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federal register

WEDNESDAY, MARCH 16, 1977

highlights

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

Reservations for May and June are now being accepted for the free weekly workshops on how to use the FEDERAL REGISTER. These sessions begin at 9:00 a.m. and end at approximately 11:30 a.m. and are held in Room 9409, 1100 L Street NW., Washington, D.C.

Each session will cover the following:

1. Brief history of the FEDERAL REGISTER.
2. Difference between legislation and regulations.
3. Relationship of the FEDERAL REGISTER to the Code of Federal Regulations.
4. Elements of a typical FEDERAL REGISTER document.
5. Introduction to the finding aids.

RESERVATIONS REQUIRED: DEAN L. SMITH, 202–523–5282

PART I:

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
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DOT/OPSO	LABOR		DOT/OPSO	LABOR
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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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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

Executive Order 11977 • March 14, 1977

Designating Certain Public International Organizations Entitled To Enjoy Certain Privileges, Exemptions, and Immunities

By virtue of the authority vested in me by Section 1 of the International Organizations Immunities Act (59 Stat. 669, 22 U.S.C. 288), Reorganization Plan No. 4 of 1965, and Section 301 of Title 3 of the United States Code, and as President of the United States of America, and having found that the United States participates in the following organizations, it is hereby ordered as follows:

SECTION 1. The African Development Fund, in which the United States participates pursuant to Section 202 of the Act of May 31, 1976 (90 Stat. 593, 22 U.S.C. 290g) and the Agreement Establishing the African Development Fund, is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act, provided that such designation shall not affect in any way the applicability of the provisions of Article 43 of such Agreement or the Declaration made by the United States pursuant to Article 58 of such Agreement.

SEC. 2. The International Fertilizer Development Center, in which the United States participates pursuant to Section 301(f) of the Foreign Assistance Act of 1961, as amended (89 Stat. 866, 22 U.S.C. 2221(f)), and the Agreement entered into by the International Fertilizer Development Center with the United States and the Consultative Group on International Agricultural Research, is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

SEC. 3. Executive Order No. 11269, as amended, is further amended by adding "and African Development Fund" after "Asian Development Bank" in Sections 2(c) and 3(d), respectively.

SEC. 4. Executive Order No. 11269, as amended, is further amended by adding to Section 3 thereof the following new subsection:

"(e) The Secretary of the Treasury is hereby delegated the functions conferred upon the President by Section 203(b) and Section 207 of the Act of May 31, 1976 (90 Stat. 593 and 594, 22 U.S.C. 290g-1 and 290g-5).".

Jimmy Carter

THE WHITE HOUSE,
March 14, 1977.

[FR Doc.77-7953 Filed 3-15-77;10:23 am]

rules and regulations

Title 7—Agriculture

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—GENERAL REGULATIONS AND POLICIES

PART 1409—MEETINGS OF THE BOARD OF DIRECTORS OF COMMODITY CREDIT CORPORATION

Government in the Sunshine Act

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: These regulations are issued pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) and set forth the procedural requirements designed to provide the public with information, to the fullest extent practicable, regarding the decision making process of the Board of Directors ("Board") of Commodity Credit Corporation ("Corporation"). The regulations include provisions for giving advance public notice of meetings of the Board, for holding meetings which may lawfully be closed to the public, for maintaining copies of transcripts, electronic recordings, or minutes of closed meetings, and for the availability of the nonexempt portions of such records to the public.

EFFECTIVE DATE: March 12, 1977.

FOR FURTHER INFORMATION CONTACT:

George E. Rippel, Staff Assistant, Office of the Administrator, ASCS, U.S. Department of Agriculture, Room 6967, South Bldg., Washington, D.C. 20250 (202-447-4786).

SUPPLEMENTAL INFORMATION: On February 8, 1977, at 42 FR 7963, the Board issued proposed regulations to implement the provisions of the Sunshine Act. Interested parties were given the opportunity to submit, not later than March 10, 1977, comments, views and recommendations regarding the proposed regulations.

The only comment received questioned whether the Board could assert exemption 9A of the Act (see, (9) (i) of § 1409.4 of the proposed regulations) to close a meeting. The commentator suggested that exemption 9A was not available to the Board because the Corporation did not appear to be an "agency which regulates currencies, securities, commodities, or financial institutions." The commentator further suggested that while the Corporation's actions may have an effect on commodity prices, these actions were similar to the actions of other agencies, such as the Civil Aeronautics Board, the Federal Power Commission and the Federal Communications Commission, whose actions may affect securities of the companies which they regulate, but that this fact alone is not sufficient to fulfill the requirements of exemption 9A.

As explained in the preamble to the proposed regulations, the purposes and authorities of the Corporation, among other things, are to stabilize, support and protect farm income and prices, and the actions of the Corporation do have a direct effect on agricultural market prices and a significant regulatory impact on agricultural commodities and the products thereof, on national and foreign markets. Thus, the Corporation's actions are intended to directly affect market prices on agricultural commodities and products, as contrasted with the actions of the other agencies mentioned above, which only incidentally, if at all, affect securities of companies which they regulate. The Corporation is an agency which regulates commodities within exemption 9A and, therefore, exemption (9) (i) in § 1409.4 is being retained.

The commentator also suggested the need to clarify proposed § 1409.4(b) to make it clear that the public interest issue will be considered separately in each instance where the Corporation determines that a meeting or information comes within one of the exemptions. The proposed regulations specifically set out the public issue determination in § 1409.4(b) separately from § 1409.4(a), which permits closure of meetings and withholding of information, to emphasize the importance and the need for a separate determination by the Board on the public interest issue. Therefore, it is not believed that any clarification is necessary in § 1409.4(b).

It was suggested that § 1409.5(c) be changed to make it clear that the General Counsel's certification will be issued before a closed meeting is held. This change has been made.

It was suggested by the commentator that proposed § 1409.6(e) include other means of informing the public, including a mailing list. A mailing list is being established and names will be included on request. The language of § 1409.6(e) requires no further amplification since it provides that the Board will "use all reasonable means to keep the public promptly and fully informed" of public announcements.

A final comment states that proposed § 1409.8(b) appears to require that a written request must be made before the transcripts, recordings and minutes of a meeting are made available to the public, contrary to the provisions of the Sunshine Act. There is no requirement for a written request in § 1409.8(b). On the contrary, § 1409.8(a) provides that the materials will be made "promptly available to the public" as provided in the Act.

The proposed regulations, with minor changes, are, therefore, adopted as set forth below.

Signed at Washington, D.C., on March 11, 1977.

BOB BERGLAND,
Secretary of Agriculture and Chairman, Board of Directors, Commodity Credit Corporation.

Sec.

AUTHORITY: The provisions of this Part 1409 issued under sec. 3(a), 90 Stat. 1244 (5 U.S.C. 552b), and sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b).

§ 1409.1 General Statement.

(a) It is the policy of Commodity Credit Corporation, under the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b) to make available to the public, to the fullest extent practicable, information regarding the decision process of the Board of Directors of Commodity Credit Corporation.

(b) This Part sets forth the procedural requirements designed to provide the public with such information while continuing to protect the rights of individuals and to maintain the capabilities of Commodity Credit Corporation in carrying out its responsibilities under the statutes administered by Commodity Credit Corporation.

§ 1409.2 Definitions.

(a) The term "Board" means the Board of Directors of Commodity Credit Corporation.

(b) The term "Director" means an individual who is a member of the Board of Directors of Commodity Credit Corporation and includes the Secretary of Agriculture, who is by statute an ex-officio director and Chairman of the Board.

(c) The term "General Counsel" means the General Counsel or the Assistant General Counsel of Commodity Credit Corporation.

(d) The term "meeting" means the deliberations of at least five (quorum) Directors of the Board of Directors of Commodity Credit Corporation where such deliberations determine or result in

the joint conduct or disposition of official Board business but shall not include deliberations for (1) closing a portion or portions of a meeting or series of meetings as provided in § 1409.5 (a) and (b) of this Part, or (2) calling a meeting at a date earlier than announced as provided in paragraph 1409.6(a)(2) of this Part; or (3) changing the subject matter of a publicly announced meeting as provided in § 1409.6(d) of this Part; or (4) determining whether or not to withhold from disclosure information pertaining to a meeting or portions of a meeting or series of meetings as provided in § 1409.5(b) of this Part.

(e) The term "public observation" means the right of any member of the public to attend and observe, but not participate or interfere in any way in an open meeting of the Board, within the limits of reasonable and comfortable accommodations made available for such purpose by Commodity Credit Corporation.

§ 1409.3 Open meetings.

Every portion of every meeting of the Board of Directors will be open to public observation except as provided in §§ 1409.4 and 1409.5 of this Part.

§ 1409.4 Exemptions.

(a) A portion or portions of a Board meeting may be closed to the public and any information pertaining to such meeting otherwise required by § 1409.3 of this Part to be disclosed to the public may be withheld, where the Board determines that public disclosure of information to be discussed at such meetings is likely to—

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practice of Commodity Credit Corporation;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) 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 (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or to an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, or (iv) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal 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, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to (i) lead to significant financial speculation in agricultural commodities or significantly endanger the stability of any financial institution; or (ii) significantly frustrate implementation of a proposed Board action except where the Board has already disclosed to the public the content or nature of its proposed action or where Commodity Credit Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern Commodity Credit Corporation's participation in a civil action or proceedings.

(b) Any Board meeting or portion thereof, which may be closed, or any information which may be withheld under paragraph (a) of this section, will not be closed or withheld, respectively, in any case where the Board finds the public interest requires otherwise.

§ 1409.5 Closure of meetings.

(a) *Procedure for closing a majority of the meetings.* (1) A majority of the meetings of the Board will be closed to the public pursuant to exemptions 4, 8, (9)(i) and 10 of § 1409.4(a) of this Part. These meetings will include deliberations such as those relating to the levels of price support for various agricultural commodities, the allocation of quantities of commodities for export programs, and the interest rates for commodity loans and farm storage facility loans. Board meetings will be closed pursuant to exemptions 4, 8, (9)(i) and 10 when at least five Directors vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting. A copy of the vote, reflecting the vote of each Director on the question, will be made available to the public. The Board will, except to the extent that such information is exempt from disclosure under the exemptions in paragraph 1409.4(a) of this Part, provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof, at the earliest practicable time.

(2) The provisions of paragraph (b) of this section and section 1409.6, except § 1409.6(e), of this Part will not apply to any meeting or portion thereof to which paragraph (a) of this section applies.

(b) *Procedure for closing other meetings.* (1) A separate vote of the entire membership of the Board will be taken with respect to each Board meeting a portion or portions of which are proposed to be closed to the public or any information which is proposed to be withheld from the public on the basis of one or more of the exemptions in § 1409.4(a) of this Part. The vote of each Director will be recorded and no proxy shall be allowed.

(2) A portion or portions of a meeting may be closed on the basis of one or more of the exemptions in § 1409.4(a) of this Part only when at least five Directors vote to take such action.

(3) A single vote of the entire membership of the Board 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 the withholding of any information concerning such series of meetings, on the basis of one or more of the exemptions in § 1409.4(a) of this Part. Each meeting in such series must involve the same particular matters and must be scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Director participating in such vote will be recorded and no proxy vote shall be allowed.

(4) Whenever any person whose interests may be directly affected by a portion of a Board's meeting requests that the Board close such portion to the public on the basis of exemptions (5), (6), or (7) of § 1409.4(a) of this Part, the Board, upon the request of any one of its members, will vote whether or not to close such portion of the meeting. The vote of each Director participating in such vote will be recorded and no proxy shall be allowed.

(c) *General counsel's certification.* Before every Board meeting closed on the basis of one or more of the exemptions in § 1409.4(a) of this Part, the General Counsel will publicly certify that, in his opinion, the meeting may be closed to the public and shall state each relevant exemption.

§ 1409.6 Notices to the public.

(a) (1) The Secretary of the Board will make public announcement at least one week before each Board meeting of (i) the time and place of the meeting, (ii) the subject matter of the meeting, except to the extent that such information is exempt from disclosure under § 1409.4(a) of this Part, (iii) whether the meeting is to be open or closed to the public and (iv) the name and business telephone number of the Secretary of the Board.

(2) Notwithstanding paragraph (a)(1) of this section, less than one week advance public notice for a meeting may be given when at least five Directors de-

termine by recorded vote that the Board business requires that a meeting be called at an earlier date, but in such case, announcement of the meeting will be made at the earliest practicable time.

(b) (1) When the Board votes on whether to close a portion or portions of a meeting or a series of meetings, or with respect to withholding any information concerning such meeting or series of meetings, in accordance with § 1409.5(b) of this Part, the Secretary of the Board will make available to the public a written copy of such vote reflecting the vote of each member on the question within one business day of such vote.

(2) If the Board votes to close a portion or portions of a meeting or a series of meetings in accordance with § 1409.5 (b) of this Part, the Secretary of the Board will make available to the public within one business day of such vote, (i) a list of the names and affiliations of persons expected to be present at such closed portion or portions of the meeting or series of meetings and (ii) a full, written explanation of the Board's action in closing the portion or portions of the meeting or series of meetings, unless such disclosure would reveal the information that the meeting itself was closed to protect.

(c) The time or place of a Board meeting may be changed following the public announcement as required by paragraph (a) (1) of this section only if the Board publicly announces such change or changes at the earliest practicable time.

(d) The subject matter of a Board meeting or the determination of the Board to open or close a meeting or portions thereof to the public, may be changed following the public announcement as required by paragraph (a) (1) of this section only if (i) five Directors determine by recorded vote that Board business so requires and that no earlier announcement of the change was possible and (ii) the Board publicly announces such change and the vote of each Director upon such change at the earliest practicable time.

(e) The Secretary of the Board shall use all reasonable means to keep the public promptly and fully informed of public announcements including the use of a bulletin board outside the office of the Secretary of the Board at the address indicated in § 1409.8(b) of this Part. Requests for information concerning Board meetings should be addressed to the Secretary of the Board.

(f) Immediately following each public announcement required by this section, the information provided in such public announcement will be submitted for publication in the FEDERAL REGISTER.

(g) The Board usually meets in room 200-A, Administration Building, United States Department of Agriculture, 14th Street and Independence Avenue, S.W., Washington, D.C. Each person interested in attending an open meeting of the Board should notify the Secretary of the Board at least one business day prior to the open meeting of their intention to attend the meeting. Any person who fails to do so may not be accommodated if there is insufficient space in the meeting room.

§ 1409.7 Records retention.

(a) The Secretary of the Board will maintain the following records for each Board meeting, or portion thereof which is closed to the public pursuant to a vote under § 1409.5 of this Part:

(1) A copy of the General Counsel's certification required by § 1409.5(c) of this Part;

(2) A copy of a statement from the presiding officer which sets forth the time and place of the closed meeting or portion thereof and list of persons present; and

(3) A complete verbatim transcript or electronic recording adequate to record fully the proceedings of each Board meeting or portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public on the basis of exemptions (8), (9)(i) or (10) of § 1409.4(a) of this Part, the Secretary of the Board will maintain either a transcript, electronic recording, or a complete set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-call vote reflecting the vote of each member on the question. All documents considered in connection with any action will be identified in such minutes.

(b) The retention period for the records required by paragraph (a) of this section will be for a period of at least two years after the particular Board meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

§ 1409.8 Public inspection and copying of records; applicable fees.

(a) The Secretary of the Board will make promptly available to the public the transcript, electronic recording, transcription of the recording, or minutes of the discussion of any item on the agenda of a Board meeting, or any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Secretary of the Board determines to contain information which may be withheld on the basis of one or more of the exemptions in § 1409.4(a) of this Part.

(b) Requests for public inspection of electronic recording, transcripts or minutes of Board meetings shall be made to the Secretary of the Board of Directors of Commodity Credit Corporation, Room 218-W, Administration Building, United States Department of Agriculture, 14th Street and Independence Avenue SW., Washington, D.C. 20250.

(c) The transcripts, minutes, or transcriptions of electronic recordings of a Board meeting will disclose the identity of each speaker, and will be furnished to any person at the actual cost of transcription or duplication.

§ 1409.9 Report to Congress.

The Secretary of Agriculture will annually report to the Congress regarding the Board's compliance with the Government in the Sunshine Act, including a tabulation of the total number of open meetings, the total number of closed meetings, the reasons for closing such meetings and a description of any litigation brought against the Board pursuant to the Government in the Sunshine Act, including any costs assessed against Commodity Credit Corporation in such litigation.

[FR Doc.77-7839 Filed 3-14-77;1:29 pm]

Title 12—Banks and Banking

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

PART 311—RULES GOVERNING PUBLIC OBSERVATION OF MEETINGS OF THE CORPORATION'S BOARD OF DIRECTORS

Adoption of Government in the Sunshine Act Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: This regulation implements the requirements of the "Government in the Sunshine Act," 5 U.S.C. 552b. The objective of the Act and of this regulation is to provide the public with the fullest practicable information regarding the decisionmaking process, consistent with protecting the rights of individuals and the ability of the agency to carry out its responsibilities.

EFFECTIVE DATE: March 12, 1977.

FOR FURTHER INFORMATION CONTACT:

Mark Rosen, Legal Division, Federal Deposit Insurance Corporation, Washington, D.C. 20429. (202-389-4422)

SUPPLEMENTARY INFORMATION: Pursuant to provisions of the "Government in the Sunshine Act," 5 U.S.C. 552b, the FDIC published in the FEDERAL REGISTER (42 FR 8146) its proposed regulations implementing that Act. Interested parties were encouraged to submit comments on these proposed regulations. One comment was received. This commentator suggested that announcements of meetings should be submitted to a newspaper of general circulation in the locality where the meeting will be held. Such procedure is not required by the Government in the Sunshine Act. The overwhelming majority of Board meetings take place in Washington, D.C., and will be announced as required by the statute in the FEDERAL REGISTER. In addition, notice will be posted on the FDIC public notice bulletin board maintained in our lobby at 550 17th Street, N.W., Washington, D.C. 20429. Other methods of notification may be employed when appropriate. The FDIC believes these procedures will adequately notify interested parties.

The FDIC has reviewed the proposed regulation and made several minor

structural or technical changes which improve the clarity of the regulation, but are not significant enough to require further discussion.

Accordingly, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b), a new Part 311 is added to Title 12 CFR.

By Order of the Board of Directors, March 11, 1977.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

Sec.
311.1 Purpose.
311.2 Definitions.
311.3 Meetings.
311.4 Procedure for announcing meetings.
311.5 Regular procedure for closing meetings.
311.6 Expedited procedure for announcing and closing certain meetings.
311.7 General Counsel certification.
311.8 Transcript, minutes of closed meetings.

AUTHORITY: 5 U.S.C. 552b and 12 U.S.C. 1819.

§ 311.1 Purpose.

This part implements the policy of the "Government in the Sunshine Act", Section 552b of Title 5, United States Code, which is to provide the public with as much information as possible regarding the decision making process of certain federal agencies, including the Federal Deposit Insurance Corporation, while preserving the rights of individuals and the ability of the agency to carry out its responsibilities.

§ 311.2 Definitions.

For purposes of this part—

(a) "Board" means Board of Directors of the Federal Deposit Insurance Corporation and includes any committee or subdivision of the Board authorized to act on behalf of the Corporation, but does not include any standing or special committee (such as the Board of Review, the Board of Review (Mergers), or the Committee on Liquidations, Loans and Purchases of Assets) which has been or may be created by the Board of Directors but whose membership consists primarily of Corporation employees, including not more than one Board member.

(b) "Meeting" means the deliberations (including those conducted by conference telephone call, or by any other method) of at least two members where such deliberations determine or result in the joint conduct or disposition of agency business but does not include:

(1) Deliberations to determine whether meetings will be open or closed or whether information pertaining to closed meetings will be withheld;

(2) Informal background discussions among Board members and staff which clarify issues and expose varying views;

(3) Infrequent decision-making by circulating written material to individual Board members;

(4) Sessions with individuals from outside the Corporation where Board members listen to a presentation and may elicit additional information.

(c) "Member" means a member of the Board.

(d) "Open to public observation" and "open to the public" mean that individuals may witness the meeting, but not participate in, record, photograph, or otherwise electronically or mechanically reproduce the meeting without prior Corporation approval.

(e) "Public announcement" and "publicly announce" mean making reasonable effort under the particular circumstances of each case to fully inform the public. This may include posting notice on the Corporation's public notice bulletin board maintained in the lobby of its offices located at 550 17th Street, N.W., Washington, D.C. 20429, issuing a press release and employing other methods of notification that may be desirable in a particular situation.

§ 311.3 Meetings.

(a) *Open meetings.* Except as provided in paragraph (b) of this section, every portion of every meeting of the Corporation's Board will be open to public observation. Board members will not jointly conduct or dispose of Corporation business other than in accordance with this part.

(b) *When meetings may be closed and announcements and disclosures withheld.* Except where the Board finds that the public interest requires otherwise, a meeting or portion thereof may be closed, and announcements and disclosure pertaining thereto may be withheld when the Board determines that such meeting or portion of the meeting or the disclosure of such information is likely to—

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Corporation;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552): *Provided*, That such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) 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 (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Corporation or any other agency responsible for the supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to:

(i) (A) Lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

(ii) Significantly frustrate implementation of a proposed Corporation action, except that this subdivision (ii) shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the Corporation's issuance of a subpoena, or the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case of formal agency ajudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 311.4 Procedure for announcing meetings.

(a) *Scope.* Except to the extent that such announcements are exempt from disclosure under § 311.3(b), announcements relating to open meetings, and meetings closed under the regular closing procedures of § 311.5, will be made in the manner set forth in this section.

(b) *Time and content of announcement.* The Corporation will make public announcement at least seven days before the meeting of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the official designated by the Corporation to respond to requests for information about the meeting. This announcement will be made unless a majority of the Board determines by a recorded vote that Corporation business requires that a meeting be called on lesser notice. In such cases, the Corporation will make public announcement of the time, place, and subject matter of the meeting, and whether it is open or closed to the public, at the earliest practicable time, which may be later than the commencement of the meeting.

(c) *Changing time or place of meeting.* The time or place of a meeting may be

changed following the public announcement required by paragraph (b) of this section only if the Corporation publicly announces the change at the earliest practicable time, which may be later than the commencement of the meeting.

(d) *Changing subject matter or nature of meeting.* The subject matter of a meeting, or the determination to open or close a meeting or a portion of a meeting, may be changed following the public announcement only if:

(1) A majority of the entire Board determines by recorded vote that agency business so requires and that no earlier announcement of the change was possible; and,

(2) The Corporation publicly announces the change and the vote of each member upon such change at the earliest practicable time, which may be later than the commencement of the meeting.

(e) *Publication of announcements in Federal Register.* Immediately following each public announcement under this section, such announcement will be submitted for publication in the FEDERAL REGISTER by the Office of the Executive Secretary.

§ 311.5 Regular procedure for closing meetings.

(a) *Scope.* Unless § 311.6 is applicable, the procedures for closing meetings will be those set forth in this Section.

(b) *Procedure.* (1) A decision to close a meeting or portion of a meeting will be taken only when a majority of the entire Board votes to take such action. A separate vote of the Board will be taken with respect to each meeting which is proposed to be closed in whole or in part to the public. A single vote may be taken with respect to a series of meetings which are proposed to be closed in whole or in part to the public, or with respect to any information concerning such series of meetings, so long as each meeting in the series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in the series. The vote of each Board member will be recorded and no proxies will be allowed.

(2) Any individual whose interests may be directly affected may request that the Corporation close any portion of a meeting for any of the reasons referred to in subparagraphs (5), (6), or (7) of § 311.3(b). Requests should be directed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. After receiving notice that an individual desires a portion of a meeting to be closed, the Board, upon request of any one of its members, will vote by recorded vote whether to close the relevant portion of the meeting. This procedure will apply even if the individual's request is made subsequent to the announcement of a decision to hold an open meeting.

(3) The Corporation's General Counsel will make the public certification required by Section 367.

(4) Within one day after any vote taken pursuant to paragraphs (b)(1) or (2) of this section, the Corporation will make publicly available a written copy of the vote, reflecting the vote of each Board member. Except to the extent that such information is exempt from disclosure, if a meeting or portion of a meeting is to be closed to the public, the Corporation will make publicly available within one day after the required vote a full written explanation of its action, together with a list of all persons expected to attend the meeting and their affiliation.

(5) The Corporation will publicly announce the time, place, and subject matter of the meeting, with determinations as to open and closed portions, in the manner and within the time limits prescribed in Section 311.4.

§ 311.6 Expedited procedure for announcing and closing certain meetings.

(a) *Scope.* Since a majority of its meetings may properly be closed pursuant to paragraphs (4), (8), (9)(i), or (10) of § 311.3(b), subsection (d)(4) of the Government in the Sunshine Act (5 U.S.C. 552b) allows the Corporation to use expedited procedures in closing meetings under these four subparagraphs. Absent a compelling public interest to the contrary, meetings or portions of meetings that can be expected to be closed using these procedures include, but are not limited to: Administrative enforcement proceedings under Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818); appointment of the Corporation as receiver, liquidator or liquidating agent of a closed bank or a bank in danger of closing; and certain liquidation activities pursuant to such appointment; possible financial assistance by the Corporation under Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1623); changes pursuant to Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) in the rates of interest insured state nonmember banks may pay on deposits; certain bank applications including applications to establish or move branches, applications to merge, and applications for insurance; and investigatory activity under Section 10(c) of the Federal Deposit Insurance Act (12 U.S.C. 1820(c)). In announcing and closing meetings or portions of meetings under this section, the following procedures will be observed.

(b) *Announcement.* Except to the extent that such information is exempt from disclosure under the provisions of § 311.3(b) the Corporation will make public announcement of the time, place and subject matter of the meeting and of each portion thereof at the earliest practicable time. This announcement will be published in the FEDERAL REGISTER if publication can be effected at least one day prior to the scheduled date of the meeting.

(c) *Procedure for closing.* (1) The Corporation's General Counsel will make the public certification required by § 311.7.

(2) At the beginning of a meeting or portion of a meeting to be closed under this section, a recorded vote of the Board will be taken. The Board will determine by its vote whether to proceed with the closing. If a majority of the entire Board votes to close, the meeting will be closed to public observation. Even though a meeting or portion thereof could properly be closed under this section, a majority of the entire Board may find that the public interest requires an open session and vote to open the meeting. A copy of the vote, reflecting the vote of each Board member, will be made available to the public.

§ 311.7 General Counsel Certification.

For every meeting or portion thereof closed under § 311.5 or § 311.6, the Corporation's General Counsel will publicly certify that, in the opinion of such General Counsel, the meeting may be closed to the public and will state each relevant exemptive provision. In the absence of the General Counsel, the Deputy General Counsel may perform the certification. If the General Counsel and Deputy General Counsel are both absent, the Special Counsel to the General Counsel or an Assistant General Counsel may provide the required certification. A copy of this certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, will be retained in the Board's permanent files.

§ 311.8 Transcript, minutes of closed meetings.

(a) *When required.* The Corporation will maintain a complete transcript, identifying each speaker, 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 portions of a meeting closed to the public pursuant to paragraphs (8), (9)(i), or (10) of § 311.3(b), the Corporation may, in lieu of a transcript, maintain a set of minutes.

(b) *Content of minutes.* If minutes are maintained, they will fully and clearly describe all matters discussed and will provide a full and accurate summary of any actions taken, and the reasons for taking such action. Minutes will also include a description of each of the views expressed by each person in attendance on any item and the record of any roll call vote, reflecting the vote of each member. All documents considered in connection with any action will be identified in the minutes.

(c) *Available material.* The Corporation will maintain a complete verbatim copy of the transcript or minutes of each meeting or portion of a meeting closed to the public for a period of at least two years after the meeting, or until one year after the conclusion of any proceeding with respect to which the meeting or portion was held, whichever occurs later. The Corporation will make promptly available to the public the transcript, identifying each speaker, or minutes of items on the agenda or testimony of any witness received at the closed meeting except that in cases where the Privacy Act of 1974 (5 U.S.C. 552a) does not apply, the Corporation may withhold information exempt from disclosure under

§ 311.3(b). For the convenience of members of the public who may be unable to attend open meetings of the Board, the Corporation will maintain for at least two years a set of minues of each meeting of the Board or portion thereof open to public observation.

(d) *Procedures for inspecting or copying available material.* (1) An individual may inspect materials made available under this Section at the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, during normal business hours. If the individual desires a copy of such material, the Corporation will furnish copies at a cost of 10 cents per page. Whenever the Corporation determines that in the public interest a reduction or waiver is warranted, it may reduce or waive any fees imposed under this section.

(2) An individual may also submit a written request for transcripts or minutes, reasonably identifying the records sought, to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

[FR Doc.77-7738 Filed 3-11-77;3:24 p.m.]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

Interpretation Concerning Licensee's Assumption of Temporary Control in Order To Protect Its Investment

AGENCY: Small Business Administration.

ACTION: Interpretation of 13 CFR 107.-901(c) concerning assumption of temporary control by a Licensee in order to protect its investment in a portfolio Small Concern.

SUMMARY: Section 107.901 of the SBIC Regulation prohibits a Licensee from assuming control over a Small Concern, unless reasonably necessary for the protection of its investment, and subject to its filing a divestiture plan. Question has arisen as to whether this right, pursuant to § 107.901(c), may be exercised where Licensee's financing is necessary to rehabilitate a Small Concern threatened with insolvency or closure, or the Small Concern has been in existence for less than two years (so-called "start-up situations") or has made substantial changes in its type of operations or products during the preceding two years, and Licensee-supplied funds are the major source of its capital. The Agency interpretation set forth below makes it clear that a Licensee may assume temporary control in the foregoing situations, subject to the filing of a divestiture plan.

FOR FURTHER INFORMATION CONTACT:

Peter F. McNeish, Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416

SUPPLEMENTARY INFORMATION: This Notice is published in accordance with Section 3 of the Administrative Procedure Act (5 U.S.C. 552(a)(1), (D)) requiring Federal agencies to publish in the FEDERAL REGISTER for the guidance of the public "* * * interpretations of general applicability formulated and adopted by the Agency." As an interpretation of general applicability, it is exempted by 5 U.S.C. 553(b), (A) and 5 U.S.C. 553(d)(2) from the public participation-comment procedure and the 30-day postponed effective date requirements of 5 U.S.C. 553 (c) and (d), respectively.

INTERPRETATION

Temporary Control of Small Business Concern (Interpreting § 107.901(c)). Section 107.901(c) authorizes a Licensee to acquire temporary control of a small concern only where reasonably necessary for the protection of its investment. This authorization was originally incorporated into the SBIC regulation on October 16, 1964 (29 FR 14221, October 16, 1964). It listed general illustrative situations where temporary control was permitted; namely, where (1) the financing is necessary to rehabilitate a small concern threatened with failure; (2) a small concern has been in existence for less than 2 years or has made substantial changes in its type of operations or products during the preceding two years, and Licensee-supplied funds constitute the major source of its capital; or (3) assumption of control is otherwise reasonably necessary for the protection of Licensee's investment. This § 107.502(d) was carried over into Revision 3 (29 FR 16946, Thursday, December 10, 1964), and into Revision 4 (33 FR 326, at 332–333 Tuesday, January 9, 1968), and Revision 5 (38 FR 30836 Wednesday, November 7, 1973) as § 107.901(c), but with the illustrative subparagraphs deleted. The deletion was made to shorten the regulation since the situations described were necessarily included in and represented circumstances warranting temporary control to protect Licensee's investment. No substantive change was intended by deletion of the illustrative subparagraphs. Accordingly, §107.901(c) assures to each Licensee, the right of reasonable protection of its investment, by assumption of temporary control, where financing is necessary to rehabilitate a small concern threatened with insolvency or closure; or the small concern has been in existence for less than two years (so-called "start-up situations") or has made substantial changes in its type of operations or products during the preceding two years, and Licensee-supplied funds constitute the major source of its capital; or temporary control is otherwise reasonably necessary under the circumstances to protect its investment.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 9, 1977.

ROGER H. JONES,
Acting Administrator.

[FR Doc.77-7666 Filed 3-15-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Reg. PR-164, Amdt. 32]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEDURES

Amendment of Rule 39, Objections to Public Disclosure of Information

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., March 11, 1977.

AGENCY: Civil Aeronautics Board.

ACTION: Final Rule.

SUMMARY: On March 12, 1977, the Government in the Sunshine Act (Pub. L. 94-409) amends the third exemption of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(3)), which deals with material exempted by statute. Section 1104 of the Federal Aviation Act (49 U.S.C. 1504) will no longer be a statute within the new third exemption. Board orders issued under section 1104 will not prevent disclosure of information in response to an FOIA request unless the material sought to be protected falls within one or more of the other FOIA exemptions. This final rule amends the Board's rules of practice (Rule 39, 14 CFR 302.39) to instruct persons requesting the Board to withhold material from public disclosure to specifically discuss the FOIA and refer to its exemptions. In this way, the Board will be able to base its section 1104 orders on the other FOIA exemptions.

EFFECTIVE DATE: March 11, 1977.

FOR FURTHER INFORMATION CONTACT:

Jerome Nelson or Carol Light: (202) 673-5233.

SUPPLEMENTARY INFORMATION:

This amendment relates to the rules of Board practice and procedure and informs the public of the effect on Board practice and procedure of a change in statutory law. We therefore find that notice and public comment are unnecessary and the rule may become effective on less than thirty days' notice.

Accordingly, 14 CFR Part 302 is amended as follows:

By revising § 302.39(d)(2) to read as follows:

§ 302.39 Objections to public disclosure of information.

* * * * *

(d) * * *

(2) The motion shall include: (i) a description of the information sought to be withheld, sufficient for identification of the same; (ii) a statement explaining how and why the information falls within the exemptions from the Freedom of Information Act (5 U.S.C. 552(b)(1)–(9); and (iii) and a statement explaining how and why public disclosure of the information would adversely affect the interests of the objecting person(s) and is not required in the interests of the public.

* * * * *

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743, (49 U.S.C. 1324); sec. 5, Government in the Sunshine Act, Pub. L. 94-409, 90 Stat. 1247)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-7770 Filed 3-15-77;8:45 am]

[Reg. PR-163, Enactment of Part 310b, Docket 30338]

PART 310b—PUBLIC ACCESS TO BOARD MEETINGS

Implementation of Sunshine Act

Effective: March 11, 1977.

Adopted: March 11, 1977.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., March 11, 1977.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule implements the open meeting provisions of the Government in the Sunshine Act (Pub. L. 94-409) at the Civil Aeronautics Board. The Sunshine Act takes effect March 12, 1977 and requires that the Civil Aeronautics Board and other agencies subject to it promulgate regulations dealing with, among other things, announcing meetings, the circumstances and requirements for meetings closed to public observation, and the making of transcripts or detailed minutes of closed meetings.

EFFECTIVE DATE: March 11, 1977.

FOR FURTHER INFORMATION CONTACT:

Jerome Nelson or Carol Light, (202) 673-5233.

SUPPLEMENTARY INFORMATION:

On January 14, 1977 the Civil Aeronautics Board issued for public comment its proposed rules implementing the open meeting provisions of Government in the Sunshine Act, Part 310b of the Board's Procedural Regulations (14 CFR Part 310b).[1] Comments were received from the Administrative Conference of the United States, the National Air Carrier Association (NACA), and Representative Richardson Preyer.

As a result of the comments and further Board consideration, we have determined to adopt the rule substantially as proposed but with some modifications. The provisions of the final rule are discussed below.

I. General Issues Regarding Open Meetings.

Section 310b.3 of the proposed rules stated that:

> It is the policy of the Board that its meetings are open to public observation unless the Board determines that: (1) A matter to be discussed at a meeting is likely to fall within one or more of the ten exemptions set out at § 310b.5; and (2) that there are sufficient reasons to close the discussion of the matter.

In its comment, NACA urged that all Board discussions of "objectives to be sought, strategy to be employed, proposals to be made, and policies to be followed in international air transportation negotiations" be closed to public observation. In support of this request, it states that these discussions would fall under Exemptions 4 and 9(B) (trade secrets and frustration of agency action) and should not be subject to the same ad hoc approach the Board would apply to other categories.

We do not accept NACA's suggestion for a predetermined policy automatically closing all such meetings. It is true that many Board discussions of international air transportation negotiations would probably fall under Exemptions 4 and 9(B) and that there would be sufficient reason to close many such meetings. Yet we cannot find in the abstract that all such discussions must be closed. The Sunshine Act requires, without exception, a vote of the Members on each item to be closed. This contemplates individualized consideration of items. In our view, meetings on international negotiations, like other meetings, will be approached on a case-by-case basis.

In addition to comment on the provisions and procedures of the proposed rule, the Board also invited comment on three general issues.

The first of these involved the relationship between a policy of open meetings, the command of section 801 of the Federal Aviation Act (49 U.S.C. 1461), and Executive Order 11920. Section 801 requires that certain Board decisions regarding overseas and foreign air transportation be submitted to the President for approval and prohibits the publication of the decision prior to its submission to the President. Under the Executive Order, the President has a brief period of time within which to classify all or part of these Board decisions in the interests of national security or foreign policy under the standards of Executive Order 11652. Arguably open meetings might hold the potential for breach of confidentiality as envisioned by Section 801 and the Executive Order. No one commented on this issue. Unless the Executive Branch submits views to the contrary, the Board has decided to treat 801 matters as proposed in the NPRM: there is a presumption of openness; decisions to close will be made on an ad hoc basis, and the Board will not close an 801 matter simply because it is an 801 matter.

The Board also requested comment on any perceived advantages and disadvantages in open discussions of enforcement matters. None were received. The Board will treat enforcement cases as it will other cases: there is a general presumption of openness but each discussion will be judged on an individual basis.

Finally, the Board requested comment on the potential effects of open meetings upon person's investment decisions. Representative Preyer stated his approval of the Board's statement that ". . . persons who choose to act on the basis of the content of discussion at open Board meetings do so entirely at their own risk" and added that in his view no further protection of individuals was necessary or appropriate. No one else commented. We agree that no addition to the proposed rule in this respect is necessary.

II. Exemptions From the Open Meeting Requirements in the Board's Rules

In its proposed rules, the Board set forth as its § 310b.5 the language of the statute concerning exemptions from the open meeting requirements (5. U.S.C. 552b(c)).

Representative Preyer states that Exemption 9(A),[2] is not available to the Board. He argues that it should be deleted from the regulations because the Board is not an agency which regulates currencies, securities, commodities, or financial institutions. We agree that the Board is not such an agency but cannot rule out the possibility that the Board might at some future time wish to discuss reports or information from such an agency at a meeting. It seems logical that the exemption relates to the source and type of information, not the location of the meeting. For example, discussions of Comptroller of the Currency reports concerning financial institutions seem to us to be within the exemption whether the discussion takes place at the Federal Reserve Board or the Civil Aeronautics Board.

III. Meetings and Procedures Under the Board's Rules

In its proposed rules, the Board indicated that Meeting Announcements would be posted on the Board's Public Notice Board, Room 714, 1825 Connecticut Avenue, NW., would be available in the Board's Office of Public Affairs and transmitted to the Federal Register for publication (§ 310b.4).

The final rules adopted below have two changes from the proposed rules. The first is that in addition to posting on the Public Notice Board and availability in the Office of Public Affairs, the announcements will be placed in the Docket file, if any, and mailed to those on the service list in the Docket. The service list is made up of all those formally participating in the proceeding who have indicated their willingness to serve copies of their submissions upon others on the list and who will be served by the other parties. Representative Preyer, in his comments, suggested other forms of publicity such as submission to publications whose readers may have an interest in the Civil Aeronautics Board, and the creation of special Meeting Announcement mailing lists. The availability of the Announcements in the Office of Public Affairs is intended to make it convenient for any media person interested in the Board to be informed of Meeting Announcements. Given the expense of mailing every Announcement to every person on the

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[1] 42 F.R. 2995.

[2] U.S.C. 552b(c)(9)(A), § 310b.5(1)(1).

Board's several mailing lists and what may be the limited utility of Announcement mailing lists, the Board will for the present rely on the forms of notice already described.

The proposed rules stated that the entire Meeting Announcement would be transmitted to the FEDERAL REGISTER for publication. The Sunshine Act, however, requires only that notice be sent to the FEDERAL REGISTER of the time, place, subject matter, whether the meeting is open or closed, changes in these items, and the name and phone number of the agency contact person (5 U.S.C. 552b (e)(3)). As stated in the rules, some of the Board's Announcements may also contain votes of Members, explanations of closings, lists of persons attending closed meetings and the Certifications of the General Counsel. In order to accommodate any FEDERAL REGISTER effort to standardize publication formats, the Board's rules state that Meeting Announcements and Announcement Amendments will be transmitted for publication of at least the time, place, subject matter, whether the meeting is open or closed, changes in these items, and the name and phone number of the Board's contact person. This will permit the Board's Announcements to be published in a standard FEDERAL REGISTER format should one be available. The Announcements posted at the Board, available in the Office of Public Affairs, in Dockets, and served on the parties will, of course, contain all the information required by the Board's rules.

The Board received two comments regarding § 310b.7, the certification by the General Counsel that a meeting may be closed. Representative Prever suggests that the regulations make it clear that a certification should occur before the meeting is closed. We agree and have modified our rule to make it clear that the General Counsel shall have an opportunity to certify before the meeting is actually closed. The Administrative Conference suggested that the designation in § 310b.7(c) of an Acting General Counsel should not be limited to Sunshine Act purposes since the intent of the Act was to have the senior legal officer responsible for the certification. We agree and the language of the regulation has been modified to make this explicit. We have also altered the rule to provide that the Secretary maintain the record copy of the certification rather than making it a part of the official Minutes, which are exclusively the record of Board action.

The section on requests to open or close announced Board meetings (§ 310b.8) has been extensively rewritten in the interests of clarity. The Administrative Conference did comment that the required number of copies (nine) seemed excessive, even though their distribution was spelled out in the rule. For the statutorily mandated requests to close meetings, the final rules request multiple copies but state that a single copy will be accepted. Requests to open meetings are not required by the statute. We believe that it is reasonable to ask persons taking advantage of this procedure to provide sufficient copies of their requests so as to minimize staff disruptions and burdens. Additionally, we have determined that ten copies, not nine are needed to provide each relevant Board component with a copy and have modified the rule to so state.

Although the issue was not raised by those commenting on the proposed rule, the Board's staff has received some inquiries on the question of tape recording and photography at open Board meetings. The final rules are an appropriate forum to address and resolve what might be a common question.

The Board's primary concern in this area as stated at § 310b.9(a) is the unimpeded exercise of the public's right to observe and the Board's right to conduct its business in an orderly manner during open meetings. In the Board's view, the necessary activity involved in the use of cameras (still, motion picture, videotape, television, etc.) would be, by its nature, disruptive to those observing the Board meeting and distracting to the Members and staff discussing Board business. We have therefore determined to bar all use of any cameras during open Board meetings. Tape recording, on the other hand, requires a lesser degree of operator activity. For example, if done unobtrusively by members of the public seated in the public seating section, tape recording would probably not be disruptive or distracting to the Board or its staff. Handheld "pocket" recorders could conceivably be operated without undue interference to other persons seated in the area. As a general guideline, we believe it to be in the public interest to permit the operation of tape recorders only in the public seating area so long as the activity is not disruptive to the Board or to other persons seated in that area and our final rules so state. In the last analysis, of course, particular situations may be examined by the Chairman or presiding Member in the factual context of a particular meeting.

The Board has also decided on several changes in its rules regarding transcripts of discussions at closed Board meetings, § 310b.10. The first is to provide that the Board, at its discretion, may use detailed minutes for discussions closed pursuant to Exemptions 8, 9A, and 10 (5 U.S.C. 552b(c)(8), (9A), and (10), § 310b.5(h), (i)(1), and (j)). The Sunshine Act provides this option (5 U.S.C. 552b(f)(1)) and, although we anticipate the use of complete transcripts for most meetings, it is possible that, in some circumstances, we will elect to use detailed minutes rather than complete transcripts for meetings closed pursuant to Exemptions 8, 9A, and 10.

The second is an editorial amendment to reflect the delegation of authority made to the General Counsel in OR-111, issued contemporaneously herewith. That delegation authorizes the General Counsel to review the transcripts and minutes of closed Board sessions so that portions of these documents which do not contain information exempt from disclosure pursuant to 5 U.S.C. 552b(c) and § 310b.5 can be made available to the public.

The third change in our final rules is the deletion of the mechanism for requests for additional portions of closed meeting transcripts. The proposed and final rules provide that nonexempt portions of transcripts will ordinarily be available within twenty working days of the meeting. The proposed rules provided that requests for additional portions could be sent to the Secretary within seven working days of the transcript's availability and a reply would be made by the Secretary within an additional seven working days. As desirable as such a procedure appears to the Board, further analysis shows that it presents serious practical problems because the proposed procedure would consume almost the entire sixty day time period for seeking judicial review.

The final rule provides that persons requesting portions of closed meeting transcripts or detailed minutes in addition to those already available in the Public Reference Room and other Board documents may do so using the preexisting procedures of the Freedom of Information Act (FOIA) as set out in Part 310 of our regulations. In this connection, it should be noted that FOIA requests for transcripts are decided on the basis of the Sunshine exemptions rather than the FOIA exemptions. (5 U.S.C. 552b(k).)

As the Board gains experience under the Sunshine Act and as the courts provide interpretations and guidelines, the Board might reexamine this area and propose other mechanisms for making nonexempt portions of transcripts and minutes available to the public.

Finally, we have added a statement in the final rule that the transcripts and detailed minutes do not constitute the official record of Board action. The transcripts and detailed minutes will be kept for Sunshine Act purposes. The official record of the Board continues to be the Minutes of the Civil Aeronautics Board maintained by the Office of the Secretary.

Since the Government in the Sunshine Act, which requires these regulations, becomes effective on March 12, 1977, and there has been a full opportunity for public comment on the proposed regulations, the Board finds that this Part may become effective on less than thirty days' notice.

Accordingly, the Board hereby adopts a new Part 310b of its Procedural Regulations (14 CFR Part 310b), to read as follows:

Sec.

Sec.

AUTHORITY: Sec. 204(a), Federal Aviation Act of 1958, as amended, Stat. 743, 49 U.S.C. 1324; 5 U.S.C. 552(g), 90 Stat. 1244.

§ 310b.1 Purpose and scope.

(a) The purpose of this regulation is to implement the open meeting provisions of the Government in the Sunshine Act, Pub. L. 94-409, 90 Stat. 1241 et seq., codified at 5 U.S.C. 552b. 5 U.S.C. 552b(g) requires the publication of these regulations implementing the requirements of 5 US.C. 552b(b) through (f).

(b) This regulation covers all meetings, as defined in § 310b.2, of a majority of the membership of the Board. The Civil Aeronautics Board has no subdivisions authorized to act on behalf of the agency within the meaning of 5 U.S.C. 552b(a)(1).

§ 310b.2 Definitions.

"Board" means the Civil Aeronautics Board.

"Meeting" means the deliberations of at least the majority of the membership where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations regarding a decision to open or close a meeting, to withhold information about a meeting, or regarding meeting agendas (e.g. time, place, subject).

"Member" means a Member of the Civil Aeronautics Board appointed by the President with the advice and consent of the Senate.

§ 310b.3 Open meetings policy.

It is the policy of the Board that its meetings are open to public observation unless the Board determines that: (1) A matter to be discussed at a meeting is likely to fall within one or more of the ten exemptions set out at § 310b.5; and (2) that there are sufficient reasons to close the discussion of the matter.

§ 310b.4 Meeting announcements.

(a) For all Board meetings, a meeting announcement shall be issued setting forth: (1) The time, place, matters to be discussed; (2) whether the discussion of each matter is to be open or closed to public observation; and (3) the name and phone number of the Board official who will respond to requests for information about the meeting.

(b) If the meeting is closed to public observation in whole or in part, the meeting announcement shall also include a copy of the Certification of the General Counsel, as set forth in § 310b.7. In addition, it shall include the recorded votes of the Members on the question of closing the meeting, and the explanation of the closing along with a list of persons expected to attend unless such information has already been made public pursuant to § 310b.6.

(c) If information about a closed meeting is itself within one or more of the exemptions set out at § 310b.5 and the Board determines to withhold such information from a meeting announcement, such announcement shall contain the recorded votes of the Members on the question of withholding information unless such vote has already been made public pursuant to § 310b.6.

(d) Each meeting announcement shall be issued at least seven calendar days before the meeting unless a majority of the members determines by recorded vote that agency business requires a meeting on less than seven days notice. If they have so voted, the meeting announcement shall issue at the earliest practicable time and shall include in addition to any information required by paragraphs (a), (b), and (c) of this section the recorded vote of the Members that agency business has required the shorter notice period.

(e) Each Meeting Announcement shall be: (1) Posted on the Board's Public Notice Board in Room 714, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (2) available in the Board's Office of Public Affairs; (3) placed in the Docket file, if any, and mailed to all persons on the service list of any Docket to be discussed at the meeting; and (4) transmitted to the FEDERAL REGISTER for publication of at least the time, place, subject matter, whether the meeting is open or closed, changes in these items, and the name and phone number of the person to contact for further information.

(f)(1) An amended Meeting Announcement shall be issued for any change in a meeting announcement.

(2) Changes in the time or place of a meeting do not require a recorded vote of the Members and may be made by issuing an amended Meeting Announcement.

(3) Changes in a prior meeting announcement regarding the subject matter, whether the meeting is open or closed in whole or in part to public observation, and decisions to withhold information about the meeting require the recorded vote of the majority of the membership as set forth in § 310b.6. Amended meeting announcements regarding these changes shall contain a copy of the recorded vote of the Members on the change unless such vote has already been made public pursuant to § 310b.6. If there has been a change from a decision to open the meeting to public observation, the explanation required by § 310b.6(e) shall also be included in the amended Meeting Announcement unless it has already been made public pursuant to § 310b.6.

(4) Amended meeting announcements shall be issued at the earliest practicable time and shall be made public in the same manner as the original meeting announcement as set forth in paragraph (e) of this section.

§ 310b.5 Matters which may be closed to the public.

Pursuant to the procedures set forth in § 310b.6, the Board may determine that discussion of a matter may be closed to public observation or that information about a matter to be discussed at a meeting may be withheld from public disclosure if such observation or disclosure 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 an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would—

(1) In the case of an 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 subparagraph (2) 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 agency action on such proposal; or

(j) Specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the 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.

§ 310b.6 Procedures for closing discussion or withholding information.

(a) Discussions of a matter shall not be closed to the public and information about a meeting shall not be withheld from the public meeting announcement except by a recorded vote of a majority of the membership with respect to each such matter or item of information. For this purpose, such votes shall be by the Members themselves without use of proxies.

(b) Each matter the discussion of which is to be closed to public observation and each piece of information that is to be withheld from the public meeting announcement shall be the subject of a separate vote unless the matter or information is expected to involve a series of meetings. In such case, the Board may vote to close the discussion or withhold the information about the same particular matter for a period of thirty days from the date of the initial discussion in the series.

(c) By the close of business on the working day following a vote to close or withhold, the Secretary of the Board shall have posted on the Board's Public Notice Board in Room 714, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 a copy of such vote, showing the vote of each Member on the question; a full written explanation of any closing as set forth in paragraph (d) of this section; and a list of all persons and their affiliation expected to attend the meeting.

(d) For each matter the discussion of which is to be closed to public observation, a full written explanation shall be issued. Such explanation shall contain refernce to the specific exemptions listed in § 310b.5 which the Board in invoking and shall set forth why the discussion is to be closed.

§ 310b.7 Certification by the General Counsel.

(a) For each matter the discussion of which the Board decides to close to the public, the General Counsel shall have the opportunity before the discussion to certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision.

(b) A copy of any such certification shall be included in the Meeting Announcement for the meeting in question and it shall be part of the Board's records for that proceeding.

(c) In the event the General Counsel position is vacant or the incumbent is unavailable or disqualified, the power to make such certification shall be exercisable by the Deputy General Counsel or the next-ranking attorney in the Office of General Counsel who is available and is not disqualified. Such person shall be deemed by the Board to be the Acting General Counsel.

(d) A copy of such certification shall be maintained in the Office of the Secretary.

§ 310b.8 Requests to open or close Board meetings.

(a)(1) Any person may request in writing that the Board open to public observation discussion of a matter which it has earlier decided to close.

(2) Such requests shall be captioned "Request to Open _____ (date) Board meeting on item _____ (number or description)." The request shall state the reason(s) therefor, the name and address of the person making the request and, if desired, a telephone number.

(3) Ten copies of such requests must be received by the Office of the Secretary no later than three working days after the issuance of the Meeting Announcement to which the request pertains. Requests received after that time will be returned to the requester with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the Public Reference Room twenty working days after the meeting.

(b)(1) Any person whose interests may be directly affected may request in writing that the Board close to public observation discussion of a matter which it has earlier decided to open for any of the reasons referred to in § 310.5 (e), (f), or (g).

(2) Such requests shall be captioned "Request to Close: _____(date) Board meeting on item _____ (number or description)", shall state the reason(s) therefor, the name and address of the person making the request and, if desired, a telephone number.

(3) It is requested that ten copies of such requests be filed with the Office of the Secretary as soon as possible after the issuance of the Meeting Announcement to which the request pertains. A single copy of the request will be accepted. Requests to close meetings must be received by the Office of the Secretary no later than the time scheduled for the meeting to which such request pertains.

(c) The Secretary shall retain one copy of timely requests and forward one copy to each Member, one copy to the General Counsel, one copy to the interested Bureau or Office, and two copies to the Docket Section, one for entry in the appropriate docket file, if any, and one to be posted on the Public Notice Board located in that section as an attachment to the Meeting Announcement to which it pertains.

(d) Responsive pleadings to requests to open or close shall not be accepted.

(e) Any Member may require that the Board vote upon the request to open or close. If the request is supported by the votes of a majority of the agency membership, an amended meeting announcement shall be issued and the Secretary shall immediately notify the requester and, before the close of business the next working day, have posted such vote and any other material required by §§ 310b.4, 310b.6, or 310b.7 on the Board's Public Notice Board.

