124	0	0	12,124
WALLER	0	8,861	0	9,011	-150	0	8,861
WARRIOR	37,640	52,686	27,022	0	-5,043	0	15,046
WEBBER	0	177	0	0	177	0	177
WELLEN	0	-114	0	0	-114	114	0
WEST-COAST	28,611	34,738	-1,246	0	-2,500	0	6,127
WESTERN	58,263	106,716	0	0	7,042	0	48,453
WHALECO	0	-37	0	0	-37	37	0
WICKETT	0	3,320	3,325	0	-5	0	3,320
WINSTON	137,218	202,638	0	0	-10	0	65,420
WIREBACK	0	1,010	0	0	32	0	1,010
WITCO	96,346	207,371	0	0	-245	0	111,025
WYATT	0	38,393	0	39,097	-704	0	38,393
YETTER	0	1,441	0	0	-7	0	1,441
YOUNG	105,350	108,103	51,578	0	-5	0	2,753
TOTAL	132,674,564	132,674,564	1,876,992	3,525,061	0	21,809,856	21,809,856

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* Also includes entitlements issued to correct an error in this firm's special correction amount.

** Reflects a correction to a prior month's report.

*** Does not include entitlements issued by virtue of the negative volume of adjusted receipts shown.

[FR Doc.77-2582 Filed 1-21-77;4:43 pm]

Just Released

CODE OF FEDERAL REGULATIONS

(Revised as of July 1, 1976)

Quantity	Volume	Price	Amount
_____	Title 45—Public Welfare (Parts 100–199)	$10.00	$_____
_____	Title 46—Shipping (Part 200–end)	7.25	_____
		Total Order	$_____

[A Cumulative checklist of CFR issuances for 1976 appears in the first issue of the Federal Register each month under Title 1]

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