(f) If no Board Member requests that a vote be taken on a request to open or close a Board meeting, the Secretary shall by the close of the next working day after the meeting to which such request pertains certify that no vote was taken. The Secretary shall forward one copy of that certification to the requester and two copies of that certification to the Docket Section, one to be placed in the appropriate Docket file, if any, and one to be posted on the Public Notice Board, where it will be displayed for one week.

§ 310b.9 Conduct of open Board meetings.

(a) The Chairman or presiding Member at each Board meeting has the authority and the responsibility to insure that the meetings are conducted in an orderly fashion so as to preserve the public's right to observe and the Board's right to conduct its business.

(b) Cameras shall not be used during open Board meetings. Tape recorders may be used by any member of the public only in the areas set aside for public seating if such use is not disruptive to the public's right to observe or the Board's right to meet.

(c) The right of the public to observe open discussions at Board meetings shall not include a right to participate at the meeting, or the right to file motions, pleadings, or other documents based on the comments of Board Members or staff at open discussions. The open meeting procedure is not an appropriate vehicle for persons to supplement records in matters before the Board. Such motions, pleadings or documents shall not be accepted by the Board.

(d) Deliberations, discussions, comments, or observations made during the course of open discussions at Board meetings do not themselves constitute action of the Board. In addition, comments made by a Member may be advanced for purposes of discussion and arguments and may not reflect the ultimate position of that Member. For this reason, persons who choose to act on the basis of the content of discussions at open Board meetings do so entirely at their own risk.

§ 310b.10 Transcripts of discussions at closed Board meetings.

(a) All Board meetings closed to public observation in whole or in part shall

be the subject of either a complete transcript indicating the identity of each speaker or, at the Board's discretion in the case of discussions closed to public observation pursuant to § 310b.5(h), (i) (1), or (j), detailed minutes. Such detailed minutes shall fully and clearly describe all matters discussed, identify documents considered in connection with any agency action, 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 items and the record of any roll call vote (reflecting the vote of each Member on the question).

(b) Transcripts and detailed minutes shall be retained in the custody of the Board's Secretary for two years after the meeting or one year after conclusion of the Board proceeding with respect to which the discussion was held, whichever occurs later. Along with the transcript or detailed minutes, the Secretary shall also maintain a copy of the General Counsel certification (as set forth in § 310b.7) and a statement of the Chairman or presiding Member setting forth the time and place of the meeting at which the discussion occurred and a list of persons present.

(c) Portions of each transcript or detailed minutes determined by the General Counsel to contain material not exempt from disclosure pursuant to § 310b.5 shall be made available to the public in the Public Reference Room, Room 710, 1825 Connecticut Avenue, N.W., Washington, D.C., 20428. Such nonexempt portions of transcripts or detailed minutes will ordinarily be available within 20 working days of the meeting.

(d) Copies of the publicly available nonexempt portions of transcripts, for 15 cents per page, can be made at the Public Reference Room or ordered from the Public Reference Room.

(e) The transcripts and detailed minutes prescribed by this section do not constitute the official record of Board action. The official record of the Board continues to be the Minutes of the Civil Aeronautics Board maintained by the Office of the Secretary.

§ 310b.11 Requests for material other than publicly available portions of transcripts or detailed minutes.

Requests for portions of transcripts or detailed minutes not publicly available in the Public Reference Room and for all other Board documents are governed by Part 310 of this title.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-7781 Filed 3-15-77;8:45 am]

SUBCHAPTER E—ORGANIZATION REGULATIONS

[Regulation OR-111, Amendment No. 57]

PART 385—DELEGATIONS AND REVIEW OF ACTION UNDER DELEGATION; NONHEARING MATTERS

Delegation of Authority to the General Counsel to Review and Release Nonexempt Portions of Transcript and Detailed Minutes Made of Board Meetings Closed to Public Observation

Effective: March 11, 1977.

Adopted: March 11, 1977.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., March 11, 1977.

AGENCY: Civil Aeronautics Board.

ACTION: Final Rule.

SUMMARY: On March 12, 1977 the Government in the Sunshine Act (Pub. L. 94-409) takes effect. By PR-163 issued contemporaneously herewith, the Board has adopted regulations implementing the open meetings provisions of that Act. (14 CFR Part 310b) section 310b.10 of the regulations provides that nonexempt portions of closed meeting transcripts and detailed minutes will be made available to the public. This rule delegates to the General Counsel of the Civil Aeronautics Board the authority of the agency to make the review of the transcripts and minutes and to release those portions which are not exempt under the standards of the Government in the Sunshine Act exemptions at 5 U.S.C. 552b(c) and the Board's identical standards at 14 CFR 310b.5.

EFFECTIVE DATE: March 11, 1977

FOR FURTHER INFORMATION CONTACT:

Jerome Nelson or Carol Light: (202) 673-5233.

SUPPLEMENTARY INFORMATION:

This amendment is a rule of agency organization and procedure and is necessary to implement a statute and regulation which take effect by March 12, 1977. We therefore find that notice and public comment are unnecessary and the rule may become effective on less than thirty days' notice.

Accordingly, 14 CFR Part 385 is amended as follows:

By adding a new paragraph (g) to § 385.19 to read as follows:

§ 385.19 Delegation to the General Counsel.

* * * * *

(g) Review transcripts and detailed minutes of closed meetings taken pursuant to 14 CFR § 310b.10 and to release to the public such portions of these transcripts and detailed minutes not found by him to be exempt from release pursuant to the standards set out at 5 U.S.C. 552b(c) and 14 CFR § 310b.5.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-7774 Filed 3-15-75;8:45 am]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

PART 1012—MEETINGS: ADVANCE PUBLIC NOTICE, PUBLIC ATTENDANCE, AND RECORDKEEPING

Amendment of Regulation To Implement the Government in the Sunshine Act

AGENCY: Consumer Product Safety Commission.

ACTION: Final regulation.

SUMMARY: This regulation amends the Commission's existing meetings policy (16 CFR 1012) to implement the open meeting provisions of the Government in the Sunshine Act. The regulation sets forth procedures for making a determination to open or close a meeting of the Commissioners, the provisions for public announcement of such meetings, and the provisions regarding recordkeeping for such meetings, as required by the Government in the Sunshine Act. The regulation continues in effect the existing provisions regarding advance public notice, public attendance, and recordkeeping for meetings other than meetings of the Commissioners which are not covered by the Government in the Sunshine Act, including meetings between individual Commissioners or Agency staff members and outside parties, hearings, staff meetings, and advisory committee meetings.

EFFECTIVE DATE: March 12, 1977.

FOR FURTHER INFORMATION CONTACT:

David Melnick, General Law Division, Office of the General Counsel, Consumer Product Safety Commission, 1111-18th Street, N.W., Washington, D.C. 20207 (202-634-7770).

SUPPLEMENTARY INFORMATION: On January 27, 1977, the Consumer Product Safety Commission published proposed and interim regulations (42 FR 5079) to implement the open meeting provisions of the "Government in the Sunshine Act". The Commission solicited public comment on those regulations and two comments were received, one from Rep. Richardson Preyer, Chairman of the Subcommittee on Gov-

ernment Information and Individual Rights of the Committee on Government Operations, House of Representatives and one from the National Electrical Manufacturers Association, Washington, D.C.

The issues raised in the comments and the Commission's conclusions thereon are as follows:

1. Chairman Preyer of the House Subcommittee on Government Information and Individual Rights pointed out that the determination to close a meeting of the Commission consists of two distinct steps: first, a determination whether the discussion comes within one of the specific exemptions; and second, if the discussion is determined to be exempt, whether the public interest nevertheless requires that the meeting be open. Chairman Preyer believes that 1012.4 (c) and (d), as proposed, were unclear on this point and suggested that the provisions be amended.

The Commission recognizes that the public interest must always be considered in determining whether to close a meeting and provided in § 1012.4(c) that notwithstanding the applicability of an exemption, a meeting could be open. However, in order to clarify the factors that must be considered in a determination to close a meeting, the Commission has amended § 1012.4(c) to explicitly provide that consideration of the public interest is a necessary step in determining whether to close a meeting, regardless of the applicability of an exemption.

2. Chairman Preyer also suggested that the § 1012.4(e)(3) as proposed be amended to make it clear that the General Counsel's certification must be made before the closed meeting is held.

The Commission, in requiring the General Counsel's certification to be issued within one day of a vote to close a meeting, as provided by proposed § 1012.4(e)(3) intended to make it clear that the certification would normally be made public approximately one week before the meeting. However, since the Commission recognizes that Agency business may in some instances require that the vote to close a meeting take place on the same day as the meeting, § 1012.4(e)(3)(iv) (redesignated § 1012.4(e)(4)(iv) in this document) has been amended to provide that the General Counsel's certification must in all cases be made available to the public before the meeting is convened. In addition, a new subparagraph (3) has been added to § 1012.4(e) to make it clear that the General Counsel's certification is a prerequisite to closing a meeting. Further, § 1012.4(e)(4) (renumbered § 1012.4(e)(5) in this document) regarding delay of the statement explaining the closing of a meeting, has been amended to clarify that the General Counsel's certification may not be delayed.

3. The National Electrical Manufacturers Association (NEMA) submitted a comment which disagreed with the Commission's preamble statement that "mere discussion of information at a public meeting would not, in the Commission's view, constitute a 'public disclosure' which would invoke the notice or retraction requirements of section 6(b)(1)" of the Consumer Product Safety Act. NEMA stated that once the Commission places an item on the agenda of a Commission meeting, it has affirmatively selected the meeting as the means to disclose the item to the public.

The Commission recognizes that discussion of an agenda item in a open Commission meeting is a public disclosure of the subject matter; however, a discussion at a Commission meeting is not the type of public disclosure which is the concern of section 6(b)(1). As stated in the preamble to the proposed regulations, the Commission has interpreted the term "public disclosure," as used in section 6(b)(1), to mean the affirmative and widespread dissemination of information, e.g., a press release which would receive widespread newspaper and television coverage. It is unlikely that Commission meetings will ordinarily receive this kind of attention. Further, section 6(b)(1) requires that an interested manufacturer or private labeler be given a 30-day opportunity to comment on a summary of the proposed "affirmative" disclosure prior to its release. It is obvious that a discussion cannot be summarized before it takes place, therefore the notice and comment provisions of section 6(b)(1) are impossible to apply.

Although the provisions of section 6(b)(1) do not apply to discussions in Commission meetings, the Commission will consider a request for correction or retraction if such discussion includes adverse statements about the safety of a product that are inaccurate or misrepresent the facts, and such statements are subsequently given widespread coverage in the media.

NEMA also commented that section 6(b)(1) should be applicable to Commission discussions since the public to whom disclosure is made may include competitors of the manufacturers whose business or products are the subject of the discussion. The comment suggests that a public discussion of a manufacturer's product may cause competitive harm to the manufacturer in some manner. The Sunshine Act recognizes this interest of manufacturers and others in protecting trade secrets and other privileged commercial or financial information and provides for the closing of meetings to protect this interest. (See § 1012.4(d)(4) of these regulations.) Section 6(b)(1) on the other hand, is intended to insure that information proposed to be disseminated—and which is otherwise releasable—is fair, accurate, and reasonably related to effectuating the purposes of the Consumer Product Safety Act. It is not intended to protect the interest of manufacturers vis-a-vis their competitors. As indicated above, there are other provisions which adequately protect this interest.

Having considered the comments received and other relevant material, the Commission concludes that the regulations shall be amended as set forth below.

Accordingly pursuant to the provisions of the Government in the Sunshine Act requiring agencies to promulgate implementing regulations, Part 1912 of Title 16, Chapter II, Subchapter A of the Code of Federal Regulations is amended to read as follows:

Sec.

AUTHORITY: 5 U.S.C. 552b(g); Pub. L. 92-573, 86 Stat. 1207 (15 U.S.C. 2051-81); Pub. L. 90-189, 81 Stat. 568 (15 U.S.C. 1191-1204); Pub. L. 86-613, 74 Stat. 372, as amended by Pub. L. 89-756, 80 Stat. 1303, and Pub. L. 91-113, 83 Stat. 187 (15 U.S.C. 1261-74); Pub. L. 91-601, 84 Stat. 1670 (15 U.S.C. 1471-76) and the Act of Aug. 7, 1956, 70 Stat. 953 (15 U.S.C. 1211-14).

§ 1012.1 General policy considerations.

(a) In enacting the Government in the Sunshine Act (Pub. L. 94-409, 5 U.S.C. 552b), the Congress stated the policy that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. The purpose of the Government in the Sunshine Act is to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities. Accordingly, when the Commissioners of the Consumer Product Safety Commission hold meetings for the purpose of jointly conducting or disposing of Commission business, the meetings shall be held in accordance with the provisions of the Government in the Sunshine Act.

(b)(1) In order for the Consumer Product Safety Commission to properly carry out its mandate to protect the public from unreasonable risks of injury associated with consumer products, the Commission has determined that it must involve the public to the fullest possible extent in its activities.

(2) To guarantee public confidence in the integrity of Commission decisionmaking, the Agency will, to the fullest possible extent, conduct its business in an open manner which is free from any actual or apparent impropriety.

(3) To achieve the goals set forth in paragraphs (b)(1) and (2), the Commission believes that, wherever practicable, it should notify the public in advance of all Agency meetings involving matters of substantial interest held or attended by its personnel and permit the public to attend such meetings. Furthermore, to ensure the widest possible exposure of the details of such meetings, the Agency will keep records of them which are freely available for inspection by the public.

§ 1012.2 Definitions.

As used in this Part 1012, the following terms shall have the meanings set forth:

(a) *Agency.* The entire organization which bears the title Consumer Product Safety Commission (CPSC).

(b) *Agency staff.* Employees of the Agency other than the five Commissioners.

(c) *Commissioner.* An individual who belongs to the collegial body heading the CPSC.

(d) *Commission.* The Commissioners of the Consumer Product Safety Commission acting in an official capacity.

(e) *Majority of the Commission.* Three or more of the Commissioners.

(f) *Commission meeting.* The joint deliberations of at least a majority of the Commission where such deliberations determine or result in the joint conduct or disposition of official Agency business. This term does not include meetings required or permitted by § 1012.4(e)(1) (to determine whether a meeting will be open or closed), meetings required or permitted by § 1012.4(b)(2) (to change the subject matter of a meeting or the determination to open or close a meeting after the public announcement) or meetings required or permitted by § 1012.4(a)(2) (to dispense with the one week advance notice of a meeting).

(g) *Agency meeting.* Any face-to-face encounter, other than a Commission meeting as defined in paragraph (f) of this section, in which one or more employees, including Commissioners, discuss any subject relating to the Agency or any subject under its jurisdiction.

(h) *Outside party.* Any person not an employee, not under contract to do work for the Agency, or not acting in an official capacity as a consultant to the Consumer Product Safety Commission, such as advisory committee members or offeror personnel. Examples of persons falling within this definition are representatives from industry, consumer groups and other government bodies. Members of the news media are not considered to be outside parties when acting in a news-gathering capacity. (See also § 1012.7).

(i) *Substantial interest matter.* Any matter, other than that of a trivial nature, that pertains in whole or in part to any issue that is likely to be the subject of a regulatory or policy decision by the Commission. Pending matters, i.e., matters before the Agency in which the Agency is legally obligated to make a decision, automatically constitute substantial interest matters. Examples of pending matters are: scheduled administrative hearings; matters published for public comment; petitions under consideration; and mandatory standard development activities. The following examples do not constitute substantial interest matters: inquiries concerning the status of a pending matter; discussions relative to general interpretations of existing laws, rules, and regulations; inspection of nonconfidential CPSC documents by the public; negotiations for contractual services; and routine CPSC activities such as recruitment, training, meetings involving consumer deputies, or meetings with hospital staff and other personnel involved in the National Electronic Injury Surveillance System.

(j) *Public announcement.* A matter is publicly announced when it is entered on the master calendar or public calendar, or both.

§ 1012.3 Forms of advance public notice of meetings; public calendar/master calendar and Federal Register.

Advance notice of Agency activities is provided to the public so that it may know of an participate in these activities to the fullest extent possible. Where appropriate, the Commission uses the following types of notices for both Agency meetings involving substantial interest matters and Commission meetings.

(a) *Public calendar/master calendar.* (1) The printed public calendar and the master calendar maintained in the Office of the Secretary are the principal means by which the Agency notifies the public of its day-to-day activities. The public calendar and/or master calendar provide advance notice of public hearings, Commission meetings, Agency meetings with outside parties involving substantial interest matters, selected staff meetings, advisory committee meetings, and other events such as speeches, and participation in panel discussions, regardless of the location. The public calendar also lists recent CPSC FEDERAL REGISTER issuances and Advisory Opinions of the Office of the General Counsel.

(2) Upon request in writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, any person or organization will be sent the public calendar on a regular basis free of charge. In addition, interested persons may contact the Office of the Secretary to obtain information from the master calendar which is kept current on a daily basis.

(3) The master calendar, supplemented by meeting summaries, is intended to serve the requirements of section 27(j)(8) of the Consumer Product Safety Act (15 U.S.C. 2076(j)(8)).

(4) Commissioners and Agency staff are responsible for reporting meeting arrangements for Agency meetings to the Office of the Secretary so that they may be published in the printed public calendar or entered on the master calendar at least seven days before a meeting, except as provided in § 1012.5(b)(1). Such reports shall include the following information:

(i) Probable participants and their affiliations;

(ii) Date, time and place of the meeting;

(iii) Subject of the meeting (as fully and precisely designated as possible);

(iv) Who requested the meeting;

(v) Whether the meeting involves matters of substantial interest;

(vi) Notice that the meeting is open or reason why the meeting or any portion of the meeting is closed (e.g., discussion of trade secrets); and

(vii) Names and telephone number of the CPSC host or contact person.

(5) The Secretary of the Commission is responsible for preparing and making public the announcements and notices relating to Commission meetings that are required in §§ 1012.4 (a) and (b).

(b) *Federal Register.* The FEDERAL REGISTER is the publication through which official notifications, including formal rules and regulations of the Agency, are made. Because the public calendar and/or master calendar are the primary devices through which the Agency notifies the public of its routine, daily activities, the FEDERAL REGISTER will be utilized only when required by the Government in the Sunshine Act (as provided in §§ 1012.4 (a) and (b)) or other applicable law, or when the Agency believes that the additional coverage which the FEDERAL REGISTER can provide is necessary to assist in notification to the public of important meetings.

§ 1012.4 Commission meetings; requirements for advance public notice and attendance by the public.

Commission meetings are held for the purpose of jointly conducting the formal business of the Agency, including the rendering of official decisions. The following provisions regarding announcement of meetings and attendance by the public shall apply to Commission meetings that determine or result in the joint conduct or disposition of official Agency business. Requirements as to other types of meetings Commissioners may attend (Agency meetings) are contained in § 1012.5.

(a) *Announcement of meetings.* (1) The Agency shall announce each Commission meeting in the public calendar or master calendar at least one week (seven calendar days) before the meeting. The Agency shall concurrently submit the announcement for publication in the FEDERAL REGISTER. The announcement and the FEDERAL REGISTER notice shall contain the following information:

(i) The date, time, and place of the meeting;

(ii) The subject matter of the meeting;

(iii) Whether the meeting will be open or closed to the public;

(iv) The name and phone number of the official who responds to requests for information about the meeting.

(2) If a majority of the Commission determines by recorded vote that Agency business requires calling a meeting earlier than 7 calendar days in advance, announcement shall be made in the public calendar or master calendar at the earliest practicable time and the Agency shall transmit the announcement concurrently for publication in the FEDERAL REGISTER.

(b) *Changes after public announcement.* (1) When necessary and at the direction of the Chairman, the Secretary shall change the time of a meeting after the announcement in the public calendar or master calendar. Such change shall be entered on the master calendar and such other notice shall be given as is practicable.

(2) The Commission may change the subject matter of a meeting or the decision to open or close a meeting or portion thereof to the public, after announcement in the public calendar or master calendar only if a majority of the Commission determines by recorded vote that Agency business so requires. The Commission shall announce the change in the public calendar or master calendar at the earliest practicable time before the meeting and shall concurrently submit the announcement for publication in the FEDERAL REGISTER. (See also § 1012.4(f) for requirements for Commission reconsideration of a decision to open or close a meeting to the public.)

(c) *Attendance by the public.* Every portion of every Commission meeting shall be open to public observation, except as provided in paragraph (d) of this section. Notwithstanding the applicability of the exceptions contained in paragraph (d) of this section, Commission meetings or portions thereof shall be open to public observation when the Commission determines that the public interest so requires. The Commission shall take into account in all cases the relative advantages and disadvantages to the public of conducting the meeting in open session. The number of public observers shall be limited only by availability of space. Attendance by the public shall be limited to observation and shall not include participation.

(d) *Exceptions to the requirement of openness.* The requirement in paragraph (c) of this section that all Commission meetings be open to public observation shall not apply to any Commission meeting or portion thereof for which the Commission has determined, in accordance with the procedures for closing meetings set forth in paragraph (e) of this section, that such meeting or portion thereof is likely to—

(1) Disclose matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and in fact properly classified pursuant to such Executive Order;

(2) Relate solely to the internal personnel rules and practices of the Agency;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552) provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) 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 (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) 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, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Agency action. This provision does 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 agency action on such proposal; or

(10) Specifically concern the Agency's issuance of a subpoena, or the Agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the 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.

(e) *Procedure for closing meetings of the Commission.* The following procedure shall be followed in closing a Commission meeting or portion thereof to public observation:

(1) A majority of the Commission must vote to close a meeting or portion thereof to public observation pursuant to subsection (d). A separate vote of the Commission shall be taken for each matter with respect to which a Commission meeting is proposed to be closed to public observation. Each such vote may, at the discretion of the Commission, apply to that portion of any meeting held within the following thirty days in which such matter is to be discussed. The vote of each Commissioner participating in such vote shall be recorded and no proxies shall be allowed.

(2) Any person, whose interest may be directly affected if a portion of a meeting is open, may request in writing to the Office of the Secretary that the Commission close that portion on the basis of paragraph (d) (5), (6) or (7) of this section. The Commission shall vote on such requests if at least one Commissioner desires to do so.

(3) Before a closed meeting may be held, the General Counsel must certify that in his or her opinion, the meeting may properly be closed to the public.

(4) Within one day of a vote in accordance with paragraph (e) (1) or (2) of this section to close a Commission meeting or portion thereof, the Secretary shall make available to the public a notice setting forth:

(i) The results of the vote reflecting the vote of each Commissioner;

(ii) A full explanation of the action of the Commission closing the meeting or portion thereof, including reference to the specific basis for such closing (see paragraph (d) of this section) and an explanation, (without disclosing exempt information), of why the Commission concludes on balance, (taking into account the relative advantages and disadvantages to the public of conducting the meeting in open or closed session) that the public interest would best be served by closing the meeting;

(iii) A list of all persons (other than Commissioners) expected to attend the meeting and their affiliations; and

(iv) A certification by the General Counsel that in his or her opinion, the meeting may properly be closed to the public. If a vote to close a Commission meeting takes place on the same day as the meeting, the certification must be made available to the public before the meeting is convened.

(5) The public release of the portion of the written statement required by paragraph (e)(4) (ii) may be delayed upon a determination by the Commission, by recorded vote, that such a notice, or portion thereof, would disclose information which may be withheld in accordance with paragraphs (d) (1) through (10) of this section.

(f) *Reconsideration of a decision to open or close a meeting.* The Commission may, in accordance with the procedures in paragraph (b) (2) or (e) (2) of this section, reconsider its determination to open or close a Commission meeting when it finds that the public interest so requires.

§ 1012.5 Agency meetings: requirements for advance public notice and attendance by the public.

For the purpose of implementing the Agency's meetings policy, meetings which involve Agency staff or the Commissioners, other than Commission meetings, shall be classified in the following categories and shall be held according to the procedures outlined within each category.

(a) *Hearings.* Hearings are public inquiries held by direction of the Commission for the purpose of fact finding or to comply with statutory requirements. The Office of the Secretary is responsible for providing transcription services at the hearings. Where possible, notice of forthcoming hearings will be published in the public calendar and the FEDERAL REGISTER at least 30 days before the date of the hearings.

(b) *Meetings between Commissioners or Agency staff and outside parties.* The following requirements shall apply to Agency meetings between Commissioners or Agency staff and outside parties whether hosted or attended at Agency premises or at the premises of outside parties, or at any other location:

(1) *Notice.* (i) (A) Notice of Agency meetings with outside parties involving substantial interest matters shall be published in the public calendar at least 7 calendar days in advance of the meeting. Any Agency employee planning to host or attend such a meeting must notify the Office of the Secretary as provided in § 1012.3(a)(4). Once notification has been made, Commission employees subsequently desiring to attend the meeting need not notify the Office of the Secretary.

(B) When there is no opportunity to give 7 days advance notice of a meeting, Agency staff (other than the personal staff of Commissioners) who desire to hold or attend such meeting must obtain the approval of the Office of the Chairman. Personal staff of Commissioners must obtain the approval of their respective Commissioners. If such approval is obtained, the Office of the Secretary must be notified in advance of the meeting to record the meeting on the master calendar. The Office of the Secretary shall publish notice of the meeting as an addendum to the succeeding public calendar. Because it could unduly compromise the independence of individual Commissioners, they need not obtain the permission of the Chairman to hold or attend an emergency unscheduled meeting. Listing of the meeting in the master calendar is still required.

(ii) *Exceptions.* The notice requirement shall not apply to:

(A) Meetings with outside parties not involving substantial interest matters (although such meetings should be listed where the public interest would be served).

(B) Meetings regarding initial notifications pursuant to section 15(b) of the Consumer Product Safety Act. However, subsequent meetings are not excepted from the notice requirement.

(C) Meetings held during the normal course of field surveillance, inspection or investigation of a person or company, including informal citation hearings under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act. However, advance notice is required for any negotiation meetings leading to settlement of individual cases.

(D) Meetings or discussions with or at the request of members of Congress and their staffs, or Office of Management and Budget personnel relating to legislation or appropriation matters.

(E) Meetings with Department of Justice employees regarding litigation matters.

(F) Routine speeches given by CPSC personnel before outside parties. However, personnel are encouraged to submit advance notice of these speeches to the Office of the Secretary for inclusion in the public calendar, for information purposes.

(2) *Attendance by the public.* (i) Any person or organization may attend any Agency meeting listed in the master calendar unless that meeting has been listed as a closed meeting. Generally, all meetings between Agency employees and outside parties are open to the public for the purpose of observation or participation, subject only to space limitations. Participation by the public may be permitted by the meeting chairperson. When feasible, a person or organization desiring to attend should give at least one day advance notice to the employee holding or attending such meeting.

(ii) The following Agency meetings are not open to the public:

(A) Meetings, or, if possible, portions of meetings where the Office of the General Counsel has determined that proprietary data are to be discussed in such a manner as to imperil their confidentiality.

(B) meetings held by outside parties at which limits on attendance are imposed by lack of space, provided, that such meetings are open to the press or other news media.

(C) Meetings regarding initial notifications pursuant to section 15(b) of the Consumer Product Safety Act. All subsequent meetings shall be open to the public.

(D) Meetings held during the normal course of field surveillance, inspection, or investigation of a person or company, including informal citation hearings under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act. However, the public may attend any negotiation meetings leading to settlement of individual cases.

(E) Meetings held with other government officials when they request that the meeting be closed, and, in the opinion of the Agency employees, extraordinary circumstances warrant closing the meeting.

(F) Meetings between Agency staff (othr than Commissioners and their personal staff) and an outside party, when, by majority vote of the Committee, it is determined that extraordinary circumstances require that the meeting be closed. In such a case, the reasons for closing the meeting or a portion of the meeting shall be detailed in the public calendar.

(G) Meetings between a Commissioner, his or her personal staff, or an outside party, when in the opinion of the Commissioner extraordinary circumstances require that the meeting be closed. In such a case, the reasons for closing the meeting or a portion of the meeting shall be detailed in the public calendar.

(H) Meetings or discussions with members of Congress and their staffs or office of Management and Budget personnel relating to legislation or appropriation matters.

(I) Meetings with Department of Justice employees regarding litigation matters.

(3) *Recordkeeping.* Any Commission employee who holds or attends an Agency meeting involving a substantial interest matter must prepare a meeting summary as described in § 1012.6(c)(1). However, only one meeting summary is required for each meeting, even if more than one CPSC employee holds or attends the meeting.

(c) *Staff meetings.* Staff meetings are attended only by members of the Agency as a general rule. At the discretion of the participants, such meetings may be listed on the public calendar and attendance by the public may be permitted. Recordkeeping is at the discretion of the participants.

(d) *Advisory committee meetings.* Meetings of the Agency's advisory committees are scheduled by the Commission. Notice will be given in both the public calendar and the FEDERAL REGISTER. Advisory committee meetings serve as a forum for discussion of matters relevant to the Agency's statutory responsibility with the objective of providing advice and recommendations to the Commission. The Agency's advisory committees are the National Advisory Committee for the Flammable Fabrics Act, the Product Safety Advisory Council, and the Technical Advisory Committee on Poison Prevention Packaging. The Office of the Secretary is responsible for the recordkeeping for such meetings. All meetings of advisory committees are open to the public as provided in the Federal Advisory Committee Act (Pub. L. 92-463, as amended by Pub. L. 94-409, 5 U.S.C. App. I) and the Commission's regulations under that Act (16 CFR 1018; 41 FR 45821, October 18, 1976).

§ 1012.6 Recordkeeping requirements.

(a) *Commission meetings.* (1) *Maintenance of transcripts, recordings or minutes.*—(i) The Agency shall maintain a complete transcript or electronic recording of each Commission meeting, whether open or closed, except that in the case of a meeting, or portion thereof, closed to the public pursuant to paragraph (10) of § 1012.4(d) of this Part, the Agency may elect to maintain a set of minutes instead of a transcript or a recording. Minutes shall:

(A) Fully and clearly describe all matters discussed, and

(B) 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 roll call vote (reflecting the vote of each Commissioner on the question). All documents considered in connection with any action shall be identified in such minutes.

(ii) The transcript, recording or minutes of closed Commission meetings shall include the certification by the General Counsel required by § 1012.4(e)(3) and a statement by the presiding Commissioner setting forth the date, time and place of the meeting and the persons present.

(iii) The transcript, recording or minutes of any Commission meeting may include attachments such as Commission opinions, briefing papers, or other documents presented at the meeting.

(iv) The transcript and accompanying material shall be maintained by the Secretary for a period of at least two years after the meeting, or until one year

after the conclusion of any Agency proceeding with respect to which the meeting, or portion thereof, was held, whichever occurs later.

(2) *Availability of transcripts, recordings or minutes.* The Agency shall make available to the public, the transcript, recording or minutes of Commission meetings. However, unless the Commission finds that the public interest requires otherwise, any portion of the transcript, recording or minutes of a closed meeting which is determined to contain information which may properly be withheld from the public on the basis of paragraphs (1) through (10) of § 1012.4(d) need not be made available to the public.

(3) *Procedure for making available transcripts, recordings or minutes.* Meeting records will be made available for inspection or copies will be furnished, as requested, in accordance with the following procedures.

(i) *Requests.* Requests for inspection or copies shall be in writing addressed to the Secretary, Consumer Products Safety Commission, Washington, D.C. 20207. A request must reasonably describe the meeting, or portion thereof, including the date and subject matter and any other information which may help to identify the requested material.

(ii) *Responses to requests.* The responsibility for responding to requests for meeting records is vested in the Secretary of the Commission. In any case where the Secretary or designee of the Secretary in his/her discretion determines that a request for an identifiable meeting record should be initially determined by the Commission, the Secretary or designee may certify the matter to the Commission for decision. In that event, the Commission decision shall be made within the time limits set forth in subparagraph (iii) and shall be final.

(iii) *Time limitations on responses to requests.* The Secretary or designee of the Secretary shall respond to all written requests for copies of meeting records within ten (10) working days. The time limitations on responses to requests shall begin to run as of the time a request for records is received and date stamped by the Office of the Secretary.

(iv) *Responses: Form and content.* When a requested meeting record has been identified and is available for disclosure, the requester shall either be informed as to where and when the records will be made available for inspection or supplied with a copy. A response denying a written request for a meeting record of a closed meeting shall be in writing signed by the Secretary and shall include:

(A) A reference to the specific exemptions under the Government in the Sunshine Act (5 U.S.C. 552b(c)) authorizing the denial; and

(B) A statement that the denial may be appealed to the Commission pursuant to subparagraph (v).

(v) *Appeals to the Commissioners.* (A) When the Secretary or designee of the Secretary has denied a request for records in whole or in part, the requester may, within 30 days of its receipt, appeal the denial to the Commissioners of the Consumer Product Safety Commission by writing to the attention of the Chairman, Consumer Product Safety Commission, Washington, D.C. 20207.

(B) The Commission will act upon an appeal within 20 working days of its receipt. The time limitations on an appeal begin to run as of the time an appeal is received by the Office of the Chairman and date stamped.

(C) The Commission's action on appeal shall be in writing, signed by the Chairman of the Commission if the appeal is denied and shall identify the Commissioners who voted for a denial. A denial in whole or in part of a request on appeal for records of a closed meeting shall set forth the exemption relied on and a brief explanation (without disclosing exempt information) of how the exemption applies to the records withheld. A denial in whole or in part shall also inform the requester of his/her right to seek judicial review as specified in 5 U.S.C. 552b(h).

(vi) *Fees.* (A) Fees shall be charged for copies of transcripts, recordings, transcriptions of recordings or minutes in accordance with the schedule contained in (C) below.

(B) There shall be no fee charged for services rendered in connection with production or disclosure of meeting records unless the charges, calculated according to the schedule below, exceed the sum of $25.00. Where the charges are calculated to be an amount in excess of $25.00, the fee charged shall be the difference between $25.00 and the calculated charges.

(C) The schedule of charges for furnishing copies of meeting records is as follows:

(1) Reproduction, duplication or copying of transcripts or minutes: 10 cents per page.

(2) Reproduction of recordings: Actual cost basis.

(3) Transcription (where meeting records are in form of recording only): Actual cost basis.

(4) Postage: Actual cost basis.

(b) *Records of Commission Action.* Records of Commission Action, summarizing the issues presented to the Commission for decision and indicating the vote of each Commissioner, document the decisions of the Commission, whether made at open or closed meetings or by ballot vote. The Commission's final Record of Commission Action constitutes the official means of recording the decisions of the Commission and the votes of individual Commissioners when filed with the Office of the Secretary.

(c) *Agency meetings.* The types of records required for Agency meetings depends on the type and purpose of the meeting. Following is a list of the types of and requirements for the categories of recordkeeping utilized by the Agency for Agency meetings.

(1) *Agency Meeting Summaries.* (i) Meeting summaries are written records setting forth the issues discussed at all Agency meetings with outside parties involving substantial interest matters. Any Commission employee who holds or attends an Agency meeting involving a substantial interest matter must prepare a meeting summary. However, only one meeting summary is required for each meeting, even if more than one CPSC employee holds or attends the meeting. A meeting summary should detail the essence of all substantive matters relevant to the Agency, especially any matter discussed which was not listed on the public calendar and should describe any decisions made or conclusions reached regarding substantial interest matters. A meeting summary should also indicate the date and the identity of persons at the meeting.

(ii) A meeting summary or a notice of cancellation of the meeting must be submitted to the Office of the Secretary within twenty (20) calendar days after the meeting for which the summary is required. The Office of the Secretary shall maintain a public file of the meeting summaries in chronological order.

(2) *Transcripts.* Transcripts are generally taken at public hearings and certain Agency meetings when complex subjects indicate verbatim records are desirable. The transcript may also include exhibits submitted to be part of the formal record of an Agency meeting. Copies of such transcripts are placed on file for public inspection in the Office of the Secretary.

§ 1012.7 Agency meetings: The news media.

The Agency recognizes that the news media occupy a unique position relative to informing the public of the activities of the Agency. It is believed that the inherently public nature of the news media requires that their activities be exempt from the requirements of this Part whenever Agency meetings are held with the news media for the purpose of informing them about Agency activities. Such Agency meetings are not exempt in the event that any representative of the news media attempts to influence any Agency employee on a substantial interest matter.

§ 1012.8 Agency meetings: Telephone conservations.

Telephone conversations present special problems regarding Agency meetings as set forth in this Part. It is recognized that persons outside the Agency have a legitimate right to information and to present their views regarding Agency activities. It is further recognized that such persons may not have the financial means to travel to meet with Agency employees. However, because telephone conversations, by their very nature, are not susceptible to attendance or participation by the public, care must be taken to ensure that they are not utilized to circumvent the provisions of this Part. Two basic rules apply to telephone conversations:

(a) Any telephone conversation in which substantial interest matters are discussed with outside parties must be detailed in a meeting summary which meets the requirements of § 1012.6(c)(1) of this Part. A summary detailing telephone conversations must be submitted by the CPSC employee involved to the

Office of the Secretary within 20 calendar days after the telephone call for which a summary is required. The Office of the Secretary shall maintain a public file of telephone call summaries in chronological order.

(b) All Agency personnel must exercise sound judgment in discussing substantial interest matters during a telephone conversation and in the exercise of such discretion, should not hesitate to terminate a telephone conversation and insist that the matters being discussed be postponed until an Agency meeting with appropriate advance public notice may be scheduled or until the matter is presented to the Agency in writing if the outside party is financially or otherwise unable to meet with the Agency employee.

Effective date: The regulations promulgated in this document are effective March 12, 1977.

Dated: March 11, 1977.

SHELDON D. BUTTS,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc.77-7717 Filed 3-15-77;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 33-5815, 34-13351, 35-19927, 39-459, IC-9672, IA-576, File No. S7-682]

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Code of Behavior Governing Ex Parte Communications Between Persons Outside the Commission and Decisional Employees

Comment deadline: April 15, 1977. The Securities and Exchange Commission today announced the adoption, effective immediately, of amendments to the Commission's Code of Behavior Governing Ex Parte Communications Between Persons Outside the Commission and Decisional Employees, 17 CFR Part 200, Subpart F. These amendments are designed to conform the language of the Commission's existing rules governing ex parte communications to the requirements of section 4 of the Government in the Sunshine Act, Pub. L. 94-409, and do not substantially alter the scope and nature of the Commission's existing rules. Although the modifications to Subpart F described herein take effect immediately, the Commission is offering an opportunity for public comment thereon and, should comment reveal the need for further amendments, appropriate action will be considered.[1]

[1] Since these amendments deal solely with Commission procedure and practice, prior public notice and comment are not required. See 5 U.S.C. 553(b). Moreover, since the amendments herein are designed simply to be interpretive of the requirements of the Sunshine Act, which takes effect on March 12, 1977, these rules are not subject to the provision in 5 U.S.C. 553(d) requiring 30 days advance notice prior to the effective date of a substantive agency rule. In any event, however, pursuant to 5 U.S.C. 553(d)(3), the Commission hereby finds, in view of the fact that these amendments do not significantly alter the nature of the procedures set forth in Subpart F, and in view of the fact that Section 4 of the Sunshine Act takes effect on March 12, 1977, that good cause exists for omitting the 30 day notice provided in 5 U.S.C. 553(d).

SCOPE OF SUBPART F

As stated above, the amendments announced herein are designed solely to conform the language of the Commission's existing prohibition against certain ex parte communications to section 4 of the Sunshine Act. In that connection, the Commission directs special attention to the scope of existing Subpart F and of section 4. The objectives of Subpart F are to protect the discharge of the Commission's quasi-judicial functions from unfair or improper influence and to insure that all participants in such proceedings have a fair opportunity to respond to the contentions and evidence presented by other participants. Pursuant to these objectives, both section 4 of the Sunshine Act and the Commission's rules are narrowly focused. Both prohibit certain communications between Commission members or decisional employees and interested persons outside the agency.[2] The Conference Report on the Sunshine Act, H.R. Rep. No. 94-1441, 94th Cong. 2d Sess. at 29 (1976), states, in regard to the scope of the prohibitions therein:

> The conferees wish to note the fact that this provision (Section 4(b) of the Sunshine Act) and the ex parte provisions of new section 557(d) (as added by this act) in no way prohibit—
>
> 1. Any communication with an agency decisionmaking official if not involving a formal adjudicatory proceeding (and a few formal rulemaking proceedings); or
>
> 2. Any communication with a decisionmaking official which is not relevant to the merits of a covered proceeding; or
>
> 3. Any communication with a decisionmaking official in any proceeding at any time if it involves only a request for the status of the proceedings and is not intended to affect the merits; or
>
> 4. Any communication at any time with an agency official not involved in the decisional process.

SYNOPSIS OF AMENDMENTS

The Commission's amendments to Subpart F affect existing §§ 200.111 through 200.114 inclusive of Title 17 of the Code of Federal Regulations. Below is a brief description of the changes in each of these rules.

[2] While the Commission's rules in Subpart F (as amended and previously) apply only to communications between Commission members or decisional employees and persons outside the agency, in certain circumstances other requirements of law or professional responsibility might restrict or preclude communications not encompassed within Subpart F. See, e.g., 5 U.S.C. 554(d); 17 CFR 200.63; Rule 2 of the Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission, 17 CFR 200.735-2(b); and ABA Code of Professional Responsibility, DR 7-110(B).

§ 200.110—This rule has been amended to indicate that the purpose of Subpart F is to conform the Commission's rules to section 4 of the Government in the Sunshine Act.

§ 200.111—Rule 111 sets forth the prohibitions applicable to certain ex parte communications, identifies the proceedings to which the prohibitions attach, and contains certain definitions. Subsection (a) of this rule has been amended to conform to new 5 U.S.C. 557(d)(1)(A) and (B). As amended, Rule 111(a) prohibits any interested person outside the agency from engaging in an ex parte communication with a Commission member or decisional employee relevant to the merits of an on-the-record proceeding, and prohibits any Commission member or decisional employee from engaging in such a communication with an interested person outside the agency.[3]

Rule 111(b) identifies the proceedings in which the prohibition in Rule 111(a) applies. This subsection is drawn from existing Rule 111(b) and includes the provision in section 4(a) of the Sunshine Act requiring that the ex parte communication prohibition extend to all proceedings subject to 5 U.S.C. 557(a).

Rule 111(c) prescribes the times at which, in a given proceeding, the prohibition in subsection (a) of the rule commences and ceases to apply. The criteria set forth are those in existing Rule 111(c) and in new 5 U.S.C. 557(d)(1)(E).

Rule 111(d) defines the terms "ex parte communication," "participants to the proceeding," and "decisional employee." The definition of ex parte communication combines new 5 U.S.C. 551(14) and the terms of existing Rule 111(f)(1) and (2)(i).[4]

The definition of the term "participants to the proceeding" is identical to that in existing Rule 111(e). The definition of the term "decisional employee" is similar to that in existing Rule 111(d).

§ 200.112—This rule establishes the procedures which are to be followed in the event that a prohibited ex parte communication occurs. Rule 112(a) re-

[3] Careful attention should be afforded to the scope, conditions, and terms of this subsection. For example, discussions concerning the proposed settlement of a proceeding would not be within the prohibition in Rule 111(a) since these discussions would occur between attorneys for the participants and not between counsel for an interested person outside the Commission and a Commission member or decisional employee. Moreover, settlement negotiations would not be deemed "communication relevant to the merits of the proceeding" within the meaning of Rule 111(a) and 5 U.S.C. 557(d)(1).

[4] The exceptions in existing Rule 111(f)(2)(ii) and (iii) for oral communications of which contemporaneous or after-the-fact notice is afforded to other participants to the proceeding have been deleted as inconsistent with Section 4 of the Sunshine Act. In addition, the exclusions from the existing ex parte communications prohibitions which appear in Rule 111(g) of the Commission's present code have been deleted as unnecessary and redundant. In general, the communications now authorized by Subsection (g) would not, under the amended rules, constitute prohibited ex parte communications.

flects new 5 U.S.C. 557(d)(1)(C) and requires that such communications, along with any responses, be placed on the public record of the proceeding.[3] Subsection (b) of the rule incorporates the additional requirement, which appears in existing Rule 112(a) and (b), that the Secretary notify all other participants to the proceeding of the occurrence of the prohibited communication.

Subsection (c) of the amended rule is identical to existing Rule 112(c) and pertains to communications which would be prohibited but for the fact that they are received after the prohibitions in Rule 111(a) have terminated as to the proceeding in question.

§ 200.113—Rule 113(a), pursuant to new 5 U.S.C. 557(d)(1)(C), affords all participants the opportunity to respond to an unauthorized ex parte communication. No amendments (aside from the addition of a descriptive caption) have been made to Subsection (b) of the rule which pertains to the handling of correspondence regarding adjudicatory proceedings.

§ 200.114—Rule 114(a) and (c), which authorize, respectively, the imposition of sanctions against persons who practice before the Commission and against Commission employees who violate the provisions of Subpart F, have not been amended (aside from the addition of descriptive captions). Subsection (b) of the rule, which authorizes adverse action of the merits against a participant who engages in a prohibited communication, has been reworded to conform to the language of 5 U.S.C. 557(d)(1)(C) and of 5 U.S.C. 556(d), as amended by Section 4(c) of the Sunshine Act.

Conclusion

The Commission believes that the amendments which it has today adopted will fully conform its rules governing ex parte communications to the language of section 4 of the Sunshine Act but will not significantly alter the substance of the existing code of behavior in this area. Nevertheless, the Commission invites comments from all interested persons concerning its Code of Conduct Governing Ex Parte Communications Between Persons Outside the Commission and Decisional Employees, and intends to afford due consideration to any views received. Although, as stated above, these amendments take effect immediately, the Commission will, should public comment indicate the need for further modifications, consider appropriate steps.

Comments concerning these amendments should be submitted, in triplicate, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, before the close of business on April 15, 1977. All such communications should refer to File S7-682 and will be available for public inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. The text of the amendments discussed herein is set forth below.

Text of Rules

Subpart F—Code of Behavior Governing Ex Parte Communications Between Persons Outside the Commission and Decisional Employees

§ 200.110 Purpose.

This code is adopted in conformity with Section 4 of the Government in the Sunshine Act, Public Law 94-409, and is designed to insulate the administrative process from improper influence.

§ 200.111 Prohibitions; application; definitions.

(a) *Prohibited communications.* In any agency proceeding which is subject to this subpart, except to the extent required for the disposition of ex parte matters as authorized by law—

(1) No interested person outside the agency shall make or knowingly cause to be made to any member of the Commission or decisional employee an ex parte communication relevant to the merits of the proceeding; and

(2) No member of the Commission or decisional employee shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding.

(b) *Proceedings to which prohibitions apply.* This subpart shall apply to all proceedings subject to 5 U.S.C. 557(a), including suspension proceedings instituted pursuant to the provisions of Regulations A, B, E, and F of the Securities Act of 1933 (§ 230.251 et seq. of this chapter), all review proceedings instituted pursuant to section 19(g) of the Securities Exchange Act of 1934, and all other proceedings where an evidentiary hearing has been ordered pursuant to a statutory provision or rule of the Commission and where the action of the Commission must be taken on the basis of an evidentiary record. In addition, this subpart shall apply to any other proceeding in which the Commission so orders.

(c) *Period during which prohibitions apply.* (1) The prohibitions in § 200.111(a) shall begin to apply when the Commission issues an order for hearing; *Provided,*

(i) That in suspension proceedings pursuant to Regulations A, B, E and F of the Securities Act of 1933 (§ 230.251 et seq. of this chapter), these prohibitions shall commence when the Commission enters an order temporarily suspending the exemption; and

(ii) That in proceedings under section 19(d) of the Securities Exchange Act of 1934 these prohibitions shall commence from the time that a copy of an application for review has been served by the Secretary upon the self-regulatory organization; and

(iii) In no case shall the prohibitions in § 200.111(a) begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his or her acquisition of such knowledge.

(2) The prohibitions in § 200.111(a) shall continue until the time to file a petition for rehearing from the final order of the Commission has expired. In the event a petition for rehearing is filed, these prohibitions shall cease if and when the petition for rehearing is denied.

(3) The Commission may, by specific order entered in a particular proceeding, determine that these prohibitions shall commence from some date earlier than the time specified in this subsection (c) or shall continue until a date subsequent to the time specified herein.

(d) *Definitions.* As used in this subpart—

(1) "Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all participants to the proceeding is not given, but it shall not include requests for status reports on any matter or proceeding. In addition, an ex parte communication shall not include:

(i) Any written communication of which copies are served by the communicator contemporaneously with the transmittal of the communication in accordance with requirements of Rule 23 of the Commission's Rules of Practice, § 201.23 of this chapter, upon all participants to the proceeding (including the interested Division or Office of the Commission); or

(ii) Any oral communication where 48 hours advance written notice is given to all participants to the proceeding (including the interested division of the Commission)

(2) "Participants to the proceeding" means all parties to the proceeding (including the interested Division or Office of the Commission) and any other persons who have been granted limited participation pursuant to the provisions of Rule 9(c) of the Commission's Rules of Practice, § 201.9(c) of this chapter.

(3) "Decisional employee" means: (i) The administrative law judge assigned to the proceeding in question; and

(ii) All members of the staff of the Office of Opinions and Review; and

(iii) The legal and executive assistants to members of the Commission; and

(iv) Any employee of the Commission who has been specifically named by order of the administrative law judge or the Commission in the proceeding to as-

[3] In certain cases, the Commission conducts nonpublic adjudicatory proceedings in which the record is confidential unless and until the Commission enters an order imposing sanctions. In such instances, the Commission construes the requirement in amended Rule 112(a) (which also appears in the existing rule) that ex parte communications be placed "on the public record" to mean only that such communications be added to the file in order that, once the entire record becomes public, the ex parte communication will likewise become public. The Commission does not intend that the occurrence of an ex parte communication will require that the existence of an otherwise private proceeding must become public by virtue of Rule 112(a).

sist thereafter in making or recommending a particular decision; and

(v) Any other employee of the Commission who is, or may reasonably be expected to be, involved in the decisional process of the proceeding.

§ 200.112 Duties of recipient; notice to participants.

(a) *Duties of recipient.* A member of the Commission or decisional employee who receives, or who make or knowingly causes to be made, a communication prohibited by this subsection, or who receives or makes a communication which he or she concludes should, in fairness, be brought to the attention of all participants to the proceeding, shall transmit to the Commission's Secretary, who shall place on the public record of the proceeding:

(1) All such written communications; and

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (1) and (2) of this subsection.

(b) *Notice to participants.* The Secretary shall send copies of the communication to all participants to the proceeding with respect to which it was made, and shall notify the communicator of the provisions of this code prohibiting ex parte communications. If the communications are from persons other than participants to the proceedings or their agents, and the Secretary determines that it would be too burdensome to send copies of the communications to all participants because: (1) The communications are so voluminous, or (2) the communications are of such borderline relevance to the issues of the proceedings, or (3) the participants to the proceeding are so numerous, the Secretary may, instead, notify the participants that the communications have been received, placed in the file, and are available for examination.

(c) *Post decisional communications.* Any Commission member or decisional employee who receives a communication which would be prohibited by this Code, but for the fact that it was received subsequent to the date when the prohibitions imposed hereby have ceased to apply, shall comply with the provisions of § 200.112(a) with respect to such communication in the event that he or she is to act in a decisional capacity in the same proceeding pursuant to remand where he or she concludes, in fairness, that such communication should be brought to the attention of all participants to the proceeding.

§ 200.113 Opportunity to respond; interception.

(a) *Opportunity to respond.* All participants to a proceeding may respond to any allegations or contentions contained in a prohibited ex parte communication placed in the public record in accordance with § 200.112. Such responses shall be included in the public record.

(b) *Interception of communications.* * * *

§ 200.114 Sanctions.

(a) *Discipline of persons practicing before the Commission.* * * *

(b) *Adverse action on claim.* Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subpart, the Commission, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(c) *Discipline of Commission employees.* * * *

Dated: March 10, 1977.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-7698 Filed 3-11-77;2:46 pm]

[Release No. 33-5814, 34-13350, 35-19926, 39-458, IC-9671, IA-575, FOIA-51; File No. S7-674]

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Government in the Sunshine; Public Observation of Commission Meetings; Information and Requests, and Related Matters

Effective date of the rules: March 12, 1977.

The Securities and Exchange Commission today announced final rulemaking action to implement the Government in the Sunshine Act, 5 U.S.C. 552b ("Sunshine Act"), which has, as its principal provision, the requirement that, unless exempt, "every portion of every meeting of an agency be open to public observation." 5 U.S.C. 552b(b). Except as specifically described below, the rules today announced are identical to the proposals on which public comment was solicited in Securities Act Release No. 5802 (Feb. 2, 1977), 11 SEC Docket 1610 (Feb. 15, 1977), 42 FR 6827 (Feb. 4, 1977).[1] The Commission has reviewed these proposals, and the public comment received thereon, and has concluded that, with minor modifications, the proposed rules will fully implement both the letter and spirit of the Sunshine Act while at the same time protecting the Commission's need, in order properly and fairly to discharge its responsibilities under the federal securities laws, to prevent public disclosure of certain information. The rules today announced shall take effect on March 12, 1977.[2]

The rules herein amend Subpart A (entitled "Organization and Program Management") and Subpart D (entitled "Information and Requests") of the Commission's existing rules in Part 200 of 17 CFR. In addition, the Commission has created a new Subpart B (entitled "Disposition of Commission Business") and a new Subpart I (entitled "Regulations Pertaining to Public Observation of Commission Meetings").[3] A brief synopsis of these rules appears in Securities Act Release No. 5802, supra, and reference should be made thereto.

The full text of the rules is appended to this release. A summary of the changes which the Commission has made in the proposals is set forth below.

§ 200.42(b)(2)—This paragraph provides that the open meetings requirements of Subpart I of the Commission's rules are inapplicable to duty officer action, whether or not the duty officer consults with other members of the Commission. The word "individually" has been added to make clear that only duty officer consultation with individual other members of the Commission does not constitute a meeting as defined in 5 U.S.C. 552b(a)(2).

§ 200.80(b)(2)—The introductory phrase has been amended to conform to the language of 5 U.S.C. 552(b)(2). A parallel change has been made in § 200.402(a)(2).

§ 200.401(f)—The phrase "more probable than not" has been added to the definition of the term "likely to" in order that the language of the definition will more closely parallel the understanding of that term as reflected in the Conference Report on the Sunshine Act, H.R. Rep. No. 94-1441, 94th Cong. 2d Sess. at 15 (1976).

§ 200.402(a)(5)(i)—This clause has been amended to conform to the language in clauses (ii) and (iii) with respect to discussions which involve accusing any person of a crime.

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[1] See also Securities Act Release No. 5805 (Feb. 16, 1977) 42 FR 10698.

[2] Since the rules published in Release No. 33-5802 and today adopted are designed simply to be interpretive of the requirements of the Sunshine Act, these rules are not subject to the provision in 5 U.S.C. 553(d) requiring 30 days advance notice prior to the effective date of a substantive agency rule. In any event, however, pursuant to 5 U.S.C. 553(d)(3), the Commission hereby finds, in view of the fact that the Sunshine Act takes effect on March 12, 1977, that good cause exists for omitting the 30 day notice provided in 5 U.S.C. 553(d).

[3] The Sunshine Act also establishes certain standards regarding ex parte communications in on-the-record agency proceedings. Accordingly, the Commission has, in Securities Act Release No. 5815 (March 10, 1977), amended its existing Code of Behavior Governing Ex Parte Communications Between Persons Outside the Commission and Decisional Employees (17 CFR pt. 200, subpt. F) to conform to 5 U.S.C. 557(d), enacted by the Sunshine Act.

§ 200.402(a)(5)(iv)—This clause, which authorizes the Commission to close meetings concerning the referral of Commission files to other law enforcement bodies, has been amended to include discussion involving whether to "transmit or disclose" files to such agencies. Upon occasion, other agencies or departments receive authorization to inspect Commission files without taking physical possession thereof, and the Commission wishes to make clear that discussion concerning such authorization is closable.

§ 200.403(b)—This subsection has been amended to add the provision, required by 5 U.S.C. 552b(e)(1), that, in certain circumstances, action to omit the one-week advance notice of Commission meetings must be "by a recorded vote."

Several other points which, the Commission has concluded, do not warrant any amendments to the proposals merit brief discussion. First, the use of the word "generically" in the phrase "generically or specifically" in § 200.404(b)(2), which provides that the Commission will announce the persons expected to attend certain closed meetings, is intended simply to permit the Commission to refrain from identifying by name all members of its own staff who might attend such a meeting. The Commission believes that the personal privacy and safety of staff members, coupled with the difficulty of predicting which of its employees are likely to attend, justify a provision of this nature. The Commission does not intend that the specific identity of persons not employed by the Commission would be omitted from announcements of closed meetings, in the unlikely event that attendance by such individuals is expected, except under unusual circumstances.

Second, the Commission recognizes that, in several of its Sunshine and FOIA rules, it has expressly exempted records, or discussions concerning records, received from securities industry self-regulatory organizations. See, e.g., amended 17 CFR § 200.80 (b), (b)(7), (b)(8) and proposed 17 CFR § 200.402 (a), (a)(5)(iv), (a)(7), (a)(8), and (a)(9)(ii). In general, the purpose of these amendments is to make explicit the Commission's long-standing practice of protecting the confidentiality of investigatory, examination, and other records received from self-regulatory organizations, to the same extent that Commission records of a similar nature would be withheld from the public. For example, investigatory records, whether generated by the Commission's staff or obtained from a self-regulatory organization, will not generally be made public if disclosure would interfere with enforcement proceedings, constitute an unwarranted invasion of personal privacy, or may otherwise be withheld under the Freedom of Information Act. The Commission stresses, however, that these amendments and proposals should not be construed as suggesting that self-regulatory organizations are themselves "agencies" within the meaning of the Administrative Procedure Act, including the FOIA and Sunshine Acts. The inclusion of references to self-regulatory organization rules in the Commission's exemptions is a consequence of the obligations of self-regulatory organizations to aid in the enforcement of certain provisions of the federal securities laws, the statutory relationship between the Commission and those entities and of the attendant need to insure the free flow of information between the Commission and the self-regulatory bodies.

Further, with regard to 17 CFR § 200.403(c)(2), which permits the Commission to delete from its agenda particular matters without prior notice, the Commission does not intend that this provision will be invoked as to items previously announced for consideration at a meeting open to the public except in extraordinary circumstances. The Commission recognizes that members of the public may arrange to attend particular open meetings, and will make every effort to afford reasonable notice of any alterations in previously noticed open meetings should such alterations be necessary. In the case, however, of closed meetings, the Commission believes it important that it retain a measure of flexibility to respond to contingencies requiring the omission or rescheduling of agenda items. Since the public would not, in any event, be in attendance at such meetings, the Commission does not believe that § 200.402(c)(2) will inconvenience interested persons.

Finally, in adopting these rules, the Commission re-emphasizes the caveat in Release No. 5802 that the sole purpose of proposed new Subparts B and I of the Commission's rules—"Disposition of Commission Business" and "Regulations Pertaining to Public Observation of Commission Meetings," respectively—is the implementation of the Sunshine Act. These rules are not intended to confer new rights, apart from those expressly conferred by the Act, nor to open to those who disagree with particular Commission decisions new avenues of attack—not available under existing law—upon Commission action for the protection of investors. Accordingly, the rules herein should be interpreted in light of the purposes and terms of the Sunshine Act.

Similarly, the Commission also stresses that the expanded right to observe Commission meetings (and the possibility of obtaining transcripts or recordings of discussion at closed meetings) should not be viewed as creating new grounds for challenging the basis and rationale for Commission action. Observations made by individual members of the Commission during the course of deliberations may not necessarily reflect the reasoning underlying the Commission's final action on a given matter. Thus, the legal sufficiency of Commission action must, as in the past, be judged solely on the basis of the action itself and any official supporting statement released by the Commission—not on the basis of remarks or observations made prior thereto.

The text of the rules which the Commission has today adopted, and which take effect on March 12, 1977, appears below.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary

MARCH 10, 1977.

TEXT OF RULES

1. Section 200.21 of Subpart A of Title 17 CFR is amended by adding the following to § 200.21 to read as follows:

Subpart A—Organization and Program Management

§ 200.21 The General Counsel.

* * * * *

The General Counsel is also responsible for publicly certifying, pursuant to § 200.406, that, in his or her opinion, particular Commission meetings may properly be closed to the public. In the absence of the General Counsel, the most senior Associate General Counsel available shall be deemed the General Counsel for purposes of § 200.406. In the absence of the General Counsel and every Associate General Counsel, the most senior Assistant General Counsel available shall be deemed the General Counsel for purposes of § 200.406. In the absence of every Associate General Counsel and every Assistant General Counsel, such attorneys as the General Counsel may designate (in such order of succession as the General Counsel directs) shall exercise the responsibilities imposed by § 200.406.

2. New Subpart B is added to Part 200 to read as follows:

Subpart B—Disposition of Commission Business

Sec.

Subpart B—Disposition of Commission Business

§ 200.40 Joint disposition of business by Commission meeting.

Any disposition of Commission business which entails joint deliberation among the members of the Commission shall occur at Commission meetings in accordance with the definitions and procedures set forth in Subpart I of this part. The Commission's Secretary shall prepare and maintain a Minute Record reflecting the official action taken at such meetings.

§ 200.41 Disposition of business by seriatim Commission consideration.

(a) Whenever the Commission's Chairman, or the Commission member designated as duty officer pursuant to § 200.42, is of the opinion that joint deliberation among the members of the

Commission upon any matter is unnecessary in light of the nature of the matter, impracticable, or contrary to the requirements of agency business, but is of the view that such matter should be the subject of a vote of the Commission, such matter may be disposed of by circulation of any relevant materials concerning the matter to at least that number of Commission members necessary to take action thereon. Each participating Commission member shall report his or her vote to the Secretary, who shall record it in the Minute Record of the Commission.

(b) Whenever any member of the Commission so requests, any matter circulated for disposition pursuant to § 200.41(a) shall be withdrawn from circulation and scheduled instead for joint Commission deliberation.

§ 200.42 Disposition of business by exercise of authority delegated to individual Commissioner.

(a) *Delegation to duty officer.* (1) Pursuant to the provisions of Pub. L. No. 87–592, 76 Stat. 394, as amended by Section 25 of Pub. L. 94–29, 89 Stat. 163, the Commission hereby delegates to an individual Commissioner, to be designated as the Commission's "duty officer" by the Chairman of the Commission (or by the Chairman's designee) from time to time, all of the functions of the Commission: *Provided, however,* That no such delegation shall authorize the duty officer (i) to exercise the function of rulemaking, as defined in the Administrative Procedure Act of 1946, as codified, 5 U.S.C. 551, et seq., with reference to general rules as distinguished from rules of particular applicability; (ii) to make any rule, pursuant to section 19(c) of the Securities Exchange Act of 1934; or (iii) to preside at the taking of evidence as described in section 7(a) of the Administrative Procedure Act, 5 U.S.C. 556(b).

(2) To the extent feasible, the designation of a duty officer shall rotate, under the administration of the Secretary, on a regular weekly basis among the members of the Commission other than the Chairman.

(b) *Exercise of duty officer authority.* (1) The authority delegated by this rule shall be exercised when, in the opinion of the duty officer, action is required to be taken which, by reason of its urgency, cannot practicably be scheduled for consideration at a Commission meeting. After consideration of a staff recommendation involving such a matter, the duty officer shall forthwith report his or her action thereon to the Secretary.

(2) In any consideration of Commission business by a duty officer, the provisions of Subpart I herein, § 200.400 et seq., shall not apply, whether or not the duty officer, in exercising his or her authority, consults with, or seeks the advice of, other members of the Commission individually.

(c) *Commission affirmation of duty officer action.* (1) Any action authorized by a duty officer pursuant to § 200.42(a) shall be either (i) circulated to the members of the Commission for affirmation pursuant to § 200.41; or (ii) scheduled for affirmation at a Commission meeting at the earliest practicable date consistent with the procedures in Subpart I.

(2) (i) The Commission may, in its discretion, at any time review any unaffirmed action taken by a duty officer, either upon its own initiative or upon the petition of any person affected thereby. The vote of any one member of the Commission, including the duty officer, shall be sufficient to bring any such unaffirmed action taken by a duty officer before the Commission for review.

(ii) A person or party adversely affected by any unaffirmed action taken by a duty officer shall be entitled to seek review by the Commission of the duty officer's unaffirmed actions, but only in the event that the unaffirmed action by the duty officer (A) denies any request for action pursuant to sections 8(a) or 8(c) of the Securities Act of 1933, or the first sentence of section 12(d) of the Securities Exchange Act of 1934; (B) suspends trading in a security pursuant to section 12(k) of the Securities Exchange Act of 1934; or (C) is pursuant to any provision of the Securities Exchange Act of 1934 in a case of adjudication, as defined in section 551 of Title 5, United States Code, not required by that Act to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in section 554(a) (1) through (6) of Title 5, United States Code).

(3) Affirmed or unaffirmed action taken by the duty officer shall be deemed to be, for all purposes, the action of the Commission unless and until the Commission directs otherwise. Rule 26 of the Commission's rules of practice, 17 CFR 201.26, shall not apply to duty officer action.

Subpart D—Information and Requests

3. Section 200.80 of Subpart D of Part 200 is amended as follows: Paragraph (a)(1)(v) is amended; paragraph (a)(1)(vi) is added; and paragraphs (b)(2), (3), (4), and (8) are amended to read as follows:

§ 200.80 Commission records and information.

(a)(1) *Information published in the* FEDERAL REGISTER. * * *

(v) Each amendment, revision, or repeal of the foregoing; and

(vi) The notice of Commission meetings described in § 200.403, but only to the extent, and under the conditions, specified in § 200.403.

* * * * *

(b) *Nonpublic matters.* * * *

(2) Related solely to the internal personnel rules and practices of the Commission or any other agency, including, but not limited to:

(i) Operation rules, guidelines, and manuals of procedure for investigators, attorneys, accountants, and other employees other than those which establish legal requirements to which members of the public are expected to conform; or

(ii) Hiring, termination, promotion, discipline, compensation, or reward of any Commission employee or member, the existence, investigation, or disposition of a complaint against any Commission employee or member, the physical or mental condition of any Commission employee or member, the handling of strictly internal matters, matters which would tend to infringe on the privacy of the staff or members of the Commission, or similar subjects.

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided,* That such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, including, but not limited to:

* * * * *

(7)(i) Investigatory records compiled for law enforcement purposes to the extent that the production of such records would: (A) Interfere with enforcement activities undertaken or likely to be undertaken by the Commission or the Department of Justice, or any United States Attorney, or any federal, state, local, or foreign governmental authority, any professional association, or any securities industry self-regulatory organization; (B) deprive a person of a right to a fair trial or an impartial adjudication; (C) constitute an unwarranted invasion of personal privacy; (D) 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; or (E) disclose investigative techniques and procedures; or (F) endanger the life or physical safety of law enforcement personnel.

(ii) The term "investigatory records" includes, but is not limited to, all documents, records, transcripts, evidentiary materials of any nature, correspondence, related memoranda, or work product concerning any examination, any investigation (whether formal or informal), or any related litigation, which pertains to, or may disclose, the possible violation by any person of any provision of any statute, rule, or regulation administered by the Commission, by any other federal, state, local, or foreign governmental authority, by any professional association, or by any securities industry self-regulatory organization. The term "investigatory records" also includes all written communications from, or to, any person complaining or otherwise furnishing information respecting such possible violations, as well as all correspondence or memoranda in connection with such complaints or information.

(8) Contained in, or related to, any examination operating, or condition report prepared by, on behalf of, or for the use of, the Commission, any other federal, state, local, or foreign governmental authority, or any securities industry self-regulatory organization, responsible for the regulation or supervision of financial institutions.

* * * * *

4. Add the following sentence to § 200.80a.

§ 200.80a Appendix A Documentary material available to the public.

* * * * *

MISCELLANEOUS

* * * * *

Notices of Commission meetings announced to the public as described in § 200.403; announcements of Commission action to close a meeting, or any portion thereof, as described in § 200.404(b) and § 200.405(c); and certifications by the General Counsel, pursuant to § 200.406, that a Commission meeting, or any portion thereof, may be closed to the public.

5. New Subpart I is added to Part 200 to read as follows:

Subpart I—Regulations Pertaining to Public Observation of Commission Meetings

Sec.

Subpart I—Regulations Pertaining to Public Observation of Commission Meetings

§ 200.400 Open meetings.

Except as otherwise provided in this subpart, meetings of the Commission shall be open to public observation.

§ 200.401 Definitions.

As used in this subpart—

(a) "Meeting" means the joint deliberations of at least the number of individual members of the Securities and Exchange Commission required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations required or permitted by § 200.41 or § 200.42 (respecting seriatim and duty officer disposition of Commission business, respectively), or by §§ 200.403, 200.404, or 200.405 (respecting whether particular Commission deliberations shall be open or closed and related matters).

(b) "Portion of a meeting" means the consideration during a meeting of a particular topic or item separately identified in the notice of Commission meetings described in § 200.403.

(c) "Open," when used in the context of a Commission meeting or a portion thereof, means that the public may attend and observe the deliberations of the Commission during such meeting or portion of a meeting, consistent with the provisions of § 200.410 (respecting decorum at meetings and other related matters).

(d) "Closed," when used in the context of a Commission meeting or a portion thereof, means that the public may not attend or observe the deliberations of the Commission during such meeting or portion of a meeting.

(e) "Announce," and "make publicly available," when used in the context of the dissemination of information, mean, in addition to any specific method of publication described in this subpart, that a document containing the information in question will be posted for public inspection in, or adjacent to, the lobby of the Commission's headquarters offices, and will be available to the public through the Commission's Public Reference Section and the Commission's Office of Public Affairs, all in Washington, D.C.

(f) The term "likely to," as used in § 200.402, illustrating the circumstances under which Commission meetings may be closed, and the circumstances in which information may be deleted from the notice of Commission meetings, means that it is more probable than not that the discussion of Commission business, or publication of information, reasonably could encompass matters which the Commission is authorized, by the Government in the Sunshine Act, Pub. L. 94–409, as implemented by this subpart, to consider or discuss at a closed meeting (or a closed portion of a meeting).

(g) The term "financial institution," as used in § 200.402(a), authorizing the closure of certain Commission meetings, includes, but is not limited to, banks, savings and loan associations, credit unions, brokers and dealers in securities or commodities, exchanges dealing in securities or commodities, national securities associations, investment companies, investment advisers, securities industry self-regulatory organizations subject to 15 U.S.C. 78s, and institutional managers as defined in 15 U.S.C. 78m(f).

(h) The term "person" includes, but is not limited to, any corporation, partnership, company, association, joint stock corporation, business trust, unincorporated organization, government, political subdivision, agency, or instrumentality of a government.

§ 200.402 Closed meetings.

(a) *Nonpublic matters.* Pursuant to the general or special procedures for closing Commission meetings, as set forth in § 200.404 or § 200.405, respectively, a meeting, or any portion thereof, shall be closed to public observation where the Commission determines that such meeting, or a portion thereof, is likely to—

(1) Disclose matters specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy, and in fact properly classified pursuant to such executive order.

(2) Relate solely to the internal personnel rules and practices of the Commission or any other agency, including, but not limited to, discussion concerning

(i) Operation rules, guidelines, and manuals of procedure for investigators, attorneys, accountants, and other employees, other than those rules, guidelines, and manuals which establish legal requirements to which members of the public are expected to conform; or

(ii) Hiring, termination, promotion, discipline, compensation, or reward of any Commission employee or member, the existence, investigation, or disposition of a complaint against any Commission employee or member, the physical or mental condition of any Commission employee or member, the handling of strictly internal matters, which would tend to infringe on the privacy of the staff or members of the Commission, or similar subjects.

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, including, but not limited to:

(i) Information contained in letters of comment in connection with resignation statements, applications for registration or other material filed with the Commission, replies thereto, and related material which is deemed to have been submitted to the Commission in confidence or to be confidential at the instance of the registrant or person who has filed such material unless the contrary clearly appears; and

(ii) Information contained in any document submitted to or required to be filed with the Commission where the Commission has undertaken formally or informally to receive such submission or filing for its use or the use of specified persons only, such as preliminary proxy material filed pursuant to Rule 14a–6 under the Securities Exchange Act (17 CFR 240.14a–6), reports filed pursuant to Rule 316(a) under the Securities Act (17 CFR 230.316(a)), agreements filed pursuant to Rule 15c3–1 under the Securities Exchange Act, 17 CFR 240.15c3–1, schedules filed pursuant to Part I of Form X–17A–5 (17 CFR 249.617) in accordance with Rule 17a–5(b)(3) under the Securities Exchange Act (17 CFR 240.17a–5(b)(3)), statements filed pursuant to Rule 17a–5(k)(1) under the Securities Exchange Act (17 CFR 240.17a–5(k)(1)), confidential reports filed pursuant to Rules 17a–9, 17a–10, 17a–12 and 17a–16 under the Securities Exchange Act (17

CFR 240.17a–9, 240.17a–10, 240.17a–12, and 240.17a–16), and any information filed with the Commission and confidential pursuant to section 45 of the Investment Company Act of 1940, 15 U.S.C. 80a–44, or Rule 45a–1 thereunder (17 CFR 270.45a–1); and

(iii) Information contained in reports, summaries, analyses, letters, of memoranda arising out of, in anticipation of, or in connection with, an examination or inspection of the books and records of any person or any other investigation.

(5) Involve accusing any person of a crime, or formally censuring any person, including, but not limited to, consideration of whether to:

(i) Institute, continue, or conclude administrative proceedings or any formal or informal investigation or inquiry, whether public or nonpublic, against or involving any person, alleging a violation of any provision of the federal securities laws, or the rules and regulations thereunder, or any other statute or rule a violation of which is punishable as a crime; or

(ii) Commence, participate in, or terminate judicial proceedings alleging a violation of any provision of the federal securities laws, or the rules and regulations thereunder, or any other statute or rule a violation of which is punishable as a crime; or

(iii) Issue a report or statement discussing the conduct of any person and the relationship of that conduct to possible violations of any provision of the federal securities laws, or the rules and regulations thereunder, or any other statute or rule a violation of which is punishable as a crime; or

(iv) Transmit, or disclose, with or without recommendation, any Commission memorandum, file, document, or record to the Department of Justic, a United States Attorney, any federal, state, local, or foreign governmental authority, any professional association, or any securities industry self-regulatory organization, in order that the recipient may consider the institution of proceedings against any person or the taking of any action that might involve accusing any person of a crime or formally censuring any person; or

(v) Seek from, act upon, or act jointly with respect to, any information, file, document, or record where such action could lead to accusing any person of a crime or formally censuring any person by any entity described in paragraph (a)(5)(iv) of this section.

(6) Disclose information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(7)(i) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, to the extent that the production of such records would: (A) Interfere with enforcement activities undertaken, or likely to be undertaken, by the Commission or the Department of Justice, or any United States Attorney, or any federal, state, local, or foreign governmental authority, any professional association, or any securities industry self-regulatory organization; (B) deprive a person of a right to a fair trial or an impartial adjudication; (C) constitute an unwarranted invasion of personal privacy; (D) 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; (E) disclose investigative techniques and procedures; or (F) endanger the life or physical safety of law enforcement personnel.

(ii) The term "investigatory records" includes, but is not limited to, all documents, records, transcripts, evidentiary materials of any nature, correspondence, related memoranda, or work product concerning any examination, any investigation (whether formal or informal), or any related litigation, which pertains to, or may disclose, the possible violation by any person of any provision of any statute, rule, or regulation administered by the Commission, by any other federal, state, local, or foreign governmental authority, by any professional association, or by any securities industry self-regulatory organization. The term "investigatory records" also includes all written communications from, or to, any person complaining or otherwise furnishing information respecting such possible violations, as well as all correspondence or memoranda in connection with such complaints or information.

(8) Disclose information contained in, or related to, any examination, operating, or condition report prepared by, on behalf of, or for the use of, the Commission, any other federal, state, local, or foreign governmental authority, or any securities industry self-regulatory organization, responsible for the regulation or supervision of financial institutions.

(9) Disclose information the premature disclosure of which would be likely to

(i)(A) Lead to significant financial speculation in currencies, securities, or commodities, including, but not limited to, discussions concerning the proposed or continued suspension of trading in any security, or the possible investigation of, or institution of activity concerning, any person with respect to conduct involving or affecting publicly-traded securities, or (B) Significantly endanger the stability of any financial institution; or

(ii) Significantly frustrate the implementation, or the proposed implementation, of action by the Commission, any other federal or state governmental authority or agency, or any securities industry self regulatory agency: *Provided, however*, That this subdivision (ii) shall not apply in any instance where the Commission has already disclosed to the public the precise content or nature of its proposed action, or where the Commission is expressly required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal.

(10) Specifically concern the Commission's consideration of, or its actual: issuance of a subpoena (whether by the Commission directly or by any Commission employee or member); participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration; or initiation, conduct, or dispostion of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554, or otherwise involving a determination on the record after opportunity for a hearing; including, but not limited to, matters involving

(i) The institution, prosecution, adjudication, dismissal, settlement, or amendment of any administrative proceeding, whether public or nonpublic; or

(ii) The commencement, settlement, defense, or prosecution of any judicial proceeding to which the Commission, or any one or more of its members or employees, is or may become a party; or

(iii) The commencement, conduct, termination, status, or disposition of any inquiry, investigation, or proceedings to which the power to issue subpoenas is, or may become, attendant; or

(iv) The discharge of the Commission's responsibilities involving litigation under any statute concernng the subject of bankruptcy; or

(v) The participation by the Commission (or any employee or member thereof) in, or involvement with, any civil judicial proceeding or any administrative proceeding, whether as a party, as amicus curiae, or otherwise; or

(vi) The disposition of any application for a Commission order of any nature where the issuance of such an order would involve a determination on the record after opportuntiy for a hearing.

(b) *Interpretation of exemptions.* The examples set forth § 200.402(a)(1) through (10) of particular matters which may be the subject of closed Commission deliberations are to be construed as illustrative, but not as exhaustive, of the scope of those exemptions.

(c) *Public interest determination.* Notwithstanding the provisions of § 200.402(a) (concerning the closing of Commission meetings), but subject to the provisions of § 200.409(a) (respecting the right of certain persons to petition for the closing of a Commission meeting), the Commission may conduct any meeting or portion of a meeting in public where the Commission determines, in its discretion, that the public interest renders it appropriate to open such a meeting.

(d) *Nonpublic matter in announcements.* The Commission may delete from the notice of Commission meetings described in § 200.403, from the announcements concerning closed meetings described in §§ 200.404(b) and 200.405(c), and from the General Counsel's certification described in § 200.406, any information or description the publication of which would be likely to disclose matters of the nature described in § 200.402(a)

(concerning the closing of Commission meetings).

§ 200.403 Notice of Commission meetings.

(a) *Content of notice.* (1) In the case of open meetings, or meetings closed pursuant to the procedures specified in § 200.404, the Commission shall announce the items to be considered. For each such item, the announcement shall include:

(i) A brief description of the generic or precise subject matter to be discussed;

(ii) The date, place, and approximate time at which the Commission will consider the matter;

(iii) Whether the meeting, or the various portions thereof, shall be open or closed; and

(iv) The name and telephone number of the Commission official designated to respond to requests for information concerning the meeting at which the matter is to be considered.

(2) Every announcement of a Commission meeting described in this subsection, or any amended announcement described in § 200.403(c), shall be transmitted to the FEDERAL REGISTER for publication.

(b) *Time of notice.* The announcement of Commission meetings referred to in § 200.403(a) shall be made publicly available (and submitted immediately thereafter to the FEDERAL REGISTER for publication) at least one week prior to the consideration of any item listed therein, except where a majority of the members of the Commission determine, by a recorded vote, that Commission business requires earlier consideration of the matter. In the event of such a determination, the announcement shall be made publicly available (and submitted to the FEDERAL REGISTER) at the earliest practicable time.

(c) *Amendments to notice.* (1) (i) The time or place of a meeting may be changed following any public announcement that may be required by § 200.403(a). In the event of such action, the Commission shall announce the change at the earliest practicable time.

(ii) The subject matter of a meeting, or the determination of the Commission to open or close a meeting (or a portion of a meeting), may be changed following any public announcement that may be required by § 200.403(a), if (A) a majority of the entire membership of the Commission determines, by a recorded vote, that Commission business so requires and that no earlier announcement of the change was possible; and (B) the Commission publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(2) Notwithstanding the provisions of this paragraph (c), matters which have been announced for Commission consideration may be deleted, or continued in whole or in part to the next scheduled Commission meeting, without notice.

(d) *Notice of meetings closed pursuant to special procedure.* In the case of meetings closed pursuant to the special procedures set forth in § 200.405, the Commission shall make publicly available, in whole or in summary form,

(1) A brief description of the general subject matter considered or to be considered, and

(2) The date, place, and approximate time at which the Commission will, or did, consider the matter. The announcement described in this subsection shall be made publicly available at the earliest practicable time, and may be combined, in whole or in part, with the announcement described in § 200.403(a).

NOTE.—The Commission intends, to the extent convenient, to adhere to the following schedule in organizing its weekly agenda: Closed meetings to consider matters concerning the enforcement of the federal securities laws and the conduct of related investigations will generally be held on Tuesdays and on Thursday afternoons. An open meeting will generally be held each Thursday morning to consider matters of any appropriate nature. On Wednesdays, either open or closed meetings, or both, will generally be held according to the requirements of the Commission's agenda for the week in question. Normally, no meetings will be scheduled on Mondays, Fridays, Saturdays, Sundays, or legal holidays.

The foregoing tentative general schedule is set forth for the guidance of the public, but is not, in any event, binding upon the Commission. In every case, the scheduling of Commission meetings shall be determined by the demands of Commission business, consistent with the requirements of this Subpart I. When feasible, the Commission will endeavor to announce the subject matter of all then-contemplated open meetings during a particular month at least one week prior to the commencement of that month.

When and if convenient after the conclusion of a closed Commission meeting, the Commission will endeavor to make publicly available a notice describing (subject to the provision in § 200.402(d) regarding nonpublic matter in announcements) the items considered at that meeting and any action taken thereon.

§ 200.404 General procedure for determination to close meeting.

(a) *Action to close meeting.* Action to close a meeting pursuant to § 200.402 (a) or (c) shall be taken only upon a vote of a majority of the entire membership of the Commission. A separate vote of the Commission members shall be taken with respect to each Commission meeting a portion or portions of which are proposed to be closed to the public pursuant to § 200.402(a), or with respect to any information which is proposed to be withheld under § 200.402(d); *Provided, however,* That a single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed, or with respect to any information concerning such series of meetings, so long as each meeting in such series relates to the same matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Commission member participating in such vote shall be recorded and no proxies shall be allowed.

(b) *Announcement of action to close meeting.* Within one day of any vote pursuant to paragraph (a) of this section or § 200.409(a) (relating to review of Commission determinations to open a meeting), the Commission shall make publicly available:

(1) A written record reflecting the vote of each participating member of the Commission on the question; and

(2) In the case of a meeting or portion thereof to be closed to the public, a written explanation of the Commission's action closing the meeting or a portion thereof, together with a list describing generically or specifically the persons expected to attend the meeting and their affiliation; and

(3) For every closed meeting, the certification executed by the Commission's General Counsel as described in § 200.406.

§ 200.405 Special procedure for determination to close meeting.

(a) *Finding.* Based, in part, on a review of several months of its meetings, as well as the legislative history of the Sunshine Act, the Commission finds that a majority of its meetings may properly be closed to the public pursuant to § 200.402(a) (4), (8), (9)(i), or (10), or any combination thereof.

(b) *Action to close meeting.* The Commission may, by recorded vote of a majority of its members at the commencement of any meeting or portion thereof, determine to close any meeting or a portion thereof properly subject to being closed pursuant to § 200.402(a) (4), (8), (9)(i), or (10), or any combination thereof. The procedure described in this rule may be utilized notwithstanding the fact that a meeting or portion thereof properly subject to being closed pursuant to § 200.402(a) (4), (8), (9)(i), or (10), or any combination thereof, could also be closed pursuant to § 200.402(a) (1), (2), (3), (5), (6), (7), or (9)(ii), or any combination thereof.

(c) *Announcement of action to close meeting.* In the case of a meeting or a portion of a meeting closed pursuant to this rule, as soon as practicable the Commission shall make publicly available:

(1) A written record reflecting the vote of each participating member of the Commission to close the meeting; and

(2) The certification described in § 200.406, executed by the Commission's General Counsel.

§ 200.406 Certification by the General Counsel.

For every Commission meeting closed pursuant to § 200.402(a) (1) through (10), the General Counsel of the Commission (or, in his or her absence, the attorney designated by General Counsel pursuant to § 200.21) shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision.

§ 200.407 Transcripts, minutes, and other documents concerning closed Commission meetings.

(a) *Record of closed meetings.* Except as provided in § 200.407(b), the Com-

mission's Secretary shall prepare a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting, or closed portion of a meeting.

(b) *Minutes of closed meetings.* In the case of a meeting, or portion of a meeting, closed to the public pursuant to § 200.402(a) (8), (9)(i), or (10), the Secretary may, in his or her discretion or at the direction of the Commission, prepare either the transcript or recording described in § 200.407(a), 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 participating Commission member on the question). All documents specifically considered by the Commission in connection with any action shall be identified if such minutes are maintained.

(c) *Retention of certificate and statement.* The Secretary shall retain a copy of every certification executed by the General Counsel pursuant to § 200.406, together with a statement from the presiding officer of the meeting, or portion of a meeting to which the certification applies, setting forth the time and place of the meeting, and the persons present.

(d) *Minute Record.* Nothing herein shall affect the provisions of §§ 200.13a and 200.40 requiring the Secretary to prepare and maintain a Minute Record reflecting the official actions of the Commission.

§ 200.408 Public access to transcripts and minutes of closed Commission meetings; record retention.

(a) *Public access to record.* Within twenty days (excluding Saturdays, Sundays, and legal holidays) of the receipt by the Commission's Freedom of Information Act Officer of a written request, or within such extended period as may be agreeable to the person making the request, the Secretary shall make available for inspection by any person in the Commission's Public Reference Room, the transcript, electronic recording, or minutes (as required by § 200.407 (a) or (b)) of the discussion of any item on the agenda, except for such item or items as the Freedom of Information Act Officer determines to involve matters which may be withheld under § 200.402 or otherwise. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication, as set forth in § 200.80e, and, if a transcript is prepared, the actual cost of such transcription.

(b) *Review of deletion from record.* Any person who has been notified that the Freedom of Information Act Officer has determined to withhold any transcript, recording, or minute, or portion thereof, which was the subject of a request for access pursuant to § 200.402 (a), or any person who has not received a response to his or her own request within the 20 days specified in § 200.408 (a), may appeal the adverse determination or failure to respond by applying for an order of the Commission determining and directing that the transcript, recording or minute, or deleted portion thereof, be made available. Such application shall be in writing and should be directed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. The applicant shall state such facts and cite such legal or other authorities as the applicant may consider appropriate. The Commission shall make a determination with respect to any appeal pursuant to this subsection within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such appeal, or within such extended period as may be agreeable to the person making the request. The Commission may determine to withhold any record that is exempt from disclosure pursuant to § 200.402(a), although it may disclose a record, even if exempt, if, in its discretion, it determines it to be appropriate to do so.

(c) *Retention of record.* The Commission, by its Secretary, shall retain a complete verbatim copy of the transcript, or 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 Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

§ 200.409 Administrative appeals.

(a) *Review of determination to open meeting.* Following any announcement stating that the Commission intends to open a meeting or a portion thereof, any person whose interests may be directly and substantially affected by the disposition of the matter to be discussed at such meeting may make a request, directed to the Commission's Secretary, that the meeting, or relevant portion thereof, be closed pursuant to § 200.402(a) (5), (6), or (7). The Secretary shall circulate such a request to the members of the Commission, along with a supporting statement provided by the requestor setting forth the requestor's interest in the matter and the reasons why the requestor believes that the meeting (or portion thereof) should be closed, and the Commission, upon the request of any one of its members, shall vote by recorded vote on whether to close such meeting or portion.

(b) *Review of determination to close meeting.* Following any announcement that the Commission intends to close a meeting or a portion thereof, any person may make written or telegraphic request, directed to the Commission's Secretary, that the meeting or a portion thereof be open. Such a request shall set forth the requestor's interest in the matter and the reasons why the requestor believes that the meeting (or a portion thereof) should be open to the public. The Secretary shall circulate such a request and supporting statement to the members of the Commission, and the Commission, upon the request of any one of its members, shall vote whether to open such a meeting or a portion thereof.

§ 200.410 Miscellaneous.

(a) *Unauthorized recordings; maintenance of decorum.* Nothing in this subpart shall authorize any member of the public to be heard at, or otherwise participate in, any Commission meeting, or to record any Commission meeting or portion thereof by electronic or photographic devices. The Commission may exclude any person from attendance at any meeting whenever necessary to preserve decorum, or where appropriate or necessary for health or safety reasons, or where necessary to terminate behavior unauthorized by this subsection. Any person desiring to record or photograph an open Commission meeting may apply to the Commission's Secretary for permission to do so, setting forth the requestor's interest in the matter and the reasons why the requestor desires to record or photograph the Commission's proceedings. The Commission's determination whether or not to permit such conduct shall be confided to its exclusive discretion; *Provided, however,* That nothing herein shall preclude any person from taking notes at, or publicly or privately reporting on, the Commission's open meetings.

(b) *Suspension of open meeting.* Subject to the satisfaction of any procedural requirements which may be required by this subpart, nothing in this subpart shall preclude the Commission from directing that the room be cleared of spectators, temporarily or permanently, whenever it appears that the discussion during an open Commission meeting is likely to involve any matter described in § 200.402(a) (respecting closed meetings).

(c) *Access to Commission documents.* Except as expressly provided, nothing in this subpart shall authorize any person to obtain access to any document not otherwise available to the public or not required to be disclosed pursuant to Subpart D. Access to documents considered or mentioned at Commission meetings may only be obtained subject to the procedures set forth in, and the provisions of, Subpart D.

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Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

SUBCHAPTER A—GENERAL RULES

[Docket No. RM77-4; Order No. 562]

PART 1—RULES OF PRACTICE AND PROCEDURE

PART 3—ORGANIZATION; OPERATION; INFORMATION AND REQUESTS; MISCELLANEOUS CHARGES; ETHICAL STANDARDS

Order Adopting Rules Governing Observation of Commission Meetings and Ex Parte Communications

On November 15, 1976, the Commission issued a notice in this proceeding, 41 FR 52303 (1976), wherein we proposed to

amend portions of Parts 1 and 3 of the Commission's rules and to adopt a new Section 1.3a, Chapter I, Title 18, CFR, to be entitled "Notice and procedures for Commission meetings." The purposes of the proposed changes are to conform the Commission's current open meeting procedures to the requirements of section 3 of the Government in the Sunshine Act (Act), Pub. L. No. 94-409, and to revise and clarify its current ex parte rule in light of section 4 of the Act.

The Commission had previously issued a notice in Docket No. RM76-24, stating that it had been petitioned by certain utilities and others to amend its ex parte rule, 18 CFR § 1.4(d) (1976). The petition proposed the amendment for the stated purpose of facilitating the disposition of matters before the Commission by allowing informal discussions between Commission staff counsel, or certain other Commission employees, and counsel for parties to proceedings before the Commission concerning proposed settlements or proposed agreements for disposition of particular issues. To the extent that the comments filed in Docket No. RM76-24 have been incorporated by reference by respondents herein, they have been considered in revising the proposed ex parte rule.

The notices provided for a period of comment and comments were received from 24 parties in Docket No. RM76-24 [1] and 11 parties in Docket No. RM77-4. [2] The concerns of the commenting parties are discussed hereafter according to subject matter. In addition to the opportunity for written submittals, an on-the-record public conference was held on February 24, 1977 in response to a request for further consideration of the proposed ex parte rule amendments. A number of participants from within and without the Commission attended. [3]

Open Meeting Provisions

The meetings of the Commission, i.e., the deliberations of the Commissioners, have been opened to public observation since April 21, 1976 pursuant to Administrative Order No. 160, issued April 1, 1976. The respondents indicated no objection to the proposed procedures in light of the Act. Some suggestions for technical revisions to the proposed rules are adopted and are not specifically discussed herein.

The Southern California Edison Company (Edison) requested that the Commission allow public observers at open meetings to record such meetings by electronic equipment or cameras in order to benefit those interested persons who are unable to attend due to distance from Washington, D.C. In view of the fact that official minutes of such meetings will be made, which will be available to members of the general public, and that ample provision is made for members of the press desiring to report on the Commission's public deliberations, we decline to accede to Edison's request. The logistical difficulties coupled with the potential for interruption do no warrant allowing the requested procedures in view of alternatives available to those unable to attend the Commission's open meetings.

The Director of the U.S. Department of Health, Education, and Welfare's Consumer Affairs Office commented that the agenda for an open meeting should be publicized as early as possible and at least one month in advance, whenever possible. We will, of course, give notice of such meetings as early as possible, although we recognize that it will likely be infeasible to announce the agenda for a particular meeting more than one week in advance in most situations. The Director also urged that we use the Commission's 24-hour telephone "Hotline" for announcing upcoming meetings. Technical limitations prevent us from extending total taped message time to include meeting announcements at the present; however, we believe the suggestion is a good one and we intend to pursue its implementation whenever it appears technically feasible to do so.

Columbia Gas Transmission Corporation, et al. requested that the Commission expand the current format of its published agenda in order to describe each action being considered by the Commissioners. The Commission's current procedure is to announce its agenda by designating each agenda item by complete docket number without further elaboration. We believe that this procedure is sufficient to alert interested members of the public of the general matters to be considered, particularly in the context of current filings that are available for public inspection. We therefore decline to adopt the suggestion due to the fact that the purpose of the Act is to open the deliberations of the Commissioners to the public rather than to expand the public's rights to secure information which would otherwise be exempt from public disclosure under the Freedom of Information Act. 5 U.S.C. 552(b)(k), 90 Stat. 1241, 1246.

Congresswoman Bella Abzug, Chairwoman of the Government Information and Individual Rights Subcommittee of the House Committee on Government Operations made several suggestions for clarifying amendments which are adopted herein without further elaboration. Congresswoman Abzug incorrectly asserted, however that the Commission cannot avail itself of exemption 9A of the Act "since (the Commission) is not 'an agency which regulates currencies, securities, commodities, or financial institutions.'" In light of our responsibilities under various statutes respecting certain corporate transactions of regulated utilities, we do not choose to delete exemption 9A from the Commission's regulations under the Act. See, e.g., 16 U.S.C. 824b, 824c, 825d and 825q; 15 U.S.C. 717k.

Congresswoman Abzug, without citing any authority for the proposition, suggested that the Commission had no discretion to delete individual items on an agenda without notice. The Commission's proposed procedure would result in the announcement of items for Commission consideration, even though the staff work might not have been completed at the time of the announcement. To eliminate flexibility with respect to deletions of agenda items would serve no useful purpose, while creating additional administrative burdens. The proposed procedure gives adequate notice to the public that a particular matter may be considered at a meeting. The agenda is subject to further check with the agency contact person designated in the notice. We therefore believe that retaining the proposed procedure best serves the needs of the public.

We recognize that a majority of the Commission's meetings may properly be closed to the public pursuant to exemptions 4, 8, 9A or 10 of the Act or any combination thereof. In such a situation, the agency is authorized to provide by special regulation for the closing of meetings under 5 U.S.C. 552b(d)(4), 90 Stat. 1241, 1243. Certain procedural and informational requirements of the Act do not apply to any portion of a meeting closed under such special regulations. This Commission has been in the vanguard in its commitment to a policy of open meetings since the adoption of Administrative Order No. 160. While we do not preclude the possibility that at some future time due to changing conditions the Commission may find it appropriate to provide a more streamlined mechanism for closing meetings, we decline to do so at the present time.

Ex Parte Communications

The Commission's proposal to modify its rule regarding ex parte communications in light of the Act and the legislative history thereof was the focus of considerable comment. Most comments were critical of the Commission's current rule and the proposed rule, arguing that both were unduly restrictive and should be revised to track the language of Section 4 of the Act, Substantive comments are responded to hereafter.

Several respondents commented that the proposed rule was in conflict with the Act because the proposed rule, though less restrictive than the current rule, was more restrictive than and, it was argued, in conflict with the Act. We recognized, and so announced, in our notice of rulemaking that the present rule served to impede unnecessarily the conduct of Commission business by prohibiting generally all contacts between Commission employees and any interested person in any contested on-the-record proceeding. At the same time, we recognized that Section 4 of the Act established a floor, not a ceiling, for prohibited ex parte communications. Thus, the Act would supplement more stringent restrictions against ex parte contacts which an agency may have issued prior to the Act. H.R. Rep. No. 94-880, Part I, 94th Cong., 2d Sess. 19 (1976).

To the extent that our proposed ex parte rule continues to be more restrictive than the minimum required by the Act, we believe that it serves a valid pur-

[1] See Attachment A.
[2] See Attachment B.
[3] See Attachment C.

pose in preventing even the appearance of improper contacts between those within[4] and without the agency. To the extent that the proposed rule would allow limited, informal discussions between staff counsel or certain Commission employees and counsel for parties to proceedings before the Commission, we believe that the relaxation of our present rule in this regard would have the salutory effect of expediting the disposition of Commission business without diminishing the integrity of the decisional process. In any event, non-unanimous settlement proposals would be required to be served upon all parties to a proceeding for such action as they may consider appropriate prior to any formal submission to the Commission.[5] Even after the filing of proposed settlement agreements with the Commission, our practice is to allow submission of comments on the proposal before any action is taken by us. Given the existence of these safeguards against the unfair treatment of any party to a proceeding before this Commission, we cannot believe that such a practice can be reasonably considered to erode public confidence in the administrative process.

Several respondents suggested that the proposed definition of ex parte contacts should be revised to exclude requests for status reports. We encourage such requests to be made to the Secretary.[6] In light of the Act, which expressly excludes requests for status reports on any matter or proceeding covered by the Act as being an ex parte contact, we will not include such requests within our definition of ex parte contacts. S. Rep. No. 94–1178, 94th Cong., 2d Sess. 29 (1976); H.R. Rep. No. 94–1441, 94th Cong., 2d Sess. 29 (1976). At the same time, we wish to make it clear that we will not allow such a request to be used as an indirect or subtle effort to influence the substantive outcome of a covered proceeding. In doubtful cases, Commissioners and staff shall treat the communication as ex parte so as to protect the integrity of the decisionmaking process. H.R. Rep. No. 94–880, Part I, 94th Cong., 2d Sess. 20–21 (1976).

It was also suggested by several respondents that the proposed exemption (vi) to the ex parte rule should eliminate the prohibition against contacts with decisional employees made after reasonable prior notice to and consent of all parties. In order that we not preclude legitimate contacts between the Commission and its staff and outside interested persons, we herein eliminate the limitation. We do so since it is our belief that the decisionmaking process is protected in instances where all parties have been given reasonable prior notice and have unanimously consented to certain communications.

Alabama Power Company et al. suggested that the definition of an ex parte communication be modified to clarify that such a communication is prohibited only when it is relative to the merits of an on-the-record proceeding pending before the Commission. We agree that such is the purpose of Section 4 of the Act, H.R. Rep. No. 94–880, Part I, 94th Cong., 2d Sess. 19–20 (1976), and our proposed rule. Accordingly, our rule will be clarified as suggested.

The Executive Committee of the Federal Power Bar Association (Association) and several participants at the public conference suggested that we define who is a decisional employee with greater precision. We consider this to be an appropriate request and will direct the Commission's Secretary to prepare and issue a list of decisional employees who are to be protected from non-consensual ex parte contacts. Such a list cannot, however, be considered as eliminating the burden upon outside persons to inquire of staff members whether they are decisional employees in a particular proceeding. Similarly, a member of the staff not listed as a decisional employee who acts in that capacity with respect to a particular proceeding should so inform any interested outside person attempting to make an ex parte contact.

This responsibility of the decisional staff is the analogue of the responsibility of the trial staff to make an appearance in a particular proceeding in order to inform the public and the decisional staff that they will not thereafter be involved in the decisional process. See, e.g., Tr. 5. Having voluntarily made or entertained prohibited ex parte communications, an employee will be prohibited from future participation in the decisional process of the relevant pending on-the-record proceeding. See, e.g., Tr. 50–51.

The Association also suggested that the Commission clarify those proceedings covered by the ex parte prohibition. We believe that the proposed rule sufficiently defines the scope of the prohibition to cover any proceeding "required by statute, constitution, published Commission rule or regulation or order in a particular case, to be decided on the basis of the record of a Commission hearing. * * *"

Edison urged that we modify the proposed rule to eliminate the provision for triggering the prohibition by the filing of protests and notices to intervene in a particular proceeding. We do not believe that this provision creates any additional difficulties for the public since it parallels the definition of "contested on-the-record proceeding" in the current rule. More importantly, however, there are sometimes unavoidable, but lengthy intervals between the filing of protests or petitions to intervene and any notice for hearing which may be issued in a particular proceeding. In such instances, we do not believe that such delays, unavoidable though they may be, should serve to erode public confidence in the decisional process by effectively preventing protestants and intervenors from being informed about and participating at all stages of a pending proceeding.

The Commission finds: (1) The notice and opportunity to participate in this rulemaking proceeding with respect to the matters presently before this Commission through the submission, in writing, and presentation at a public, on-the-record conference held on February 24, 1977 of data, views, comments, and suggestions in the manner described above, are consistent and in accordance with the procedural requirements prescribed by 5 U.S.C. 553.

(2) Good cause exists for making the amendments herein adopted effective immediately upon issuance.

(3) It is necessary and appropriate for the administration of the Government in the Sunshine Act, the Federal Power Act and the Natural Gas Act, that the Commission's General Rules be amended as herein provided.

The Commission, acting pursuant to the authority granted the Federal Power Commission by the Federal Power Act, as amended, particularly Sections 308 and 309 (49 Stat. 858, 859; 16 U.S.C. 825g, 825h), by the Natural Gas Act, as amended, particularly Sections 15 and 16 (52 Stat. 829, 830; 15 U.S.C. 717n, 717o), and by Pub. L. No. 94–409 (90 Stat. 1241) orders:

(A) Part I—Rules of Practice and Procedure—Chapter I, Title 18 of the Code of Federal Regulations, is amended as follows:

1. Section 1.1(c)(1) is revised to read as follows:

§ 1.1 The Commission.

* * * * *

(c) Sessions. * * * (1) *Public.* Public sessions of the Commission will be held after due notice as ordered by the Commission. (See §§ 1.3 and 1.3a).

* * * * *

2. Section 1.2(a)(1) is revised to read as follows:

§ 1.2 The Secretary.

(a) *Official records.* (1) The Secretary shall have custody of the Commission's seal, the minutes of all action taken by the Commission, the transcripts, electronic recordings or minutes of meetings closed to public observation, its rules and regulations and its administrative orders.

* * * * *

3. Immediately following § 1.3, a new § 1.3a, Notice and procedures for Commission meetings, is added. Section 1.3a reads as follows:

---

[4] Several respondents expressed concern that improper contacts may occur between trial staff and advisory staff in the absence of an express prohibition and of separation of function within the staff. We do not believe that further actions are necessary in this regard since we construe 18 CFR § 1.30 (f) as prohibiting improper contacts between different staff elements. Thus, any Commission employee who participates in a substantial manner in a contested on-the-record proceeding should enter a formal appearance in that proceeding, whether or not appearing as a witness or as staff counsel, and should thereafter refrain from improper contacts with the advisory, i.e., decisional, staff.

[5] Unaccepted proposals of settlement may continue to be privileged and shall not be admissible in evidence against any counsel or person claiming such privilege pursuant to 18 CFR § 1.18(e) (1976).

[6] See, e.g., 18 CFR § 3.100(b) (1976).

§ 1.3a Notice and procedures for Commission meetings.

(a) *Definitions.* In this section:

(1) "Agency", as defined in 5 U.S.C. 551(1) as "* * * each authority of the Government of the United States, whether or not it is within or subject to review by another agency, * * *" includes "* * * any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency * * *" (5 U.S.C. 552(e)) which is headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) "Meeting" means the deliberations of at least the number of individual members of the Federal Power Commission required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations required or permitted by paragraphs (d)(3) and (f) of this section;

(3) "Member" means an individual who belongs to the collegial body heading the Federal Power Commission; and

(4) "Staff" includes the employees of the Federal Power Commission other than the five Commissioners.

(b) *Open meetings.* (1) Every portion of every meeting of the Federal Power Commission will be open to public observation subject to the exemptions provided in paragraph (d)(1) of this section. Open meetings will be attended by the Commissioners, certain Commission staff, and any other individual or group desiring to observe the meeting. The public will be invited to observe and listen to the meeting but not to participate nor to record any any of the discussions by means of electronic or other devices or cameras. Documents being considered at Commission meetings may be obtained subject to the procedures and exemptions set forth in § 1.36 of this Part.

(2) Commission members shall not jointly conduct or dispose of agency business other than in accordance with this section.

(c) *Physical arrangements.* The Secretary shall be responsible for seeing that ample space, sufficient visibility, and adequate acoustics are provided for public observation of the Commission meetings.

(d) *Closed meetings.* (1) Meetings will be closed to public observation where the Commission properly determines, according to the procedures set forth in paragraph (d)(3) of this subsection, that such portion or portions of the meeting or disclosure of such information is likely to:

(i) Disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and are (B) in fact properly classified pursuant to such Executive order;

(ii) Relate solely to the internal personnel rules and practices of an agency;

(iii) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(iv) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential, which may include geological or geophysical information and data, including maps, concerning wells;

(v) Involve accusing any person of a crime, or formally censuring any person;

(vi) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, including personnel and medical files and similar files;

(vii) 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 (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) 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, (E) disclose investigative techniques and procedures, or, (F) endanger the life or physical safety of law enforcement personnel;

(viii) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(ix) Disclose information the premature disclosure of which would:

(A) In the case of an 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

(B) In the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that paragraph (d)(1)(ix)(B) 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 agency action on such proposal; or

(x) Specifically concern the Commission's issuance of a subpoena, or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(2) Commission meetings shall not be closed pursuant to paragraph (d)(1) of this section when the Commission finds that the public interest requires that they be open.

(3) (i) Action to close a meeting, or portion thereof, pursuant to the exemptions defined in paragraph (d)(1) of this section shall be taken only when a majority of the entire membership of the Commission votes to take such action. A separate vote of the Commission members shall be taken with respect to each Commission meeting a portion or portions of which are proposed to be closed to the public or with respect to any information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to 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 thirty days after the initial meeting in such series. The vote of each Commission member participating in such vote shall be recorded and no proxies shall be allowed.

(ii) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (d)(1)(v), (d)(1)(vi), (d)(1)(vii) of this section, the Commission, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(iii) Within one day of any vote taken pursuant to paragraph (d)(3)(i) or (d)(3)(ii) of this section, the Secretary of the Commission shall make publicly available 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, the Secretary shall, within one day of the vote taken pursuant to paragraph (d)(3)(i) or (d)(3)(ii) of this section, make publicly available a full written explanation of the Commission's action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this paragraph shall be disclosed except to the extent that it is exempt from disclosure under the provisions of paragraph (d)(1) of this section.

(e) *Transcripts.* (1) Prior to a determination that a meeting should be closed pursuant to paragraph (d) of this section, the General Counsel of the Commission shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the

meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Secretary of the Commission as part of the transcript, recording, or minutes required by paragraph (e)(2) of this section.

(2) The Secretary 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 (d)(1)(viii), (d)(1)(ix)(A), or (d)(1)(x) of this section, the Secretary 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 roll-call vote (reflecting the vote of each member on the question). All agenda documents considered in connection with any Commission action shall be identified in such minutes.

(3) The Secretary 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 Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

(4) Within a reasonable time after the adjournment of a meeting closed to the public, the Commission shall make available to the public, in the Office of Public Information of the Commission, Washington, D.C., the transcript, electronic recording, of minutes (as required by paragraph (e)(2) of this section) 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 the Director of Public Information determines to contain information which may be withheld under paragraph (d) of this section. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription (see § 3.102).

(5) The determination of the Director of Public Information to withhold information pursuant to paragraph (e)(4) of this section may be appealed to the Chairman of the Commission, in his capacity as administrative head of the Commission pursuant to Section 1 of Reorganization Plan No. 9 of 1950. The Chairman, or officer designated pursuant to § 3b.224(f) of this subchapter, will make a determination to withhold or release the requested information within twenty days from the date of receipt of the request for review (excluding Saturdays, Sundays, and legal public holidays).

(6) For an extension of the time limit prescribed by paragraph (e)(5) of this section, the provisions of § 1.36(f)(3) of this part shall apply.

(f) *Public announcement.* (1) Except to the extent that such information is exempt from disclosure under the provisions of paragraph (d) of this section, in the case of each meeting, the Secretary of the Commission shall make public announcement at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the official designated by the Commission to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the Commission determines by a recorded vote that Commission business requires that such meeting be called at an earlier date, in which case the Secretary shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (f)(1) of this section only if the Secretary publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (i) a majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires (as for example, pursuant to paragraph (d)(3)(ii) of this section) and that no earlier announcement of the change was possible, and (ii) the Secretary publicly announces such change and the vote of each member upon such change at the earliest practicable time: *Provided,* That individual items which have been announced for Commission consideration may be deleted without notice.

(3) The "earliest practicable time", as used in this subsection, means as soon as possible, which should in few, if any, instances be later than the commencement of the meeting or portion in question.

(4) The Secretary of the Commission shall use reasonable means to assure that the public is fully informed of the public announcements required by this subsection. For example, such announcements may be posted on the Commission's public notice boards, published in official FPC publications, or sent to the persons on a mailing list maintained for those who want to receive such material.

(5) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in a preceding announcement, and the name and telephone number of the official designated by the Commission to respond to requests for information about the meeting shall also be submitted by the Secretary of the Commission for publication in the FEDERAL REGISTER.

(6) Following each Commission meeting, the Secretary shall issue a list of Commission actions taken which shall become effective as of the date of issuance of the related order or other document, which the Secretary shall issue in due course, all in the manner prescribed by the Commission under the Natural Gas Act, Federal Power Act, or other legal authority.

* * * * *

4. Section 1.4(d) is amended as follows:

(a) Paragraph (1) is amended by adding two new definitions to the second sentence.

(b) Five new subparagraphs (v), (vi), (vii), (viii), and (ix) are added to paragraph (2).

(c) Paragraph (3) is amended by the addition of a phrase to the first sentence and by the addition of two additional sentences.

(d) Paragraph (4) is amended by deleting the fourth sentence.

(e) Paragraph (6) is redesignated as paragraph (7) and a new paragraph (6) is added.

(f) Newly designated paragraph (7) is completely revised.

Section 1.4(d), as amended, reads as follows:

§ 1.4 Appearances and practice before the Commission.

* * * * *

(d) *Ex parte communications.* * * *

(1) * * *

For the purposes of this paragraph, the term "ex parte communication" means an oral or written communication relative to the merits of an on-the-record proceeding pending before the Commission which is not on the public record and with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this section; the term "decisional employee" means a Commissioner or member of his personal staff, an administrative law judge, or any other employee of the Commission who is or may be reasonably expected to be involved in the decisional process of the proceeding; the term "contested on-the-record proceedings" means * * *

(2) The prohibitions contained in paragraph (d)(1) of this section do not apply to a communication:

* * * * *

(v) When the communication is between the staff counsel assigned to the proceeding or, in the presence of or after coordination with such staff counsel, any other employee of the Commission (except a decisional employee) and any party or counsel to any party or parties to the proceeding or, in the presence of or after coordination with such counsel or party, and agent of any such party: *Provided,* That any employee of the Commission who may reasonably be expected to participate in the decisional

process may waive such participation by entering a staff appearance in the proceeding: *Provided further*, That nonunanimous settlement offers shall thereafter be served on all participants in the proceeding prior to the submission of such offers to the Commission;

(vi) Which all the participants agree may be made on an ex parte basis;

(vii) Related to routine safety, construction, and operational inspections of project works by the Commission staff not undertaken to investigate or study a matter pending in issue before the Commission in any on-the-record proceeding;

(viii) Related to routine field audits of the accounts or any books or records of a company subject to the Commission's accounting requirements not undertaken to investigate or study a matter pending in issue before the Commission in any on-the-record proceeding;

(ix) Which relates solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents filed with the Commission in a proceeding covered by this subsection and which is made in the presence of or after coordinationer with counsel, except a communication with a decisional employee, in the absence of waiver of participation.

(3) All written communications prohibited by paragraph (d)(1) of this section, all sworn statements reciting the substance of all such oral communications, and all written responses and sworn statements reciting the substance of all oral responses to such prohibited communications shall be delivered to the Secretary of the Commission who shall place the communication in public files associated with the case, but separate from the record material upon which the Commission can rely in reaching its decision. The Secretary shall serve such communications upon all parties to the proceeding. The Secretary shall also serve a copy of the sworn statement to the communicator and allow him a reasonable opportunity to file a response.

(4) A Commissioner, member of his immediate staff, Administrative Law Judge, or any other employee of the Federal Power Commission who receives an oral offer of any communication prohibited by paragraph (d)(1) of this section shall decline to listen to such communication and shall explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof shall advise the communicator that he will not consider the communication. The recipient shall prepare a sworn statement setting forth the substance of the communication and the circumstances thereof within 48 hours and deliver the statement to the Secretary of the Commission for compliance with the procedures established in paragraph (d)(3) of this section.

* * * * *

(6) Upon receipt of a communication knowingly made in violation of paragraph (d)(1) of this section, the Commission, Administrative Law Judge, or other employee presiding at the hearing may require, to the extent consistent with the interests of justice and the policy of underlying statutes, the communicator to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(7) The prohibitions contained in paragraph (b)(1) of this section shall apply from the time at which a proceeding is noticed for hearing or the person responsible for such communication has knowledge that it will be noticed for hearing or at the time at which a protest or a petition or notice to intervene in opposition to requested Commission action has been filed, whichever occurs first.

* * * * *

5. Section 1.36 is amended as follows:

a. Subsection (a) is amended by adding a new sentence immediately following the second sentence.

b. Paragraph (14) of subsection (c) is redesignated as paragraph (15) and a new paragraph (14) would be added.

c. Subparagraph (iii) of the newly designated paragraph (15), in susection (c), is revised.

Section 1.36, as amended, reads as follows:

§ 1.36 Public information and requests.

* * * * *

(a) *Notice of proceedings.* * * * Notice of applications for certificates of public convenience and necessity under section 7 of the Natural Gas Act is provided for by § 157.9 of this chapter. Notice of public sessions and proceedings and of meetings of the Commission is provided by §§ 1.3 and 1.3a of this chapter.

* * *

* * * * *

(c) *Public records.*

* * * * *

(14) Transcripts, electronic recordings, or minutes of Commission meetings closed to public observation containing material nonexempt pursuant to § 1.3a of this Part.

(15) All other records of the Commission except for those that are:

* * * * *

(iii) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

* * * * *

(B) Section 3.102(b), Part 3—Organization; Operation; Information and Requests; Miscellaneous Charges; Ethical Standards, Chapter I, Title 18 of the Code of Federal Regulations is amended by adding a new sentence immediately following the third sentence. As amended, § 3.102(b) reads as follows:

§ 3.102 Public information requests, and assistance; miscellaneous charges.

* * * * *

(b) * * * Any person may obtain a copy of the schedule of fees by requesting such schedule from the Office of Public Information in person, by telephone, or by mail. Copies of transcripts, electronic recordings, or minutes of Commission meetings closed to public observation containing material non-exempt pursuant to § 1.3a of this Part are available to the public at the actual cost of duplication or transcription.

* * * * *

(C) The Secretary shall issue a list of employees usually participating in the decisionmaking process, which is to be updated periodically.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

ATTACHMENT A—RESPONDENTS IN DOCKET NO. RM76-24

American Bar Association
Cities of Adrian, Minnesota, et al.
Columbia Gas of Kentucky, Inc., et al.
Consumers Power Company
The Dayton Power and Light Company
Delmarva Power and Light Company
Executive Committee of The Federal Power Bar Association
FPC—Bureau of Natural Gas
FPC—Office of Administrative Law Judges
FPC—Office of Economics, Bureau of Power, Office of the General Counsel, and Office of Special Assistants
Georgia Power Company
Gulf Power Company
Interstate Natural Gas Association of America
The Montana Power Company
Northern Natural Gas Company
Pacific Power and Light Company
Phillips Petroleum Company
Power Authority of the State of New York
Public Service Commission of the State of New York
Public Service Company of New Mexico
Public Service Electric and Gas Company
Southern California Edison Company
Tucson Gas and Electric Company
Wisconsin Municipal Electric Utilities

ATTACHMENT B—RESPONDENTS IN DOCKET NO. RM77-4

Cong. Bella Abzug
Alabama Power Company, et al.
Columbia Gas Transmission Corporation, et al.
Consumers Power Company
Executive Committee of the Federal Power Bar Association
FPC, Bureau of Natural Gas
HEW, Virginia H. Knauer, Director, Office of Consumer Affairs
Interstate Natural Gas Association of America
Northern Natural Gas Company
Southern California Edison Company
Tenneco Oil Company

ATTACHMENT C—PARTICIPANTS IN PUBLIC CONFERENCE IN DOCKET NO. RM77-4 HELD FEBRUARY 24, 1977

PRESENT

Romulo L. Diaz, Jr., of the Commission, presiding.
William I. Harkaway, 1750 Pennsylvania Avenue, N.W., Washington, D.C. 20006, on behalf of the Federal Power Bar Association.
Jerome J. McGrath, John H. Cheatham, III, of the Interstate Natural Gas Association, on behalf of the Interstate Natural Gas Association.
William G. Porter, Jr., of Porter, Stanly, Platt & Arthur, 37 W. Broad Street, Columbus, Ohio, on behalf of Alabama Power Co., et al.
Richard M. Merriman, of Reid & Priest, 1701 K Street, Northwest, Washington, D.C. 20006, on behalf of the Federal Power Bar Association.
Francis J. Walsh, 1101 17th Street, Northwest, Washington, D.C., on behalf of Union Texas.
C. R. Tilley, of Columbia Gas System Service Corporation, 1625 I Street, N.W., Washington, D.C. 20006, on behalf of Columbia Gas System Service Corporation and Columbia Gas Transmission Corporation.
Frederick T. Searls, of Debevoise and Liberman, 806 15th Street, Northwest, Washington, D.C. 20005, on behalf of Alabama Power Company, et al.
Thomas F. Ryan, Jr., 821 15th Street, Northwest, Washington, D.C. 20005, on behalf of himself.
Kenneth Richardson, Joseph J. Solters, William Bagliebter, Robert Scarbrough, Lilo Schifter, H. H. Hammond, William W. Lindsay, of the Federal Power Commission, on behalf of the Federal Power Commission.
Mary Jane Klipple, Room 500, 1101 17th Street, N.W., Washington, D.C. 20036, on behalf of Foster Associates.
Carl W. Ulrich, of Chapman, Gadsby, Hannah and Duff, 1700 Pennsylvania Avenue, N.W., Washington, D.C. 20006, on behalf of Colorado Interstate Gas Company.
George L. Weber, of Consolidated Natural Gas Service Co., Inc., 1101 16th Street, N.W., Washington, D.C., on behalf of Consolidated Natural Gas Co.
William Warfield Ross, 1320 19th Street, N.W., Washington, D.C. 20036, on behalf of the Administrative Law Section, American Bar Association.
Harry L. Albrecht, 1120 Connecticut Avenue, N.W., Washington, D.C. 20037, on behalf of Natural Gas Pipeline Co.
Anthony D. Pryor, P.O. Box 2511, Houston, Texas 77001, on behalf of Tennessee Gas Pipeline Co.
Morton L. Simons, of Simons & Simons, 1629 K Street, N.W., Washington, D.C. 20006.

[FR Doc.77-7795 Filed 3-11-77;5:01 pm]

Title 20—Employees' Benefits

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

PART 401—DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

PART 422—ORGANIZATION AND PROCEDURES

Freedom of Information

In order to conform current regulations to the requirements of the Freedom of Information Act as amended by the Government in the Sunshine Act, Pub. L. 94-409, secion 5(b) effective March 12, 1977, the Secretary of Health, Education, and Welfare is issuing the interim amendment to 20 CFR Part 401 set out below. The rules for disclosure of social security records contained in 20 CFR Part 401, the Social Security Administration's Regulation No. 1, were the subject of a Notice of Intent and Hearings published by the Commissioner of Social Security on November 22, 1976 (41 FR 51425). The notice solicited public comments and testimony on the Social Security Administration's disclosure policy in anticipation of a proposal to amend Regulation No. 1. The Department is currently studying the testimony received at public hearings and the written comments as part of an indepth evaluation of existing policy and preparation of a notice of proposed rulemaking. The Secretary has determined that an interim Regulation No. 1 is needed immediately so that the disclosure rules for social security information will be consistent with the requirements of the amended Freedom of Information Act. For that reason the Secretary finds that prior notice and public comment on the interim regulation, as well as a delayed effective date, are impracticable and contrary to the public interest. Although the interim regulation contains the general disclosure policy for social security information, a final set of rules (which will be established as soon as practicable after notice of proposed rulemaking and further opportunity for public comment) will explain the application of the disclosure policy in a much more specific manner.

Social security information, as referred to herein, includes information obtained by the Department in administering titles II, XVI, and XVIII of the Social Security Act, irrespective of the organizational component within the Department responsible for the administration of the programs authorized by those titles.

Prior to the Government in the Sunshine Act, any social security information protected by Regulation No. 1 pursuant to section 1106(a) of the Social Security Act was also immune from disclosure under the Freedom of Information Act. Such information constituted matter "specifically exempted from disclosure by statute" within the meaning of exemption (3) of the Freedom of Information Act, 5 U.S.C. 552(b)(3). The Government in the Sunshine Act amended exemption (3) with the result that the Department can no longer cite section 1106(a) as authority for denying a Freedom of Information Act request. The Congressional Conference Committee specifically noted section 1106(a) as an example of a statute whose terms would not bring it within the amended exemption (3). See House of Representative Report No. 94-1441, 94th Cong., 2d Sess. (August 26, 1976) p. 25. Accordingly any social security information previously withheld on this basis must be made available unless another Freedom of Information Act exemption applies or another statute, which qualifies under amended exemption (3), prohibits disclosure. The Social Security Administration has applied the Freedom of Information Act rules to nonpersonal information since the July 1975 amendment to Regulation No. 1, 40 FR 27649, and the Department will now apply these rules to personal information as well.

While the Freedom of Information Act does not apply to disclosure to Federal agencies, Federal and State courts, or to instances where no specific request is made, the Department considers that a single consistent set of interim rules best promotes the public interest. Therefore, the interim regulation incorporates the principles of the Freedom of Information Act as the general rules for determining whether social security information may be disclosed, whether or not the Freedom of Information Act specifically applies. If, considering the circumstances of the disclosure, the information would not be exempt under 5 U.S.C. 552(b), the information may be disclosed (unless, of course, disclosure would be prohibited by another statute such as the Privacy Act or the Internal Revenue Code as amended by the Tax Reform Act of 1976). If the information would be exempt under the Freedom of Information Act, then the information will generally not be disclosed. The rules provide that information arguably exempt—for example, internal memoranda under 5 U.S.C. 552(b)(5) or investigatory records under 5 U.S.C. 552(b)(7)—may nevertheless be released under criteria for "waiving" an exemption. The interim regulation also expressly incorporates the access requirements of the Privacy Act and the mandatory disclosure provisions of the Freedom of Information Act, as well as the disclosure restrictions of other applicable laws.

In applying the interim rules to social security information, in all likelihood the most pertinent Freedom of Information Act exemption will be exemption (6), 5 U.S.C. 552(b)(6). Exemption (6) protects

personnnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This exemption requires the Department to weigh the individual's interest in privacy against the public interest served by disclosure. The Department anticipates that application of this balancing test to the records of workers and beneficiaries will produce results similar to the existing rules in Regulation No. 1. Therefore, a significant change in the availability of beneficiary or worker information is not intended or anticipated. Nevertheless unforeseen differences could occur in some cases, since the outcome of the balancing test depends on the precise facts of the case to which it is applied.

The balancing test may have a different impact on some other information currently protected by Regulation No. 1, for example, payments to individual physicians under the Medicare program. Although this information reflects at least to some degree the physician's income, a matter in which he has a privacy interest, disclosure would serve the strong public interest in the accountability of government programs, revealing how public funds are spent and the extent to which the funds are paid to individuals when acting in a business or professional capacity. The Department's past disclo-

sure of the amounts paid to physicians under the Medicaid program would be consistent with a determination that releasing the same information regarding Medicare payments does not involve a "clearly unwarranted" invasion of privacy.

Furthermore, exemption (4), while it may affect the new rules for disclosure of some social security data, would not appear to preclude disclosure of Medicare payments. Exemption (4), 5 U.S.C. 552 (b)(4), applies to "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Since Medicare payment information is generated by the Department and its carriers, the data are not "obtained from" a source outside the Executive Branch as required by current case law on exemption (4).

In addition to exemptions (4) and (6), the new disclosure rules will also require the Department in some instances to apply exemption (3), the "statutory" exemption in 5 U.S.C. 552(b)(3). Although section 1106(a) no longer qualifies, there are other statutes affecting social security information which appear to meet the exemption (3) criteria as amended by the Sunshine Act. For example, the Tax Reform Act of 1976 will still govern the redisclosure of tax "returns" and "return information" in the possession of the Department. Section 1865(a)(2) of the Social Security Act, which protects the confidentiality of accreditation survey reports submitted by the Joint Commission on Accreditation of Hospitals, will continue to do so under the new disclosure rules. Sections 1106 (d) and (e) of the Social Security Act, which protect certain official reports dealing with the operation of the health programs established by title XVIII of the Act, qualify under exemption (3) and will remain binding. The rules of these and other qualifying statutes are incorporated in the new Regulation No. 1 simply by reference to the "Freedom of Information Act rules," which include, by definition, exemption (3).

The regulation also provides that the procedural rules in 20 CFR Part 422, Subpart E, will apply to requests for disclosure governed by the substantive rules in Part 401. Under this provision, the fee schedules in 20 CFR Part 422 and the Department public information regulation, 45 CFR Part 5, will be applied to requests pursuant to the Freedom of Information Act. The fees for access by individuals to information about them in program record systems under the Privacy Act are limited, of course, by the Privacy Act, 5 U.S.C. 552a(f)(5), as implemented by the Department Privacy Act regulation, 45 CFR 5b.13. Fees for all other disclosures will be determined in accordance with section 1106(b) of the Social Security Act. It is anticipated that determinations thereunder will follow the prior rules established in 20 CFR 401.6 before amendment.

Accordingly, the principles of the Freedom of Information Act are adopted as interim rules for disclosure in the amendments to 20 CFR Part 401 set forth below. The Secretary finds that new statutory requirements resulting from the Government in the Sunshine Act establish good cause for dispensing with prior notice and a delayed effective date. Therefore, as authorized by the Administrative Procedure Act, 5 U.S.C. 553 (b) and (c), the amendments are adopted effective immediately.

If you have questions, please contact Mr. Kenneth Dyer, Acting Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7454.

(Secs. 205, 1102, and 1106 of the Social Security Act; 49 Stat. 624, as amended, 647, as amended, 53 Stat. 1398, as amended; sec. 290, 66 Stat. 234; (42 U.S.C. 405, 1302, 1306; 8 U.S.C. 1360; 5 U.S.C. 552a) (Privacy Act of 1974); (5 U.S.C. 552) (Freedom of Information Act), as amended by Pub. L. 94–409, 90 Stat. 1241; 26 U.S.C. 6103, as amended by Pub. L. 94–455, 90 Stat. 1667 (Tax Reform Act of 1976))

(Catalog of Federal Domestic Assistance Programs No. 13.800–13.807, Social Security Programs.)

NOTE: The Department has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 amended by Executive Order 11949 and OMB Circular A–107.

Dated: March 11, 1977.

JOSEPH A. CALIFANO, JR.,
Secretary of Health, Education, and Welfare.

Parts 401 and 422 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

1. Part 401 is amended by deleting §§ 401.4 through 401.6 and amending §§ 401.1 through 401.3 as follows:

§ 401.1 Purpose and scope.

(a) The regulations in this part implement section 1106(a) of the Social Security Act. As authorized by section 1106 (a), these regulations prescribe rules for the disclosure of information protected by section 1106(a). The rules apply to information obtained by officers or employees of the Department in the course of administering titles II, XVI, and XVIII of the Social Security Act, information obtained by Medicare intermediaries or carriers in the course of carrying out agreements under sections 1816 and 1842 of the Social Security Act, information obtained by State agencies in the course of carrying out agreements for making disability or blindness determinations under sections 221 and 1633 of the Social Security Act, information obtained during the course of a consultative examination under Part 404, § 404.1527 or Part 416, § 416.927 of this chapter, and any other information subject to section 1106(a) of the Social Security Act. The rules do not govern disclosure of information which is not subject to the prohibitions of section 1106(a), such as employee personnel records or other information maintained solely for purposes of personnel management.

(b) Except as authorized by the rules in this part, no information described in paragraph (a) of this section shall be disclosed. The procedural rules in Part 422, Subpart E, of this chapter shall be applied to requests for information which is subject to the rules for disclosure in this part.

(c) Requests for information which may not be disclosed according to the provisions of this part shall be denied under authority of section 1106(a) of the Social Security Act and this part, and furthermore, such requests which have been made pursuant to the Freedom of Information Act shall be denied under authority of an appropriate Freedom of Information Act exemption, 5 U.S.C. 552 (b).

§ 401.2 Definitions.

For purposes of this part: (a) The term "Freedom of Information Act rules" means the substantive mandatory disclosure provisions of the Freedom of Information Act, 5 U.S.C. 552 (including the exemptions from mandatory disclosure, 5 U.S.C. 552(b), as implemented by the Department's public information regulation, 45 CFR Part 5, Subpart F and by Part 422, Subpart E of this chapter);

(b) The term "subject individual" means an individual whose record is maintained by the Department in a system of records, as the terms "individual," "record," and "system of records" are defined in the Privacy Act of 1974, 5 U.S.C. 552a(a);

(c) The term "person" means a person as defined in the Administrative Procedure Act, 5 U.S.C. 551(2). This includes State or local agencies, but does not include Federal agencies or State or Federal courts.

§ 401.3 Rules for disclosure.

(a) *General rule.* The Freedom of Information Act rules shall be applied to every proposed disclosure of information. If, considering the circumstances of the disclosure, the information would be made available in accordance with the Freedom of Information Act rules, then the information may be disclosed regardless of whether the requester or recipient of the information has a statutory right to request the information under the Freedom of Information Act, 5 U.S.C. 552, or whether a request has been made.

(b) *Application of the general rule.* Pursuant to the general rule in paragraph (a) of this section,

(1) Information shall be disclosed—

(i) To a subject individual when required by the access provision of the Privacy Act, 5 U.S.C. 552a(d), as implemented by the Department Privacy Act regulation, 45 CFR Part 5b; and

(ii) To a person upon request when required by the Freedom of Information Act, 5 U.S.C. 552;

(2) Unless prohibited by any other statute (e.g., the Privacy Act of 1974, 5 U.S.C. 552a(b), the Tax Reform Act of 1976, 26 U.S.C. 6103, or section 1106 (d) and (e) of the Social Security Act), information may be disclosed to any requester or recipient of the information, including another Federal agency or a State or Federal court, when the information would not be exempt from man-

datory disclosure under Freedom of Information Act rules or when the information nevertheless would be made available under the Department's public information regulation's criteria for disclosures which are in the public interest and consistent with obligations of confidentiality and administrative necessity, 45 CFR Part 5, Subpart F, as supplemented by Part 422, Subpart E of this chapter.

§§ 401.4–401.6 [Deleted]

§ 422.426 [Amended]

2. Section 422.426 of Subpart E of Part 422 is amended by deleting paragraph (b) and redesignating paragraph (c) as paragraph (b).

[FR Doc.77-7754 Filed 3-11-77;4:14 pm]

[Regs. No. 4, 16]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Rights and Benefits Based on Disability; Determination of Disability or Blindness; Additional Medical Criteria for Determinations of Disability for Children Under Age 18

On December 3, 1976, there was published in the FEDERAL REGISTER (41 FR 53042) a notice of proposed rule making with proposed amendments to Subpart P, Regulations No. 4 and Subpart I, Regulations No. 16. The proposed amendments provided: (1) Additional medical criteria for the determination of disability of children under age 18 under title XVI of the Social Security Act; and (2) For the use of these criteria when evaluating disability under title II of a wage earner under age 18. Section 501(b) of Pub. L. 94–566, enacted October 20, 1976, requires that we publish these criteria within 120 days of enactment. Interested parties were given 45 days from the date of publication of that notice within which to submit any data, views, or arguments to the Social Security Administration, Department of Health, Education, and Welfare.

These criteria were developed in consultation with the Social Security Administration's Medical Consultant Staff, augmented by physicians with expertise in specific subspecialties of pediatrics. Several groups in the medical community were requested to comment on these medical criteria as they were being formulated.

The definition of disability in title XVI closely parallels that in title II, with the exception that title XVI provides specifically for eligibility for children under age 18 on the basis of disability. Within the basic definition of disability (i.e., an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months), title XVI provides for a finding of disability in the case of a child under the age of 18 if the child suffers from any medically determinable physical or mental impairment of comparable severity.

In determining "comparable severity," it is necessary to recognize that the manifestations of certain disease processes in children may be different than in adults, even where the diagnosed disease is the same.

The basic requirements for the determination of disability for children under age 18 are found in Regulations No. 16, Subpart I, § 416.904. Section 416.904 provides, in part, that disability will be deemed to exist for a child under age 18 if the child is not engaging in substantial gainful activity and his impairment(s) meets the requisite durational requirement and is either listed in the published appendix to Subpart I or, with appropriate consideration of the particular effect of disease processes in children, is medically the equivalent of a listed impairment. Thus, determinations of disability of children have been made and will continue to be made under the authority provided in § 416.904 and in consideration of the basic requirements stated therein.

The Listing of Impairments in the published appendix to Subpart I is identical to that in the appendix to Subpart P of Regulations No. 4. These criteria had originally been developed for the purpose of determining disability with respect to the essentially adult claimant population of the title II disability insurance program. When these criteria were adopted for the title XVI program, it was recognized that for a number of impairments, the medical criteria published in the appendix were directly applicable for determining disability of children, as well as of adults, and that these criteria could readily be used in children's claims.

Conversely, it was also recognized from the outset that some of the published criteria would not be directly applicable for determining disability of children because those criteria are based primarily on experience with impairments in adults. Additionally, it was recognized that some diseases and impairments generally seen only in young children were not addressed in the published appendix. Experience gained in evaluating impairments of children since January 1974 indicates the advisability of providing additional medical criteria at this time.

These proposed additional criteria do not alter the basic requirements for determining disability for children under § 416.904. They will, however, facilitate the decision making process because the criteria are directly applicable for determining disability for children. Because these proposed additional medical criteria are based on the concept of "comparable severity" to the Listing of Impairments published in the appendix to Subpart I, there should not be any transitional problems upon a child's attainment of age 18. Absent medical improvement, an impairment or a combination of impairments which meets or equals the proposed additional medical criteria for children until the attainment of age 18 would be expected to meet or equal the comparable existing medical criteria after the attainment of age 18.

The proposed amendments also contain technical revisions; specifically, the appendix has been redesignated "Appendix 1" and subdivided into Parts A and B. Part A contains the Listing of Impairments in the published appendix and is applicable to all individuals age 18 and over and to children under age 18 where it is clear, based upon the medical facts of the case, that the criteria are appropriate. Part B, which is herewith published as a Final Regulation, is applicable only to the evaluation of children's impairments where the criteria in Part A do not give appropriate consideration to the particular effect of disease processes in childhood. Thus, where additional criteria are included in Part B, the impairment categories are, to the extent feasible, numbered in such a way as to maintain a relationship with their counterparts in Part A.

We are also amending Regulations No. 4, Subpart P, § 404.1506 to refer to Part B when evaluating disability under title II of a wage earner under age 18 where the adult criteria are not applicable. Though not conclusive of the issue of disability in title II claims, use of the criteria in Part B will facilitate the title II decision making process in those cases where an applicant under age 18 applies for disability benefits on the basis of his own earnings.

In response to the Notice of Proposed Rule Making various interested parties submitted comments which were considered in preparing these final regulations. There follows a discussion of the comments received from 30 sources.

1. One writer stated that the proposed amendments to the regulations do not show how the Department arrived at the proposed medical criteria nor how the impairments are disabling; and another inquired about the extent of input from practicing physicians. The medical criteria were developed and formulated over a 2-year period by the Social Security Administration Medical Consultant Staff together with practicing physicians, and other professionals, such as psychologists, who are experts in various specialties, primarily pediatrics. In identifying these impairments and the level of severity which would establish disability, these professionals placed primary emphasis on the effects of physical and mental impairments in children, the impact of the impairment on the child's activities, and the restrictions on growth, learning, and development imposed on the child by the impairments. Those impairments which were determined to impact on the child's development to the same extent that the adult criteria have on an adult's ability to engage in substantial gainful activity were deemed to be of "comparable severity" to the adult listing. All the listed impairments have a severe impact on the child's development in one form or another—

physical, mental, emotional, or social. Thus, within this context, we believe that we have complied with Congressional intent and the law.

2. Another commentator stated that the Social Security Administration interprets severity in medical rather than functional terms. Such an interpretation is necessary because the proposed amendments to the regulations are derived from section 1614(a)(3)(C) of the Social Security Act, which specifies that a physical or mental impairment is one which is "demonstrable by medically acceptable clinical and laboratory diagnostic techniques." The medical criteria proposed, however, do result in functional limitations or restrictions, depending on the nature of the impairments, and these have been considered.

3. One writer questioned the use of the term "medically determinable" in § 416.904, pointing out that the exact cause of mental deficiency is not known in many cases. The term "medically determinable" is not meant to imply that the specific etiology of a disabling condition must be determined, but that its effect and limitations are discernible by the use of techniques commonly employed and accepted by medical professionals. In the case of mental deficiency, this can include detailed accounts of the child's daily activities, based on the observations of professional persons, as explained in section 112.00 of the Appendix.

4. Several writers commented that the proposed amendments to the regulations provide for a finding of childhood disability only when the particular child's impairment fits within one of the impairments enumerated in the regulations and that they do not make provision for a situation where a child has several impairments which involve more than one body system. The impairments listed in Appendix 1 provide a means to efficiently and equitably evaluate the more common impairments. The enumeration of these impairments does not preclude a finding of disability for children who have an impairment that is not included in the Appendix, nor does it preclude a favorable decision in cases where the child has a combination of impairments—where the individual impairments are less severe than a listed impairment. Decisions in such cases are made within the framework of § 416.904(b), which provides for evaluating unlisted impairments or a combination of multiple impairments. These decisions are made on the basis of whether the unlisted impairment, or the totality of impairments, are of a severity equivalent to a listed impairment.

5. One writer stated that the Listing is simply a modification of that used for adults. We agree that for those impairments common to both adults and children the proposed Listing corresponds to the adult Listing, with modifications of the adult criteria, where necessary, to take into account the different impact on children. In addition, the Listing contains impairments that are generally seen only in children.

6. Some writers indicated that the regulations should be broadened to include developmental needs. The medical criteria in Appendix 1 do consider developmental levels. Many of the criteria were established by considering disability in terms of departures from developmental norms at various levels. Developmental needs, however, such as counseling, special education, training, rehabilitation, guidance, etc., are not considered because they are not within the scope of the law.

7. Other writers suggested that the regulations should be based on a definition of disability which responds specifically to the physical, mental, and emotional development of the child; and several commentators believed that children must be evaluated according to developmental milestones. In applying the law, we considered those medical factors which relate to physical, mental, and emotional development. We also considered developmental milestones and, where they apply, these criteria were incorporated into the Listing so that the regulations do describe childhood impairments that interfere with the child's development.

8. A number of writers suggested that title XVI should include additional provisions for the general welfare and health needs of disabled children. Several writers suggested that the proposed regulations be broadened to help all children in need of medical care. Another writer recommended that responsibility for the care of children found disabled under the regulations be linked with a State program for crippled children. Another writer was concerned about the absence of a provision for dental care. Finally, one writer observed that the regulations should weigh the effect of the child's familial and educational development. While we concur that disabled children require many services, the intent of Congress is to provide benefits for children who meet the definition of disability. Because none of the above concerns relate to "disability," no changes are being made. To the writer who suggested a link with a State program for crippled children, however, Public Law 94-566, enacted on October 20, 1976, amends section 1615 of title XVI and provides for the referral of those children found blind or disabled under the title XVI criteria to a State agency, such as one providing crippled children's services, for appropriate counseling, medical, educational, developmental, rehabilitative, and social services.

9. One writer noted that § 416.902 gives consideration to education and indicated that consideration of education in an infant or child is inappropriate. We agree that consideration of education is inappropriate in determining disability in children under age 18. Section 416.902 does not apply to children under age 18; it refers to individuals age 18 and over.

10. Section 416.904 states that a child under age 18 will be found to be disabled as defined in § 416.901(b)(1) if he has a medically determinable physical or mental impairment of comparable severity to that which qualifies an individual age 18 or over. Several writers expressed concern about the phrase "if the child is not engaging in substantial gainful activity" as contained in § 416.904. A recommended substitution for "substantial gainful activity" was "age-appropriate major daily activities." This portion of § 416.904 is derived from section 1614(a)(3) and does not enter into the medical evaluation process. It covers the unusual situation where a child is actually working and deriving substantial earnings therefrom despite the presence of a severe impairment. As required by section 1614(a)(3)(D) of the Social Security Act, such a situation would preclude a finding of disability. Further, we believe that to set a standard based on "age-appropriate major daily activities" for all impairments is unduly restrictive and not within the intent of the law.

11. Other writers stated that it seems inappropriate to use a work-related definition for children. Recognizing that children are not expected to engage in work activity, disability in children has been defined in terms of a child's activity, growth, and development. Thus, the child's theoretical capacity to engage in work activity is not considered in determining disability under the listing in Appendix A.

12. Another writer states that a child's performance of substantial gainful work should not be a conclusive factor in denying supplemental security income benefits. This writer points out that some disabled children may be in situations where they are found to engage in employment. Not all employment situations constitute substantial gainful activity as defined elsewhere in the regulations (§§ 416.932, 416.933, and 416.934). Most persons who are denied under this provision (which applies to adults as well as children) are those who have developed special skills that permit them to perform substantial work despite a severe impairment. It would be unusual for a child who has a severe impairment to find and successfully perform substantial gainful activity. In that event, however, section 1614(a)(3)(D) of the Social Security Act requires a denial of the disability claim.

13. One writer was concerned that "substantial gainful activity" could be interpreted to mean attendance in a school classroom. The term substantial gainful activity as defined in §§ 416.932–416.934 of the regulations refers only to that activity within a work situation which is usually performed for remuneration, pay, or profit. Thus, school attendance cannot be construed as substantial gainful activity.

14. Appendix 1, Part B, section 112.00B states that developmental milestone criteria may be the sole basis for adjudication only in cases where the child's young age or condition preclude formal standardized testing by a psychologist or psychiatrist experienced in testing children. One writer commented that the

proposed amendments to the regulations limit the identification of mental disorders to physicians; additionally, he suggested that psychologists are limited to a testing role. Under the title XVI statutory provisions, evidence from a medical source is necessary to establish the existence, severity, and duration of an impairment. Psychologists are recognized as a source of medical evidence as pointed out in Appendix I, Part A, section 12.00D, which indicates that "the severity of a mental disorder should be evaluated on the basis of psychiatrists' reports, hospital reports, psychologists' reports and description of daily activities." Consequently, psychologists' reports represent primary sources of medical evidence and are included in determining whether disability exists. Additionally, section 112.00B of the proposed amendments to the regulations indicates that standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not clearly covered under the provisions of section 112.05A. Thus, many cases may include psychologists' reports containing a composite of information pertaining to the claimant's daily activities and current behavior, as well as laboratory findings including the results of standardized psychological tests. Because the validity of these test results are important in the documentation and evaluation of mental deficiency, the regulations simply emphasize that they should be administered by qualified and experienced psychologists or psychiatrists. Reference to psychologists in this capacity is not intended to imply that their role is limited to this function. Because all symptoms, signs, and laboratory findings by psychologists are considered medical evidence and because their role is not limited to that of testing, no change in the proposed regulatory language is required.

15. One writer commented that the medical criteria of the regulations should be reviewed in light of the medical advances. Consistent with traditional policies of the Social Security Administration, the need for ongoing review of the regulations in light of progress in medicine is fully appreciated and undertaken periodically. Future revisions will be made based on these medical advances and operating experience.

16. One commenter was concerned that investigations of continuing medical severity, after entitlement, will infringe upon privacy. Periodic redeterminations of disability do not constitute an invasion of the individual's privacy if he wishes benefits. In scheduling future reexaminations to determine whether medical recovery has occurred, emphasis is placed on those who have impairments which have a definite potential for improvement.

17. Another writer objected to the use of the pronouns "her," "his," and "him." This accords with §416.120(c)(11) of the regulations which states that the masculine gender includes the feminine, unless otherwise indicated.

18. One writer raised a question as to the clarity of the criteria for growth impairment and pointed out that the requirement of one standard deviation of bone age delay would include too many normal children. Appropriate changes have been made to section 100.00 Growth Impairment in response to this comment.

19. Three writers advised using additional higher frequency tone levels in evaluating hearing impairments, and one writer advised other clarifying language for evaluating hearing impairments. These changes have been incorporated in sections 102.00, and 102.08.

20. Two writers recommended clarifying language for section 104.00 Cardiovascular Impairments. A number of these have been adopted. The others are under study.

21. Two writers questioned the specific identification of Down's syndrome under section 112.00. Because there is an adequate basis for adjudication of impairments associated with this diagnosis elsewhere in the Regulations, the reference to Down's syndrome in sections 112.00 and 112.05 have been removed.

Section 102.02 has been revised to clarify that the standard for evaluating impairment of central visual acuity in adults also applies to children under age 18. Minor editorial changes have also been made. According, these amendments to the regulations are adopted as set forth below.

(Secs. 223, 1102, 1614, 1631, of the Social Security Act, as amended; 70 Stat. 815, 49 Stat. 647, as amended, 86 Stat. 1471, 86 Stat. 1475; 42 U.S.C. 423, 1302, 1382c, 1383.)

Effective date: The amendments shall be effective March 16, 1977.

(Catalog of Federal Domestic Assistance Programs No. 13.802, Social Security-Disability Insurance, No. 13.807, Supplemental Security Income Program.

NOTE: The Social Security Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order No. 11821 and OMB Circular A-107.

Dated: February 16, 1977.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: March 9, 1977.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

Parts 404 and 416 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

1. Section 404.1506 is amended by inserting a new paragraph (e) to read as follows:

§ 404.1506 Listing of impairments in appendix.

* * * * *

(e) In determining whether a wage earner under age 18 has an impairment which is disabling on medical considerations alone (see § 404.1502(a)), reference shall also be made to Part 416, Subpart I, Appendix 1, Part B.

2. The entries for section 416.906, and Appendix in the Table of Contents for Part 416, Subpart I are revised as follows:

Subpart I—Determination of Disability or Blindness

* * * * *

416.906 Listing of impairments in Appendix 1.

* * * * *

APPENDIX 1—LISTING OF IMPAIRMENTS

Part A.—Criteria Applicable to Individuals Age 18 and Over and to Children Under Age 18 Where Criteria are Appropriate.

Part B.—Additional Medical Criteria for the Evaluation of Impairments of Children.

3. Paragraph (a) of § 416.902 is revised to read as follows:

§ 416.902 Evaluation of disability for individuals age 18 or over.

(a) Whether or not an impairment in a particular case constitutes a disability, as defined in § 416.901(b)(1), is determined from all the facts of that case. Primary consideration is given to the severity of the individual's impairment. Consideration is also given to such other factors as the individual's age, education and work experience. Medical considerations alone can justify a finding that the individual is not under a disability where the only impairment is a slight neurosis, slight impairment of sight or hearing, or other slight abnormality or a combination of slight abnormalites. On the other hand, medical considerations alone (including physiological and psychological manifestations of aging) can, except where other evidence rebuts a finding of "disability," e.g., the individual is actually engaging in substantial gainful activity, justify a finding that the individual is under a disability where his impairment is one that meets the duration requirement in § 416.901(b)(1), and is listed in Part A of Appendix 1 to this Subpart I, or the Social Security Administration determines his impairment (or combined impairments) to be medically the equivalent of a listed impairment (see § 416.905).

* * * * *

4. Section 416.904 is revised to read as follows:

§ 416.904 Evaluation of disability of a child under age 18.

A child under age 18 will be found to be disabled as defined in § 416.901(b)(1) if he has a medically determinable physical or mental impairment of comparable severity to that which qualifies an individual age 18 or over. Disability shall be deemed to be of comparable severity and to exist under § 416.901(b)(1) if the child is not engaging in substantial gainful activity, and if:

(a) His impairment or impairments meet the durational requirements in § 416.901(b)(1), and are listed in Appendix 1 to this Subpart I; or

(b) His impairment or impairments are not listed in Appendix 1 to this Subpart I but singly or in combination meet the durational requirement in § 416.901(b)(1) and are determined by the Social

Security Administration, with appropriate consideration of the particular effect of disease processes in childhood, to be medically the equivalent of a listed impairment (see § 416.905).

5. Section 416.905 is revised to read as follows:

§ 416.905 Determining medical equivalence.

(a) An individual's impairment or impairments shall be determined to be medically the equivalent of an impairment listed in Appendix 1 to this Subpart I, only if the medical findings with respect thereto are at least equivalent in severity and duration to the listed findings of the listed impairment.

(b) Any decision with respect to disability made under the criteria in § 416.901(b) as to whether an individual's impairment or impairments are medically the equivalent of an impairment listed in Appendix 1 to this Subpart I, shall be based on medical evidence demonstrated by medically acceptable clinical and laboratory diagnostic techniques, including a medical judgment furnished by one or more physicians designated by the Social Security Administration, relative to the question of medical equivalence. A "physician designated by the Social Security Administration" shall include a physician in the employ of or engaged for this purpose by the Social Security Administration or State agency authorized to make determinations of disability.

6. Section 416.906 is amended by revising the title, redesignating the existing paragraphs (b), (c), and (d) as (c), (d), and (e) respectively, incorporating technical revisions in the existing paragraphs (a) and (c), and inserting a new paragraph (b) to read as follows:

§ 416.906 Listing of impairments in appendix 1.

(a) With respect to § 416.901(b)(1), the Listing of Impairments in Appendix 1 to this Subpart I describes, for each of the major body systems, impairments which:

(1) Are of a level of severity which can justify a finding that the individual is disabled, except where other evidence rebuts such a finding; and

(2) Are expected to result in death or to last for a continuous period of not less than 12 months.

(b) The Listing of Impairments consists of two parts—A and B. Part A contains medical criteria that are applicable to all individuals age 18 and over. The medical criteria in Part A may also be applied in the evaluation of impairments in children under age 18 where the disease processes have similar impairment impact on children and adults. Part B contains additional medical criteria applicable only to the evaluation of impairments of children under age 18. Part B is used where the criteria in Part A do not give appropriate consideration to the particular effects of the disease processes in childhood; i.e., when the disease process is generally found only in children or when the disease process differs in its effect on children than on adults. Where additional criteria are included in Part B, the impairment categories are, to the extent feasible, numbered to maintain a relationship with their counterparts in Part A. The method for adjudicating claims for children under age 18 is to look first to Part B. Where the medical criteria in Part B are not applicable, the medical criteria in Part A should be used.

* * * * *

(d) An impairment shall not be considered to be one listed in Appendix 1 to this Subpart I solely because it has the name of a listed impairment. To be considered a listed impairment, it must also have such attendant findings as are recited in the Listing for the impairment.

* * * * *

7. Subpart I of Part 416 is amended by designating the existing Listing of Impairments as Part A entitled as follows:

APPENDIX 1

LISTING OF IMPAIRMENTS

Part A

Criteria applicable to individuals age 18 and over and to children under age 18 where criteria are appropriate.

Sec.

* * * * *

8. Subpart I of Part 416 is further amended by adding to Appendix 1 a new Part B, which read as follows:

Part B

Additional medical criteria for the evaluation of impairments of children under age 18 (where criteria in Part A do not give appropriate consideration to the particular disease process in childhood).

Sec.

100.00 GROWTH IMPAIRMENT

A. *Impairment of growth* may be disabling in itself or it may be an indicator of the severity of the impairment due to a specific disease process.

Determinations of growth impairment should be based upon the comparison of current height with at least three previous determinations, including length at birth, if available. Heights (or lengths) should be plotted on a standard growth chart, such as derived from the National Center for Health Statistics: NCHS Growth Charts. Height should be measured without shoes. Body weight corresponding to the ages represented by the heights should be furnished. The adult heights of the child's natural parents and the heights and ages of siblings should also be furnished. This will provide a basis upon which to identify those children whose short stature represents a familial characteristic rather than a result of disease. This is particularly true for adjudication under § 100.02B.

B. *Bone age determinations* should include a full descriptive report of roentgenograms specifically obtained to determine bone age and must cite the standardization method used. Where roentgenograms must be obtained currently as a basis for adjudication under § 100.03, views of the left hand and wrist should be ordered. In addition, roentgenograms of the knee and ankle should be obtained when cessation of growth is being evaluated in an older child at, or past, puberty.

C. The criteria in this section are applicable until closure of the major epiphyses. The cessation of significant increase in height at that point would prevent the application of these criteria.

100.01 CATEGORY OF IMPAIRMENTS, GROWTH

100.02 *Growth Impairment*, considered to be related to an additional specific medically determinable impairment, and one of the following:

A. Fall of greater than 15 percentiles in height which is sustained; or

B. Fall to, or persistence of, height below the third percentile.

100.03 *Growth impairment*, not identified as being related to an additional, specific medically determinable impairment. With:

A. Fall of greater than 25 percentiles in height which is sustained; and

B. Bone age greater than two standard deviations (2 SD) below the mean for chronological age (see § 100.00B).

101.00 MUSCULOSKELETAL SYSTEM

A. *Rheumatoid arthritis.* Documentation of the diagnosis of juvenile rhematoid arthritis shoud be made according to an established protocol, such as that published by the Arthritis Foundation, *Bulletin on the Rheumatic Diseases*, Vol. 23, 1972–1973 Series, p. 712. Inflammatory signs include persistent pain, tenderness, erythema, swelling, and increased local temperature of a joint.

B. *The measurements of joint motion* are based on the technique for measurements described in the "Method of Measuring and Recording," published by the American Academy of Orthopedic Surgeons in 1965, or "The Extremities and Back" in *Guides to the Evaluation of Permanent Impairment*, Chicago, American Medical Association, 1971 Chapter 1, pp. 1–48.

C. *Degenerative arthritis* may be the end stage of many skeletal diseases and conditions, such as traumatic arthritis, collagen disorders, septic arthritis, congenital dislocation of the hip, aseptic necrosis of the hip, slipped capital femoral epiphyses, skeletal dysplasias, etc.

101.01 CATEGORY OF IMPAIRMENTS, MUSCULOSKELETAL

101.02 *Juvenile rheumatoid arthritis.* With:

A. Persistence or recurrence of joint inflammation despite six months of medical treatment and one of the following:

1. Limitation of motion of two major joints of 50 percent or greater; or

2. Fixed deformity of two major weight-bearing joints of 30 degrees or more; or

3. Radiographic changes of joint narrowing, erosion, or subluxation; or

4. Persistent or recurrent systemic involvement such as iridocyclitis or pericarditis; or

B. Steroid dependence.

101.03 *Deficit of musculoskeletal function* due to deformity or musculoskeletal disease and one of the following:

A. Walking is markedly reduced in speed or distance despite orthotic or prosthetic devices; or

B. Ambulation is possible only with obligatory bilateral upper limb assistance (e.g. with walker, crutches); or

C. Inability to perform age-related personal self-care activities involving feeding dressing and personal hygiene.

101.05 *Disorders of the spine.*

A. *Fracture of vertebra with cord involvement (substantiated by appropriate sensory and motor loss).*

B. *Scoliosis (congenital idiopathic or neuromyopathic).* With:

1. Major spinal curve measuring 60 degrees or greater; or

2. Spinal fusion of six or more levels. Consider under a disability for one year from the time of surgery; thereafter evaluate the residual impairment; or

3. FEV (vital capacity) of 50 percent or less of predicted normal values for the individual's measured (actual) height.

C. *Kyphosis or lordosis measuring 90 degrees or greater.*

101.08 *Chronic osteomyelitis* with persistence or recurrence of inflammatory signs or drainage for at least 6 months despite prescribed therapy and consistent radiographic findings.

102.00 Special Sense Organs

A. *Visual impairments in children.* Impairment of central visual acuity should be determined with use of the standard Spellen test chart. Where this cannot be used, as in very young children, a complete description should be provided of the findings using other appropriate methods of examination, including a description of the techniques used for determining the central visual acuity for distance.

The accommodative reflex is generally not present in children under 6 months of age. In premature infants, it may not be present until 6 months plus the number of months the child is premature. Therefore absence of accommodative reflex will be considered as indicating a visual impairment only in children above this age (6 months).

Documentation of an ophthalmologic disorder must include description of the ocular pathology.

B. *Hearing impairments in children.* The criteria for hearing impairments in children take into account that a lesser impairment in hearing which occurs at an early age may result in a severe speech and language disorder.

Improvement by a hearing aid, as predicted by the testing procedure, must be demonstrated to be feasible in that child, since younger children may be unable to use a hearing aid effectively.

The type of audiometric testing performed must be described and a copy of the results must be included. The pure tone air conduction in § 102.08 are based on American National Standard Institute Specifications for Audiometers, S 3.6—1969 (ANSI-1969). The report should indicate the specifications used to calibrate the audiometer

The finding of a severe impairment will be based on the average hearing levels of the four frequencies, 500, 1000, 2000, and 3000 Hertz (Hz) in the better ear, and on speech discrimination, as specified in § 102.08.

102.01 Category of Impairments, Special Sense Organs

102.02 *Impairment of central visual acuity.*

A. Remaining vision in the better eye after best correction is 20/200 or less.

B. For children below 3 years of age at at time of adjudication:

1. Absence of accommodative reflex (see § 102.00A for exclusion of children under 6 months of age); or

2. Retrolental fibroplasia with macular scarring or neovascularization; or

3. Bilateral congenital cataracts with visualization of retinal red reflex only or when associated with other ocular pathology.

102.08 *Hearing impairments.*

A. For children below 5 years of age at time of adjudication, inability to hear air conduction thresholds at an average of 40 decibels (db) hearing level or greater in the better ear.

B. For children 5 years of age and above at time of adjudication:

1. Inability to hear air conduction thresholds at an average of 70 decibels (db) or greater in the better ear or

2. Speech discrimination scores at 40 percent or less; or

3. Inability to hear air conduction thresholds at an average of 40 decibels (db) or greater in the better ear, and a speech and language disorder which significantly affects the clarity and content of the speech and is attributable to the hearing impairment.

103.00 Respiratory System

A. *Documentation of pulmonary insufficiency.* The reports of spirometric studies for evaluation under Table I must be expressed in liters. The reported FEV_1 should represent the largest of at least three satisfactory attempts, and should be within 10 percent of another FEV_1. The appropriately labeled spirometric tracing of three FEV maneuvers must be submitted with the report, showing distance per second on the abscissa and distance per liter on the ordinate. The unit distance for volume on the tracing should be at least 15 mm. per liter and the paper speed at least 20 mm. per second. The height of the individual without shoes must be recorded.

The ventilatory function studies should not be performed during or soon after an acute episode or exacerbation of a respiratory illness. In the presence of acute bronchospasm, or where the FEV_1 is less than that stated in Table I, the studies should be repeated after the administration of a nebulized bronchodilator. If a bronchodilator was not used in such instances, the reason should be stated in the report.

A statement should be made as to the child's ability to understand directions and to cooperate in performance of the test, and should include an evaluation of the child's effort. Where tests cannot be performed or completed, the reason (such as a child's young age) should be stated in the report.

B. *Cystic fibrosis.* This section discusses only the pulmonary manifestations of cystic fibrosis. Other manifestations, complications, or associated disease must be evaluated under the appropriate section.

The diagnosis of cystic fibrosis will be based upon appropriate history, physical examination, and pertinent laboratory findings. Confirmation based upon elevated concentration of sodium or chloride in the sweat should be included, with indication of the technique used for collection and analysis.

103.01 Category of Impairments, Respiratory

103.03 *Bronchial asthma.* With evidence of progression of the disease despite therapy and documented by one of the following:

A. Recent, recurrent intense asthmatic attacks requiring parenteral medication; or

B. Persistent prolonged expiration with wheezing between acute attacks and radiographic findings of peribronchial disease.

103.13 *Pulmonary manifestations of cystic fibrosis.* With:

A. FEV_1 equal to or less than the values specified in Table I (see § 103.00A for requirements of ventilatory function testing); or

B. For children where ventilatory function testing cannot be performed:

1. History of dyspnea on mild exertion or chronic frequent productive cough; and

2. Persistent or recurrent abnormal breath sounds, bilateral rales or rhonchi; and

3. Radiographic findings of extensive disease with hyperaeration and bilateral peribronchial infiltration.

Table I

Height (in centimeters):	FEV_1 *equal to or less than (liters)*
110 or less	0.6
120	.7
130	.9
140	1.1
150	1.3
160	1.5
170 or more	1.6

104.00 Cardiovascular System

A. *General.* Evaluation should be based upon history, physical findings, and appropriate laboratory data. Reported abnormalities should be consistent with the pathologic diagnosis. The actual electrocardiographic tracing, or an adequate marked photocopy, must be included. Reports of other pertinent studies necessary to substantiate the diagnosis or describe the severity of the impairment must also be included.

B. *Evaluation of cardiovascular impairments in children* requires two steps:

1. The delineation of a specific cardiovascular disturbance, either congenital or acquired. This may include arterial or venous disease, rhythm disturbance, or disease involving the valves, septa, myocardium or pericardium; and

2. Documentation of the severity of the impairment, with medically determinable and consistent cardiovascular signs, symptoms, and laboratory data. In cases where impairment characteristics are questionably secondary to the cardiovascular disturbance, additional documentation of the severity of the impairment (e.g., catherization data, if performed) will be necessary.

C. *Chest roentgenogram* (6 ft. PA film) will be considered indicative of cardiomegaly if:

1. The cardiothoracic ratio is over 60 percent at age one year or less, or 55 percent at more than one year of age; or

2. The cardiac size is increased over 15 percent from any prior chest roentgenograms; or

3. Specific chamber or vessel enlargement is documented in accordance with established criteria.

D. *Tables* I, II, *and* III below are designed for case adjudication and not for diagnostic purposes. The adult criteria may be useful for older children and should be used when applicable.

E. *Rheumatic fever,* as used in this section assumes diagnoses made according to the revised Jones Criteria.

104.01 Category of Impairments, Cardiovascular

104.02 *Chronic congestive failure.* With two or more of the following signs:

A. Tachycardia (see Table I).

B. Tachypnea (see Table II).

C. Cardiomegaly on chest roentgenogram (see § 104.00C).

D. Hepatomegaly (more than 2 cm. below the right costal margin in the right midclavicular line).

E. Evidence of pulmonary edema, such as rales or orthopnea.

F. Dependent edema.

G. Exercise intolerance manifested as labored respiration on mild exertion (e.g., in an infant, feeding).

TABLE I—TACHYCARDIA AT REST

Age	Apical Heart (beats per minute)
Under 1 yr	150
1 through 3 yr	130
4 through 9 yr	120
10 through 15 yr	110
Over 15 yr	100

TABLE II—TACHYPNEA AT REST

Age	Respiratory rate over (per minute)
Under 1 yr	40
1 through 5 yr	35
6 through 9 yr	30
Over 9 yr	25

104.03 *Hypertensive cardiovascular disease.* With persistently elevated blood pressure for age (see Table III) and one of the following:

A. Impaired renal function as described under the criteria in § 106.02; or

B. Cerebrovascular damage as described under the criteria in § 111.06; or

C. Congestive heart failure as described under the criteria in § 104.02.

TABLE III—ELEVATED BLOOD PRESSURE

Age	Systolic (over) In mm. Hg	Diastolic (over) In mm. Hg
Under 6 mo	95	60
6 mo. to 1 yr	110	70
1 through 8 yrs	115	80
9 through 11 yrs	120	80
12 through 15 yrs	130	80
Over 15 yrs	140	80

104.04 *Cyanotic congenital heart disease.* With one of the following:

A. Surgery is limited to palliative measures; or

B. Characteristic squatting, hemoptysis, syncope, or hypercyanotic spells; or

C. Chronic hematocrit of 55 percent or greater or arterial O_2 saturation of less than 90 percent at rest, or arterial oxygen tension of less than 60 Torr at rest.

104.05 *Cardiac arrhythmia, such as persistent or recurrent heart block or A-V dissociation (with or without therapy).* And one of the following:

A. Cardiac syncope; or

B. Congestive heart failure as described under the criteria in § 104.02; or

C. Exercise intolerance with labored respirations on mild exertion (e.g., in infants, feeding).

104.07 *Cardiac syncope.* With at least one documented syncopal episode characteristic of specific cardiac disease (e.g., aortic stenosis).

104.08 *Recurrent hemoptysis.* Associated with either pulmonary hypertension or extensive bronchial collaterals due to documented chronic cardiovascular disease.

104.09 *Chronic rheumatic fever or rheumatic heart disease.* With:

A. Persistence of rheumatic fever activity for 6 months or more, with significant murmur(s), cardiomegaly (see § 104.00C), and other abnormal laboratory findings (such as elevated sedimentation rate or electrocardiographic findings); or

B. Congestive heart failure as described under the criteria in § 104.02.

105.00 DIGESTIVE SYSTEM

A. *Disorders of the digestive system* which result in disability usually do so because of interference with nutrition and growth, multiple recurrent inflammatory lesions, or other complications of the disease. Such lesions or complications usually respond to treatment. To constitute a listed impairment, these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Documentation of gastrointestinal impairments* should include pertinent operative findings, radiographic studies, endoscopy, and biopsy reports. Where a liver biopsy has been performed in chronic liver disease, documentation should include the report of the biopsy.

C. *Growth retardation and malnutrition.* When the primary disorder of the digestive tract has been documented, evaluate resultant malnutrition under the criteria described in § 105.08. Evaluate resultant growth impairment under the criteria described in § 100.03. Intestinal disorders, including surgical diversions and potentially correctable congenital lesions, do not represent a severe impairment if the individual is able to maintain adequate nutrition, growth, and development.

D. *Multiple congenital anomalies.* See related criteria, and consider as a combination of impairments.

105.01 CATEGORY OF IMPAIRMENTS, DIGESTIVE

105.03 *Esophageal obstruction, caused by atresia, stricture, or stenosis.* With malnutrition as described under the criteria in § 105.08.

105.05 *Chronic liver disease.* With one of the following:

A. Inoperable biliary atresia demonstrated by X-ray or surgery; or

B. Intractable ascites not attributable to other causes, with serum albumin of 3.0 gm./100 ml. or less; or

C. Esophageal varices (demonstrated by angiography, barium swallow, or endoscopy or by prior performance of a specific shunt or plication procedure); or

D. Hepatic coma, documented by findings from hospital records; or

E. Hepatic encephalopathy. Evaluate under the criteria in § 112.02; or

F. Chronic active inflammation or necrosis documented by SGOT persistently more than 100 units or serum bilirubin of 2.5 mg. percent or greater.

105.07 *Chronic inflammatory bowel disease (such as ulcerative colitis, regional enteritis), as documented in § 105.00.* With one of the following:

A. Intestinal manifestations or complications, such as obstruction, abscess, or fistula formation which has lasted or is expected to last 12 months; or

B. Malnutrition as described under the criteria in § 105.08; or

C. Growth impairment as described under the criteria in § 100.03.

105.08 *Malnutrition, due to demonstrable gastrointestinal disease causing either a fall of 15 percentiles of weight which persists or the persistence of weight which is less than the third percentile (on standard growth charts).* And one of the following:

A. Stool fat excretion per 24 hours:

1. More than 15 percent in infants less than 6 months.

2. More than 10 percent in infants 6-18 months.

3. More than 6 percent in children more than 18 months; or

B. Persistent hematocrit of 30 percent or less despite prescribed therapy; or

C. Serum carotene of 40 mcg./100 ml. or less; or

D. Serum albumin of 3.0 gm./100 ml. or less.

106.00 GENITO-URINARY SYSTEM

A. *Determination of the presence of chronic renal disease* will be based upon the following factors:

1. History, physical examination, and laboratory evidence of renal disease.

2. Indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. *Renal transplant.* The amount of function restored and the time required to effect improvement depend upon various factors including adequacy of post-transplant renal function, incidence of renal infection, occurrence of rejection crisis, presence of systemic complications (anemia, neuropathy, etc.) and side effects of corticosteriod or immunosuppressive agents. A period of at least 12 months is required for the individual to reach a point of stable medical improvement.

C. Evaluate associated disorders and complications according to the appropriate body system listing.

106.01 CATEGORY OF IMPAIRMENTS, GENITO-URINARY

106.02 *Chronic renal disease.* With:

A. BUN of 30 mg./100 ml. or greater; or

B. Serum creatinine of 3.0 mg./100 ml. or greater; or

C. Creatinine clearance equal to or less than 42 ml./min./1.73 m^2; or

D. Chronic renal dialysis program for irreversible renal failure; or

E. Renal transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see § 106.00B).

106.06 *Nephrotic syndrome, with edema not controlled by prescribed therapy.* And:

A. Serum albumin less than 2 gm./100 ml.; or

B. Proteinuria more than 2.5 gm./1.73 m^2/day.

107.00 HEMIC AND LYMPHATIC SYSTEM

A. *Sickle cell disease* refers to a chonric hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis must be included. Vaso-occlusive, hemolytic, or aplastic episodes should be documented by description of severity, frequency, and duration.

Disability due to sickle cell disease may be solely the result of a severe, persistent anemia or may be due to the combination of chronic progressive or episodic manifestations in the presence of a less severe anemia.

Major visceral episodes causing disability include meningitis, osteomyelitis, pulmonary infections or infarctions, cerebrovascular accidents, congestive heart failure, genitourinary involvement, etc.

B. *Coagulation defects.* Chronic inherited coagulation disorders must be documented by appropriate laboratory evidence such as abnormal thromboplastin generation, coagulation time, or factor assay.

C. *Acute leukemia.* Initial diagnosis of acute leukemia must be based upon definitive bone marrow pathologic evidence. Recurrent disease may be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination. The pathology report must be included.

Section 107.11 contains the designated duration of disability implicit in the finding

of a listed impairment. Following the designated time period, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of any remaining impairment must be evaluated on the basis of the medical evidence.

107.01 CATEGORY OF IMPAIRMENTS, HEMIC AND LYMPHATIC

107.03 *Hemolytic anemia (due to any cause).* Manifested by persistence of hematocrit of 26 percent or less despite prescribed therapy, and reticulocyte count of 4 percent or greater.

107.05 *Sickle cell disease.* With:

A. Recent, recurrent, severe vaso-occlusive crises (musculoskeletal, vertebral, abdominal); or

B. A major visceral complication in the 12 months prior to application; or

C. A hyperhemolytic or aplastic crisis within 12 months prior to application; or

D. Chronic, severe anemia with persistence of hematocrit of 26 percent or less; or

E. Congestive heart failure, cerebrovascular damage, or emotional disorder as described under the criteria in § 104.02, § 111.00ff, or § 112.00ff.

107.06 *Chronic idiopathic thrombocytopenic purpura of childhood.* With purpura and thrombocytopenia of 40,000 platelets/cu. mm. or less despite prescribed therapy or recurrent upon withdrawal of treatment.

107.08 *Inherited coagulation disorder.* With:

A. Repeated spontaneous or inappropriate bleeding; or

B. Hemarthrosis with joint deformity.

107.11 *Acute leukemia.* Consider under a disability:

A. For 2½ years from the time of initial diagnosis; or

B. For 2½ years from the time of recurrence of active disease.

109.00 ENDOCRINE SYSTEM

A. *Cause of disability.* Disability is caused by a disturbance in the regulation of the secretion or metabolism of one or more hormones which are not adequately controlled by therapy. Such disturbances or abnormalities usually respond to treatment. To constitute a listed impairment these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Growth.* Normal growth is usually a sensitive indicator of health as well as of adequate therapy in children. Impairment of growth may be disabling in itself or may be an indicator of a severe disorder involving the endocrine system or other body systems. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

C. *Documentation.* Description of characteristic history, physical findings, and diagnostic laboratory data must be included. Results of laboratory tests will be considered abnormal if outside the normal range or greater than two standard deviations from the mean of the testing laboratory. Reports in the file should contain the information provided by the testing laboratory as to their normal values for that test.

D. *Hyperfunction of the adrenal cortex.* Evidence of growth retardation must be documented as described in § 100.00. Elevated blood or urinary free cortisol levels are not acceptable in lieu of urinary 17-hydroxycorticosteroid excretion for the diagnosis of adrenal cortical hyperfunction.

E. *Adrenal cortical insufficiency.* Documentation must include persistent low plasma cortisol or low urinary 17-hydroxycorticosteroids or 17-ketogenic steroids and evidence of unresponsiveness to ACTH stimulation.

109.01 CATEGORY OF IMPAIRMENTS, ENDROCRINE

109.02 *Thyroid Disorders.*

A. *Hyperthyroidism (as documented in § 109.00C).* With clinical manifestations despite prescribed therapy, and one of the following:

1. Elevated serum thyroxine (T_4) and either elevated free T_4 or resin T_3 uptake; or

2. Elevated thyroid uptake of radioiodine; or

3. Elevated serum triiodothyronine (T_3).

B. *Hypothyrodism.* With one of the following, despite prescribed therapy:

1. IQ of 69 or less; or

2. Growth impairment as described under the criteria in § 100.02B and C; or

3. Precocious puberty.

109.03 *Hyperparathyroidism (as documented in § 109.00C).* With:

A. Repeated elevated total or ionized serum calcium; or

B. Elevated serum parathyroid hormone.

109.04 *Hypoparathyroidism or Pseudohypoparathyroidism.* With:

A. Severe recurrent tetany or convulsions which are unresponsive to prescribed therapy; or

B. Growth retardation as described under the criteria in § 100.02B and C.

109.05 *Diabetes insipidus, documented by pathologic hypertonic saline or water depriation test.* And one of the following:

A. Intracranial space-occupying lesion, before or after surgery; or

B. Unresponsiveness to Pitressin; or

C. Growth retardation as described under the criteria in § 100.02B and C; or

D. Unresponsive hypothalmic thirst center, with chronic or recurrent hypernatremia; or

E. Decreased visual fields attributable to a pituitary lesion.

109.06 *Hyperfunction of the adrenal cortex (Primary or seconday).* With:

A. Elevated urinary 17-hydroxycorticosteroids (or 17-ketogenic steroids) as documented in § 109.00C and D; and

B. Unresponsiveness to low-dose dexamethasone suppression.

109.07 *Adrenal cortical insufficiency (as documented in § 109.00C and E).* With recent, recurrent episodes of circulatory collapse.

109.08 *Juvenile diabetes mellitus (as documented in § 109.00C) requiring parenteral insulin.* And one of the following, despite prescribed therapy:

A. Recent, recurrent hospitalizations with acidosis; or

B. Recent, recurrent episodes of hypoglycemia; or

C. Growth retardation as described under the criteria in § 100.02B or C; or

D. Impaired renal function as described under the criteria in § 106.00ff.

109.09 *Iatrogenic hypercorticoid state.* With chronic glucocorticoid therapy resulting in one of the following:

A. Osteoporosis; or

B. Growth retardation as described under the criteria in § 100.02B or C; or

C. Diabetes mellitus as described under the criteria in § 109.08; or

D. Myopathy as described under the criteria in § 111.06; or

E. Emotional disorder as described under the criteria in § 112.00ff.

109.10 *Pituitary dwarfism (with documented growth hormone deficiency).* And growth impairment as described under the criteria in § 100.02C.

109.11 *Adrenogenital syndrome.* With:

A. Recent, recurrent salt-losing episodes despite prescribed therapy; or

B. Inadequate replacement therapy manifested by accelerated bone age and virilization; or

C. Growth impairment as described under the criteria in § 100.02B or C.

109.12 *Hypoglycemia (as documented in § 109.00C).* With recent, recurrent hypoglycemic episodes producing convulsion or coma.

109.13 *Gonadal Dysgenesis (Turner's Syndrome), chromosomally proven.* Evaluate the resulting impairment under the criteria for the appropriate body system.

110.00 MULTIPLE BODY SYSTEMS

A. *Catastrophic congenital abnormalities or disease.* This section refers only to very serious congenital disorders, diagnosed in the newborn or infant child.

B. *Immune deficiency diseases.* Documentation of immune deficiency disease must be submitted, and may include quantitative immunoglobulins, skin tests for delayed hypersensitivity, lymphocyte stimulative tests, and measurements of cellular immunity mediators.

110.01 CATEGORY OF IMPAIRMENTS, MULTIPLE BODY SYSTEMS

110.08 *Catastrophic congenital abnormalities or disease.* With:

A. A positive diagnosis (such as anencephaly, trisomy D or E, cyclopia, etc.), generally regarded as being incompatible with extrauterine life; or

B. A positive diagnosis (such as cri du chat, Tay-Sachs Disease) wherein attainment of the growth and development level of 2 years is not expected to occur.

110.09 *Immune deficiency disease.*

A. *Hypogammaglobulinemia or dysgammaglobulinemia.* With:

1. Recent, recurent severe infections; or

2. A complication such as growth retardation, chronic lung disease, collagen disorder, or tumors.

B. *Thymic dysplastic syndromes* (such as Swiss, diGeorge).

111.00 NEUROLOGICAL

A. *Seizure disorder* must be substantiated by at least one detailed description of a typical seizure. Report of recent documentation should include an electroencephalogram and neurological examination. Sleep EEG is preferable, especially with temporal lobe seizures. Frequency of attacks and any associated phenomena should also be substantiated.

Young children may have convulsions in association with febrile illnesses. Proper use of § 111.02 and § 111.03 requires that a seizure disorder be established. Although this does not exclude consideration of seizures occurring during febrile illnesses, it does require documentation of seizures during nonfebrile periods.

There is an expected delay in control of seizures when treatment is started, particularly when changes in the treatment regimen are necessary. Therefore, a seizure disorder should not be considered to meet the requirements of § 111.02 or § 111.03 unless it is shown that seizures have persisted more than three months after prescribed therapy began.

B. *Minor motor seizures.* Classical petit mal seizures must be documented by characteristic EEG pattern, plus information as to age at onset and frequency of clinical seizures. Myoclonic seizures, whether of the typical infantile or Lennox-Gastaut variety after infancy, must also be documented by the characteristic EEG pattern plus information as to age at onset and frequence of seizures.

C. *Motor dysfunction.* As described in § 111.06, motor dysfunction may be due to any neurological disorder. It may be due to static or progressive conditions involving any area of the nervous system and producing any type of neurological impairment. This

may include weakness, spasticity lack of coordination, ataxia, tremor, athetosis, or sensory loss. Documentation of motor dysfunction must include neurologic findings and description of type of neurologic abnormality (e.g., spasticity, weakness), as well as a description of the child's functional impairment (i.e., what the child is unable to do because of the abnormality). Where a diagnosis has been made, evidence should be included for substantiation of the diagnosis (e.g., blood chemistries and muscle biopsy reports), wherever applicable.

D. *Impairment of communication.* The documentation should include a description of a recent comprehensive evaluation, including all areas of affective and effective communication, performed by a qualified professional.

111.01 CATEGORY OF IMPAIRMENT, NEUROLOGICAL

111.02 *Major motor seizure disorder.*

A. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of more than one major motor seizure per month despite at least three months of prescribed treatment. With:

1. Diurnal episodes (loss of consciousness and convulsive seizures); or

2. Nocturnal episodes manifesting residuals which interfere with activity during the day.

B. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of at least one major motor seizure in the year prior to application despite at least three months of prescribed treatment. And one of the following:

1. IQ of 69 or less; or

2. Significant interference with communication due to speech, hearing, or visual defect; or

3. Significant emotional disorder; or

4. Where significant adverse effects of medication interfere with major daily activities.

111.03 *Minor motor seizure disorder.* In a child with an established seizure disorder, the occurrence of more than one minor motor seizure per week, with alteration of awareness or loss of consciousness, despite at least three months of prescribed treatment.

111.05 *Brain tumors.* A. Malignant gliomas (astrocytoma—Grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, primary sarcoma, or brain stem gliomas; or

B. Evaluate other brain tumors under the criteria for the resulting neurological impairment.

111.06 *Motor dysfunction (due to any neurological disorder).* Persistent disorganization or deficit of motor function for age involving two extremities, which (despite prescribed therapy) interferes with age-appropriate major daily activities and results in disruption of:

A. Fine and gross movements; or

B. Gait and station.

111.07 *Cerebral palsy.* With: A. Motor dysfunction meeting the requirements of § 111.06 or § 101.03; or

B. Less severe motor dysfunction (but more than slight) and one of the following:

1. IQ of 69 or less; or

2. Seizure disorder, with at least one major motor seizure in the year prior to application; or

3. Significant interference with communication due to speech, hearing, or visual defect; or

4. Significant emotional disorder.

111.08 *Meningomyelocele (and related disorders).* With one of the following despite prescribed treatment:

A. Motor dysfunction meeting the requirements of § 111.06 or § 111.03; or

B. Less severe motor dysfunction (but more than slight), and:

1. Urinary or fecal incontinence when inappropriate for age; or

2. IQ of 69 or less; or

C. Four extremity involvement; or

D. Noncompensated hydrocephalus producing interference with mental or motor developmental progression.

111.09 *Communication impairment, associated with documented neurological disorder.* And one of the following:

A. Documented speech deficit which significantly affects the clarity and content of the speech; or

B. Documented comprehension deficit resulting in ineffective verbal communication for age; or

C. Impairment of hearing as described under the criteria in § 102.08.

112.00 MENTAL AND EMOTIONAL DISORDERS

A. *Introduction.* This section is intended primarily to describe mental and emotional disorders of young children. The criteria describing medically determinable impairments in adults should be used where they clearly appear to be more appropriate.

B. *Mental retardation. General.* As with any other impairment, the necessary evidence consists of symptoms, signs, and laboratory findings which provide medically demonstrable evidence of impairment severity. Standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not clearly covered under the provisions of § 112.05A. Developmental milestone criteria may be the sole basis for adjudication only in cases where the child's young age and/or condition preclude formal standardized testing by a psychologist or psychiatrist experienced in testing children.

Measures of intellectual functioning. Standardized intelligence tests, such as the Wechsler Preschool and Primary Scale of Intelligence (WPPSI), the Wechsler Intelligence Scale for Children (WISC), the Revised Stanford-Binet Scale, and the McCarthey Scales of Children's Abilities, should be used wherever possible. Key data such as subtest scores should also be included in the report. Tests should be administered by a qualified and experienced psychologist or psychiatrist, and any discrepancies between formal test results and the child's customary behavior and daily activities should be duly noted and resolved.

Developmetal milestone criteria. In the event that a child's young age and/or condition preclude formal testing by a psychologist or psychiatrist experienced in testing children, a comprehensive evaluation covering the full range of developmental activities should be performed. This should consist of a detailed account of the child's daily activities together with direct observations by a professional person; the latter should include indices or manifestations of social, intellectual, adaptive, verbal, motor (posture, locomotion, manipulation), language, emotional, and self-care development for age. The above should then be related by the evaluating or treating physician to established developmental norms of the kind found in any widely used standard pediatrics text.

C. Profound combined mental-neurological-musculoskeletal impairments. There are children with profound and irreversible brain damage resulting in total incapacitation. Such children may meet criteria in either neurological, musculoskeletal, and/or mental sections; they should be adjudicated under the criteria most completely substantiated by the medical evidence submitted. Frequently, the most appropriate criteria will be found under the mental impairment section.

112.01 CATEGORY OF IMPAIRMENTS, MENTAL AND EMOTIONAL

112.02 *Chronic brain syndrome.* With arrest of developmental progression for at least six months or loss of previously acquired abilities.

112.03 *Psychosis of infancy and childhood.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; constriction of age-appropriate interests; deficiency of age-appropriate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Significant withdrawal or detachment; or

B. Impaired sense of reality; or

C. Bizarre behavior patterns; or

D. Strong need for maintenance of sameness, with intense anxiety, fear, or anger when change is introduced; or

E. Panic at threat of separation from parent.

112.04 *Functional nonpsychotic disorders.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; construction of age-appropriate interests; deficiency of age-appropriate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Psychophysiological disorder (e.g., diarrhea, asthma); or

B. Anxiety; or

C. Depression; or

D. Phobic, obsessive, or compulsive behavior; or

E. Hypochondriasis; or

F. Hysteria; or

G. Asocial or antisocial behavior.

112.05 *Mental retardation.*—A. Achievement of only those developmental milestones generally acquired by children no more than one-half the child's chronological age; or

B. IQ of 59 or less; or

C. IQ of 60–69, inclusive, and a physical or other mental impairment imposing additional and significant restriction of function or developmental progression.

13.00 NEOPLASTIC DISEASES, MALIGNANT.—A. *Introduction.* Determination of disability in the growing and developing child with a malignant neoplastic disease is based upon the combined effects of:

1. The pathophysiology, histology, and natural history of the tumor; and

2. The effects of the currently employed aggressive multimodal therapeutic regimens.

Combinations of surgery, radiation, and chemotherapy or prolonged therapeutic schedules impart significant additional morbidity to the child during the period of greatest risk from the tumor itself. This period of highest risk and greatest therapeutically-induced morbidity defines the limits of disability for most of childhood neoplastic disease.

B. *Documentation.* The diagnosis of neoplasm should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen, along with all pertinent laboratory and X-ray reports. The evidence should also include a recent report directed especially at describing whether there is evidence of local or regional recurrence, soft

part or skeletal metastasis, and significant post-therapeutic residuals.

C. *Malignant solid tumors*, as listed under § 113.03, include the histiocytosis syndromes except for solitary eosinophilic granuloma. Thus, § 113.03 should not be used for evaluating brain tumors (see § 111.05) or thyroid tumors, which must be evaluated on the basis of whether they are controlled by prescribed therapy.

D. *Duration of disability* from malignant neoplastic tumors is included in § 113.02 and § 113.03. Following the time periods designated in these sections, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of a remaining impairment must be evaluated on the basis of the medical evidence.

113.01 Category of impairments, neoplastic diseases—malignant.

113.02 *Lymphoreticular malignant neoplasms.* Consider under a disability:

A. For 2½ years from the time of initial diagnosis, or

B. For 2½ years from the time of recurrence of active disease.

113.03 *Malignant solid tumors.* Consider under a disability:

A. For 2 years from the time of initial diagnosis; or

B. For 2 years from the time of recurrence of active disease.

113.04 *Neuroblastoma.* With one of the following:

A. Extension across the midline; or

B. Distant metastasis; or

C. Recurrence; or

D. Onset at age 1 year or older.

113.05 *Retinoblastoma.* With one of the following:

A. Bilateral involvement; or

B. Metastases; or

C. Extension beyond the orbit; or

D. Recurrence.

[FR Doc.77-7605 Filed 3-15-77;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Public Observation of Parole Commission Meetings

On February 3, 1977 42 FR 6610, the United States Parole Commission published a notice of proposed rules implementing the requirements of 5 U.S.C. 552b, subsections (b) through (f), ("The Government in the Sunshine Act"). Following the period announced for the submission of public comment, the Commission voted to adopt its rules with the single change that § 16.200(e)(5) was expanded to clarify the functions of the study committees referred to in that section.

The only comment received was from Rep. Richardson Preyer, Chairman of the Government Information and Individual Rights Subcommittee of the House Committee on Government Operations. This letter raised several points of criticism, specifically discussed below.

1. Section 16.202(b) was criticized for prohibiting the use of "any mechanical or electronic device" to record an open meeting. The comment suggested consideration be given to permitting recording methods whose operation would not disturb the proceedings. The Commission reserves in its rule the right to grant prior permission for the use of such methods in appropriate circumstances. The Commission believes that as a general policy, a limitation to observation and note-taking prevents the possibility of disruption while providing members of the public with the opportunity to keep memoranda of points of interest to them.

2. Section 16.203(a)(4) was criticized for varying from the language of exemption 4 of the Act. However, the Commission believes that one proper function of agency rules is to apply a general law such as the Sunshine Act to the specific context within which the agency operates, and to explain its practical significance to day to day agency operations. No criticism was made that the type of financial information involved in applications for exemptions under 29 U.S.C. 504 and 1111, would not fall within the exemption for "financial information" set forth at section (c)(4), whenever obtained upon a promise of confidentiality.

3. Section 16.203(b) was criticized for not setting up a formal, two-step procedure by which the Commission would apparently first vote whether a meeting could be closed, and second, whether the meeting should be opened in the public interest, notwithstanding an available exemption under the law. However, such a procedural formality is not, in the Commission's view, required by the law. The Commission believes that it is implicit in its regulation, and it is the Commission's intent, that it will in all cases consider the public interest, and that it will open its meetings whenever feasible notwithstanding the available exemptions.

4. Section 16.203(d)(4) was criticized for failing to require certification by the General Counsel before a meeting may be closed. The Commission agrees that the better practice, as suggested in H. Rep. 94–1441, p. 19, is to obtain certification prior to the holding of a closed meeting, and will endeavor to make it its practice to do so. Moreover, the relative infrequency of Commission business and policy meetings (as compared with other agencies), makes the possibility of late certification generally unlikely. Only in the case of meetings to decide individual parole cases would the rare emergency be likely to arise (under statutory deadlines for decision-making) necessitating late certification.

5. Finally, § 16.204(c)(2) was criticized because it would permit deletion of items without notice; however, this deletion provision applies only to closed meetings. Thus, no member of the public planning to attend a meeting would be inconvenienced by such a deletion.

Accordingly, pursuant to the authority of 18 U.S.C. 4203(a)(1) and 5 U.S.C. 552b(g), a new Subpart F is added to 28 CFR, Chapter I, Part 16 as follows, effective March 12, 1977.

Dated: March 10, 1977.

GEORGE J. REED,
Acting Vice Chairman,
United States Parole Commission.

Subpart F—Public Observation of Parole Commission Meetings

AUTHORITY: 18 U.S.C. 4203(a)(1), 5 U.S.C. 552b(g).

Subpart F—Public Observation of Parole Commission Meetings

§ 16.200 Definitions.

As used in this part: (a) The term Commission means the United States Parole Commission and any subdivision thereof authorized to act on its behalf.

(b) The term meeting refers to the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(c) Specifically included in the term meeting are:

(1) Meetings of the Commission required to be held by 18 U.S.C. 4203(a);

(2) Special meetings of the Commission called pursuant to 18 U.S.C. 4204(a)(1);

(3) Meetings of the National Commissioners in original jurisdiction cases pursuant to 28 CFR 2.17(a);

(4) Meetings of the entire Commission to determine original jurisdiction appeal cases pursuant to 28 CFR 2.27; and

(5) Meetings of the National Appeals Board pursuant to 28 CFR 2.26.

(6) Meetings of the Commission to conduct a hearing on the record in conjunction with applications for certificates of exemption under section 504(a) of the Labor-Management Reporting and Disclosure Act of 1959, and section 411 of the Employee Retirement Income Security Act of 1974 (28 CFR 4.1–17 and 28 CFR 4a.1–17).

(d) Specifically excluded from the term meeting are:

(1) Determination made through independent voting of the Commissioners without the joint deliberation of the number of Commissioners required to take such action, pursuant to § 16.201;

(2) Original jurisdiction cases determined by sequential vote pursuant to 28 CFR 2.17;

(3) Cases determined by sequential vote pursuant to 28 CFR 2.24 and 2.25;

(4) National Appeals Board cases determined by sequential vote pursuant to 28 CFR 2.26;

(5) Meetings of committees of Commissioners, not constituting a quorum of the Commission, which shall be established by the Chairman to report and make recommendations to the Commis-

sion and the Chairman on any matter, including (i) policy, (ii) budget, (iii) personnel and training, and (iv) research; in addition, such committees may from time to time be approved by a majority of the Commission and Chairman regarding policies and procedures of the Commission;

(6) Determinations required or permitted by these regulations to open or close a meeting, or to withhold or disclose documents or information pertaining to a meeting.

(e) All other terms used in this part shall be deemed to have the same meaning as identical terms used in Chapter I, Part 2, of Title 28, of the Code of Federal Regulations.

§ 16.201 Voting by the Commissioners without joint deliberation.

(a) Whenever the Commission's Chairman so directs, any matter which (1) does not appear to require joint deliberation among the members of the Commission, or (2) by reason of its urgency, cannot be scheduled for consideration at a Commission meeting, may be disposed of by presentation of the matter separately to each of the members of the Commission. After consideration of the matter each Commission member shall report his vote to the Chairman.

(b) Whenever any member of the Commission so requests, any matter presented to the Commissioners for disposition pursuant to paragraph (a) of this section shall be withdrawn and scheduled instead for consideration at a Commission meeting.

(c) The provisions of § 16.206(a) of these rules shall apply in the case of any Commission determination made pursuant to this section.

§ 16.202 Open meetings.

(a) Every portion of every meeting of the Commission shall be open to public observation unless closed to the public pursuant to the provisions of § 16.203 (Formal Procedure) or § 16.205 (Informal Procedure).

(b) The attendance of any member of the public is conditioned upon the orderly demeanor of such person during the conduct of Commission business. The public shall be permitted to observe and to take notes, but unless prior permission is granted by the Commission, shall not be permitted to record or photograph by means of any mechanical or electronic device any portion of meetings which are open to the public.

(c) The Commission shall be responsible for arranging a suitable site for each open Commission meeting so that ample seating, visibility, and acoustics are provided to the public and ample security measures are employed for the protection of Commissioners and Staff. The Commission shall be responsible for recording or developing the minutes of Commission meetings.

(d) Public notice of open meetings shall be given as prescribed in § 16.204 (a), and a record of votes kept pursuant to § 16.206(a).

§ 16.203 Closed meetings—formal procedure.

(a) The Commission, by majority vote, may close to public observation any meeting or portion thereof, and withhold from the public announcement concerning such meeting any information, if public observation or the furnishing of such information is likely to:

(1) Disclose matters (i) specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission or any agency of the Government of the United States;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552, or the Federal Rules of Criminal Procedure): *Provided*, That such statute or rule (i) requires that the matters be withheld in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld, including exempted material under the Privacy Act of 1974 or the Commission's Alternate Means of Access under the Privacy Act of 1974, as set forth at 28 CFR 16.85;

(4) Disclose a trade secret or commercial or financial information obtained from any person, corporation, business, labor or pension organization, which is privileged or obtained upon a promise of confidentiality, including information concerning the financial condition or funding of labor or pension organizations, or the financial condition of any individual, in conjunction with applications for exemption under 29 U.S.C. 504 and 1111, and information concerning income, assets and liabilities of inmates, and persons on supervision;

(5) Involve accusing any person of a crime or formally censuring any person;

(6) Disclose information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose an investigatory record compiled for law enforcement purposes, or information derived from such a record, which describes the criminal history or associations of any person under the Commission's jurisdiction or which describes the involvement of any person in the commission of a crime, but only to the extent that the production of such records or information would

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) 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 an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed Commission action except where

(i) The Commission has already publicly disclosed the content or nature of its proposed action or

(ii) The Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal;

(9) Specifically concern the Commission's issuance of subpoena or participation in a civil action or proceeding; or

(10) Specifically concern the initiation, conduct, or disposition of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554, or of any case involving a determination on the record after opportunity for a hearing. Included under the above terms are:

(A) Record review hearings following opportunity for an in-person hearing pursuant to the procedures of 28 CFR 4.1–17 and 28 CFR 4a.1–17 (governing applications for certificates of exemption under the Labor-Management Reporting and Disclosure Act of 1959 and the Employee Retirement Income Security Act of 1974, and

(B) The initiation, conduct, or disposition by the Commission of any matter pursuant to the procedures of 28 CFR 2.1–58 (parole, release, supervision, and recommitment of prisoners, youth offenders, and juvenile delinquents).

(b) *Public Interest Provision.* Notwithstanding the exemptions at paragraph (a) (1)–(10) of this section, the Commission may conduct a meeting or portion of a meeting in public when the Commission determines, in its discretion, that the public interest in an open meeting clearly outweighs the need for confidentiality.

(c) *Nonpublic matter in announcements.* The Commission may delete from any announcement or notice required in these regulations information the disclosure of which would be likely to have any of the consequences described in paragraph (a) (1)–(10) of this section, including the name of any individual considered by the Commission in any case of formal or informal adjudication.

(d) *Voting and certification.* (1) A separate recorded vote of the Commission shall be taken with respect to each meeting or portion thereof which is proposed to be closed, and with respect to any information which is proposed to be withheld pursuant to this section. Voting by proxy shall not be permitted. In the alternative, the Commission may, by a single majority vote, close to public observation a series of meetings, or portion(s) thereof or withhold information concerning such series of meetings, provided that:

(i) Each meeting in such series involves the same particular matters and

(ii) Each meeting is scheduled to be held no more than thirty days after the initial meeting in the series.

(2) Upon the request of any Commissioner, the Commission shall make a determination as to closure pursuant to this subsection if any person whose interests may be directly affected by a portion of a meeting requests the Commission to close such portion or portions to the public observation for any of the grounds specified in paragraph (a) (5) (6) or (7) of this section.

(3) The determination to close any meeting to public observation pursuant to this section shall be made at least one week prior to the meeting or the first of a series of meetings as the case may be. If a majority of the Commissioners determines by recorded vote that agency business requires the meeting to take place at any earlier date, the closure determination and announcement thereof shall be made at the earliest practicable time. Within one day of any vote taken on whether to close a meeting under this section, the Commission shall make available to the public a written record reflecting the vote of each Commissioner on the question, including a full written explanation of its action in closing the meeting, portion(s) thereof, or series of meetings, together with a list of all persons expected to attend the meeting(s) or portion(s) thereof and their affiliation, subject to the provisions of paragraph (c) of this section.

(4) For every meeting or series of meetings closed pursuant to this section, the General Counsel of the Parole Commission shall publicly certify that, in Counsel's opinion, the meeting may be closed to the public and shall state each relevant exemptive provision.

§ 16.204 Public notice.

(a) *Requirements.* Every open meeting and meeting closed pursuant to § 16.203 shall be preceded by a public announcement posted before the main entrance to the Chairman's Office at the Commission's headquarters, 320 First Street, Northwest, Washington, D.C., and, in the case of a meeting held elsewhere, in a prominent place at the location in which the meeting will be held. Such announcement shall be transmitted to the FEDERAL REGISTER for publication and, in addition, may be issued through the Department of Justice, Office of Public Information, as a press release, or by such other means as the Commission shall deem reasonable and appropriate. The announcement shall furnish:

(1) A brief description of the subject matter to be discussed;

(2) The date, place, and approximate time of the meeting;

(3) Whether the meeting will be open or closed to public observation; and

(4) The name and telephone number of the official designated to respond to requests for information concerning the meeting. See § 16.205(d) for the notice requirement applicable to meetings closed pursuant to that section.

(b) *Time of notice.* The announcement required by this section shall be released to the public at least one week prior to the meeting announced therein except where a majority of the members of the Commission determines by a recorded vote that Commission business requires earlier consideration. In the event of such a determination, the announcement shall be made at the earliest practicable time.

(c) *Amendments to notice.* The time or place of a meeting may be changed following the announcement only if the Commission publicly announces such change at the earliest practicable time. The subject matter of a meeting, or determination of the Commission to open or close a meeting, or portion of a meeting, to the public may be changed following the announcement only if:

(1) A majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and

(2) The Commission publicly announces such change and the vote of each member upon such change at the earliest practicable time: *Provided*, That individual items which have been announced for Commission consideration at a closed meeting may be deleted without notice.

§ 16.205 Closed meetings — Informal procedures.

(a) *Finding.* Based upon a review of the meetings of the U.S. Parole Commission since the effective date of the Parole Commission and Reorganization Act (May 14, 1976), the regulations issued pursuant thereto (28 CFR Part 2) the experience of the U.S. Board of Parole, and the regulations pertaining to the Commission's authority under 29 U.S.C. 504 and 29 U.S.C. 1111 (28 CFR Parts 4 and 4a), the Commission finds that the majority of its meetings may properly be closed to the public pursuant to 5 U.S.C. 552 (d)(4) and (c)(10). The major part of normal Commission business lies in the adjudication of individual parole cases, all of which proceedings commence with an initial parole or revocation hearing and are determined on the record thereof.

Original jurisdiction cases are decided at bi-monthly meetings of the National Commissioners (28 CFR 2.17) and by the entire Commission in conjunction with each business meeting of the Commission (held at least quarterly) (28 CFR 2.27).

The National Appeals Board normally decides cases by sequential vote on a daily basis, but may meet from time to time for joint deliberations. In the period from October, 1975 through September, 1976, the National Appeals Board made 2,072 Appellate decisions.

Finally, over the last two years the Commission determined eleven cases under the Labor and Pension Acts, which are proceedings pursuant to 5 U.S.C. 554. The only meetings of the Commission not of an adjudicative nature involving the most sensitive inquiry into the personal background and behavior of the individual concerned, or involving sensitive financial information concerning the parties before the Commission, are the normal business meetings of the Commission, which are held at least quarterly.

(b) *Meetings to which applicable.* The following types of meetings may be closed in the event that a majority of the Commissioners present at the meeting, and authorized to act on behalf of the Commission, votes by recorded vote at the beginning of each meeting or portion thereof, to close the meeting or portions thereof:

(1) Original jurisdiction initial and appellate case deliberations conducted pursuant to 28 CFR 2.17 and 2.27;

(2) National Appeals Board deliberations pursuant to 28 CFR 2.26;

(3) Meetings of the Commission to conduct a hearing on the record regarding applications for certificates of exemption pursuant to the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 504, and the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1111 (28 CFR 4.1–17 and 29 CFR 4a.1–17).

(c) *Written record of action to close meeting.* In the case of a meeting or portion of a meeting closed pursuant to this section, the Commission shall make available to the public as soon as practicable:

(1) A written record reflecting the vote of each member of the Commission to close the meeting; and

(2) A certification by the Commission's General Counsel to the effect that in Counsel's opinion, the meeting may be closed to the public, which certification shall state each relevant exemptive provision.

(d) *Public notice.* In the case of meetings closed pursuant to this section the Commission shall make a public announcement of the subject matter to be considered, and the date, place, and time of the meeting. The announcement described herein shall be released to the public at the earliest practicable time.

§ 16.206 Transcripts, minutes, and miscellaneous documents concerning Commission meetings.

(a) In the case of any Commission meeting, whether open or closed, the Commission shall maintain and make available for public inspection a record of the final vote of each member on rules, statements of policy, and interpretations adopted by it: 18 U.S.C. 4203(d).

(b) The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public pursuant to §16.203. In the case of a meeting, or portion of a meeting, closed to the public pursuant to § 16.205 of these regulations, the Commission may maintain either the transcript or recording described above, or a set of minutes unless a recording is required by Title 18, U.S.C. 4208(f). The minutes required by this section 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 Com-

missioner on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) The Commission shall retain a copy of every certification executed by the General Counsel's Office pursuant to these regulations, together with a statement from the presiding officer of the meeting, or portion of a meeting to which the certification applies, setting forth the time and place of the meeting, and the persons present.

(d) Nothing herein shall affect any other provision in Commission procedures or regulations requiring the preparation and maintenance of a record of all official actions of the Commission.

§ 16.207 Public access to non-exempt transcripts and minutes of closed Commission meetings—documents used at meetings—record retention.

(a) *Public access to records.* Within a reasonable time after any closed meeting, the Commission shall make available to the public, in the Commission's Public Reading Room located at 320 First Street Northwest, Washington, D.C., the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at such meeting, maintained hereunder, except for such item or items of such discussion or testimony which contain information exempt under any provision of the Government in the Sunshine Act (Pub. L. 94-409), or of any amendment thereto. Copies of non-exempt transcripts, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) Access to documents identified or discussed in any Commission meeting, open or closed, shall be governed by Department of Justice regulations at this Part 16, Subparts (c) and (d). The Commission reserves the right to invoke statutory exemptions to disclosure of such documents under 5 U.S.C. 552 and 552a, and applicable regulations. The exemptions provided in U.S.C. 552b(c) shall apply to any request made pursuant to 5 U.S.C. 552 or 552a to copy and inspect any transcripts, recordings or minutes prepared or maintained pursuant hereto.

(c) *Retention of records.* The Commission shall maintain a complete verbatim copy of the transcript, or 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 Commission proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

§ 16.208 Annual report.

The Commission shall report annually to Congress regarding its compliance with Sunshine Act requirements, including a tabulation of the total number of meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the Commission under this section, including any costs assessed against the Commission in such litigation and whether or not paid.

[FR Doc.77-7663 Filed 3-15-77;8:45 am]

Title 29—Labor

CHAPTER X—NATIONAL MEDIATION BOARD

PART 1209—PUBLIC OBSERVATION OF NATIONAL MEDIATION BOARD MEETINGS

Government in the Sunshine Act

Notice is hereby given that Chapter X, Title 29 Code of Federal Regulations, is amended by the addition of a new Part 1209, entitled "Public Observation of National Mediation Board Meetings." A notice of proposed rulemaking with respect to Part 1209 was published in the FEDERAL REGISTER on February 9, 1977, (42 FR 8155). The final text of Part 1209 reflects minor non-substantive editorial and organizational changes from the proposed text.

Part 1209 implements the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b. This part sets forth the regulations under which the National Mediation Board shall engage in public decisionmaking processes, make public announcement of meetings at which a quorum of Board Members consider and determine official agency actions, and inform the public of which meetings they are entitled to observe.

These amendments are issued pursuant to the authority of 5 U.S.C. 552b (g) and 44 Stat. 577, as amended (45 U.S.C. 151 et seq.).

The regulations as adopted read as set forth below and shall be effective for all meetings as defined therein held on or after March 12, 1977.

By direction of the National Mediation Board.

ROWLAND K. QUINN, Jr.,
Executive Secretary.

29 CFR, Chapter X, is amended by the addition of a new Part 1209, reading as follows:

Sec.

AUTHORITY: 5 U.S.C. 552b(g), 44 Stat. 577, as amended (45 U.S.C. 151 et seq.)

§ 1209.01 Scope and purpose.

(a) The provisions of this part are intended to implement the requirements of section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552b.

(b) It is the policy of the National Mediation Board that the public is entitled to the fullest practicable information regarding its decisionmaking processes. It is the purpose of this part to provide the public with such information while protecting the rights of individuals and the ability of the agency to carry out its responsibilities.

§ 1209.02 Definitions.

For purposes of this part:

(a) The term "Board" means the National Mediation Board, a collegial body composed of three Members appointed by the President with the advice and consent of the Senate.

(b) The term "meeting" means the deliberations of at least two Members of the Board where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations to determine whether a meeting shall be closed to public observation, or with respect to any information proposed to be withheld under 5 U.S.C. 552b(c).

§ 1209.03 Conduct of National Mediation Board Business.

Members shall not jointly conduct or dispose of agency business other than in accordance with this part.

§ 1209.04 Open meetings.

Every portion of every Board meeting shall, except as otherwise provided by § 1209.11, be open to public observation.

§ 1209.05 Public announcement of meetings.

(a) Except as provided in §§ 1209.06 and 1209.07, the Board shall make a public announcement at least one week before the scheduled meeting, to include the following:

(1) Time, place, and subject matter of the meeting, except as qualified by paragraph (b) of this section;

(2) Whether the meeting is to be open or closed to the public; and

(3) Name and telephone number of the agency official who will respond to requests for information concerning the meeting.

(b) If announcement of the subject matter of a closed meeting would reveal information, the nature of which would frustrate the purpose for closing the meeting, the subject matter shall not be announced.

§ 1209.06 Special meetings.

Notwithstanding § 1209.05, where agency business so requires, the Board Members may determine, by majority recorded vote, to schedule a meeting for a date earlier than one week subsequent to public announcement. Under such circumstances, the information to be conveyed to the public pursuant to § 1209.05 shall be publicly announced at the earliest practicable time.

§ 1209.07 Change in meeting plans subsequent to public announcement.

(a) Following public announcement of a meeting pursuant to § 1209.05 or § 1209.06, the time or place of a meeting may be changed only if the change is announced publicly at the earliest practicable time in a manner otherwise in conformance with § 1209.05.

(b) Following public announcement of a meeting, the subject matter of a meeting or the determination to open or close a meeting may be changed only if both of the following conditions are met:

(1) A majority, recorded vote of the Members of the Board determines that agency business requires the change and that no earlier announcement of such change was possible; and

(2) A public announcement of the change and of the individual Board Members' votes is made at the earliest practicable time.

§ 1209.08 Providing information to the public.

Information available to the public in accordance with this part shall be posted on a bulletin board maintained for such purpose at the Board's offices, 1425 K Street NW., Washington, D.C. Interested individuals or organizations may request the Executive Secretary, National Mediation Board, Washington, D.C. 20572 to place them on a mailing list for receipt of information available under this part.

§ 1209.09 Federal Register notices.

Immediately following each public announcement required by this part, the following information, as applicable, shall be submitted for publication in the FEDERAL REGISTER.

(a) Notice of the time, place, and subject matter of a meeting;

(b) Whether the meeting is open or closed;

(c) Any change in one of the preceding; and

(d) The name and telephone number of the agency official who will respond to rquests for information about the meeting.

§ 1209.10 Capacity of public observers.

The public may attend open Board meetings *for the sole purpose of observation.* Observers *may not participate* in meetings unless expressly invited or otherwise interfere with the conduct and disposition of agency business. When a portion of a meeting is closed to the public, observers will leave the meeting room upon request to enable discussion of the exempt matter therein under consideration.

§ 1209.11 Provisions under which meetings may be closed.

A meeting as defined in § 1209.02 or portion thereof, may be closed to public observation where the Board determines that portions of the meeting are likely to incorporate deliberations subject to the exemptions enumerated in 5 U.S.C. 552b (c).

§ 1209.12 Procedures for closing meetings.

(a) The Board may determine to close to public observation a particular meeting or portions thereof, only if at least two Board Members vote on the record to take such action. No proxy votes shall be permitted. A single vote may be taken with respect to a series of meetings, or portions thereof, which are proposed to be closed to the public, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in the series.

(b) Whenever any person, whose interests may be directly affected by a portion of a meeting, requests that the Board close such portion to the public for any of the reasons referred to in 5 U.S.C. 552b(c) (5), (6) or (7), the Board, upon request of any of the Members thereof, shall determine by recorded vote whether to close such portion.

(c) For every meeting or portion thereof which Members of the Board have voted to close, the General Counsel of the National Mediation Board shall publicly certify whether, in his or her opinion, the meeting may properly be closed to the public. In addition, the General Counsel shall state each relevant exemptive provision as set forth in 5 U.S.C. 552b(c). A copy of the General Counsel's certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and listing the persons present, shall be retained by the Board's Executive Secretary.

§ 1209.13 Public availability of recorded vote to close meetings and explanation therefor.

Within one day of any vote taken on a proposal to close a meeting, the Board shall make publicly available a record reflecting the vote of each Member on the question. In addition, within one day of any vote which closes a portion or portions of a meeting to the public, the Board shall make publicly available a full written explanation of its closure action together with a list naming all persons expected to attend and identifying their affiliation, unless such disclosure would reveal information, the nature of which would frustrate the purpose for closing the meeting.

§ 1209.14 Maintaining records of closed meetings.

(a) A record of each meeting or portion thereof which is closed to the public will be made and retained for two years or for one year after the conclusion of the agency proceeding involved in the meeting, whichever is longer. Such record shall consist of a verbatim transcript or electronic recording of the meeting except as provided by § 1209.14(b).

(b) In lieu of a transcript or recording, a comprehensive set of minutes may be produced if the closure decision was made pursuant to 5 U.S.C. 552b(c) (8), (9)(A), or (10). Such minutes shall fully and clearly describe all matters discussed, provide a full and accurate summary of any actions taken and the reasons expresed therefor, and include a description of each of the views expressed on any item. The minutes shall also reflect the vote of each Member on any action taken during the proceedings and identify all documents produced at the meeting.

§ 1209.15 Availability of records to the public.

(a) The Board shall make promptly available to the public the transcript, electronic recording, or minutes maintained as a record of closed meetings, except for such records exempt from disclosure pursuant to 5 U.S.C. 552b(f)(2). Copies of such nonexempt transcripts, minutes, or electronic recordings, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) Requests for transcripts, minutes, or electronic recordings of Board meetings shall be directed to the Executive Secretary, National Mediation Board, Washington, D.C. 20572. Such requests shall reasonably identify the records being sought and include a statement that whatever costs are involved in furnishing the records will be acceptable or, alternatively, that costs will be acceptable up to a specified amount. The Board may determine to require prepayment of costs associated with this Subsection.

§ 1209.16 Requests for records under Freedom of Information Act.

Requests to review or obtain copies of agency records other than notices or records prepared under this Part may be pursued in accordance with the Freedom of Information Act (5 U.S.C 552), part 1208 of the Board's rules addresses the requisite procedure under that Act.

[FR Doc.77-7728 Filed 3-11-77;3:23 pm]

Title 45—Public Welfare

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

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Quality Control System; Revocation of Disallowance Provisions

The Administrator of the Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare, hereby amends § 205.40 and revokes § 205.41 of Title 45 of the Code of Federal Regulations. Current regulations in § 205.40 provide for a Quality Control system for the Aid to Families with Dependent Children program, and, in Puerto Rico, the Virgin Islands and Guam, for the programs of financial assistance to the aged, blind or disabled. This section requires States to sample their caseloads to determine their rates of erroneous payments thereunder for 6-month reporting periods, and to take corrective action to reduce the inci-

dence of these erroneous payments. As amended on August 5, 1975 (40 FR 32954) after proposed rulemaking published on May 19, 1975 (40 FR 21737), the regulations at § 205.41 provided for the disallowance of Federal financial participation in payments to ineligibles and overpayments exceeding the prescribed tolerance levels of 3 percent and 5 percent, respectively. The disallowances were to be taken for all reporting periods beginning with the July 1–December 31, 1975 reporting period.

Two factors form the basis for the Department's revocation of § 205.41. First on May 14, 1976, the United States District Court for the District of Columbia issued an Order and Opinion in the case of *State of Maryland* v. *Mathews* which involved a challenge by 14 States to the validity of the disallowance provisions.

The Court ruled, contrary to the plaintiff States' argument, that the Social Security Act does not require Federal matching of all erroneous payments, and therefore concluded that a regulation providing for the disallowance of such payments exceeding specified levels is authorized by the Act. However, the Court ruled that the Act does contemplate Federal matching of a reasonable level of erroneous payments.

The Court found the tolerance levels of 3 percent and 5 percent to be inadequately justified, and, based upon the evidence before it, unreasonably strict. Accordingly, the Court enjoined the Department from enforcing § 205.41 against the plaintiff States.

Second, the Department has been discussing with representatives of a number of States the possibility of revising the Quality Control program. The Department decided not to appeal the *Maryland* decision as a demonstration of its good faith in these discussions. The Department also believes that it would be unfair, and certainly contrary to the spirit of cooperation necessary for successful completion of these discussions, to take the disallowances against those States which did not attain the prescribed tolerance levels and were not parties to the *Maryland* action.

Therefore, the Department is retroactively revoking § 205.41 to comply with the *Maryland* decision, and to demonstrate its good faith in discussion with the States to seek a fair alternative to the present Quality Control regulations. Accordingly, no disallowances will be taken for any periods pursuant to the § 205.41 provisions that are being revoked.

The revocation of the current content of § 205.41 does not exempt the States from the requirements of § 205.40. Thus, States are still required to sample their caseloads, report the results of these samples, and develop and implement corrective action plans to reduce the incidence of erroneous payments as specified under that section.

It should be noted that the revocation of § 205.41 also results in States being held fiscally accountable for individually identified payments to ineligibles and overpayments which are made after the date of publication of this revocation. The regulations at 45 CFR 233.10(b)(1) provide that Federal financial participation is available only in proper payments. Therefore, absent the provision of § 205.41 which, in effect, provide for FFP in these improper payments not exceeding the prescribed tolerance levels, the Department is now required to disallow FFP in all such individual improper payments identified by the State or through Federal reviews.

The Department finds that there is good cause to dispense with proposed rulemaking for two reasons. First, the revocation, effective retroactively, will relieve States of the potential fiscal burden of disallowances for prior periods. Second, immediate publication is necessary to enable those States which were not parties to the *Maryland* action to plan their budgets with full knowledge of the Department's intentions.

In addition to the revocation of § 205.41, two changes are being made in § 205.40:

1. Section 205.40(b)(3)(iv) incorporates by cross-reference the tolerance levels "specified in paragraph (a) of § 205.41 of this chapter"; § 205.40 (a) and (c) refer to § 205.41. The revocation of § 205.41 requires that tolerance levels be reflected in § 205.40 for purposes of corrective action plans; and that the references to § 205.41 be deleted. The revisions do not require proposed rulemaking procedures since they are purely technical and do not result in any substantive change.

2. The Department recognizes that the Child Support Enforcement Program under Title IV-D of the Act is a major Federal/State undertaking which cuts across many aspects of the eligibility and grant determination process for a large portion of the AFDC caseload, and that States continue to experience significant difficulty in fully implementing these provisions. Accordingly, § 205.40(c) is amended to extend, through June 30, 1977, the time period during which IV-D-related errors will not be counted as case errors.

The purpose of this change is to provide the States with an additional period of time during which to fully implement the cited requirements. The basis for the extension is the Department's belief that to cite case errors associated with the IV-D program would be unreasonable and not in the best interest of the goal of improved management of the AFDC program and uniform national application of quality control.

This amendment does not exempt the States from implementing the statutory and regulatory program requirements. Failure to substantially comply with such requirements could still result in withholding of Federal financial participation. The Department finds that there is good cause to waive public participation procedures because the extension benefits State agencies without having any adverse effects on applicants for, or recipients of, assistance.

Both the *Maryland* decision and the decision in similar actions, *State of Ohio* v. *Mathews and State of Georgia* v. *Mathews*, clearly allow the Department to establish new tolerance levels for overpayments and payments to ineligibles, under regulations similar to those contained at § 205.41 prior to this revocation, as a basis for disallowing FFP in the future. Accordingly, the Department has prepared a draft proposal to establish new tolerance levels for use as the basis for future disallowances of FFP. The draft proposal is currently in the review process and is available prior to its publication in the FEDERAL REGISTER. Copies of the draft proposal may be obtained from:

Dr. Victor Kugajevsky, Office of Special Initiatives, Social and Rehabilitation Service, U.S. Department of Health, Education, and Welfare, Room 5092, MES Building, 330 C Street SW., Washington, D.C. 20201, 202-245-0330.

Accordingly, Chapter II, Title 45 of the Code of Federal Regulations is revised as set forth below:

1. Section 205.40 is revised by deleting all cross-references to § 205.41 and amending paragraphs (b)(3)(iv) and (c) to read as set forth below:

§ 205.40 Quality control system.

(a) *Definitions.* For purposes of this section, notwithstanding any other regulations in this chapter:

* * * * *

(b) *State plan requirements.*—A State plan under title IV–A or I, X, XIV or XVI of the Social Security Act must provide for a continuing system of quality control for assuring that assistance is furnished in accordance with permissible State practice (as defined herein). Under this requirement:

* * * * *

(3) The State agency shall submit to the Social and Rehabilitation Service, in such form and at such times as it prescribes:

* * * * *

(iv) A corrective action plan for reducing the case error rates of ineligibility, overpayments, and underpayments, within 90 days of the close of the 6-month sampling period to which they apply (January 1 through June 30, or July 1 through December 31), even after achieving case error rates of:

(A) 3 percent for ineligibility;

(B) 5 percent for overpayments; and

(C) 5 percent for underpayments; and

* * * * *

(c) *Temporary exception.* Through June 30, 1977, for the purpose of this section, the term "case error" shall not include errors that result solely from the State's:

(1) Failure to apply, or improper or incomplete application of, the following provisions:

(i) 45 CFR 232.10 Furnishing of social security numbers;

(ii) 45 CFR 232.11 Assignment of rights to support; and

(iii) 45 CFR 232.12 Cooperation in obtaining support; and

(2) Treatment of child support collected and distributed under the State

IV-D plan and support or contribution income received directly from a legally liable individual by the AFDC family, when the recipient's support rights have been assigned to the State agency.

2. Section 205.41 is revoked, retroactive to July 1, 1975.

§ 205.41 [Reserved]

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

Effective date. This amendment is effective July 1, 1975.

(Catalog of Federal Domestic Assistance Program No. 13.761, Public Assistance—Maintenance Assistance (State Aid))

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

Answers to specific questions may be obtained by calling Victor Kugajevsky, 202-245-0330.

Dated: February 7, 1977.

DON I. WORTMAN,
Acting Administrator, Social and Rehabilitation Service.

Approved: March 10, 1977.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc.77-7756 Filed 3-15-77;8:45 am]

CHAPTER VI—NATIONAL SCIENCE FOUNDATION

PART 614—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS OF THE NATIONAL SCIENCE BOARD

The following regulations implement the policy of the United States and of the National Science Board (NSB) to give the public open access to the decisionmaking of the Board to the fullest extent that is practicable, consistent with the rights of individuals, and consistent with the ability of the Board and the Federal Government generally to carry out their responsibilities. It will be the general rule of the Board that every portion of every meeting of the National Science Board will be open to public observation. Certain exceptions to this rule will be made to protect the rights of citizens and the functioning of the Board and the Foundation. The following regulations identify the conditions under which meetings may be closed under these exceptions and under which certain other information may be withheld. They also prescribe procedures for closing meetings, for handling the transcripts or recordings of closed meetings, and for making public announcements of Board meetings and meeting changes.

These regulations were published in proposed form in 41 FR 54956 on December 16, 1976. Comments received have been carefully considered. The principal points raised and the Foundation's responses follow:

1. *Comment.* The Board should be required to decide by majority vote whether any document considered at a Board meeting shall be kept secret. *Response.* The Foundation's currently effective Freedom of Information Act regulations (45 CFR Part 612) cover the availability of documents, including documents considered at Board meetings. Meaningful detailed consideration by the full National Science Board of what parts of what documents may be and should be withheld would be impractical and a poor use of its limited time.

2. *Comment.* The regulations should permit requests from the public for reconsideration of decisions to close meetings. *Response.* Inclusion of a formal provision is not required by law and appears unnecessary. The staff of the Board will consider any such requests and bring them to the attention of the Chairman.

3. *Comment.* Any decision not to release all or parts of the transcript of a closed meeting should be taken in the same manner as a decision to close all or parts of the meeting—by record vote of the Board. *Response.* Such a requirement is conspicuously absent in 5 U.S.C. 552b(f)(2). Section 614.4(c) of the Board's regulations, which provides for release by the Chairman or his designee, should speed and simplify the release of information, since the Board meets as a whole only at intervals of a month or more.

4. *Comment.* Budget deliberations of the Board are not per se exempt under the Act. *Response.* The regulations do not make budget deliberations per se exempt. The Board will generally follow Administration guidance on interpretation of the Act in determining what budget deliberations to conduct in closed session.

5. *Comment.* The preamble to the NSB regulations indicates that there will be cases in which Board recommendations to the President will be considered in closed session to prevent premature disclosure. Agency recommendations to the President are not ipso facto within exemption 9B. *Response.* The proposed regulations do not require recommendations to the President to be considered in closed session. However, the Board may find in individual cases that deliberations on some such recommendations are within the exemption. This is consistent with its legislative history.

6. *Comment.* Section 614.2(a) should be amended to require, besides a finding that the subject matter falls within a specific exemption, a finding that the public interest mandates a closed meeting. *Response.* Proposed § 614.2(a) states that the Board may close portions of meetings if it properly determines that the subjects under discussion fall within one of the exemptions. In other words, the section is permissive, not mandatory. In deciding whether or not to close any discussion the Board will naturally be guided by the public interest provision of the Act.

7. *Comment.* Section 614.2(a)(9)(i), which reflects exemption 9A of the Act, is not available to the Board and should be deleted from the regulations. *Response.* The Board may conceivably receive information from a government agency within the scope of 9A. The provision which would allow the Board to consider any such information in closed session might be used in such a rare circumstance, but not otherwise.

8. *Comment.* Section 614.3(a) should be amended to make clear that the General Counsel's certificate must be presented before a meeting may be closed. *Response.* The Act says only that "for every meeting closed" the General Counsel shall certify. It does not say when he shall certify. The certificate normally will nonetheless be executed before any meeting of the Board is closed. Instances may arise in which the certificate will not be reduced to written form before the the closed meeting, however, even though the Board's resolution to close will be made with advice from the General Counsel. This might occur, for example, when items that cannot be postponed are added to a closed-meeting agenda at the last minute. Thus, § 614.3 is consistent with the text of the Act and provides appropriate flexibility for special circumstances.

9. *Comment.* Section 614.4(a) should be amended to make the transcript or recording of a closed meeting publicly available on the Board's own initiative, whether or not a public request for it is made. *Response.* The Act does not require that the transcript be made available before a request is made. The Board has been conducting its meetings under the Act for several months, during which no request for a transcript or recording has yet been made. Preparation of a transcript or recording for release, with accompanying decisions on what will and will not be withheld, is costly. The Board's experience thus far indicates that anticipatory expenditure of the taxpayers' money for this purpose would be unjustified. Should the frequency of requests for transcripts materially increase, however, the Board will reconsider this matter.

10. *Comments.* Section 614.5(b) should be amended to provide for the posting on public notice boards of meeting announcements and related information. *Response.* This has been done.

Accordingly, Part 614 of Title 45 of the Code of Federal Regulations is promulgated as set forth below, effective March 12, 1977.

NORMAN HACKERMAN,
Chairman, National Science Board.

MARCH 11, 1977.

Sec.

AUTHORITY: Government in the Sunshine Act, sec. 552b of Title 5, United States Code; 90 Stat. 1241.

§ 614.1 General rule.

Except as otherwise provided in these regulations, every portion of every meeting of the National Science Board will be open to public observation.

§ 614.2 Grounds for closing meetings.

(a) The National Science Board may by record vote close any portion of any meeting if it properly determines that an open meeting:

(1) Is likely to disclose matters that (i) are specifically authorized under criteria established by Executive Order to be kept secret in the interests of national defense or foreign policy and (ii) are in fact properly classified pursuant to the Executive Order;

(2) Is likely to relate solely to the internal personnel rules and practices of the National Science Foundation;

(3) Is likely to disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided,* That the statute (i) requires in such a manner as to leave no discretion on the issue that the matters be withheld from the public, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Is likely to involve accusing any person of a crime, or formally censuring any person;

(6) Is likely to disclose personal information where the disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Is likely to disclose investigatory law-enforcement records, or information which, if written, would be contained in such records, but only to the extent provided in 5 U.S.C. 552b(c)(7);

(8) Is likely to disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Is likely to disclose information, the premature disclosure of which would:

(i) In the case of information received from an 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

(ii) Be likely to significantly frustrate implementation of a proposed Foundation action, unless the Foundation has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative before taking final action; or

(10) Is likely to specifically concern the Foundation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

(b) Anyone who believes his interests may be directly affected by a portion of a meeting may request that the Board close it to the public for any reason referred to in paragraphs (a) (5), (6), or (7) of this section. The request should be addressed to the National Science Board, National Science Foundation, Washington, D.C. 20550. It will be circulated to Members of the Board if received at least three full days before the meeting, and on motion of any Member the Board will determine by record vote whether to close the affected portion of the meeting.

§ 614.3 Materials relating to closed portions of meetings.

If a portion or portions of any meeting of the National Science Board are closed to the public under § 614.2:

(a) The General Counsel of the National Science Foundation shall publicly certify that, in his opinion, that portion or portions may properly be closed to the public. The certificate shall state the exemptions under 5 U.S.C. 552b(c) that make the closings proper.

(b) The presiding officer of the meeting (usually the Chairman of the Board) shall furnish a statement setting forth the time and place of the meeting and the persons present.

(c) The Board shall make a complete transcript or electronic recording adequate to record fully the proceedings of each portion of the meeting that is closed to the public.

(d) The National Science Board Office shall maintain the General Counsel's certificate, the presiding officer's statement, and the transcript or recording of the meeting for at least two years after the meeting and at least one year after the Board completes consideration of any proposal, report, resolution, or similar matter discussed in any closed portion of the meeting.

§ 614.4 Opening of transcript or recording.

(a) Except as otherwise provided in this section, the transcript or electronic recording of every portion of every meeting closed to the public will promptly be made available on request to any member of the public in an easily accessible place. The National Science Board Office will furnish to any member of the public on request copies of the transcript or of a transcription of the recording disclosing the identity of each speaker, and will charge for the copies or transcriptions no more than the actual cost of duplication or transcription.

The Board will, however, withhold the transcript or recording of the discussion of any agenda item if the Chairman of the Board or a Board Member designated by him determines that the discussion contains information which should be withheld under the same standards as apply for closing meetings under § 614.2.

(c) The Board will release any transcript or recording withheld under this paragraph (b) when the Chairman of the Board or any person designated by him determines that the grounds for withholding it no longer apply.

(d) A request under paragraph (a) of this section should be directed in writing to the Executive Secretary, National Science Board, should clearly state what is requested, and should contain a promise to pay the costs of any duplication or transcription requested.

§ 614.5 Public announcement.

(a) Except as provided in paragraphs (c) and (d) of this section, the National Science Board will make a public announcement of each Board meeting at least one week before the meeting takes place.

The announcement will cover: (1) The time, place, and subject matter of the meeting;

(2) What portions of the meeting, if any, are to be closed to the public; and

(3) The name and telephone number of the official designated to respond to requests for information on the meeting.

(b) Each such announcement will be promptly posted on public notice boards at the National Science Foundation and made available to journals of general scientific interest. Immediately following the issuance of such an announcement, it will be submitted for publication in the FEDERAL REGISTER.

(c) The announcement may be made less than a week before the meeting it announces or after the meeting only if (1) the Board by record vote determines that agency business requires the meeting to be called on such short or after-the-fact notice and (2) an announcement is made at the earliest practicable time.

(d) All or any portion of the announcement of any meeting may be omitted if the Board by record vote determines that the announcement would disclose information which should be withheld under the same standards as apply for closing meetings under § 614.2.

§ 614.6 Meeting changes.

(a) The time or place of a meeting of the National Science Board that has been publicly announced as provided in § 614.5 may subsequently be changed, but any such change will be publicly announced at the earliest practicable time.

(b) The subject matter of any portion of any meeting of the Board that has been publicly announced as provided in § 614.5 or the determination whether any portion of any meeting so publicly announced will be open or closed may subsequently be changed, but only when:

(1) The Board determines by record vote that agency business so requires and that no earlier announcement of the change was possible; and

(2) The Board publicly announces the change and the vote of each Member on the change at the earliest practicable time.

§ 614.7 Record vote.

(a) For purposes of this part a vote of the National Science Board is a "record vote" if: (1) It carries by a majority of all those holding office as Board Members at the time of the vote;

(2) No proxies are counted toward the necessary majority; and

(3) The individual vote of each Member present and voting is recorded.

(b) Within one day of any such record vote or any attempted record vote that fails to achieve the necessary majority under paragraph (a)(1) of this section, the Board Office will make publicly avail-

able a written record showing the vote of each Member on the question.

(c) Within one day of any record vote under which any portion or portions of a Board meeting are to be closed to the public, the Board Office will make available a full written explanation of the Board's action and a list of all persons expected to attend the meeting, showing their affiliations.

§ 614.8 Application to Board Executive Committee.

All the provisions of this part applicable to the National Science Board shall apply equally to the Executive Committee of the Board whenever the Executive Committee is meeting pursuant to its authority to act on behalf of the Board.

[FR Doc.77-7783 Filed 3-11-77;4:35 pm]

CHAPTER XIV—NATIONAL INSTITUTE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 1440—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS

National Council on Educational Research

ACTION: Final regulation.

SUMMARY: This notice contains the final regulation implementing the Government in the Sunshine Act, Pub. L. 94-409, as required by section 3(a) of the Act.

EFFECTIVE DATE: March 13, 1977.

FOR FURTHER INFORMATION CONTACT:

Peter Gerber, Chief, NCER Staff, 1200 19th Street, NW., Washington, D.C. 20208.

The National Council on Educational Research (NCER) published in the FEDERAL REGISTER (42 FR 9399, February 16, 1977) its proposed regulations implementing the "Government in the Sunshine Act" (Pub. L. 94-409; 5 U.S.C. 552b). Interested parties were encouraged to submit comments on these proposed regulations. Three written comments were received.

One party urged that closed meetings be the rare exceptions to the general rule stated in § 1440.1 that "except as otherwise provided in these regulations, every portion of every meeting of the NCER will open to public observation." NCER agrees that only in rare instances will the statutory exemptions be invoked. Thus § 1440.1 remains as proposed.

This party also stressed the importance of the public announcement requirements of § 1440.5. This party would have the NCER adopt a procedure of placing a notice at least one week in advance in a newspaper of general circulation in the area where the meeting is to be held. Whenever feasible, the NCER will give the broadest possible publication concerning the time, place and subject of its meetings. The NCER thinks that as currently written, § 1440.5 provides adequate authority for public notification, without requiring the specific notice suggested.

The second party was the Honorable Richard Preyer, in his capacity as Chairman of the House Subcommittee on Government Information and Individual Rights of the Committee on Government Operations. Mr. Preyer made three suggestions.

Mr. Preyer first referred to the introductory comments to the proposed regulations about the possibility of closing discussions on NIE's proposed budget and which indicate that NCER will follow the guidance of the Office of Management and Budget in this regard. Mr. Preyer indicated that this issue was raised at various times during congressional considerations of the Act and that Congress did not see fit to include a specific exemption for such discussions. The NCER agrees that budget discussions will be closed to the extent that they are determined to fit within any of the ten exemptions contained in the Act, and that budget discussions are not per se exempt under these regulations.

Mr. Preyer's second suggestion was that Section 1440.2 be amended to make clear that there are two distinct steps in any determination that the NCER agrees before it can vote to close a meeting, the NCER must decide first whether the discussion comes within one of the specific exemptions; and second, if it is determined that the meeting can be closed, whether the public interest nevertheless requires that the meeting be open.

Therefore, the NCER has adopted appropriate modifications to § 1440.2.

Mr. Preyer's third suggestion concerned possible ambiguity about the timing of the public certification by the General Counsel of HEW whether the meeting may properly be closed to the public.

In order to make the timing clear, the NCER has amended § 1440.3(a) so that the General Counsel of HEW shall certify, in writing to the NCER prior to any NCER vote, whether the proposed closing of any portion or portions of a meeting or series of meetings would be proper under the provisions of this subpart and of the Government in the Sunshine Act.

The third party was concerned that the statutory two year record preservation period of § 1440.3(d) might be inadequate. He suggested that NCER amend § 1440.3(d) to provide that the records would be kept "for at least five years after the meetings," because it may take the public two years to become aware of the existence of such records.

The NCER recognizes this concern, but is not convinced that it is necessary for the NCER to require records retention for five years. Section 1440.3(d) will remain as proposed.

JOHN E. CORBALLY,
Chairman.

Title 45 CFR Chapter XIV is amended by adding a new Part 1440 to read as follows:

Sec.
1440.1 General rule.
1440.2 Grounds for closing meetings.
1440.3 Materials relating to closed portions of meetings.
1440.4 Opening of transcript or recording.
1440.5 Public announcement.
1440.6 Meeting changes.
1440.7 Record vote.
1440.8 Application to NCER Committees.

AUTHORITY: Government in the Sunshine Act, sec. 552b of Title 5, United States Code: 90 Stat. 1241.

§ 1440.1 General rule.

Except as otherwise provided in these regulations, every portion of every meeting of the NCER will be open to public observation.

§ 1440.2 Grounds for closing meetings.

(a) The NCER may by record vote close any portion of any meeting if it properly determines that an open meeting:

(1) Is likely to disclose matters that (i) are specifically authorized under criteria established by Executive Order to be kept secret in the interests of national defense or foreign policy and (ii) are in fact properly classified pursuant to the Executive Order;

(2) Is likely to relate solely to the internal personnel rules and practices of the National Institute of Education (NIE);

(3) Is likely to disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That the statute (i) requires in such a manner as to leave no discretion on the issue that the matters be withheld from the public, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Is likely to involve accusing any person of a crime, or formally censuring any person;

(6) Is likely to disclose persona linformation where the disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Is likely to disclose investigatory law-enforcement records, or information which, if written, would be contained in such records, but only to the extent provided in 5 U.S.C. 552b(v)(7);

(8) Is likely to disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Is likely to disclose information, the premature disclosure of which (i) In the case of information received from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or (ii) Be

likely to significantly frustrate implementation of a proposed NIE action, unless the NIE has already disclosed to the public the content or nature of its proposed action or is required by law to to make such disclosure on its own initiative before taking final action; or

(10) Is likely to specifically concern the NIE participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

(b) Such a determination must also include the NCER's consideration and determination whether the public interest merits keeping the meeting open, despite the applicability of an exemption permitting a closed meeting or portion thereof.

(c) Anyone who believes his interests may be directly affected by a portion of a meeting may request that the NCER close it to the public for any reason referred to in paragraphs (a) (5), (6), or (7) of this section. This request should be addressed to the Chief, NCER Staff at the headquarters of the NIE. It will be circulated to Members of the NCER if received at least three full days before the meeting, and on motion of any Member, the NCER will determine by record vote whether to close the affected portion of the meeting.

§ 1440.3 Materials relating to closed portions of meetings.

If a portion or portions of any meeting of the NCER are closed to the public under § 1440.2:

(a) The General Counsel of HEW shall certify, in writing to the NCER prior to any NCER vote, whether or not in his or her opinion the proposed closing of any portion or portions of a meeting or series of meetings is proper under the provisions of this subpart and of the Government in the Sunshine Act.

(b) The presiding officer of the meeting (usually the Chairman of NCER) shall furnish a statement setting forth the time and place of the meeting and the persons present.

(c) The NCER shall make a complete transcript or electronic recording adequate to record fully the proceedings of each portion of the meeting that is closed to the public.

(d) The NCER office shall maintain the General Counsel's certificate, the presiding officer's statement and the transcript or recording of the meeting for at least two years after the meeting and at least one year after the NCER completes consideration of any proposal, report, resolution, or similar matter discussed in any closed portion of the meeting.

§ 1440.4 Opening of transcript of recording.

(a) Except as otherwise provided in this section, the transcript or electronic recording of every portion of every meeting closed to the public will promptly be made available on request to any member of the public in an easily accessible place. The NCER office will furnish to any member of the public on request copies of the transcript or of a transcription of the recording disclosing the identity of each speaker, and will charge for the copies or transcriptions no more than the actual cost of duplication or transcription.

(b) The NCER will, however, withhold the transcript or recording of the discussion of any agenda item if the Chairman of the NCER or a NCER Member designated by him determines that the discussion contains information which should be withheld under the same standards as apply for closing meetings under § 1440.2.

(c) The NCER will release any transcript or recording withheld under paragraph (b) of this section when the Chairman of the NCER or any person designated by him determines that the grounds for withholding it no longer apply.

(d) A request under paragraph (a) of this section should be directed in writing to the Chief, NCER Staff, NIE, should clearly state what is requested, and should contain a promise to pay the costs of any duplication or transcription requested.

§ 1440.5 Public announcement.

(a) Except as provided in paragraph (c) and (d) of this section, the NCER will make a public announcement of each meeting at least one week before the meeting takes place. The announcement will cover: (1) The time, place, and subject matter of the meeting; (2) what portions of the meeting, if any, are to be closed to the public; and (3) the name and phone number of the official designated to respond to requests for information on the meeting.

(b) Each such announcement will be promptly made available to selected journals and other appropriate publications. Immediately following the issuance of such an announcement it will be submitted for publication to the FEDERAL REGISTER.

(c) The announcement may be made less than a week before the meeting it announces or after the meeting only if (1) the NCER by record vote determines that agency business requires the meeting to be called on such short or after-the-fact notice and (2) a full announcement is made at the earliest practicable time.

(d) All or any portion of the announcement of any meeting may be omitted if the NCER by record vote determines that the announcement would disclose information which should be withhehld under the same standards as apply for closing meetings under § 1440.2.

§ 1440.6 Meeting changes.

(a) The time or place of a meeting of the NCER that has been publicly announced as provided in § 1440.5 may subsequently be changed, but any such change will be publicly announced at the earliest practicable time.

(b) The subject matter of any portion of any meeting of the NCER that has been publicly announced as provided in § 1440.5 or the determination whether any portion of any meeting so publicly announced will be open or closed may subsequently be changed, but only when: (1) The NCER determines by record vote that agency business so requires and that no earlier announcement of change was possible, and (2) the NCER publicly announces the change and the vote of each member on the change at the earliest practicable time.

§ 1440.7 Record vote.

(a) For purposes of this part of a vote of the NCER is a "record vote" if: (1) It carries by a majority of all those holding office as NCER Members at the time of the vote; (2) no proxies are counted toward the necessary majority; and (3) the individual vote of each Member present and voting is recorded.

(b) Within one day of any such record vote or any attempted record vote that fails to achieve the necessary majority under paragraph (a)(1) of this section, the NCER office will make publicly available a written record showing the vote of each member on the question.

(c) Within one day of any record vote under which any portion or portions of a NCER meeting are to be closed to the public, the NCER office will make available a full written explanation of the NCER's action and a list of all persons expected to attend the meeting, showing their affiliations.

§ 1440.8 Application to NCER Committees.

All the provisions of this part applicable to the NCER shall apply equally to the Committees of NCER whenever the Committees are authorized to act on behalf of the NCER.

[FR Doc.77-7673 Filed 3-15-77;8:45 am]

CHAPTER XVIII—HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

PART 1802—PUBLIC MEETING PROCEDURES OF THE BOARD OF TRUSTEES

Implementation of Government in the Sunshine Act

On February 1, 1977, at 42 FR 5987, the Harry S. Truman Scholarship Foundation issued proposed regulations which set forth the procedures which will be followed by the Foundation's Board of Trustees in conducting its meetings, as prescribed by the Government in the Sunshine Act (5 U.S.C. 552b).

The Foundation gave notice that the proposed regulations would (1) define terms used therein, (2) request notification from the public of intention to attend an open meeting, (3) clarify that these procedures apply only to meetings of the Board of Trustees of the Foundation, (4) declare that, unless otherwise specified, every meeting of the Board of Trustees shall be open to the public, (5) state the basis for closing a meeting to the public, (6) provide for the announcement of meetings, (7) state how a meeting shall be closed, (8) require the keeping of records of closed meetings, and (9) state how requests for information shall be addressed.

Prior to adoption of the proposed regulations, the Foundation opened the record for public comment. Only the Subcommittee on Government Information and Individual Rights of the Committee on Government Operations of the United

States House of Representatives submitted comments. These comments listed six specific suggestions as follows:

(1) The subcommittee suggested that the barrier to the use of recording devices at Board meetings in § 1802.3 (b) of the proposed regulations should only bar recording devices that would disrupt the proceedings. Section 1802.3(b) has been amended to follow this suggestion.

(2) The subcommittee suggested the addition of a specific declaration to the proposed regulations to make it clear that meetings can be closed only after a specific finding that an open meeting is not required by the public interest. Such a declaration has been added to § 1802.6 (a) of the regulations.

(3) The subcommittee pointed out that exemption 9A of the Government in the Sunshine Act, the exemption concerning the regulation of currencies, securities, commodities, or financial institutions, does not apply to the Foundation. Accordingly, this exemption has been deleted from § 1802.4(i) of the Foundation's regulations.

(4) The subcommittee suggested that the Foundation publicize its meetings widely. The Foundation will make every effort to comply with this suggestion.

(5) The subcommittee suggested the deletion of proposed § 1802.5(e) permitting the deletion of meeting agenda items without notice. This suggestion has been followed and the proposed regulation has been stricken.

(6) The subcommittee pointed out that the General Counsel of the Foundation must publicly certify that a particular meeting may properly be closed before it may be closed. Section 1802.6(e) of the Foundation's regulations have been amended to make this point clear.

These amendments to the Foundation's proposed regulations make these regulations conform to the Government in the Sunshine Act with respect to the activities of the Foundation. Accordingly, the Foundation now publishes in final form the following regulations, effective March 12, 1977.

Dated: March 11, 1977.

ROBERT E. CLEARY,
Executive Secretary.

Approved:
JOHN W. SNYDER,
Chairman, Board of Trustees.

Title 45 of the Code of Federal Regulations is amended by establishing a new Part 1802 in Chapter XVIII, to read as follows:

PART 1802—PUBLIC MEETING PROCEDURES OF THE BOARD OF TRUSTEES

Sec.

AUTHORITY: 5 U.S.C. 552b(g); 20 U.S.C. 2001-2012.

§ 1802.1 Purpose and scope.

The Harry S. Truman Scholarship Foundation will provide the public with the fullest practical information regarding its decision-making processes while protecting the rights of individuals and the Foundation's abilities to carry out its responsibilities. Accordingly, these procedures apply to meetings of the Board of Trustees, Harry S. Truman Scholarship Foundation, including committees of the Board of Trustees.

§ 1802.2 Definitions.

As used in this part:

"Board" or "Board of Trustees" means the collegial body that conducts the business of the Harry S. Truman Scholarship Foundation as specified in section 5(b), Pub. L. 93-642 (20 U.S.C. 2004), consisting of:

(1) Eight persons appointed by the President, by and with the advice and consent of the Senate;

(2) Two Members of the Senate, one from each political party, appointed by the President of the Senate;

(3) Two members of the House of Representatives, one from each political party, appointed by the Speaker; and

(4) The Commissioner of Education or his designee, who serves as an ex officio member of the Board.

"Chairman" means the presiding officer of the Board.

"Committee" means any formally designated subdivision of the Board, consisting of at least two Board members, authorized to act on behalf of the Board, including the Board's standing committees and any ad hoc committees appointed by the Board for special purposes.

"Executive Secretary" means the individual appointed by the Board to serve as the chief executive officer of the Foundation.

"Meeting" means the deliberations of at least the number of individual voting members of the Board required to take action on behalf of the Board, where such deliberations determine or result in the joint conduct or disposition of official business of the Board, but does not include (1) deliberations to open or close a meeting, to establish the agenda for a meeting, or to release or withhold information, required or permitted by §§ 1802.5 or 1802.6, (2) notation voting or similar consideration of matters whether by circulation of material to members individually in writing, or polling of members individually by telephone or telegram and (3) instances where individual members, authorized to conduct business on behalf of the Board or to take action on behalf of the Board, meet with members of the public or staff. Conference telephone calls that involve the requisite number of members, and otherwise come within the definition, are included.

"Member" means a member of the Board of Trustees.

"Staff" includes the employees of the Harry S. Truman Scholarship Foundation, other than the members of the Board.

§ 1802.3 Open meetings.

(a) Members shall not jointly conduct or dispose of business of the Board of Trustees other than in accordance with these procedures. Every portion of every meeting of the Board of Trustees or any committees of the Board shall be open to public observation subject to the exceptions provided in Section 1802.4.

(b) Open meetings will be attended by members of the Board, certain staff, and any other individual or group desiring to observe the meeting. The public will be invited to observe and listen to the meeting but not to participate. The use of cameras and disruptive recording devices will not be permitted.

§ 1802.4 Grounds on which meetings may be closed, or information may be withheld.

Except in a case where the Board or a committee finds that the public interest requires otherwise, the open meeting requirement as set forth in the second sentence of § 1802.3(a) shall not apply to any portion of a Board or committee meeting, and the informational disclosure requirements of §§ 1802.5 and 1802.6 shall not apply to any information pertaining to such meeting otherwise required by this part to be disclosed to the public, where the Board or committee, as applicable, properly determines that such portion or portions of its meetings 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 the Harry S. Truman Scholarship Foundation;

(c) Disclose matters specifically exempted from disclosure by statute (other than section 552, Title 5, United States Code), 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 and 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 an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except that this paragraph 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 agency action on such proposal; or

(j) Specifically concern the issuance of a subpoena, or Foundation participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Foundation of a particular case of formal adjudication pursuant to the procedures in Section 554 of Title 5, United States Code, or otherwise involving a determination on the record after opportunity for a hearing.

§ 1802.5 Procedure for announcing meetings.

(a) Except to the extent that such information is exempt from disclosure under the provisions of Section 1802.4, in the case of each Board or committee meeting, the Executive Secretary, acting at the direction of the Board, shall publish in the FEDERAL REGISTER, at least seven days before the meeting, the following information:

(1) Time of the meeting;

(2) Place of the meeting;

(3) Subject matter of the meeting;

(4) Whether the meeting or parts thereof are to be open or closed to the public; and

(5) The name and phone number of the person designated by the Board or committee to respond to requests for information about the meeting.

(b) The seven-day period for the public announcement required by paragraph (a) of this section may be reduced if a majority of the members of the Board or committee, as applicable, determine by a recorded vote that Board or committee business requires that such expedited meeting be called at an earlier date. The Board or committee shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(c) The time or place of a meeting may be changed following the public announcement required by paragraph (a) only if the Executive Secretary, acting at the direction of the Board, publicly announces such change at the earliest practicable time. Such change need not be voted on by the members.

(d) The subject matter of a meeting, or the determination of the Board or committee, as applicable, 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) only if (1) a majority of the entire voting membership of the Board or a majority of the entire voting membership of a committee, determines by a recorded vote that Board or committee business so requires and that no earlier announcement of the change was possible, and (2) the Board or committee publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(e) The "earliest practicable time" as used in this section, means as soon as possible, which should in few, if any, instances be no later than commencement of the meeting or portion in question.

(f) 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 preceding, and the name and phone number of the person designated by the Board or committee to respond to requests for information about the meeting, shall be submitted for publication in the FEDERAL REGISTER.

§ 1802.6 Procedure for closing meetings.

(a) Action to close a meeting or a portion thereof, pursuant to the exemptions set forth in § 1802.4, shall be taken only when a majority of the entire voting membership of the Board or a majority of the entire voting membership of a committee, as applicable, vote to take such action. Any such action shall include a specific finding by the Board that an open meeting is not required by the public interest.

(b) A separate vote of the Board or committee members shall be taken with respect to each Board or committee meeting, a portion or portions of which are proposed to be closed to the public pursuant to § 1802.4 or with respect to any information which is proposed to be withheld under § 1802.4.

(c) A single vote of the Board or committee 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.

(d) The vote of each member shall be recorded, and may be by notation voting, telephone polling or similar consideration.

(e) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Board or a committee close such portion to the public under any of the exemptions relating to personal privacy, criminal accusation, or law enforcement information referred to in paragraph (e), (f), or (g) of § 1802.4, the Board or committee, as applicable, upon request of any one of its members, shall vote by recorded vote whether to close such meeting. Where the Board receives such a request prior to a meeting, the Board may ascertain by notation voting, or similar consideration, the vote of each member of the Board, or committee, as applicable, as to the following:

(1) Whether the business of the Board or committee permits consideration of the request at the next meeting, and delay of the matter in issue until the meeting following, or

(2) Whether the members wish to close the meeting.

(d) Within one day of any vote taken pursuant to paragraph (a), (b), (c) or (e), of this section, the Board or committee shall make publicly available 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, the Board or committee shall, within one day of the vote taken pursuant to paragraph (a), (b), (c), or (e) of this section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this paragraph shall be disclosed except to the extent it is exempt from disclosure under the provisions of § 1802.4.

(e) For every meeting closed pursuant to § 1802.4, the General Counsel of the Harry S. Truman Scholarship Foundation shall certify before the meeting may be closed that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Board as part of the transcript, recording or minutes required by § 1802.7.

§ 1802.7 Transcripts, recordings, minutes of meetings.

(a) The Board of Trustees 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 closed to the public pursuant to paragraph (j) of § 1802.4, the Board shall maintain either such a transcript or recording, or a set of minutes.

(b) Where minutes are maintained they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons for such actions, including a description of each of the views expressed on any item and the record of any roll call 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) The Board 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 Board proceeding with respect to which the meeting or portion was held, whichever occurs later.

(d) Public availability of records shall be as follows:

(1) Within ten days of receipt of a request for information (excluding Saturdays, Sundays, and legal public holidays), the Foundation shall make available to the public, in the offices of the Harry S. Truman Scholarship Foundation, 712 Jackson Place NW., Washington, D.C., the transcript, electronic recording, or minutes 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 the General Counsel determines to contain information which may be withheld under § 1802.4.

(2) Copies of such transcript, or minutes, or a transcription of such recording disclosing the identify of each speaker, shall be available at the actual cost of duplication or transcription.

(3) The determination of the General Counsel to withhold information pursuant to subparagraph (1) may be appealed to the Board. The appeal shall be circulated to individual Board members. The Board shall make a determination to withhold or release the requested information within twenty days from the date of receipt of a written request for review (excluding Saturdays, Sundays, and legal public holidays).

(4) A written request for review shall be deemed received by the Board when it has arrived at the offices of the Board in a form that describes in reasonable detail the material sought.

[FR Doc.77-7649 Filed 3-15-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20195; RM-2041; RM-2659; FCC 77-119]

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

Wireless Microphones; Operation of Wireless Microphones in the Frequency Range 174–216 MHz (VHF Channels (Television) 7–13)

Adopted: February 10, 1977.

Released: March 8, 1977.

In the matter of amendment of Part 2, and Subpart D, Part 74, of the Commission's Rules and Regulations, with respect to the use of wireless microphones.[1] Report, memorandum opinion and order.

By the Commission: Commissioner Lee absent.

1. The Commission has under consideration its notice of inquiry and notice of proposed rule making in the above entitled matter. Comments were requested in the notice on the desirability of amending the low power auxiliary broadcast rules to permit the operation of wireless microphones in the frequency range 174–216 MHz (VHF television Channels 7–13). The notice was released in response to a petition for rule making filed by Vega Electronics (Vega), a manufacturer of wireless microphones.

2. The reasoning behind the proposal was explained in the notice as follows: there are many areas in AM, FM, and TV broadcasting where wireless microphones could effectively be used. Broadcast use of wireless microphones, however, requires freedom from interference (to function properly), and an adequate spectrum allocation (in order to accommodate a large number of wireless microphones at a given location). For the most part, the frequencies allocated within the present framework of the Commission's Rules do not simultaneously satisfy these requirements. Petitioner, however, suggested frequencies in the 174–216 MHz band could meet these requirements and would be suitable for wireless microphone use.

3. Present operations on these frequencies are of a fixed nature and are authorized in accordance with a rigid set of separation requirements (Section 73.610). Due to the nature of the separation requirements, it was stated, there exists a television channel in every community that is not used for local off-the-air service and on which no distant off-the-air service may be received. This channel may not be used by a regular television station since in does not meet the prescribed separation requirements. Nonetheless, it could be used for wireless microphone operation without fear of interference to local reception. Conversely, from the wireless microphone user's standpoint this channel could be considered interference-free.

4. Under the technical criteria suggested by Vega, one television channel would accommodate the simultaneous operation of ten wireless microphones at the same location. This was expected to satisfy the need for wireless microphones used in special events coverage and in dramatic presentations having a large number of performers. In short, the Vega proposal would permit the operation of wireless microphones in large numbers without fear of interference.

5. The Commission was persuaded by the Vega showing. It appeared the lack of desirable spectrum had limited wireless microphone development. In view of this and the length of time since the last examination of the needs of this particular auxiliary broadcast service, we proposed amendment of the existing low power broadcast auxiliary rules as suggested by Vega.

6. In doing so, the Commission expressed reservations that interference could occur as a result of wireless microphone operation. Our concern included the possibilities of interference with off-the-air television reception, cable television systems and subscribers, closed circuit television systems, home video recording and reproducing equipment, and UHF to VHF television receiver converters.

7. In addition, comments were requested on eight specific topics. These were:

(a) What technical standards should apply to wireless microphones;

(b) Whether type acceptance or type approval should be required of wireless microphones;

(c) What potential exists for excess signal radiation from the microphone cord;

(d) Whether a five MHz band should be specified within each television channel with upper and lower limits, what these limits should be, and whether the chrominance subcarrier should be given protection;

(e) Whether specific center frequencies should be specified, and if so, what they should be;

(f) Whether suitable rule amendments should be formulated to cover the foregoing topics;

(g) Whether limits on the area of operation of wireless microphones should be specified; and

(h) What means exist by which producers of television programs, etc., that are not broadcast licensees might have available the expected benefits of the Vega proposal.

8. Comments in response to the notice were filed by the American Broadcasting Company, Inc. (ABC), Association of Motion Picture and Television Producers (AMPTP), CBS, Inc. (CBS), Comrex Corporation (Comrex), Metromedia, Inc. (Metromedia), National Broadcasting Company (NBC), and Vega. Reply comments were filed by ABC, the Association of Maximum Service Telecasters, Inc. (AMST), AMPTP, Motorola, Inc. (Motorola), and Vega. Late comments were filed by Robert C. Moffett, director of engineering services of KOCE-TV (Channel 50), Huntington Beach, California.

9. Based upon our review of the comments, reply comments, and related technical data, we are persuaded that wireless microphone operations in the 174–216 MHz band may be permitted without significantly increasing the potential for, or the degree of, interference to existing services. In order to do this, certain precautions relating to frequency usage and area of operation, among others, must be strictly observed. These limitations will be discussed after an examination of the comments filed in opposition to the proposal.

10. These opposition comments, filed by Metromedia and AMST, argue the Commission does not have the technical data necessary to insure the interference-free operation of wireless microphones, Metromedia states the proceed-

[1] The original notice of inquiry and notice of proposed rule making was concerned with amendment of Part 74 only. The Commission has since determined that Part 2 should also be amended.

ing should be delayed pending investigations to obtain such data, while AMST feels the proceeding should be terminated. It is noted in both comments that any expected potential for interference will increase due to the unauthorized use of wireless microphone by technically unknowledgeable persons. Rather than run this risk, Metromedia suggests present wireless microphone frequencies be utilized instead.

11. The Commission disagrees. The notice explained in some detail the problems associated with broadcast use of present wireless microphone frequencies. It is therefore non-productive for Metromedia to state that present allocations should be utilized. Secondly, the possibility that unauthorized use may be made of wireless microphones is a minor consideration in view of the increase in spectrum efficiency made possible by the proposal. The technical criteria adopted herein will tend to insure that these wireless microphones will not be available to the general public, e.g. for recreational use, due to the economics of producing a technically acceptable unit. Finally, the Commission is of the view that adequate technical data exists upon which to amend the rules to permit the proposed operation. This data has been acquired over the years and it, along with the technical comments filed in response to the notice, indicates to the Commission the sharing concept is both feasible and desirable.

12. This does not imply that there is absolutely no chance of interference to the reception of off-the-air television broadcast signals. For example, a wireless microphone operating under the technical criteria proposed could create a potential co-channel interference area extending for several miles. This assumes operation of a unit that is highly efficient in its radiating capability. For a few locations and for a small percentage of the time, this interference area could extend considerably beyond this range. On the other hand, the radiating efficiency of these wireless microphone units is very low. Moreover, as certain of the comments noted, the presence of a co-channel television signal of sufficient strength to be received by a television set indicates the presence of a signal of sufficient strength to interfere with the wireless microphone receiver. The source of the television broadcast signal is unimportant. Whether it originates from a television broadcast station or a television translator station, it limits the area available for wireless microphone operation. Because of this, we anticipate operation of these units will occur in areas where co-channel television signals are not capable of being received. In these areas, the interference range of the wireless microphone unit is not a matter of great concern.

13. The responses to the notice favoring the proposal do not expect the interference considerations noted in paragraph 6 of this document to materialize. Cable television systems, home video systems, and closed circuit television systems should not be affected by wireless microphone operation according to these comments, since such systems are "hard wired" and are for the most part unaffected by "outside" fields. Similarly, the possibility of interference to UHF to VHF converters is remote since there are so few remaining in service. While the subject was not addressed in the comments, the Commission has also considered the possibility of interference to CATV "head-end" receiving equipment and to VHF television translator "front ends." In this assumed situation, the co-channel wireless microphone signal would interfere with the reception of the desired, distant broadcast signal at the CATV and translator receiving locations. The quality of the broadcast service offered by these methods would then be impaired. Additionally, it is possible that wireless microphone operation in close proximity to television receivers connected to CATV systems may cause interference. We have found, however, that the CATV and translator equipment of concern is generally located in remote areas where little wireless microphone usage is anticipated. Consequently, the likelihood of interference is quite small. If an interference situation should arise, it may be easily resolved through the choice of a different channel for the wireless microphone transmissions. In any event, the potential for this type of interference does not appear to necessitate specific rule amendments to guard against it.

14. The CBS comments suggest each application for wireless microphone operation contain a statement indicating the possibility of interference to nearby cable and closed circuit television systems, UHF to VHF converters, and home video recorders. The reply comments of Vega disagree with this suggestion. It states that wireless microphone operators should only be required to bear the burden of resolving interference complaints. The Commission agrees with Vega. The usefulness of the showing suggested by CBS depends primarily on the Commission's knowledge of the location of the closed circuit television systems, home recorders, etc. This is information the Commission simply does not have. In view of the comments concerning the high resistance of these closed systems to interference, there is no reason for the Commission to request a showing of limited usefulness. We will, however, require wireless microphone users to bear the burden of resolving interference complaints.

15. In paragraph 10(a) of the notice, comments were requested on the technical standards suggested by Vega and proposed by the Commission. These standards envisioned wireless microphone operating with 50 mW power, a maximum deviation of ±15 KHz, and a frequency tolerance of 0.005%. Crystal control of the units was proposed. In addition, comments concerning the need for antenna height and gain limitations were elicited.

16. The technical standards proposed were generally thought sufficient to permit satisfactory wireless microphone operation. The power, frequency deviation, and frequency tolerance limitations met with approval from all commenting parties. Similarly, it was agreed that crystal control of the wireless microphone units should be required. Opinions varied, however, as to the necessity of adopting antenna height and gain restrictions.

17. In view of the concurring comments, the standards contained in the notice are being adopted. Limits on antenna height and gain, however, do not appear necessary. Instead, a rule provision similar to present Section 74.435 (i) is being adopted which we feel is an adequate safeguard against execesses in either area. While all parties opposed specifying an audio frequency response range, the Commission is going to specify a maximum modulating frequency of 15 kHz. This will prevent wide band spectrum occupancy by individual wireless microphone units.

18. Except for ABC, all parties favor either type approval or type acceptance of wireless microphone equipment (paragraph 10(b) of the notice). ABC feels either is an unnecessary burden on both licensees and the Commission. Our feeling, however, is that type acceptance is necessary to insure strict compliance with the standards set forth. Thus, it will be required.

19. The danger of excess signal radiation from the microphone cord was discounted by all of the parties favoring the proposal (paragraph 10(c) of the notice). Each stated it was a minor consideration and should not be of Commission concern.

20. Responses to questions concerning the matter of specifying a five MHz band with upper and lower limits, of protecting the chrominance subcarrier, and of specifying channel center frequencies (paragraphs 10 (d) and (e) in the notice) are interdependent. A five MHz band with a 0.5 MHz guard band at each end of the TV channel is thought to provide sufficient channels for wireless microphone operation. There is disagreement as to whether specific frequencies within the television channel should be afforded protection. NBC and ABC felt there was no reason to protect certain frequencies while CBS and Vega felt it was appropriate. Specific channel center frequencies should not be specified according to the comments of all three networks. Vega's comments recommend a uniform channel spacing of either 100 or 200 kHz while its reply comments state the Commission should honor the views of the broadcasters, i.e., specific channel frequencies should not be assigned. Motorola, on the other hand, recommended uneven channel spacing within each television channel. This, they state, will permit maximum efficiency so that other compatible uses may be provided for.

21. The Commission is of the opinion that specific channel center frequencies

should be specified. This will aid licensees contemplating co-channel use in the same area by simplifying coordination problems. In addition, it will call attention to the taboo frequency band, discussed below, within which wireless microphone operation is being prohibited. We have decided to specify channel center frequencies at 200 kHz intervals. Vega notes that 100 kHz spacing would yield a greater number of usable frequencies but that sophisticated computer techniques would be required to determine the unusable channels (due to third and fifth order intermodulation products). A channel spacing of 200 kHz simplifies the frequency selection process somewhat and for this reason it has been selected. In any event, with a 200 kHz channel spacing the Commission may reduce the separation between channels at a later date if necessary.

22. We have not adopted the uneven channel spacing plan proposed by Motorola for a number of reasons. By not doing so we anticipate receivers of high quality will be manufactured in order to discriminate against the undesired signals generated by transmitters using an even channel spacing plan. Ultimately this will permit the use of a greater number of frequencies within each television channel. Specifying uneven channel spacing would not place as great a discriminatory burden on the wireless microphone receivers and would not offer an incentive to manufacturers to upgrade their equipment. Consequently, no increase in the number of usable frequencies within each television channel could be expected.

23. We are also establishing a taboo frequency band within ±100 kHz of 3.25 MHz below the lower band edge of the upper adjacent television channel. This will prevent the possibility of a "beat" signal being generated between the wireless microphone signal and the picture carrier of the upper adjacent channel. Such a signal could cause interference to the sound carrier of the upper adjacent television channel. Vega felt a similar taboo band should be established to protect the chrominance subcarrier, and there has been concern by others that operation near the visual carrier frequency could also result in harmful interference. However, the Commission's data does not indicate that additional protection for these two frequencies is necessary and we have not included it. However, if future experience indicates that such protection is warranted, additional taboos will be established as appropriate.

24. In paragraph 10(g) of the notice information regarding specific areas of operation for wireless microphone usage was requested. The responses to that question were varied. NBC felt that operational limitations should not be more stringent for wireless microphones in the 174–216 MHz band than they are for other auxiliary broadcast stations. ABC felt no restrictions were necessary since it believes the potential for interference is so slight. CBS and Vega, on the other hand, advocate a specified area of operation. Vega's comments suggest the area outside the Grade B contour of any co-channel television station. Its reply comments, however, again encourage the Commission to decide the question "based on the views of the broadcasters."

25. The Commission agrees with the comments which suggested a limitation on the area of wireless microphone operation. The danger of interference to television service is neither as remote as the proposals advocates claim, nor as great as AMST and Metromedia maintain. Yet the technical data available to the Commission indicates that co-channel interference possibilities may be all but removed by imposing a limitation on the area of operation. Such a limitation appears to be the only means the Commission has of protecting off-the-air television service and still permitting the shared use of the channels. In view of this we have decided to limit wireless microphone operations to areas outside existing co-channel Grade B television contours. We do not feel wireless microphone applicants and licensees should be burdened with the problem of determining the location of a protected station's Grade B contour. We are therefore setting forth specific figures to be used by applicants and licensees in determining the approximate Grade B contour. The figures are: for Zone I, 97 Km (60 miles); for Zones II and III, 120 Km (75 miles). For the sake of simplicity, these figures assume protected television stations to be operating with maximum facilities. Additionally, the Commission is cognizant of its agreements with Canada and Mexico. As an interim measure, pending coordination with Canada and Mexico on this matter, minimum separations from allocated channels in Canada and Mexico will be: for Zone I, 274 Km (170 miles); for Zone II, 306 Km (190 miles); for Zone III, 354 Km (220 miles). In the case of Zone III, 322 Km (200 miles) will apply if the area of wireless microphone operation is 322 Km (200 miles) or more from the Mexican border. Operation contrary to these standards will be permitted only upon a showing of need and judicious channel selection. Given these limitations and the frequency limitations discussed in paragraphs 21 and 23, the Commission believes wireless microphone operation may be accommodated without danger of either co- or adjacent channel interference.

26. It has generally been suggested in the comments that licensees be given the option of choosing the frequencies of operation for wireless microphones. This would be accomplished by the Commission issuing a blanket license for the 174–216 MHz band or by authorizing an individual license for each television channel. In either case, the licensee would select the specific frequency of operation. The Commission is not opposed to this proposal. We will authorize the operation of wireless microphones within individual television channels. The licensee may then select the specific frequency or frequencies to be used. These frequencies, however, must be ones that are specified as available for wireless microphone operation. In addition, licensees will be permitted the use of more than one high band VHF television channel.

27. One remaining major question requires resolution: should groups or entities other than broadcast licensees be permitted to use wireless mircrophones in the 174–216 MHz band? The notice requested comments on this subject and specifically mentioned program producers and cable television operators as examples of groups that have the same production problems as broadcast licensees. The three networks responded to this question by stating eligibility should not be extended. NBC states that film producers have access to frequencies in the Motion Picture and Business Radio Services (in the Industrial Radio Services), while cable television operators have access to the Business Radio Service.

28. It is also stated in these comments that broadcast licensees have the technical expertise necessary to insure the proper non-interference operation of wireless microphones. It is urged that other groups lack this expertise and would not be as mindful of the interference possibilities. Also noted is the difference between intra-service and inter-service frequency sharing. The former, we are told, is more desirable since all users would be responsible to the Commission's Broadcast Bureau whose staff is quite familiar with broadcast matters.

29. The Vega reply comments, however, indicate eligibility should be extended beyond broadcast licensees, and AMPTP advocates eligibility for motion picture and television program producers in its comments and reply comments. Additionally, it has come to our attention that there are other groups such as producers of live entertainment programs who also have needs similar to those of broadcast licensees, and it is stated that such groups should not be denied the benefits of the Vega proposal.

30. The Commission finds itself in agreement with the motion picture and television producers. These groups exhibit wireless microphone requirements akin to those of broadcast licensees. Since it has been shown that the presently allocated wireless microphone frequencies are generally unsuitable for broadcast use, it seems they would be unsuitable for use by groups with requirements similar to those of broadcast licensees. In view of this, there seems to be no reason to deny motion picture and television program producers, and certain cable television operators, the immediate use of the 174–216 MHz band.[3] In addition,

[3] Only Cable system operators who operate cable systems that produce program material for origination or access cablecasting as defined in Sections 76.5 (w) and (x) of the rules.

those network entities which have recently been granted eligibility in the Auxiliary Broadcast Service will be granted use of the 174–216 MHz band. Although we are not establishing specific eligibility herein for nonbroadcast entities other than motion picture producers and cable system operators, the Commission will consider on a case-by-case basis applications by other groups such as live entertainment program producers, etc., for operation in the 174–216 MHz band. We are confident that groups other than broadcast licensees can use these frequencies responsibly, obtaining the benefits of such use while being aware of the interference possibilities associated with it. If not, adequate sanctions exist for dealing with operations not in compliance with the rules.

31. We are providing eligibility for the use of the 174–216 MHz band by motion picture producers, television program producers, and cable television operators under Part 74. These non-broadcast groups will be authorized to use these frequencies by the Commission's Broadcast Bureau just as translator and ITFS (Instructional Television Fixed Service) licensees are. The broadcast related experience of our staff will be available to them in this manner.

32. The Comrex comments suggest the Commission permit wireless microphone use of UHF television frequencies in addition to the VHF frequencies. This request, however, is beyond the scope of the present proceeding and will not be considered.

33. Also pending before the Commission is a petition for rulemaking (RM–2659), filed by AMPTP, seeking the use of frequencies in the 169–172 MHz band for wireless microphone operation. The Commission believes that the purpose for which the frequencies were requested in RM–2659 has been satisfied by the instant proceeding. Therefore, to this extent the petition is being granted and in all other respects denied.

34. We have concluded that, for the reasons set forth above, adoption of these amendments will serve the public interest. Accordingly, *It is ordered*, That effective April 18, 1977, Parts 2 and 74 of the Commission's rules and regulations are amended as set forth in the attached Appendix pursuant to the authority contained in Sections 4(i), 303(a), (b), (g), (q) and (r) and 307(b) of the Communications Act of 1934, as amended. *It is further ordered*, That the petition for rulemaking (RM–2659), concerning wireless microphone operations in the 169 to 172 MHz band and filed by the Association of Motion Picture and Television Producers, Inc., Is granted to the extent indicated above and in all other respects Denied.

35. Finally, it should be noted that information developed through field investigations would indicate that certain manufacturers of wireless microphones may be improperly equipping the devices to operate on unauthorized frequencies. Additionally, certain users have apparently altered the wireless microphones to achieve the same results. Manufacturers and users alike are hereby placed on notice that our investigations in this area will continue and appropriate sanction action will be initiated. The Commission cannot tolerate continued spectrum pollution through the willful use of unauthorized frequencies by wireless microphones and intends to vigorously enforce the rules adopted herein.

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

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. In Part 2 of Chapter I of Title 47 of the Code of Federal Regulations, Section 2.106, the Table of Frequency Allocations, is amended by adding a new footnote designator, NG 115, to the band 174–216 MHz and by adding, in proper numerical sequence, the text of footnote NG 115 in the list of footnotes following the table, as follows:

§ 2.106 Table of frequency allocations.

United States

* * *	* * *
Band (MHz) 5	Allocation 6.
* * *	* * *.
174–216	NG (NG 115).
* * *	* * *.

* * * * *

NG 115 In the 174 to 216 MHz band wireless microphones may be authorized to operate on a secondary, non-interfering basis, subject to terms and conditions set forth in Part 74 of these Rules and Regulations.

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

2. Section 74.15(b) is amended to read as follows:

§ 74.15 License period.

* * * * *

(b) Licenses for stations or systems in the Auxiliary Broadcast Service held by a licensee of a broadcast station will be issued for a period running concurrently with the license of the associated broadcast station with which it is licensed. Licenses held by eligible networks for the purpose of providing program services to affiliated stations under Subpart D, and by eligible networks, cable television operators, motion picture producers, and television program producers under Subpart H, will be issued for a period running concurrently with the normal licensing period for broadcast stations located in the same area of operation.

* * * * *

3. Part 74, Subpart D is amended by the deletion of the words "And Low Power Auxiliary" from the heading of the subpart to read as follows:

Subpart D—Remote Pickup Broadcast Stations

* * * * *

§ 74.401 [Amended]

4. Section 74.401 is amended by the deletion of the definition of "Low Power Broadcast Auxiliary Station".

§ 74.402 [Amended]

5. Section 74.402 is amended by the deletion of subparagraph (a)(9) which consists of frequency Group T and by the deletion of footnote 9 associated with Group T.

§ 74.435 [Reserved]

6. Section 74.435 is deleted and marked Reserved.

7. Sections 74.451 (c) and (e) are amended by the deletion of the words "or low power auxiliary" and "and low power auxiliary", respectively, from the first sentence of each paragraph, and paragraph (c) is additionally amended by deleting reference to "fees" to read as follows:

§ 74.451 Type acceptance of equipment.

* * * * *

(c) An applicant for a remote pickup broadcast station or system may also apply for type acceptance for an individual transmitter by following the type acceptance procedure set forth in Part 2 of the Commission's Rules and Regulations. Individual transmitters which are type accepted will not normally be included in the Commission's "Radio Equipment List".

* * * * *

(e) Remote pickup broadcast station equipment authorized to be used pursuant to an application accepted for filing prior to September 1, 1977, may continue to be used by the licensee or its successors or assignees: Provided, however, if operation of such equipment causes harmful interference due to its failure to comply with the technical standards set forth in this Subpart, the Commission may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

* * * * *

8. Section 74.452(b) is amended by the deletion of the words "or low power auxiliary" from the first sentence to read as follows:

§ 74.452 Equipment changes.

* * * * *

(b) The licensee of a remote pickup broadcast station may, except as set forth in paragraph (d) of this section, make any other changes in the equipment that are deemed desirable or necessary, including replacement with type accepted equipment, without prior Commission approval: *Provided*, the proposed changes will not depart from any of the terms of the station or system authorization or the Commission's technical rules

governing his service: *And Provided Further*, that any changes made to type accepted transmitting equipment shall be in compliance with the provisions of Part 2 of the Commission's Rules and Regulations concerning modification to type accepted equipment.

* * * * *

§ 74.466 Station inspections.

The licensee of each remote pickup broadcast station or system shall make such station or system available for inspection by representatives of the Commission at any reasonable hour.

10. Sections 74.468 (a) and (c) are amended by the deletions of the words "or low power auxiliary" from the first sentence of each paragraph to read as follows:

§ 74.468 Operator requirements.

(a) Except under the circumstances specified in paragraph (d) of this section, a remote pickup broadcast station may be operated by any person designated by and under control of the station licensee. That person need not be a licensed operator under Part 13 (Commercial Radio Operators) of the Commission's Rules and Regulations.

* * * * *

(c) The provisions of this section authorizing unlicensed persons to operate remote pickup broadcast stations, or authorizing unattended operation of such stations in certain circumstances, shall not be construed to change or diminish in any respect the responsibility of a station licensee to have and to maintain control over the stations licensed to it or for the proper functioning and operation of those stations in accordance with the terms of the station or system license and pertinent Commission rules and regulations.

* * * * *

11. Section 74.481 is amended by the deletion of paragraph (e) and the marking of it as Reserved.

§ 74.481 Logs and records.

* * * * *

(e) [RESERVED]

* * * * *

12. Part 74 is amended by the addition of a new Subpart H to read as follows:

Subpart H—Low Power Auxiliary Stations

Definitions and Allocation of Frequencies

§ 74.801 Definitions.

Cable television system operator. A cable television operator is defined in § 76.5(11) of the rules as that local business entity, be it natural person, partnership, corporation, or association, which offers for sale services of a cable television system in the system community.

Low power auxiliary station. An aural auxiliary station authorized and operated pursuant to the provisions set forth in this Subpart. Devices authorized as low power auxiliary stations are intended to transmit over distances of approximately 100 meters and will normally fall into two general categories; cue and control signal transmitters and wireless microphones.

Motion picture producer. Motion picture producer refers to a person engaged in the production or filming of motion pictures.

Network entity. An organization which produces programs available for simultaneous transmissions by 10 or more affiliated stations, and having distribution facilities or circuits available to such affiliated stations in service at least 12 hours each day.

Television program producer. Television program producer refers to a person engaged in the production of television programs.

§ 74.802 Frequency assignment.

(a) The following frequency bands may be assigned for use by low power auxiliary stations:

26.10—26.48 MHz
161.625—161.775 MHz (except in Puerto Rico or the Virgin Islands)
174—216 MHz
450—451 MHz
455—456 MHz
947—952 MHz

Except for the 174–216 MHz band, transmitting units may be operated on any frequency within the band of frequencies for which the station is licensed.

(b) In the 174–216 MHz band, operations are limited to locations removed from existing co-channel stations[1] by the following distances unless otherwise authorized by the Commission:

Zone I, 97 Km (60 miles)
Zone II and III, 120 Km (75 miles)

Specific frequency operation is required in this band. However, the licensee will select the exact frequency on which operation is desired. Specific frequencies available for use by low power auxiliary stations in the 174–216 MHz band are as follows:

(1) Within television Channel 7 (174–180 MHz):

174.6, 174.8, 175.0, 175.2, 175.4, 175.6, 175.8, 176.0, 176.2, 176.4, 176.6, 177.0, 177.2, 177.4, 177.6, 177.8, 178.0, 178.2, 178.4, 178.6, 178.8, 179.0, 179.2, 179.4.

(2) Within television Channel 8 (180–186 MHz):

180.6, 180.8, 181.0, 181.2, 181.4, 181.6, 181.8, 182.0, 182.2, 182.4, 182.6, 183.0, 183.2, 183.4, 183.6, 183.8, 184.0, 184.2, 184.4, 184.6, 184.8, 185.0, 185.2, 185.4.

(3) Within television Channel 9 (186–192 MHz):

186.6, 186.8, 187.0, 187.2, 187.4, 187.6, 187.8, 188.0, 188.2, 188.4, 188.6, 189.0, 189.2, 189.4, 189.6, 189.8, 190.0, 190.2, 190.4, 190.6, 190.8, 191.0, 191.2, 191.4.

(4) Within television Channel 10 (192–198 MHz):

192.6, 192.8, 193.0, 193.2, 193.4, 193.6, 193.8, 194.0, 194.2, 194.4, 194.6, 195.0, 195.2, 195.4, 195.6, 195.8, 196.0, 196.2, 196.4, 196.6, 196.8, 197.0, 197.2, 197.4.

(5) Within television Channel 11 (198–204 MHz):

198.6, 198.8, 199.0, 199.2, 199.4, 199.6, 199.8, 200.0, 200.2, 200.4, 200.6, 201.0, 201.2, 201.4, 201.6, 201.8, 202.0, 202.2, 202.4, 202.6, 202.8, 203.0, 203.2, 203.4.

(6) Within television Channel 12 (204–210 MHz):

204.6, 204.8, 205.0, 205.2, 205.4, 205.6, 205.8, 206.0, 206.2, 206.4, 206.6, 207.0, 207.2, 207.4, 207.6, 207.8, 208.0, 208.2, 208.4, 208.6, 208.8, 209.0, 209.2, 209.4.

(7) Within television Channel 13 (210–216 MHz):

210.6, 210.8, 211.0, 211.2, 211.4, 211.6, 211.8, 212.0, 212.2, 212.4, 212.6, 213.0, 213.2, 213.4, 213.6, 213.8, 214.0, 214.2, 214.4, 214.6, 214.8, 215.0, 215.2, 215.4.

(c) A licensee is not limited with respect to the number of low power auxiliary stations which may be licensed.

(d) Low power auxiliary licensees will not be granted exclusive frequency assignments.

§ 74.803 Frequency selection to avoid interference.

(a) Where two or more low power auxiliary licensees need to operate in the same area, the licensees shall endeavor to select frequencies or schedule operation in such manner as to avoid mutual interference. If a mutually satisfactory arrangement cannot be reached, the Commission shall be notified and it will specify the frequency or frequencies to be employed by each licensee.

(b) The selection of frequencies in the 174–216 MHz band for use in any area shall be guided by the need to avoid interference to television reception. In this band low power auxiliary station usage is secondary to television broadcasting and shall not cause harmful interference to television reception. If interference occurs, low power auxiliary station operation shall cease immediately and shall not resume until the interference problem has been resolved.

§ 74.804 Use of FCC form 425.

(a) Applicants proposing to operate low power auxiliary equipment in the 26.10–26.48 MHz band in the Chicago, Illinois Regional Area, as defined in Section 74.404(d) of the Part, shall make application on FCC Form 425 in lieu of FCC Form 313. Form 425 shall be used to apply for new facilities or to apply for modification, renewal or assignment of existing authorizations.

(b) Applications on FCC Form 425 shall be submitted to the Commission's Chicago Regional Office at 1550 Northwest Highway, Park Ridge, Illinois, 60068.

(c) Information regarding the special provisions relating to the land mobile spectrum management program in the

[1] Authorizations issued by the Commission will be subject to the provisions of any agreements entered into by the United States with Canada and Mexico. Until further notice, the following minimum separations from allocated channels in Canada and Mexico will be required:

Zone I, 274 Km (170 miles)
Zone II, 306 Km (190 miles)
Zone III*, 354 Km (220 miles)

*322 Km (200 miles) will apply if the location is 322 Km (200 miles) or more from the Mexican border.

Chicago region is contained in Section 74.405.

ADMINISTRATIVE PROCEDURE

§ 74.811 Cross reference.

See §§ 74.11 to 74.16.

LICENSING POLICIES AND GENERAL OPERATING REQUIREMENTS

§ 74.831 Scope of service and permissible transmissions.

The license for a low power auxiliary station authorizes the transmission of cues and orders to production personnel and participants in broadcast programs and motion pictures and in the preparation therefor, the transmission of program material by means of a wireless microphone worn by a performer and other participants in a program or motion picture during rehearsal and during the actual broadcast, filming, or recording, or the transmission of comments, interviews, and reports from the scene of a remote broadcast. Low power auxiliary stations operating in the 947–952 MHz band may, in addition, transmit synchronizing signals and various control signals to portable or hand-carried TV cameras which employ low power radio signals in lieu of cable to deliver picture signals to the control point at the scene of a remote broadcast.

§ 74.832 Licensing requirements and procedures.

(a) A license authorizing operation of one or more low power auxiliary stations will be issued only to the following:

(1) A licensee of a standard, commercial FM, noncommercial educational FM, commercial television, educational television or international broadcasting station. Low power auxiliary broadcast stations will be licensed for use with a specific broadcasting station or combination of broadcasting stations licensed to the same licensee and to the same community.

(2) A network entity as defined in § 74.801.

(3) A cable television system operator who operates a cable system that produces program material for origination or access cablecasting, as defined in §§ 76.5 (w) and (x).

(4) Motion picture producers as defined in § 74.801.

(5) Television program producers as defined in § 74.801.

(b) An application for a new or renewal of low power auxiliary license shall specify the frequency band or bands desired. Only those frequency bands necessary for satisfactory operation shall be requested.

(c) Licensees of standard, commercial FM, noncommercial educational FM, educational and commercial television or international broadcast stations, and network entities may be authorized to operate low power auxiliary stations in the frequency bands set forth in Section 74.802(a).

(d) Cable television operators, and motion picture and television program producers may be authorized to operate low power auxiliary stations only in the 174–216 MHz band.

(e) An application for new low power auxiliary stations or for a change in an existing authorization shall specify the broadcasting station, combination of such station, or the network with which the low power broadcast auxiliary facilities are to be principally used as set forth in paragraph (h) of this section; or it shall specify the motion picture or television production company or the cable television operator with which the low power broadcast auxiliary facilities are to be solely used. A single application, filed in duplicate on FCC Form 313 or FCC Form 425, as appropriate, may be used in applying for the authority to operate one or more low power auxiliary units. The application shall specify the number of units to be operated and the frequency bands which will be used. Applications for the use of the 174–216 MHz band shall also specify the nearest television stations operating on the requested channel since operations in this band are limited to areas removed from existing co-channel stations. Motion picture producers, television program producers, and cable television operators are required to attach a single sheet to their application form explaining in detail the manner in which the eligibility requirements set forth in paragraph (a) are met.

(f) Applications for the use of the 174–216 MHz band must specify an area of operation within which the low power auxiliary station will be used. This area of operation may, for example, be specified as the metropolitan area which the broadcast licensee serves, or a restricted area within which motion picture and television producers are operating. Since low power auxiliary station use of this band will only be permitted in areas removed from existing co-channel television broadcast stations, it is the licensee's responsibility to insure operation of these stations does not occur at distances less than those specified in Section 74.802(b) with respect to existing co-channel television stations serving part of the specified area of operation.

(g) Low power auxiliary licenses will specify the minimum and maximum number of units that may be operated as follows: from 1 to 5 stations; from 4 to 12 stations; from 10 to 24 stations; from 20 to 50 stations; 45 or more stations. Licensees shall have installed and maintain in operating condition the minimum number of units authorized within 120 days following the grant date of the license.

(h) For broadcast licensees, low power auxiliary stations will be licensed for use with a specific broadcasting station or combination of broadcasting stations licensed to the same licensee and to the same community. Licensing of low power auxiliary stations for use with a specific broadcasting station or combination of such stations does not preclude their use with other broadcasting stations of the same or a different licensee at any location: *Provided, however,* That low power auxiliary stations operating in the 174–216 MHz band may not operate outside the area of operation specified in the authorization without prior Commission approval. Such additional use for low power auxiliary stations operating in other bands is permitted without further authority of the Commission: *Provided, however,* Operation of low power auxiliary stations shall, at all times, be in accordance with the requirements of Section 74.882 of this Subpart: *And provided further,* A low power auxiliary station that is being used with a broadcasting station or network other than one with which it is licensed, shall, in addition to meeting the requirements of Section 74.861 of this Subpart, not cause harmful interference to another low power auxiliary station which is being used with the broadcast station(s) or network with which it is licensed.

(i) In case of permanent discontinuance of operation of a station licensed under this Subpart, the licensee shall forward the station license to the Commission in Washington for cancellation. For purposes of this section, a station which is not operated for a period of one year is considered to have been permanently discontinued.

§ 74.833 Temporary authorizations.

(a) Special temporary authority may be granted for: operation of a low power auxiliary station licensed to another licensee; operation, as a low power auxiliary station, of equipment licensed to another class of station or service, or, operation of equipment of suitable design not heretofore licensed. Such authority will normally be granted only for special operations of a temporary nature.

(b) A request for special temporary authority for the operation of a low power auxiliary station may be made by informal application, which shall be filed with the Commission in Washington at least 10 days prior to the date of the proposed operation: *Provided,* That, an application filed within less than 10 days of the proposed operation may be accepted upon a satisfactory showing of the reasons for the delay in submitting the request.

(c) An informal request for special temporary authority shall be addressed to the Commission in Washington, D.C., or the Commission's Chicago Regional office, as appropriate (see § 74.804), and shall set forth full particulars including: applicant's name, statement of eligibility, call letters of associated broadcasting station or stations, if any, name and address of individual designated to receive return telegram, type and manufacturer of equipment, power output, emission, frequency or frequencies proposed to be used, commencement and termination date and location of proposed operation, and purpose for which request is made including any particular justification.

(d) A request for special temporary authority shall specify a frequency band consistent with the provisions of

§ 74.802: *Provided*, That, in the case of events of wide-spread interest and importance which cannot be transmitted successfully on these frequencies, frequencies assigned to other services may be requested upon a showing that operation thereon will not cause interference to established stations: *And provided further*, In no case will operation of a low power auxiliary broadcast station be authorized on frequencies employed for the safety of life and property.

(e) An applicant requesting special temporary authority to operate, as a low power auxiliary station, equipment authorized for use by another class of station, shall, if the equipment to be used is not licensed to the applicant, submit a statement to show that temporary control of the transmissions therefrom has been secured for the duration of the special operation proposed.

(f) Special temporary authority to permit operation of low power auxiliary stations pending Commission action on an application for regular authority will not normally be granted.

EQUIPMENT

§ 74.851 Type acceptance of equipment.

(a) Applications for new low power auxiliary stations tendered after August 31, 1977, will not be accepted unless the equipment specified therein has been type accepted for use pursuant to provisions of this Subpart. However, all applications specifying the use of the 174–216 MHz band, must specify type accepted equipment.

(b) Any manufacturer of a transmitter to be used in this service may apply for type acceptance for such transmitter following the type acceptance procedure set forth in Part 2 of the Commission's Rules and Regulations. Attention is also directed to Part 1 of the Commission's Rules and Regulations which specifies the fees required when filing an application for type acceptance.

(c) An applicant for a low power auxiliary station may also apply for type acceptance for an individual transmitter by following the type acceptance procedure set forth in Part 2 of the Commission's Rules and Regulations. The application for type acceptance must be accompanied by the proper fees as prescribed in Part 1 of the Commission's Rules and Regulations. Individual transmitters which are type accepted will not normally be included in the Commission's "Radio Equipment List."

(d) Low power auxiliary station equipment authorized to be used pursuant to an application accepted for filing prior to September 1, 1977 may continue to be used by the licensee or its successors or assignees: *Provided, however*, If operation of such equipment causes harmful interference due to its failure to comply with the technical standards set forth in this Subpart, the Commission may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

(e) Each instrument of authority which permits operation of a low power auxiliary station using equipment which has not been type accepted will specify the particular transmitting equipment which the licensee is authorized to use.

(f) All transmitters marketed after August 31, 1977, shall be type accepted by the Federal Communications Commission for use under this Subpart. (Refer to Subpart I of Part 2 of the Commission's Rules and Regulations.)

§ 74.852 Equipment changes.

(a) The licensee of a low power auxiliary station may, except as set forth in paragraph (c) of this section, make any changes in the equipment that are deemed desirable or necessary, including replacement with type accepted equipment, without prior Commission approval: *Provided*, The proposed changes will not depart from any of the terms of the station authorization or the Commission's technical rules governing this service: *And provided further*, That any changes made to type accepted transmitting equipment shall be in compliance with the provisions of Part 2 of the Commission's Rules and Regulations concerning modification to type accepted equipment.

(b) Any equipment changes made pursuant to paragraph (a) of this section shall be set forth in the next application for renewal of license.

(c) Prior to September 1, 1977, Commission approval must be obtained before replacing an authorized transmitter with a transmitter which has not been type accepted for use in the low power auxiliary broadcast service. Transmitters initially installed after August 31, 1977, must be type accepted for use in this service.

TECHNICAL OPERATION AND OPERATORS

§ 74.861 Technical requirements.

(a) Transmitter power is the power at the transmitter output terminals and delivered to the antenna, antenna transmission line, or any other impedance-matched, radio frequency load. For the purpose of this Subpart, the transmitter power is the carrier power.

(b) Each authorization for a new low power auxiliary station issued pursuant to an application accepted after August 31, 1977, shall require the use of type accepted equipment. Such equipment shall be operated in accordance with the emission specifications included in the type acceptance grant and as prescribed in paragraphs (c) through (k) of this section. However, all authorizations issued for the use of the 174–216 MHz band shall require the use of type accepted equipment.

(c) The maximum authorized bandwidth of emissions corresponding to the types of emissions specified below, and the maximum authorized frequency deviation in the case of frequency or phase modulated emissions, shall be as follows:

Frequencies (megahertz)	Authorized bandwidth (kiloherts)	Maximum frequency deviation (kiloherts) [1]	Type of emission [2 3]
26.10 to 26.48	20	5	A3, F3, F9
161.625 to 161.775	30	5	A1, A2, A3, F1, F2, F3, F9
174 to 216	100	15	F3
450 to 451:			
(10 kHz channels)	10	1.5	A1, A2, A3, F1, F2, F3, F9
(25 kHz channels)	25	5	A1, A2, A3, F1, F2, F3, F9
(50 kHz channels)	50	10	A1, A2, A3, F1, F2, F3, F9
(100 kHz channels)	100	35	A1, A2, A3, F1, F2, F3, F9
455 to 456:			
(10 kHz channels)	10	1.5	A1, A2, A3, F1, F2, F3, F9
(25 kHz channels)	25	5	A1, A2, A3, F1, F2, F3, F9
(50 kHz channels)	50	10	A1, A2, A3, F1, F2, F3, F9
(100 kHz channels)	100	35	A1, A2, A3, F1, F2, F3, F9

[1] Applies where class F1, F2, F3, or F9 emission is used.
[2] Transmitters operating above 450 MHz shall show a need for employing A1, A2, F1, or F2 emission.
[3] Emission designators shall be established in accordance with provisions of subpt. C of pt. 2 of the Commission's Rules and Regulations. For transmitting equipment which is type accepted, emission designators will appear in the Commission's radio equipment list.

(d) The mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) On any frequency removed from the operating frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: at least 25 decibels;

(2) On any frequency removed from the operating frequency by more than 100 percent up to and including 250 percent of the authorized bandwith: at least 35 decibels;

(3) On any frequency removed from the operating frequency by more than 250 percent of the authorized bandwidth: at least $46+10 \log_{10}$ (mean output power in watts) decibels.

(e) In the event a station's emissions outside its authorized frequency band causes harmful interference, the Commission may, at its discretion, require the licensee to take such further steps as may be necessary to eliminate the interference.

(f) Low power auxiliary transmitters not required to operate on specific carrier frequencies shall operate sufficiently within the authorized frequency band edges to insure the emission bandwidth falls entirely within the authorized band.

(g) An emission appearing on any discrete frequency outside the authorized frequency band shall be attenuated, at least $46+10 \log_{10}$ (mean output power, in watts) decibels below the mean output power of the transmitting unit.

(h) Unusual transmitting antennas or antenna elevations shall not be used to deliberately extend the range of low power auxiliary stations beyond the

limited areas defined in Section 74.831 (b) of this Subpart.

(i) For low power auxiliary stations not operating in the 174–216 MHz band, the following technical requirements are imposed:

(1) The maximum transmitter power which will be authorized as 1 watt. Licensees may accept the manufacturer's power rating; however, it is the licensee's responsibility to observe specified power limits.

(2) If a low power auxiliary station employs amplitude modulation, modulation shall not exceed 100 percent on positive or negative peaks.

(j) For low power auxiliary stations operating in the 174–216 MHz band, the following technical requirements are imposed:

(1) Transmitters shall be crystal controlled, employ frequency modulation with a maximum deviation of ±15 kHz and a maximum modulating frequency of 15 kHz, and shall have a frequency tolerance of 0.005%.

(2) The power of the unmodulated carrier at the transmitter output terminals may not exceed 50 mW.

(k) Low power auxiliary stations shall be operated so that no harmful interference is caused to any other class of station operating in accordance with Commission Rules and Regulations and with the Table of Frequency Allocations in Part 2 thereof.

NOTE.—All stations, regardless of date or original licensing must meet the authorized bandwidth and maximum frequency deviation specifications contained in paragraph (c) by August 31, 1978.

§ 74.866 Station inspections.

The licensee of each low power auxiliary station shall make such station available for inspection by representatives of the Commission at any reasonable hour.

§ 74.867 Posting of licenses.

The license for one or more low power auxiliary stations shall be posted with the license for any broadcasting station with which the auxiliary is licensed. The licenses held by an eligible network entity, cable television operator, motion picture producer, or television program producer shall be kept in the licensee's files at the address shown on the authorization.

§ 74.868 Operator requirements.

(a) A low power auxiliary station may be operated only by a person designated by and under the control of the licensee and need not be a licensed operator under Part 13 (Commercial Radio Operators) of the Commission's Rules and Regulations.

(b) The provisions of this section authorizing unlicensed persons to operate low power auxiliary stations shall not be construed to change or diminish in any respect the responsibility of the licensee to have and to maintain control over the stations licensed to it or for the proper functioning and operation of those stations in accordance with the terms of the station license and pertinent Commission rules and regulations.

(c) All transmitter repairs or adjustments which may affect the proper operation of a low power auxiliary station shall be made by or under the immediate supervision of a person holding a first or second-class commercial radiotelephone operator's license.

OTHER OPERATING REQUIREMENTS

§ 74.881 Logs and records.

Each licensee of low power auxiliary stations having transmitter output power exceeding 50 mW shall maintain an accurate record listing the current location of all such low power auxiliary stations. These records may be kept at the main studio or transmitter of a broadcasting station with which the auxiliary station is licensed, or in the files of the principal place of business for eligible network entities, cable television operators, motion picture producers, and television program producers. These records shall be retained for a period of one year.

§ 74.882 Station identification.

Call signs will not be assigned to low power auxiliary stations. In lieu thereof, for transmitters used for voice transmissions and having a transmitter output power exceeding 50 mW, an announcement shall be made at the beginning and end of each period of operation at a single location, over the transmitting unit being operated, identifying the transmitting unit designator, its location, and the call sign of the broadcasting station or name of the licensee with which it is being used. A period of operation may consist of a continuous transmission or intermittent transmissions pertaining to a single event.

[FR Doc.77-7597 Filed 3-15-77;8:45 am]

Title 50—Wildlife and Fisheries

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

PART 26—PUBLIC ENTRY AND USE

De Soto National Wildlife Refuges, Iowa and Nebraska

The following special regulations are issued and are effective on March 16, 1977.

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

IOWA-NEBRASKA

DE SOTO NATIONAL WILDLIFE REFUGE

Public recreational activities on De Soto National Wildlife Refuge, Missouri Valley, Iowa, are permitted from April 15 through September 30, 1977, inclusive, subject to the following special conditions:

(1) *Authorized activities.* Public recreational activities are limited to fishing, picnicking, swimming, boating, water skiing, sightseeing, mushroom picking, and nature observation.

(2) *Open season.* The open season for general public recreation use is from April 15, 1977, through September 30, 1977. During this period, the area is open daily from 6:00 a.m. through 10:00 p.m. Admittance onto the refuge is prohibited after 9:00 p.m. Between the dates of September 16 and September 30, 1977, all water oriented recreational activities, except boat and bank fishing, are prohibited. Boat motors are limited to 25 horsepower or less during this period. Swimming will be permitted from May 28 to September 5, 1977, during the hours posted, and only in the designated beach area. Two separate mushroom picking areas are open daily to the public from April 15 through May 31, hours of use are the same as for the general use area.

(3) *Open area.* The area open for general public use comprises approximately 2,000 acres and the special mushroom picking areas comprise approximately 1,100 acres. These 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, 10597 West 6th Avenue, Denver, Colorado 80215. Maps of the open areas are also posted or available for handout at entrance points.

(4) *Access.* Entry onto the open area is permitted only at gates or points of entry specifically posted for this purpose.

(5) *Other Provisions.* (a) The use of air mattresses, innertubes, beach balls and all other flotation devices, other than life preservers, is prohibited on refuge waters.

(b) The possession of bottles or cans is prohibited on the designated swimming beach.

(c) The use of fire is permitted, but only in grills.

(d) Access to refuge waters with air boats or house boats is prohibited.

(e) Access to refuge waters with boats that have toilets that flush directly into the water is prohibited, unless such toilets are sealed from use.

(f) The maximum number of power boats greater than 25 horsepower that will be permitted on refuge waters at any one time is 125.

(g) The possession of open alcoholic beverages is prohibited on any boat propelled by mechanical power while the craft is in operation.

(h) The lake being long and narrow requires that all boaters keep to the right and maintain a highway type traffic pattern. Turns shall always be made to the operator's left except when beaching or docking a boat.

(i) A portion of the refuge lake is posted as a "No Ski Zone". No water skiing is allowed in the area.

(j) All boats are prohibited from loading or unloading passengers from the swimming area.

(k) Operation of boats, excluding sailboats, with persons on deck or gunwales is prohibited.

(l) All boat and bank fishermen will be permitted to use the entire lake.

(m) Domestic animals, including dogs, cats, horses and cattle are not permitted on the refuge.

(n) Removal of all plant life, including down timber, is prohibited.

(p) Violators of refuge regulations may be required to remove themselves from the area.

The provisions of this special regulation supplement the regulations which govern public access, use, and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through September 30, 1977.

DAVID E. HEFFERNAN,
Acting Refuge Manager.

FEBRUARY 24, 1977.

[FR Doc.77-7640 Filed 3-15-77;8:45 am]

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

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Interim Regime for Taking of Marine Mammals Incidental to Commercial Fishing Operations

On January 5, 1977, notice was published in the FEDERAL REGISTER (42 FR 1034) that the National Marine Fisheries Service (NMFS) had on December 29, 1976, amended its regulations governing the incidental take of marine mammals in commercial fishing operations and the general permit issued to the American Tunaboat Association to incidentally take marine mammals in yellowfin tuna purse seining. The permit was amended to extend its duration from 2400 hours December 31, 1976 to 2400 hours April 30, 1977; to prohibit the taking of marine mammal species and stocks between 0001 hours January 1, 1977 and 2400 hours April 30, 1977, until such time as the NMFS Director designates that such taking can commence; and to limit the number of marine mammal species and stocks that may be killed under the permit once taking commences as set forth in the notice.

By Order of the United States Court of Appeals for the District of Columbia Circuit of August 6, 1976, the previously described regulations and permit were voided as of January 1, 1977. This Court upheld an Order of the District of Columbia District Court voiding these regulations and the permit issued thereunder because of a failure by the NMFS to make certain findings as required by the Marine Mammal Protection Act. However, in part, because these findings had purportedly been made in adopting new regulations, the D.C. Circuit Court of Appeals, on March 8, 1977, stayed the District Court Order to allow the taking of porpoise incidental to yellowfin tuna purse seining pursuant to the 1976 permit as modified in the January 5, 1977 FEDERAL REGISTER notice, from March 8, 1977, to April 30, 1977, or until a 1977 permit is issued, whichever comes first. It was further ordered that this taking shall be governed by regulations published in the FEDERAL REGISTER on March 1, 1977 (42 FR 12010) except as to the term of the permit and quotas of porpoise and could commence upon issuance of modified certificates of inclusion. Finally, it was ordered that any and all porpoise taken under the modified permit are to be counted as a part of the total allowable take for 1977.

Modified certificates of inclusion will be issued to all 1976 certificate holders not later than Saturday, March 12, 1977. Therefore, as allowed by the Court Order of March 8, 1977, the Director is designating, in accordance with the amended permit, that the taking of marine mammals incidental to yellowfin tuna purse seining can commence at 0001 hours March 14, 1977 Pacific Coast Time. Thus, as of 0001 hours March 14, 1977, Pacific Coast Time, taking of porpoise incidental to yellowfin tuna purse seining may commence provided that such taking is governed by regulations published in the FEDERAL REGISTER on March 1, 1977, and the number and kind of marine mammals taken be limited to that set forth in 42 FR 1034. The taking under this amended certificate is effective until 2400 hours April 30, 1977, or when a new 1977 permit is issued, or when the quotas are reached, whichever comes first.

Dated: March 11, 1977.

WINFRED M. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.77-7757 Filed 3-15-77;8:45 am]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

Part 21—Vocational Rehabilitation and Education

Administration of Educational Benefits; Open Circuit Television

On page 49506 of the FEDERAL REGISTER of November 9, 1976, there was published a notice of proposed regulatory development to amend § 21.4233(c) to clarify the acceptable number of credit hours of training which may be allowed for the purpose of full-time measurement when pursued by open circuit television.

Interested persons were given 30 days in which to submit comments regarding the proposed regulation.

A total of seven comments were received. Most of the comments generally objected to the fact that the regulation restricts the use of open circuit television courses in the training of veterans. However, one of the comments objects more specifically to the requirement of the regulation which limits the maximum number of credit hours of open circuit television training to six credit hours.

This general objection to placing restrictions of any kind upon this type of training must be rejected as a matter of law.

Section 1673(c), title 38, United States Code, provides that no course may be approved for enrollment of an eligible veteran if an integral part of the course is to be pursued by open circuit television when the course is pursued in residence, and leads to a standard college degree, unless the major portion of the course is to be pursued through conventional classroom or laboratory attendance.

The provision of law is mandatory and may not be ignored by the Veterans Administration. This general concept has long been a part of § 21.4233 and is not in any way altered by the proposed amendment. The intent of Congress has been that courses offered by remote media, such as open circuit television, fail to meet the accepted traditional requirements for courses offered as a part of an institutional program. Such courses lack the essentials of pupil-teacher availability and relationships, and the normal school environment, which are not normally supplied with open circuit television courses. While it is true that the authors of the comments seem to believe that this intent of Congress is not consonant with accepted contemporary technology and educational practice, legislation would be required to alter the statutory basis for the current regulation.

The comment of one of the persons interested in the proposed change to § 21.4233 reveals an understanding of the necessity for restrictions, but questions the manner in which the regulation executes the responsibility. This person questions the validity of restricting the maximum amount of credits to be permitted by open circuit training to six per semester or quarter. Since the law only requires that the nontelevision portion of the course shall be the majority, the person states that the regulation is in error in that, even though more than six credits are by open circuit television a majority of the courses could be by nontelevision training. The reason that the regulation is being amended is that the majority of educational institutions do not operate on a full-time equivalency greater than 12 credit hours per semester. The existing regulation is based upon an outdated rule of thum, that 14 semester hours of credit is the normal full-time training rate. The existing regulation contains an example based upon that logic which could result in a misleading interpretation. Some individuals would have barred a person from taking six credits of open circuit television training unless the person was also enrolled in eight credits by traditional classroom training. In fact a person who is enrolled for six credits by open circuit television could take as few as seven credit hours by traditional classroom training and be in compliance with the law.

On the other hand, a person enrolled for more than 14 semester hours of credit has been limited to six semester hours of open circuit television regardless of how many credit hours in excess of fourteen are taken. In this regard we concur with the comment and do hereby amend the proposed change accordingly.

In the light of the statutory language and the absence of contrary Congressional intent, it is determined that the only requirement needed is that the major portion of the course shall be by conventional classroom and/or labora-

tory training. Thus, if a person is enrolled for 16 credit hours of which 9 are by conventional classroom attendance the student qualifies for full-time benefits even though the remaining 7 credits are by open circuit television.

The comments do raise a disturbing note, since more than one of them states or implies that the educational institutions do record courses taken by open circuit television upon student transcripts without differentiating them from courses of a like nature taken by traditional classroom training. The schools may not maintain their records in such a way as to obscure the true nature of the training from validation upon compliance survey. Some permanent records of the school, if not the student transcripts, must differentiate, so that compliance with § 21.4233 may be verified. A school which fails to maintain such records may subject itself to liability under § 21.4009, for a student whose training does not meet the requirements of § 21.4233 may not be paid benefits for such courses.

Effective date: This VA Regulation is effective March 10, 1977.

Approved: March 10, 1977.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

In § 21.4233, paragraph (c)(1)(iii) is revised to read as follows:

§ 21.4233 Combination.

* * * * *

(c) *Television*—(1) *Open circuit telecast.* A program may be pursued in part by open circuit telecast when:

* * * * *

(iii) A major portion of the credit hours for which the veteran or eligible person is enrolled during any semester or quarter is offered through conventional classroom and/or laboratory sessions.

[FR Doc.77-7786 Filed 3-15-77;8:45 am]

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Administration of Educational Benefits; Failure of School To Meet Requirements; Correction

On page 41 FR 54201 of the FEDERAL REGISTER of December 13, 1976, there was published a notice of proposed regulatory development to amend Part 21 of the Code of Federal Regulations to correct an error in § 21.4207.

Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulation. A total of two comments were received.

One of the comments objects to the failure of the proposed regulation to provide for an appeal of original decisions made at the Central Office level (when a decision was not made at the field station level). This comment fails to consider the nature of the existing procedures and makes a proposal which would be in direct conflict with the law.

The determinations called for in some cases are to be rendered by the Veterans Administration Central Office, according to the provisions of § 21.4207. The actual decision is rendered by the Central Office Education and Training Review Panel with the concurrence of the Director, Education and Rehabilitation Service, but if the Director does not concur, the final determination shall be made by the Chief Benefits Director. (§ 21.4208(c))

This delegation of final authority is in accordance with the specific provisions of law found in sections 211 and 212, title 38, United States Code. Section 211 states that, with minor exceptions, the Administrator shall render final decisions on any question of law or fact under any law, administered by the Veterans' Administration, providing benefits for veterans and their dependents or survivors. It also states that no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus or otherwise.

Section 212, title 38, United States Code, grants to the Administrator the right to delegate authority to act and to render decisions to such officers and employees of the Veterans Administration as he finds necessary. In the exercise of this authority the Administrator has delegated authority for final decisions regarding the failure of a school to meet legal requirements, as provided by §§ 21.4207 and 21.4208. Section 212 specifically states that the exercise of such delegated authority, by those to whom the Administrator has made the delegation, shall have the same force and effect as though the Administrator himself had made the decision.

The second letter approaches the proposed change from a similar, if more specific, point of view. The person making the comment wishes to amend the proposed regulation to remove that portion of it which makes decisions of the field station appealed to Central Office and subsequently approved by Central Office, effective on the date of the original station decision. The proposal would also defer implementation of such approved decisions for 30 days after the receipt of the final decision by the institution. The person making the suggestion wishes to provide this delay, for determinations that an educational institution has failed to meet legal requirements, to enable the educational institution and/or the student to appeal the action. However, this overlooks the fact that the determination is as to the status of the school, not the student, and the student would not have the right to contest the issue. Furthermore, neither the school nor the student could appeal beyond the Central Office level anyway, because as noted above no appeal lies to any other legal authority. The determination of Central Office is the determination of the Administrator, who is the ultimate authority and the highest level of recourse available to the school.

Apparently the person commenting does not fully understand the intent of the proposed change. The language of existing paragraph (e) of § 21.4207 failed to clearly differentiate the situations which may occur. Merged together are two categories of cases. One category consists of those cases in which no decision was reached by the station. There are two such possibilities. One is the case in which the station committee makes a recommendation which is not unanimous and which must, therefore, be submitted to Central Office for a decision. The second is the case in which, even though the committee has submitted a unanimous recommendation, the station head does not concur and the decision must, also, be made by Central Office. In both cases in this category, since no decision has been made until Central Office has responded, both the old regulation and the current regulation provide that the decision shall become effective on the date the station receives the decision from Central Office. An earlier date such as the date that the decision is actually rendered by Central Office would be unfair, since the station has the responsibility to notify the school of the determination made and the ensuing delay in obtaining the decision and acting upon it by the station would be inequitable.

Unfortunately the language used to describe this rule in § 21.4207(e) was so broad as to encompass a second category of cases that are determined by Central Office and provides a different effective date than that which was used in VA Regulations under the Korean Conflict G.I. Bill (upon which § 21.4207 was patterned). If the station's adverse decision based upon a unanimous recommendation of the committee and the approval of the station head, is appealed to Central Office for review pursuant to paragraph (d) and Central Office affirms the decision, the effective date should be the date that the station head approved the committee's recommendation. In this case the school has already been notified at the time the station renders its decision. The language of paragraph (e) stated, however, that in such a case the effective date would be the date the station receives the decision of Central Office affirming the station's decision.

This would result in the students being eligible to receive benefits for training at a school that is not in compliance with the law for the period between the date the station first decides adversely to the school and the date that it receives the determination from Central Office affirming the decision. Such a result was never intended and is inconsistent with the provisions of §§ 21.2208 and 21.2209 (no longer in effect) used to administer the Korean Conflict G.I. Bill.

Therefore, the proposals of those persons commenting are rejected and the proposed change to § 21.4207 is hereby adopted without further amendment.

Effective date: This VA Regulation is effective March 10, 1977.

Approved: March 10, 1977.

By direction of th Administrator.

RUFUS H. WILSON,
Deputy Administrator.

In § 21.4207, paragraphs (a), (c), (d), and (e) are revised to read as follows:

§ 21.4207 Failure of school to meet requirements.

(a) *Committee on Educational Allowances.* The Committee on Educational Allowances in the field station is authorized to make recommendations on action to be taken for the purposes of this section, subject to approval by the station head. The committee will include a minimum of three staff members designated by the station head. The unanimous recommendation of the committee, when approved by the station head, becomes the final administrative decision of the Veterans Administration unless an application for review is filed as provided in paragraph (d) of this section.

* * * * *

(c) *Referral to Central Office by the field station.* The decision will be made by Central Office and the issue shall be referred to the Director, Education and Rehabilitation Service if:

(1) The recommendation of the Committee on Educational Allowances is not unanimous, or

(2) The station head does not approve the recommendation of the Committee.

(d) *Request by the school for review.* The school may file an application for review by Central Office of any decision rendered under paragraph (a) of this section. The application must be received in Central Office within 30 days after the date of notice of the decision. See § 21.4208.

(e) *Effective date.* The effective date for decisions of the field station or of Central Office will be:

(1) The date the station head approves the unanimous recommendation of the Committee on Educational Allowances, if no review by Central Office is required;

(2) The date the station head originally approved the recommendation of the Committee on Educational Allowances, if the decision is reviewed by Central Office, pursuant to paragraph (d) of this section, and approved;

(3) The date the station head originally approved the recommendation of the Committee on Educational Allowances, if the decision is reviewed by Central Office, pursuant to paragraph (d) of this section, and the station's decision is reversed by a Central Office decision; or

(4) The date of receipt by the field station of the decision of Central Office rendered pursuant to paragraph (c) of this section. See § 21.4208.

* * * * *

[FR Doc.77-7789 Filed 3-15-77;8:45 am]

proposed rules

NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE

[1 CFR Part 438]

GOVERNMENT IN THE SUNSHINE ACT

Meetings of the Board of Directors

Congress established the Center on November 28, 1975 in the National Productivity and Quality of Working Life Act of 1975. The organization and functions of the National Center for Productivity and Quality of Working Life are outlined in Pub. L. 94–136.

Notice is hereby given that the National Center for Productivity and Quality of Working Life has proposed regulations which would implement the provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

Prior to adoption of these proposed regulations consideration shall be given to any comments or suggestions pertaining to the proopsed regulations which are submitted in writing no later than April 15, 1977, to the Executive Director of the National Center for Productivity and Quality of Working Life, 2000 M Street, NW., Washington, D.C. 20036.

It is proposed to add to Title 1, Chapter IV a new Part 438 to read as follows:

PART 438—NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE

Sec.

AUTHORITY: Pub. L. 94–136 and Pub. L. 94–409.

§ 438.1 Definitions.

(a) The term "agency" means any agency, as defined in 5 U.S.C. 552(e) which includes the National Center for Productivity and Quality of Working Life.

(b) The term "Center" means the National Center for Productivity and Quality of Working Life.

(c) The term "Board" means the Board of Directors of the Center established under section 202 of Pub. L. 94–136.

(d) The term "member" means any one of the members of the Board.

(e) The term "meeting" means any deliberations of at least the number of members required to take action on behalf of the Board where such deliberations determine or result in a recommendation of national policy to the President and Congress.

(f) The term "public observation" means the right of any member of the public to attend and observe, but not participate or interfere in any way in an open meeting within the limits of reasonable and comfortable accommodations made available for such purposes by the Center.

§ 438.2 Scope of application.

These provisions apply to the meetings of the Board and do not apply to conferences or gatherings of employees of the Center who meet or join with others, except at meetings of the Board.

§ 438.3 Open meeting.

All meetings shall be open to the public observation except as may be exempt by 5 U.S.C. 552b(c) paragraphs (1) through (10) as cited in § 438.4.

§ 438.4 Exemptive provisions.

(a) Except in a case where the Board finds that the public interest requires otherwise, a meeting or portion thereof may be closed to public observation, and information pertaining to such meeting may be withheld from the public, where the Board determines that the exemptive provisions listed in 5 U.S.C. 552b(c) paragraphs (1) through (10), apply to such portion or portions of the meeting.

§ 438.5 Notice of public observation.

(a) In order to permit the Center to determine the amount of space and number of seats needed to accommodate individuals who desire to exercise the right of public observation, such individuals are requested to give notice to the Center at least two business days before the start of the open meeting of the intention to exercise such right.

(b) Individuals who have not given advance notice of intention to exercise the right of public observation will not be permitted to attend and observe the open meeting of the Board if the available space and seating are necessary to accommodate individuals who gave advance notice of such intention.

(c) Notice of intention to exercise the right of public observation may be given in writing, in person, or by telephone to the official responsible pursuant to § 438.10.

§ 438.6 Procedures for closure of meetings.

(a) Any action taken to close a meeting or a portion of a meeting shall only be taken by the Board according to the provisions of 5 U.S.C. 552b(d) paragraphs (1) and (2).

§ 438.7 Public availability of copies of recorded voting.

Within one business day of any vote taken to close a meeting or any portion of a meeting the Center shall make publicly available a written copy of the vote reflecting the vote of each member on the question, a full written explanation of the action closing the portion, and a list of all persons expected to attend the meeting and their affiliation.

§ 438.8 Certification of closed meetings.

For every meeting closed pursuant to §§ 438.4 and 438.6, the Executive Director of the Center shall publicly certify that in his or her opinion the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of the certification, together with a statement from the Chairman of the Board, or presiding officer of the meeting, setting forth the time and place of the meeting, and the persons present shall be retained by the Center.

§ 438.9 Public announcement of meetings.

(a) For each meeting the Center shall make a public announcement, at least one week before the meeting. The announcement shall include time, place and subject matter of the meeting, whether it will be open or closed to the public, and the name and phone number of the official responsible to respond to requests for information about the meeting.

(b) When a majority of the Board determines by a recorded vote that business requires the meeting be called at an earlier date, the Center shall at the earliest practicable time make public announcement of the time, place and subject of the meeting and whether it will be open to the public. The Center shall announce at the earliest practicable time changes in the time or place of the previously announced meeting.

(c) The Board may change the subject matter of a meeting or the determination to open or close a meeting or portion of a meeting to the public only if the Board determines by recorded vote that the business so requires, and that no earlier announcement was possible, and announces such change and the vote of each member upon such change at the earliest practicable date.

§ 438.10 Federal Register notice.

Immediately following each public announcement required by § 438.9, the notice of time, place and subject matter of a meeting, whether the meeting is

open or closed, any change in one of the preceding and the name and phone number of the official designated by the Center to respond to requests for information about the meeting, shall be submitted for publication in the FEDERAL REGISTER.

§ 438.11 Recording of closed meetings.

The Center shall maintain a complete transcript, or electronic recording or minutes as required by 5 U.S.C. 552b(f)(1), to record fully the proceedings of each meeting or portion of a meeting closed to the public.

§ 438.12 Availability of records to the public.

(a) The Center shall make promptly available to the public, according to the provisions of 5 U.S.C. 552b(f)(2), in the Center offices the transcript, electronic recording, or minutes required to be kept by 552b(f)(1) as cited in § 438.11. Copies shall be furnished at the actual cost of duplication or transcription.

(b) Fees shall be paid by check or money order made payable to the National Center for Productivity and Quality of Working Life.

(c) Copies of a transcript, transcription of electronic recording or set of minutes which are publicly available pursuant to these regulations shall be furnished by request made in person or by mail at the Center Offices located at 2000 M Street NW., Washington, D.C. 20036.

(d) The Executive Director of the Center has the discretion to waive charges whenever release of the copies is determined to be in the public interest.

Dated: March 10, 1977.

GEORGE H. KUPER,
Executive Director, National Center for Productivity and Quality of Working Life.

[FR Doc.77-7547 Filed 3-11-77;11:50 am]

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 211]

REEVALUATION OF THE CRUDE OIL BUY/SELL PROGRAM

Notice of Extension of Time for Submission of Written Comments and Change in Date of Public Hearing

On March 3, 1977 the Federal Energy Administration (FEA) issued a Notice of Public Hearing and Opportunity for Public Comment (42 FR 12187, March 3, 1977) regarding a reevaluation of the Mandatory Crude Oil Allocation Program (the "buy/sell program") set forth in 10 CFR 211.65. The notice stated that written comments were to be received by, and that the public hearing was to be held on, March 21, 1977.

FEA has received several requests for an extension in the filing deadline for written comments and for a change in the date for the public hearing, based on the problems anticipated in preparing comments and testimony.

Accordingly, in order to facilitate full participation in this proceeding, FEA hereby gives notice that the public hearing will be held at 9:30 a.m., e.s.t., on Tuesday, April 12, 1977, in Room 2105, 2000 M Street NW., Washington, D.C. 20461.

Data, views or arguments with respect to the proposal should be submitted to Executive Communications, Room 3309, Federal Energy Administration, Box KR, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to FEA Executive Communications with the designation "Reevaluation of the Crude Oil Buy/Sell Program." Fifteen copies should be submitted. All comments received before 4:30 p.m. on Wednesday, April 13, 1977, will be considered by the Federal Energy Administration before final action is taken on the proposed regulations.

Written requests for an opportunity to make oral presentations should be directed to Executive Communications, FEA, and must be received before 4:30 p.m. on Monday, April 4, 1977. Such a request may be hand delivered to Room 3309, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. The person making the request should give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through Tuesday, April 12, 1977. Each person selected to be heard will be so notified by the FEA before 4:30 p.m., Wednesday, April 6, 1977 and must submit 100 copies of his or her statement to FEA, Regulations Management, Room 2105, 2000 M Street NW., Washington, D.C. 20461, before 4:30 p.m. on Monday, April 11, 1977.

Any interested person may submit questions to be asked of any person making a statement at the hearings, to Executive Communications, FEA before 4:30 p.m., Friday, April 8, 1977.

Issued in Washington, D.C., March 14, 1977.

ERIC J. FYGI,
Acting General Counsel.

[FR Doc.77-7044 Filed 3-14-77;4:55 pm]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-13347; File No. S7-613]

RECORDS REGARDING BENEFICIAL OWNERSHIP OF ACCOUNTS CARRIED BY BROKERS AND DEALERS

Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Extension of Time for Comment.

SUMMARY: The time for comment on a proposed amendment to Securities Exchange Act Rule 17a-3(a)(9) is being extended. The comment period expired on March 4, 1977.

DATES: Comments must be received on or before: April 1, 1977.

ADDRESSES: Interested persons should submit six copies of their written views and comments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 and should refer to File No. S7-613. All submissions will be made available for public inspection in the Commission's Public Reference Section, Room 6101, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Charles M. Horn, Esq.,
Office of Chief Counsel,
Division of Market Regulation,
Securities and Exchange Commission,
Washington, D.C. 20549
202/755-8747.

SUPPLEMENTARY INFORMATION: On January 27, 1976, the Commission published Securities Exchange Act Release No. 12055,[1] which, among other things, proposed for comment an amendment to Securities Exchange Act Rule 17a-3(a)(9), 17 CFR 240.17a-3(a)(9). Interested persons were invited to submit written views and comments on the proposed amendment not later than May 1, 1976.[2]

Subsequently, the Commission instituted a general inquiry into the rules of national securities exchanges relating to foreign access[3] and disapproved two rules of the New York Stock Exchange, Inc. (the "NYSE")[4] establishing certain restrictions on foreign access, in light of the proposed amendment to Rule 17a-3(a)(9).

On January 10, 1977, the Commission republished for comment the proposed amendment to Rule 17a-3(a)(9)[5] to clarify, in some respects, the intended operation of the proposed amendment, and invited interested persons to submit comments by March 4, 1977.

The NYSE and other interested persons have requested the Commission to extend the comment period concerning the matters raised in Securities Exchange Act Release No. 13149.[6] In light of the complex issues involved, the Commission does not believe that granting the request would result in unduly delay-

[1] 41 FR 8075 (Feb. 24, 1976.)

[2] On April 28, 1976, the Commission extended the comment period to June 15, 1976, Securities Exchange Act Release No. 12378, 41 FR 18432 (May 4, 1976).

[3] Securities Exchange Act Release No. 12157 (Mar. 2, 1976), 41 FR 10662 (Mar. 12, 1976).

[4] Securities Exchange Act Release No. 12737 (Aug. 25, 1976), 41 FR 38847 (Sept. 13, 1976).

[5] Securities Exchange Act Release No. 13149, 42 FR 3312 (Jan. 18, 1977).

[6] It has been urged that "[w]hen the Commission proposes a rule for public comment, it should be required to act on that rule within a reasonable time period * * *." "Final Report of the SEC Major Issues Conference" (1977), at 3.

ing Commission action.[7] Under the circumstances, the Commission has determined to extend the comment period until April 1, 1977.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 9, 1977.

[FR Doc.77-7714 Filed 3-15-77; 8:45 am]

[17 CFR Part 270]

[Release No. IC-9669; File No. S7-675]

REGISTERED MANAGEMENT COMPANIES

Extension of Comment Period Regarding Use of Depository Systems

This notice extends the period for comments to the notice, published February 11, 1977 (42 FR 8666), proposing regulations regarding the use of depository systems by registered management companies. Proposed Rule 17f-4 (17 CFR 270.17f-4) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) would govern the direct or indirect use by such companies of certain depository systems for the deposit of the companies' securities.

A request for an extension of time to April 11, 1977 was submitted by the Investment Company Institute (the "ICI"). The ICI stated that due to the length and complexity of the proposed rule it would not be feasible for it to comment by March 15, 1977, the present expiration date of the comment period. In view of this request, the Commission has authorized an extension until April 11, 1977 of the due date for submitting comments with respect to the proposed rule. The Commission believes that this extension is appropriate and will not result in undue delay. Interested persons are invited to submit their views and comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before April 11, 1977. All such communications should refer to File No. S7-675, and will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 9, 1977.

[FR Doc.77-7712 Filed 3-15-77;8:45 am]

DEPARTMENT OF DEFENSE

Defense Communications Agency

[32 CFR Part 287a]

[DCA Instruction 210-225-2]

PRIVACY ACT OF 1974

Exemptions

AGENCY: Defense Communications Agency.

ACTION: Proposed Rulemaking Amendment.

SUMMARY: On November 28, 1975, there was published in the FEDERAL REGISTER (40 FR 55535) a final rule adoption, effective September 27, 1975, pertaining to the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a) implementation by the Defense Communications Agency concerning procedures and requirements on personal privacy and rights of individuals regarding their personal privacy. The Defense Communications Agency proposes to amend the final rules by adding a new section (§ 287a.8 Exemptions.) to the rules which would authorize the Director, DCA the right to create exemptions and to permit any information in the records systems which is properly classified to be exempt from the access requirements of the Privacy Act.

DATES: Any inquiries, comments, including written data, views or arguments concerning the proposed amendment may be submitted to the address indicated below. All material received on or before April 15, 1977, will be considered.

ADDRESS: Defense Communications Agency, ATTN: Code 105, Washington, D.C. 20305.

FOR FURTHER INFORMATION CONTACT: Mr. C. Herbert Lucero, (202) 692-2009, at the above address.

JOHN T. WHEALEN,
Counsel.

MARCH 11, 1977.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

It is proposed to add the following new § 287a.8 as follows:

§ 287a.8 Exemptions.

Section 5 U.S.C. 552a (3) (j) and (3) (k) authorize an agency head to exempt certain systems of records or parts of certain systems of records from some of the requirements of the act. This part reserves to the Director, DCA, as head of an agency, the right to create exemptions pursuant to the exemption provisions of the act. All systems of records maintained by DCA shall be exempt from the requirements of 5 U.S.C. 552a (d) pursuant to 5 U.S.C. 552a(3) (k) (1) to the extent that the system contains any information properly classified under Executive Order 11652, "Classification and Declassification of National Security Information and Material," dated March 8, 1972 (37 FR 10053, May 19, 1972) and which is required by the Executive Order to be kept classified in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions may contain isolated information which has been properly classified.

[FR Doc.77-7732 Filed 3-15-77;8:45 am]

Defense Nuclear Agency

[32 CFR Part 291a]

[DNA Instruction 5400.11]

PRIVACY ACT OF 1974

Exemptions

AGENCY: Defense Nuclear Agency.

ACTION: Proposed Rulemaking Amendment.

SUMMARY: On November 28, 1975, FR Doc. 75-32008, there was published in the FEDERAL REGISTER (40 FR 55543) a final adoption of rules, effective September 27, 1975, pertaining to the privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a) implementation by the Defense Nuclear Agency concerning procedures and requirements on personal privacy and rights of individuals regarding their personal privacy. The Defense Nuclear Agency proposes to amend these final rules by amending § 291a.6 by adding a paragraph (b) thereto which would authorize the Director, Defense Nuclear Agency, to permit any information in the records systems which is properly classified to be exempt from the access requirements of the Privacy Act. This provision was previously omitted through oversight.

DATES: Any inquires, comments, including written data, views or arguments concerning the proposed amendment may be submitted to the address indicated below. All material received on or before April 16, 1977, will be considered.

ADDRESS: Chief, Civilian Personnel Division, Personnel Administration Directorate, Defense Nuclear Agency, Washington, D.C. 20305.

FOR FURTHER INFORMATION CONTACT: Mr. J. David Woodend, (202) 325-7591, at the above address.

MARCH 11, 1977.

WARREN D. JOHNSON,
Lieutenant General, United States Air Force Director.

MAURICE W. ROCHE,
Director, Correspondence and Directives Office of the Assistant Secretary of Defense (Comptroller).

It is proposed to add the following new paragraph (b) after the Note in § 291a.6(a):

§ 291a.6 Specific exemptions.

* * * * *

(b) Section 5 U.S.C. 552a(3) (j) and (3) (k) authorize an agency head to exempt certain systems of records or parts of certain systems of records from some of the requirements of the act. All systems of records maintained by Defense Nuclear Agency shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(3) (k) (1) to the extent that the system contains any information properly classified under Executive Order 11652, "Classification and Declassification of National Security Information and Material," dated March 8, 1972 (37 FR 10053, May 19, 1972) and which is required by the Executive Order

[7] The comments of the NYSE may be helpful in view of its recent experience in attempting to resolve the possible problems of disclosure arising with respect to prospective or existing member organizations with foreign affiliations.

to be kept classified in the interest of national defense or foreign policy. The exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions may contain isolated information which has been properly classified.

[FR Doc.77-7733 Filed 3-15-77;8:45 am]

Corps of Engineers

[33 CFR Part 207]

NAVIGATION REGULATIONS

Disestablishment of Seaplane Restricted Area

AGENCY: U.S. Army Corps of Engineers.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commander, Twelfth Coast Guard District has requested that a seaplane restricted area located in San Francisco Bay bordering the Coast Guard Air Station in South San Francisco, San Mateo County, California, be disestablished as the Coast Guard no longer requires the use of the area nor requires that watercraft be restricted from the area at any time. Accordingly, we propose to delete paragraph (d) of 33 CFR 207.640 to disestablish this seaplane restricted area.

COMMENT CLOSING DATE: April 1, 1977.

PROPOSED EFFECTIVE DATE: Date of publication of final rule in the FEDERAL REGISTER.

ADDRESS: Comments, suggestions or objections concerning this proposal should be submitted to: Office of the Chief of Engineers, Forrestal Building, Washington, D.C. 20314. ATTN: DAEN-CWO-N.

FOR FURTHER INFORMATION CONTACT:

Ralph Eppard, Regulatory Functions Branch Office of the Chief of Engineers, 20314 (202-693-5070)

§ 207.640 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and Connecting Waters, California.

* * * * *

(d) San Francisco Bay at South San Francisco; seaplane restricted area. [Deleted].

* * * * *

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

(40 Stat. 266; 33 U.S.C. 1)

Dated: March 3, 1977.

MARVIN W. REES,
Colonel, Corps of Engineers Executive Director of Civil Works.

[FR Doc.77-7639 Filed 3-15-77;8:45 am]

DEPARTMENT OF AGRICULTURE

Forest Service

[36 CFR Part 292]

SAWTOOTH NATIONAL RECREATION AREA—FEDERAL LANDS

Administration and Use of Federal Lands

Pursuant to the authority vested in the Secretary of Agriculture by the Act of June 4, 1897 (30 Stat. 35, 36, as amended; 16 U.S.C. 487, 551), and the Act of August 22, 1972, Pub. L. 92-400 (86 Stat. 612), regulations for Federal lands in the Sawtooth National Recreation Area are herein proposed as a new Subpart D to Part 292, Chapter II, Title 36 of the Code of Federal Regulations.

Section 11 of Pub. L. 92-400 directs the promulgation of regulations to regulate the use of and protect the surface values of Federal lands in the recreation area including unpatented mining claims. These regulations establish guidelines for the use, management, utilization, and disposal of natural resources on Federally owned lands including, but not limited to, mineral exploration and development operations. Upon publication of final regulations, the Closure Order for the Sawtooth National Recreation Area dated May 14, 1973, will be revoked.

Interested persons may submit written comments, suggestions, or objections to the U.S. Department of Agriculture, Forest Service, Recreation Management Staff, South Agriculture Building, Washington, D.C. 20250, through April 15, 1977.

All written submissions made pursuant to this notice will be available for public inspection in Recreation Management Staff during regular business hours (7 CFR 1.27(b)).

In light of the foregoing it is proposed to amend 36 CFR Part 292 by adding a new Subpart D as follows:

Subpart D—Sawtooth National Recreation Area—Federal Lands

Sec.
292.17 General provisions.
292.18 Mineral resources.

AUTHORITY: Pub. L. 92-400, 86 Stat. 612.

Subpart D—Sawtooth National Recreation Area—Federal Lands

§ 292.17 General provisions.

(a) The use, management, and utilization of natural resources on the Federal lands in the Sawtooth National Recreation Area (SNRA) are subject to the General Management Plan and the laws, rules, and regulations pertaining to the National Forests with the exception that Part 252 of this chapter does not apply to these resources. No use or disposal of such resources shall be authorized which will result in substantial impairment of the natural values of the Recreation Area.

(b) Definitions: (1) "Act" means Pub. L. 92-400, (86 Stat. 612), which established the SNRA.

(2) "Area Ranger or Superintendent" means the Forest Service officer having administrative authority for the SNRA.

(3) "General Management Plan" means the document setting forth the land allocation and resource decisions for management of the SNRA.

(4) "Letter of Authorization" means a letter signed by the Area Ranger, or his designee, authorizing an operator to conduct operations as approved in the operating plan.

(5) "Mineral Resources" means all locatable minerals.

(6) "Operator" means a person conducting or proposing to conduct operations.

(7) "Operations" means all functions, work, and activities in connection with exploration, development, mining or processing of mineral resources and all uses reasonably incident thereto, including roads and other means of access on lands, regardless of whether said operations take place on or off mining claims.

(8) "Operating Plan" means a written instrument describing proposed operations on Federal lands and containing such information as required by § 292.18.

(9) "Person" means any individual, partnership, association, corporation, or other legal entity.

(10) "Substantial Impairment" means that level of disturbance of the values of the SNRA which is incompatible with the standards of the General Management Plan. The proposed activities will be evaluated as to: (i) The period of impact, (ii) the area affected, and (iii) the importance of the impact on the SNRA values.

(11) "Unpatented Mining Claims" means any mining claim or millsite claim located prior to August 22, 1972, pursuant to the Mining Law of 1872, but not patented.

§ 292.18 Mineral resources.

(a) *Occupancy.* No unpatented mining claim may be used or occupied for any purpose other than exploration, mining, or processing operations and uses reasonably incident thereto.

(b) *Letter of authorization.* A letter of authorization with the posting of an appropriate bond is required prior to conducting operations in the SNRA.

(c) *Operating plan.* A proposed operating plan must be filed with the Area Ranger prior to conducting any operations and prior to construction, reconstruction, improvement or maintenance of roads and trails, bridges, or other facilities for access within the SNRA; provided, that an operating plan is not required for (1) operations which only involve vehicular travel on existing roads open to public use; (2) marking and/or reestablishing claims corners; (3) sampling and exploration work which will not cause significant damage to surface resources and will not involve the removal of more than 100 pounds of material for analysis and study, provided the Area Ranger has prior notice of such activities; or (4) the evaluation and study of existing underground mine workings not involving surface disturbances.

(d) *Operating plan—requirements.* Each operating plan shall include:

(1) The names and mailing address of the persons who will operate and their agents, along with a statement of ownership and/or authorization under which the operation is to be conducted, and including a copy of the location notice(s), proof of assessment labor, and quit claim deeds if ownership has changed within the assessment year.

(2) A map or sketch showing information sufficient to locate the proposed area of operations on the ground, existing and/or proposed roads or access routes to be used in connection with the operations and the approximate location and size of areas where surface resources will be disturbed.

(3) Information describing the nature of operations proposed and how they will be conducted, the type and standard of existing and proposed roads or access routes, the means of transportation to be used, the period during which the proposed operations will take place, and measures to be taken for protecting the values of the SNRA and reclaiming the lands.

(e) *Operating plan—approval.* (1) The Area Ranger shall promptly acknowledge receipt of any operating plan to the operator. The Area Ranger shall review the environmental effects and conduct a technical examination of each proposed operating plan.

The technical examination shall identify the resources and the land uses in the area of operations. The Area Ranger shall use the current General Management Plan of the SNRA and the Final Environmental Statement as guides in determining whether the proposed operations may result in substantial impairment of the values of the SNRA. In his review, the Area Ranger may solicit comments from the general public and/or other government agencies in any analysis of environmental effects. In his review, the Area Ranger will consider the compatibility of the proposed operating Plan with the Act and the General Management Plan. The Area Ranger may not approve an operating plan for an identical climed area to more than one operator.

(2) Within 30 working days of receipt of a proposed operating plan, the Area Ranger shall take one of the following actions:

(i) Notify the operator that the operating plan has been approved as submitted; or,

(ii) Notify the operator that the operating plan has been approved subject to the operator accepting the changes or conditions deemed necessary by the Area Ranger; or,

(iii) Notify the operator that more time is necessary to review the plan because of the need to prepare an environmental impact statement, or conduct a cultural resource survey, or other stated reasons; in such cases, the operator will be notified of the approximate time needed to complete the review; or,

(iv) Notify the operator of an apparent conflict of ownership and that additional proof of ownership is required.

(v) Notify the operator that the operating plan as submitted is inadequate to support any conclusion as to substantial impairment, and that additional information will be required.

(vi) Notify the operator that the operating plan is not approved since such operations as specified in the plan would create substantial impairment.

(f) *Operating plans—suspension or modification.* The Area Ranger may suspend or terminate authorization to operate in whole or in part where such operations are causing substantial impairment which cannot be mitigated. At any time during operations under an approved operation plan, the operator may be required to modify the operating plan in order to minimize or avoid substantial impairment of the values of the SNRA.

(g) *Bond requirements.* (1) An operator shall furnish a bond, in the mount determined by the Area Ranger to be appropriate for reclamation of the disturbed surface area, prior to the commencement of operations. In lieu of a bond, the operator may deposit into a Federal depository, as directed by the Forest Service, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond.

(2) When the reclamation of the project, or portions thereof, has been completed, the operator will notify the Area Ranger who will examine the area to determine whether the reclamation is acceptable. When the Area Ranger has accepted as completed any portion of the reclamation, he shall reduce proportionately the amount of bond thereafter to be required with respect to the remaining reclamation. However, the operator will not be released from liability under the bond for the amount which may be necessary to revegetate each planting area for a minimum period of at least 5 years after the first efforts at revegetation if those initial efforts are unsuccessful.

(3) If the Area Ranger determines that revegetation is likely to occur before the expiration of such minimum period, he may release the operator from the extended liability under the bond for revegetation of the planting area.

(h) *Access.* The operator shall permit free and unrestricted public access to and through lands included within an unpatented mining claim for all lawful and proper purposes. In areas where such access would unduly interfere with authorized operations or would constitute a hazard to public health and safety, public use may be restricted with price approval of the Area Ranger.

BOB BERGLAND,
Secretary.

MARCH 11, 1977.

[FR Doc.77-7676 Filed 3-15-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Parts 2920, 6260]

RULES FOR VISITOR USE—OTHER THAN DEVELOPED RECREATION SITES

Extension of Comment Period

In a proposed rulemaking notice published in the FEDERAL REGISTER on January 27, 1977 (42 FR 5293), the Department of the Interior published proposed regulations providing rules and procedures setting up a fair and equitable system of special recreation permits for recreational use of areas requiring management of such use in order to ensure a safe recreational experience for the user while minimizing the environmental impact of the recreational use of the area. In the notice, comments were requested by March 14, 1977. It has now been determined to extend the comment period by 30 days. Comments received on or before April 13, 1977, will be considered before final action is taken on the proposed rulemaking.

CHRIS FARRAND,
Acting Assistant Secretary of the Interior.

MARCH 11, 1977.

[FR Doc.77-7741 Filed 3-15-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1109]

[Ex Parte No. 338]

ESTABLISHMENT OF ADEQUATE RAILROAD REVENUE LEVELS

Standards and Procedures

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to make a determination of revenue adequacy, using specified criteria, in any railroad general rate increase proceeding where an improvement of earnings is sought. This proposal is made to implement a provision of the Railroad Revitalization and Regulatory Reform Act of 1976.

DATES: Statements of participants are due on or before the following dates: Notices of intent to participate—March 21, 1977; Statements of comment—April 25, 1977; Replies to statements of comment—May 20, 1977.

The proposed effective date of the subject rules is February 1, 1978.

ADDRESS: Notices of intent to participate, statements of comment, and replies shall be sent to the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Deputy Director or Assistant Deputy Director, Section of Rates, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423 (202-275-7693).

SUPPLEMENTARY INFORMATION: The present section 15a(4) of the Inter-

state Commerce Act (49 U.S.C. 15a(4)) was enacted on February 5, 1976, by section 205(2) of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4–R Act"; Pub. L. 94–210, 90 Stat. 41). As pertinent, it provides that:

> With respect to common carriers by railroad, the Commission shall, within 24 months after the date of enactment of this paragraph, after notice and an opportunity for a hearing, develop and promulgate (and thereafter revise and maintain) reasonable standards and procedures for the establishment of revenue levels adequate under honest, economical, and efficient management to cover total operating expenses, including depreciation and obsolescence, plus a fair, reasonable, and economic profit or return (or both) on capital employed in the business. Such revenue levels should (a) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation, and (b) insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States. The Commission shall make an adequate and continuing effort to assist such carriers in attaining such revenue levels.

Under the authority of section 15a(4), this rulemaking proceeding is instituted for the purpose of developing and promulgating (and thereafter revising and maintaining) reasonable standards and procedures for the establishment of adequate railroad revenue levels.

It is our proposal herein to add a new section 1109.25 to Title 49 of the Code of Federal Regulations, to include essentially the following provisions: In any railroad general rate increase proceeding aimed at improving the carriers' earnings, the adequacy of revenues at the proposed rate level shall be determined. Such determination shall be in accordance with the criteria stated in section 15a(4), and shall be based upon consideration of whether such revenues (1) provide a return on net investment equal to the carriers' cost of capital, (2) enable the maintenance of financial ratios indicative of a sound financial condition, and (3) provide a flow of funds sufficient to allow the carriers' needs for funds to be met. The carriers' cost of capital, their return on net investment and other financial ratios, and the sufficiency of their flow of funds shall be determined upon joint consideration of (1) evidence submitted by the parties pursuant to regulations already prescribed, and (2) projections made by the Commission, employing the methodology initially developed in Ex Parte No. 271, Net Investment—Railroad Rate Base and Rate of Return, 345 I.C.C. 1492.[1]

It is clear that section 15a(4) calls for a thorough analysis of railroad revenue requirements in determining adequacy of revenues. Railroad general rate increase proceedings provide a logical setting for making such an analysis.

These proceedings afford an ample record for determining revenue adequacy. Under recently-prescribed regulations, the carrier respondents in such proceedings are required to submit:

(1) Financial ratios and underlying data for essentially the 3 years preceding the rate proposal;

(2) Income statement data (a) for the previous 4-quarter period as actually reported, and (b) for the previous 4-quarter period, restated to reflect current wage, price and productivity levels, with and without the proposed increase;

(3) Funds flow statements (statements of changes in financial position) for each of the preceding 3 calendar years; and

(4) Other data, including information on rents payable; payments to affiliates for services; costs and revenues for specified commodity groups; uneven effects of the proposed increase by commodities, localities, types of traffic, and individual carriers; and number of employees, service hours, compensation, employee benefits and labor productivity.

These regulations provide that the restated income statement data should enable the Commission to find that the proposed increase:

(a) Is cost justified and does not reflect future inflationary expectations;

(b) Takes into account expected and reasonable productivity gains;

(c) Is not excessive in terms of the carriers' ability to provide adequate and safe service or to provide for necessary expansion to meet future requirements for transportation services; and

(d) Is not excessive in terms of the rate of return needed by the carriers to attract debt and equity capital at reasonable costs.

Finally, these regulations require the carriers to submit such evidence as will permit a determination of their cost of debt and equity capital, and of the respective amounts of such capital which they need to attract in order to insure their financial stability and capacity to render service.

These requirements were prescribed in Ex Parte No. 290, Procedures Governing Rail General Increase Proceedings, 351 I.C.C. 544 (1976), as modified February 4, 1977, and are codified at 49 CFR 1102. They are to become effective January 1, 1978.

The evidentiary base provided for general rate increase proceedings by Ex Parte No. 290 may be supplemented by Commission projections of carrier financial data. The initial methodology for making such projections was developed under the supervision of Commissioner Hardin, Coordinator, and is set forth in his report in Ex Parte No. 271, supra.

The projected data include income statements, balance sheets, funds flow statements, and financial ratios, for the class I railroads by district and nationwide (excluding, initially, the bankrupt railroads). The projections are to be based on estimates of traffic levels and other data, using, among other things, published econometric forecasts of the general level of economic activity. Initial projects for the years 1976 through 1985 are set forth in the Coordinator's report. We propose to rely both upon the evidentiary requirements of Ex Parte No. 290 and upon projection methodology of Ex Parte No. 271 (including the short-term methodology described at 351 I.C.C. 1936–1942), in making determinations of revenue adequacy.

We do not propose to make revenue-adequacy determinations in all general increase proceedings. As is commonly recognized, the stringent competitive environment in which the railroads operate is frequently a severe limiting factor on the size of the rate increases that the carriers can even hope to implement. For this reason, many of the general increase proposals that have actually been made in recent years have been no greater, and sometimes less, than the amount of the expense increases shown by the carriers as occurring since the previous general rate proceeding.

It has been contended for several years that railroad earnings have been below an adequate level. However, where it has appeared that the level of earnings would not be improved by a particular increase proposal, there has been no need for a detailed analysis of the magnitude of the earnings deficiency. Further, because of the necessity for a prompt regulatory response to proposals of this nature, the opportunity for detailed consideration of earnings requirements has been limited. (As indicated later in this notice, comments will also be requested as to the application of section 15(a)(4) to proceedings involving specific increases of individual carriers.)

Where the carriers are content to rest their case for a proposed increase on the need to recoup expense increases, it appears sufficient to evaluate the reason that the revenue increase produced by a proposed rate increase may exceed recent expense increases, and they seek to justify the rate at least in part on the basis of a need for improved earnings, then the analysis of revenue adequacy under the section 15a(4) criteria is clearly relevant. Thus, it is in such proceedings that we have proposed to make the revenue-adequacy determination.

Because the Commission's evidentiary requirements for railroad general increase proceedings require the submis-

[1] The purposes of the present proceeding overlap those of Ex Parte No. 271, which was under way at the time of enactment of the 4–R Act. In Ex Parte No. 271, the Commission undertook to consider questions pertaining to the computation of railroad return on investment for ratemaking purposes, and related matters. A substantial record was compiled in that proceeding, and the findings and recommendations of the Coordinator, Commissioner Hardin, were set forth in a report served December 22, 1976 (345 I.C.C. 1492).

Because of time limits on pending proceedings imposed by section 303(b) of the 4–R Act (Pub. L. 94–210, 90 Stat. 50 (49 U.S.C. 17(14)), and in view of the institution of the present proceeding, the Commission does not contemplate the issuance of a further report in Ex Parte No. 271. However, to the extent that the issues addressed in Ex Parte No. 271 are pertinent to the implementation of section 15a(4), consideration will be given in the present proceeding to the record in Ex Parte No. 271, to the Coordinator's findings and recommendations, and to any exceptions or comments submitted thereon.

sion of data for class I carriers only, we have proposed that the revenue-adequacy determination be based on data for the same class of carriers. Moreover, in these cases we do not propose to make determinations for individual carriers within that class. We recognize the importance of considering the financial posture of individual carriers in evaluating all general increase proposals, and we require the submission of individual carrier data, such as financial ratios and historical funds flows, in our existing regulations. However, at the present time, it would be unduly difficult and time-consuming to make a detailed financial analysis and projections for every class I carrier in the course of a general increase proceeding. Further, because individual carriers within a district cannot feasibly maintain rate levels different from those of their competitors, the reasonableness of overall rate levels must be determined primarily on a district and national basis, rather than by individual carriers. Thus, the purposes of these proceedings will be satisfactorily served by the determination of revenue adequacy on a district and national basis. Of course, if it is ultimately determined that section 15(a)(4) applies also to any category of specific rate increases, determination would be based on reverse adequacy for the individual carrier involved.

Section 15(a)(4) calls for the determination of revenue adequacy under conditions of honest, economical, and efficient management is not a new one under the act, but rather has long been a part of the rule of ratemaking set forth in section 15a(2) (which, as amended by the "4–R Act", no longer applies to the railroads). Accordingly, while this requirement will underlie the entire revenue adequacy determination, it does not form the basis of a separate standard or procedure in the proposed regulation.

In the words of section 15a(4), the adequate revenue level must "cover total operating expenses, including depreciation and obsolescence." The necessity for rail revenues to cover expenses is one that is recognized in all general increase proceedings, whether or not an improvement in earnings is sought. The manner of recording expenses is prescribed in the Commission's Uniform System of Accounts for Railroad Companies (49 CFR 1201). Such expenses are required to be shown in the income statement data specified in Ex Parte No. 290. Thus, the evidentiary standards for showing expenses are well developed, and we propose to employ the same standards in making the revenue-adequacy determination.

Appraising the adequacy of the carriers' rate of return requires first that there be agreement as to the rate base and as to the income category that represents a return on that base. With respect to the rate base, section 15a(4) employs the term, "capital employed in the business." We interpret "the business as referring to transportation. Indeed, a principal concern in regulating carrier rates is that they be properly remunerative for transportation services. Thus, the proper rate base is one that measures capital employed in transportation.

Such a measurement is envisioned in the concept, "net investment in transportation property," which the Commission has long used as a rate base in appraising carrier earnings. Net investment consists of the net original cost of the transportation assets held by the carriers, plus an allowance for working capital. Accordingly, in considering adequacy of revenues under section 15a(4), we propose to use net investment in transportation property as the rate base.

Whether this rate base is distorted because of unrealistic depreciation reserves or for other reasons is a matter that was under consideration in Ex Parte No. 271. We note that, on the basis of special depreciation studies, the Coordinator concluded that the net investment base was reasonably stated.

If "capital employed in the business" refers to transportation property, then a return on such capital must logically be the income produced by the provision of transportation services. Such a concept is best reflected in the accounting category of "net railway operating income" specified in the Commission's Uniform System of Accounts. Net railway operating income is the amount left over from operating revenues after operating expenses, taxes and rents are deducted. It is the figure already used by the Commission in finding return on net investment, and we propose to continue this practice in implementing section 15a(4).

One of the questions addressed in Ex Parte No. 271 was whether the amount of taxes recognized in computing net railway operating income should include deferred taxes, or should be limited to taxes currently paid. Because the resolution of this question will have a bearing on the computation of return on investment for the purposes of section 15a(4), it will be given further consideration in this proceeding.

Evidentiary requirements concerning the showing of return on net investment are already found in the Commission's regulations. For example, the carriers are required to submit financial ratios, including return on net investment, for essentially the three years preceding the proposed increase. Another requirement of these regulations is the estimation of the income, including net railway operating income, that would result from the proposed increase, based on a restatement of the data of the previous year at current wage, price and productivity levels. In addition, the Commission's projections using the Ex Parte No. 271 methodology will include projections of return on net investment. Such data should provide a reasonable basis for conclusions as to the return on net investment that would result from a proposed increase.

Consideration of a proper rate of return for railroads was undertaken in Ex Parte No. 271. The Coordinator concluded that, under present circumstances, the railroads should strive to earn a return of from 6 to 10 percent on net investment. That proceeding, however, did not undertake to prescribe a standard for finding a fair return. The formulation of such a standard appears to be called for in the present proceeding.

The modern approach to finding a fair return is the determination of the firm's cost of capital. Ordinarily, the cost of debt capital (an interest rate) and the cost of equity capital (earnings as a percentage of equity) are separately determined. Then, the two are weighted together according to the debt/equity structure to find the composite cost of capital as a percentage of the investment. Most of the evidence presented on the rate of return question in Ex Parte No. 271, for example, consisted of studies of the railroads' cost of capital.

The cost-of-capital criterion appears to be fully responsive to the requirements of section 15a(4). A return equal to the cost of capital would allow the carriers to meet their interest obligations, and give them the level of earnings required by shareholders. Thus, it should protect their credit in the debt and equity markets, and enable them to retain and attract the capital they need. Accordingly, we propose to employ cost of capital as the standard for a "fair, reasonable, and economic profit or return" for the purposes of section 15a(4).

Evidence concerning the carriers' cost of capital is already required by the Commission's prescribed regulations for railroad general increase proceedings. The nature of the required evidence is not specified in the regulations, and we do not propose at this time to prescribe one particular technique for showing cost of capital. Cost of capital studies can be made in a variety of ways. If based on valid assumptions, the various methods should provide fairly similar results, and can serve as useful checks upon one another. Thus, we contemplate that the parties would be allowed the freedom to show the carriers' cost of capital in the ways they deem most suitable under conditions prevailing at the time of a particular proceeding. However, we desire the comments of the participants to this proceeding as to whether they believe a particular technique for showing cost of capital should be prescribed, and as to the details of the technique, if any, that they believe should be adopted.

Section 15a(4) does not envision that the rate of return will be the sole factor to be considered in judging revenue adequacy. Rather, it specifies that adequate revenues must provide a "flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation." In addition, the revenue level, to be adequate, must "insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States."

The fact that section 15a(4) contemplates something in addition to rate of return analysis is confirmed by its legislative history. In reporting on a provision in S. 2718 similar to the present section 15a(4), the Senate Committee on Commerce stated:

> In considering adequate revenue levels, the Commission will be expected to utilize the most modern financial analysis techniques available and to adopt a prospective view of carrier revenue needs. Previous analyses of the adequacy of regulated industry revenues has focused upon adequate returns on investments. While this type of analysis may need to be continued, it is equally important for the Commission to focus on the level of revenue needed to provide and maintain adequate service in the public interest. This requires emphasis upon present and future revenue levels under honest, economic, and efficient management as opposed to a theoretically adequate rate of return on investment that may have no relationship to the need for operating and capital funds necessary to maintain service in the public interest. (Senate Report No. 94-499: Report of the Senate Committee on Commerce on S. 2718, Rail Services Act of 1975, November 26, 1975, pages 51-52.)

The Committee's call for a "prospective view of carrier revenue needs" finds a ready response in the projection methodology of Ex Parte No. 271. Further, in that proceeding, as well as in Ex Parte No. 290, the groundwork has been laid for a proper use of the "most modern financial analysis techniques," specifically, analysis of financial ratios and analysis of funds flows. We will discuss how the use of these techniques appears to meet the requirements of section 15a(4).

Return on net investment is itself a financial ratio, and may be used to illustrate the analysis of financial ratios. Like other financial ratios, return on net investment relates one item of financial data to another, in particular, it relates an item from the income statement (net railway operating income) to an item based on the balance sheet (net investment in transportation property). The value of this ratio is that it tells how profitably the transportation property is being used. This ratio figure can be used for comparisons of various types, such as those among carriers or among districts, as well as comparisons between railroads and other industries. It can also be used for comparisons between years for a particular carrier or group of carriers. Such comparisons are a means for testing how well the carriers are performing at a particular time, and whether their performance is improving or declining with the passage of time.

However, return on net investment is only one of a number of financial ratios that can be used in making judgements about various aspects of the carriers' financial performance. Relationships between a number of items in the income statement and balance sheet can be examined, to permit judgements as to operating efficiency, liquidity, ability to meet debt obligations, and other matters. Further discussion of such uses may be found in the Coordinator's report in Ex Parte No. 271, 345 I.C.C. 1492 at 1932-1936.

Financial ratios can be of value in making judgments as to the soundness of the carriers' financial conditions at a particular revenue level, and as to the attractiveness of their debt and equity securities in the capital markets. Thus, analysis of such ratios can assist in the determination required by section 15a(4) as to whether a proposed rate level would "insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States."

An approach that could be taken in this proceeding would be the prescription of particular numbers for various ratios that would be taken as indicators of revenue adequacy. However, we have doubts as to the validity of such a mechanical approach. It appears preferable to us at this time to simply recognize the importance of considering financial ratios in determining adequacy of revenues, and to allow the ratios shown in particular proceedings to be appraised according to the informed judgments of the parties and the Commission. Thus, we do not propose any particular numerical ratios as tests of adequate revenues. However, we do propose that one measure of revenue adequacy for the purposes of section 15a(4) be whether such revenues make possible a satisfactory financial condition, as reflected by analysis of financial ratios.

In our evidentiary regulations for railroad general increase proceedings, we require evidence of selected carrier financial ratios for the 3 years preceding a proposed general increase. In addition, the projection methodology in Ex Parte No. 271 embraces the projection of financial ratios, as a concomitant of the projections of income statements and balance sheets. Such data will afford the needed evidentiary basis for the use of financial ratios in the determination of revenue adequacy. Accordingly, we propose no additional evidentiary requirements with respect to financial ratios at this time.

The other factor proposed to be considered in the evaluation of revenue adequacy is the sufficiency of the carriers' flow of funds. A statement of funds flow permits a broader view of railroad financial requirements than is provided within the confines of the income statement. The focus of the income statement is on revenues obtained from the use of carrier property, and on the expenses incurred in obtaining those revenues. The income statement recognizes the movement of money from shippers to carriers, and the payment of some of that money to providers of labor, material and supplies. However, carrier operations also involve other movements of funds. Such transactions have to do chiefly with the acquisition of property, or capital goods, with which to provide service and with the financing of such property. They concern primarily the movement of funds between carriers and shareholders, between carriers and lenders, and between carriers and suppliers of capital goods.

A list of the sources of carrier funds and a balancing list of the uses of such funds is a statement of funds flow. The study of such a statement can aid in the determination of adequate revenue levels, by revealing the extent to which the carriers are succeeding in obtaining the funds they need to meet their requirements for funds.

The carriers' requirements for funds arise from several causes. The criteria stated in section 15a(4) relate to these causes. First is the need for capital spending, in the acquisition of transportation property. The carriers must have sufficient funds to replace needed assets as they become unusable through exhaustion or obsolescence, and to expand their plant when necessary to provide needed service. In the words of section 15a(4), they must have sufficient funds to "support prudent capital outlays."

In addition, the carriers must be able to repay their debt obligations as they become due. Section 15a(4) refers to this aspect as the necessity for having sufficient funds to "assure the repayment of a reasonable level of debt."

Third, the carriers must be able to provide the necessary reward to shareholders, through a combination of dividend payments and increases in shareholders' equity from retained earnings. If the carriers do not have sufficient funds for this purpose, they cannot hope to market additional stock on reasonable terms. This is recognized in section 15a(4) as the need for sufficient funds to "permit the raising of needed equity capital."

Inflation is also a factor in the carriers' needs for funds. In particular, it affects the amount needed for capital expenditures, by requiring increases in the dollar investment just to maintain the same real value. It also affects the amount of earnings required by shareholders to offset the decline in the real value of their equity. If the carriers have sufficient funds to meet their needs at inflated dollar costs, then they will have sufficient funds, in the words of section 15a(4) to "cover the effects of inflation."

As indicated by section 15a(4), the carriers' "flow of net income plus depreciation" must be sufficient to allow their needs for funds to be met. We do not construe this language to mean that all of the needed funds must be provided directly from the flow of net income plus depreciation. As we have previously found, not all of the carriers' requirements for capital expenditures can be expected to be met from funds provided by ratepayers. Ex Parte Nos. 265 and 267, Increased Freight Rates, 1970 and 1971, 339 I.C.C. 125, 180-181 (1971); Ex Parte No. 295, Increased Freight Rates and Charges, 1973, Nationwide, 344 I.C.C. 589, 610 (1973); Ex Parte No. 318, Increased Freight Rates and Charges—1976, ____ I.C.C. ____ (1976), slip opinion, pp. 29-30. There must be a resort to the other sources of capital as well. However, the amounts of funds that the carriers can hope to raise in the capital markets

depends on the quality of their credit in those markets. The quality of their credit, in turn, depends on the adequacy of their earnings. Thus, while the flow of net income plus depreciation is not expected to cover all needs for funds directly, it must be sufficient to allow those needs to be met, giving consideration to the carriers' credit in the capital markets.

By examining the carrier's rates of return and other financial ratios, the Commission can estimate the carrier's credit in the capital markets, and draw conclusions as to the amounts of debt and equity capital that they could expect to raise. By considering these data, together with estimates of funds requirements and of the amounts of net income and depreciation expected at the proposed rate level, the Commission can determine whether the carriers will have sufficient funds to meet their requirements for funds at the proposed rate level.

The determination of the amount of funds required by the carriers at a particular time, as well as the determination of the amount of funds available from capital sources, are matters requiring judgment based on all the facts existing at a particular time. Thus, we have not proposed particular standards for such determinations, other than to say that the criteria of section 15a(4) will govern, and that an adequate revenue level is one that will provide a sufficient flow of funds to allow the carriers' needs for funds to be met.

With respect to evidentiary requirements, our regulations provide that the carriers shall submit funds flow statements (statements of changes in financial position) for the three years preceding the proposed increase. In addition, the carriers are required to show the amounts of capital needed in order to assure their financial stability and their capacity to render service.

The computerized projection methodology of Ex Parte No. 271 is being developed with the primary purpose of forecasting funds flow. This methodology relies on forecasts of traffic levels and other pertinent data to anticipate what the railroads' funds requirements will be for each of the succeeding 10 years. Thus, it will permit an estimate of the extent to which the carriers' foreseeable funds requirements may exceed the funds available from operations and capital sources.

We do not propose additional evidentiary requirements with respect to funds flow at this time, although this is a matter for further consideration after receipt of comments. Rather, we propose that the sufficiency of the carriers' flow of funds at the proposed rate level shall be determined upon joint consideration of the evidence required by our prescribed regulations and projections of funds flow using the methodology of Ex Parte No. 271.

We recognize that interested persons may already have given substantial attention to section 15a(4), and may have formulated their own proposals as to how it should be implemented. Our purpose in proposing a specific rule at this time is not, by any means, to foreclose consideration of such proposals, but merely to afford a useful basis for comment. In particular, we hope to stimulate consideration of how any new standards and procedures would mesh with the Commission's existing machinery for handling railroad general increase proceedings.

All interested persons are invited to submit their comments (including data, views and arguments) as to the regulation proposed herein, and as to any amplification or modification of that regulation that they consider desirable. Comments are also desired as to the following questions:

1. Should other financial indicators, such as projected return on shareholders' equity, be accorded the same or greater weight than rate of return on investment?

2. Should standards and procedures be prescribed for determining adequacy of overall revenues for carriers involved in proceedings concerning individual rates?

In addition, comments are desired on the projection methodology of Ex Parte No. 271, and will be seriously considered for the purpose of modifying and refining that methodology. In particular, it is noted that the expenditure projections made in Ex Parte No. 271 were based on normalized maintenance, and did not include expenditures need to make up deferred maintenance. One of the needs for funds that the Commission has recognized in the past in granting general increases is for making up deferred maintenance and delayed capital improvements (see in particular, Ex Parte No. 305, Nationwide Increase of Ten Percent in Freight Rates and Charges, 1974, order served June 4, 1974). We recognize that, besides the data reported to us under Ex Parte No. 305, the carriers have filed data with the Secretary of Transportation under section 504(a) of the 4–R Act and that under other provisions of the Act the maintenance needs of particular rail lines will come under study for considerations of public funding. We are aware of problems of definition and of lack of uniformity in measurement. Comments are desired as to whether deferred maintenance and delayed capital improvements should be included in the projection methodology, and as to how they should be defined and determined.

Finally, comments of interested persons are desired as to any regulations or approaches other than those suggested here that they may believe are warranted to provide the standards and procedures called for by section 15a(4). All common carriers by railroad subject to Part I of the Interstate Commerce Act are made respondents in this proceeding.

Any interested person may participate in this proceding by submitting initial or reply statements of comments (or both) in response to this notice. Any person intending to participate shall, on or before March 21, 1977, file an original and one copy of a notice of intent to participate with the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20433. Because the Commission desires to conserve time, to avoid unnecessary expense, and to limit the service of statements in this proceeding to persons who intend actively to participate, each notice of intent to participate shall include a detailed statement of (1) whether the person's interest extends merely to receiving Commission releases in this proceeding; (2) whether the person wishes to participate by filing and receiving statements of comment; (3) whether, if the person desires to file statements, his interests can be consolidated with those of other persons by the filing of joint statements; and (4) any other pertinent information to aid in limiting the service list to be issued in this proceeding. The Commission will prepare and make available, to all persons submitting notices of intent to participate, a service list which will contain the names and addresses of all persons participating in this proceeding.

An original and 19 copies of each statement of comment, if possible, shall be filed with the Commission, and one copy of each statement shall be served upon each person on the service list, on or before April 25, 1977. Replies to statements of comment shall be similarly filed and served on or before May 20, 1977. No oral hearing is contemplated at this time.

Notice of the institution of this rulemaking proceeding will be given to the general public by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy of the notice with the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

This is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

By the Commission.

ROBERT L. OSWALD,
Secretary.

Accordingly, it is proposed that 49 CFR 1109 be amended by adding a new § 1109.25 as follows:

§ 1109.25 Standards and procedures for the establishment of adequate railroad revenue levels.

In any proceeding where a proposed general increase in railroad rates is sought to be justified, in whole or in part, on the basis of a need for a higher level of carrier earnings (i.e., where the increase is recognized as being greater than the amount necessary to offset expense increases occurring since the carriers' last previous general rate increase), the adequacy of revenues at the proposed rate level shall be determined by the Commission. Such determination shall be made, by district and on a national basis, for the class I railroads.

(a) The determination of the adequacy of revenues at the proposed rate level

shall be governed by the criteria set forth in section 15a(4) of the Interstate Commerce Act (49 U.S.C. 15a(4)), and shall be based upon consideration of:

(1) Whether such revenues cover total operating expenses (including depreciation and retirements) and provide a return on net investment in transportation property equal to the carriers' cost of capital;

(2) Whether such revenues enable the carriers to maintain financial ratios indicative of a sound financial condition; and

(3) Whether such revenues make possible a sufficient flow of funds to allow the carrier's needs for funds to be met.

(b) Determination of the railroads' cost of capital, their return on net investment and other financial ratios, and the sufficiency of their flow of funds, at the proposed rate level, shall be made upon joint consideration of:

(1) Evidence submitted by the railroads pursuant to the requirements of part 1102 of this chapter;

(2) Other evidence submitted by the parties to the proceeding; and

(3) Projections of income statements, balance sheets, financial ratios and funds flows by the Commission, employing the methodology described in Ex Parte No. 271, Net Investment–Railroad Rate Base & Rate of Return, 345 I.C.C. 1492, and such modifications of that methodology as may from time to time be adopted by the Commission.

(Sec. 205, Pub. L. 94-210, 90 Stat. 41 (49 U.S.C. 15a(4)).)

[FR Doc.77-7590 Filed 3-15-77;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

PUBLIC INFORMATION MEETING

Notice is hereby given in accordance with § 800.5(c) of the Advisory Council on Historic Preservation's "Procedures for the Protection of Historic and Cultural Properties" (36 CFR Part 800), that on April 18, 1977, at 3:00 p.m., a public information meeting will be held at the Pawnee Bill State Park, Pawnee, Oklahoma. The purpose of this meeting is to provide an opportunity for representatives of National, State and local units of government, representatives of public and private organizations and interested citizens to receive information and express their views on the proposed 9-hole Blue Hawk Peak Golf Course, an undertaking assisted by the Bureau of Outdoor Recreation that will affect the Blue Hawk Peak Ranch, a property included in the National Register of Historic Places.

A summary of the agenda of the public information meeting follows:

I. An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.

II. An explanation of the undertaking and an evaluation of its effects on the property by the Bureau of Outdoor Recreation.

III. A statement by the Oklahoma State Historic Preservation Officer.

IV. Statements from local officials, private organizations and the public on the effects of the undertaking on the properties.

V. A general question period.

Speakers should limit their statements to approximately 10 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, P.O. Box 25085, Denver, Colorado 80225, telephone number 303–234–4946.

ROBERT M. UTLEY,
Deputy Executive Director.

[FR Doc.77–7638 Filed 3–15–77; 8:45 am]

PUBLIC INFORMATION MEETING

Notice is hereby given in accordance with § 800.5(c) of the Council's "Procedures for the Protection of Historic and Cultural Properties" (36 CFR Part 800) that on March 22, 1977, at 7:00 P.M., a public information meeting will be held at the Fall Creek YMCA, 10th and Indiana Avenue, Indianapolis, Indiana. The purpose of this meeting is to provide an opportunity for representatives of national, State, and local units of government, representatives of public and private organizations and interested citizens to receive information and express their views on the proposed demolition of Lockefield Gardens, Indianapolis, Indiana, as it affects the Gardens, a property included in the National Register of Historic Places.

A summary of the agenda of the public information meeting follows:

I. An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.

II. An explanation of the undertaking and an evaluation of its effects on the property.

III. A statement by the Indiana State Historic Preservation Officer.

IV. Statements from local officials, private organizations, and the public on the effects of the undertaking on the property.

V. A general question period.

Speakers should limit their statements to approximately 10 minutes.

Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1522 "K" Street NW., Washington, D.C. 20005 at 202–254–3380.

ROBERT M. UTLEY,
Deputy Executive Director.

[FR Doc.77–7742 Filed 3–15–77; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 29916]

NEW MEXICO

Application

MARCH 8, 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), Hanson Oil Corporation has applied for one 3-inch salt water disposal pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 19 S., R. 34 E.,
Sec. 35, E½NE¼ and SW¼NE¼.

The pipeline will convey salt water from oil and gas operations across 0.532 miles of national resource land in Lea County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

RAUL E. MARTINEZ,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77–7726 Filed 3–15–77; 8:45 am]

Bureau of Indian Affairs

DISTRIBUTEES AND DEPENDENT MEMBERS OF HOPLAND RANCHERIA, CALIFORNIA

Dependent Members Listed in the Hopland Rancheria Distribution Plan Are Not Terminated

MARCH 4, 1977.

This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

On February 20, 1976, a Final Declaratory Judgment and Permanent Injunction was issued in the two actions of Eddie F. Knight, et al., Plaintiffs No. C–74–0005, and Ambrose Duncan, Jr., et al., Plaintiffs No. C–73–0034, v. Thomas Kleppe, et al., Defendants, by Judge W. T. Sweigert, United States District Court, Northern District of California.

As to the named plaintiffs in Action No. C–74–0005, the district court entered the following judgment:

Kate D. Feliz (also known as Doris Feliz), Rand M. Feliz (also known as Randolph Feliz), Barbara Feliz, Thelma Campbell Knight, Eddie Knight, Gail Knight, Delores Knight, Gertrude Campbell Feliz, June Feliz, Frank Feliz, Richard Feliz, and John Feliz, plaintiffs in Action No. 74–0005; retain their status as Indians under federal law, have not been "terminated" pursuant to section 10(b) of the California Rancheria Act as amended, and must be removed from the list of "dependent members" in the Hopland Rancheria's Distribution Plan. The Secretary of the Interior is under a duty to effect this removal forthwith. These plaintiffs must not be denied services or benefits provided by the United States because of their status as such on the ground that they have been terminated pursuant to section 10(b) of the Rancheria Act.

As to all the named plaintiffs in Action Nos. C–73–0334 and C–74–0005 and the class of similarly situated Indians which they represent, the court entered the following order:

This judgment affects all of the named plaintiffs and all Indians whose names have been listed or otherwise included in California Rancheria Distribution Plans and/or in termination notices published in the

FEDERAL REGISTER pursuant to 25 CFR 242.10 (1959) as dependent members of the immediate families of distributees.

Defendants and all persons acting in concert with them are permanently enjoined from treating any Indians, heretofore listed in a California termination roll as a "dependent member" of a distributee's immediate family, as a terminated Indian pursuant to section 10(b) of the California Rancheria Act, until such time as that Indian has been given full notice and afforded an opportunity for a hearing . . . and, if a hearing is requested in a timely manner until such time as a written decision based upon the evidence adduced at such hearing has been rendered.

Accordingly, notice is hereby given deleting the names of the following dependent members of the immediate families of distributees of Hopland Rancheria from those listed on "A Plan for the Distribution of the Assets of the Hopland Rancheria" approved on May 22, 1961 and they are hereby considered to be unterminated Indians and entitled to federal services in accordance with the aforementioned decision of the district court.

Deletion of dependent family members	Date of birth	Address	Relationship to distributee	Distributee
Evelyn Crandell	June 21, 1960	2451 Fleetwood Dr., San Bruno, Calif. 94066.	Daughter	James Crandell.
Lucille Silva	May 10, 1931	551 Lovers Lane, Ukiah, Calif. 95482.	Wife	John Silva.
Sharol Silva	Nov. 23, 1953	do	Daughter	Do.
Charlotte Silva	May 17, 1954	do	do	Do.
Arlis Elliott	Jan. 15, 1952	122 Pacific Ave., Crescent City, Calif. 95531.	do	William Elliott.
Debra Elliott	Mar. 28, 1955	do	do	Do.
Ethel Burke	June 4, 1906	1391 Nokomis Rd., Hopland, Calif. 95449.	Wife	Vivian J. Burke.
Tillie Billy	Apr. 29, 1917	4374 Sebastopol Rd., Santa Rosa, Calif. 95401.	do	Richard Billy.
Ray Billy	Jan. 25, 1938	do	Son	Do.
Delmar Wayne Billy	July 26, 1939	do	do	Do.
Beverly D. Billy	Dec. 18, 1941	536 B St., Santa Rosa, Calif. 95401.	Daughter	Do.
Leone Billy	June 22, 1944	4374 Sebastopol Rd., Santa Rosa, Calif. 95401.	Son	Do.
Timothy Billy	Aug. 23, 1947	do	do	Do.
Leona Billy	June 18, 1949	do	Daughter	Do.
Cornell Daniels	Mar. 9, 1956	3316 Belden St., Sacramento, Calif. 95838.	Grandson	Kate Ball Daniel.
Dianna Lorintes	Apr. 30, 1950	P.O. Box 413, Hopland, Calif. 95449.	Daughter	Juanita Knight.
Debra Jean Antone	Sept. 23, 1957	P.O. Box 451, Healdsburg, Calif. 95448.	do	Do.
Isabel Iris Antone	Sept. 19, 1960	do	do	Do.
Kate D. Feliz	Mar. 16, 1924	1003 Shelter Ave., Napa, Calif. 94558.	Wife	Robert Feliz.
Rand M. Feliz	Mar. 7, 1953	230 Freitas Ave., Ukiah, Calif. 95482.	Son	Do.
Barbara M. Feliz	July 5, 1954	do	Daughter	Do.
Gertrude Feliz	May 20, 1932	P.O. Box 262, Ukiah, Calif 95482.	Wife	Necho Feliz, Jr.
Frank Eugene Feliz	Jan. 30, 1952	do	Son	Do.
Richard Joseph Feliz	Apr. 10, 1953	do	Son	Do.
June Lee Feliz	May 27, 1954	do	Daughter	Do.
John Ray Feliz	May 28, 1955	do	Son	Do.
Thelma Knight	Dec. 26, 1929	P.O. Box 755, Windsor, Calif. 95492.	Wife	William Knight.
Christine Knight	July 3, 1937	P.O. Box 180, Fulton, Calif. 94539.	do	John Knight.
Tina Knight	Apr. 22, 1956	do	Daughter	Do.
Deana Knight	Feb. 19, 1957	do	do	Do.
Cathy Knight	July 14, 1959	do	do	Do.
Mary Feliz		P.O. Box 431, Hopland, Calif. 95449.	Wife	George Feliz.
Sheena M. Feliz	Jan. 20, 1967	do	Daughter	Do.
Bryan Billy	Mar. 26, 1955	7967 Canterbury Lane, Dublin, Calif. 94566.	Son	Matthews Billy.
Matthews Billy, Jr.	Aug. 7, 1957	do	do	Do.
Pauline Elliott	Apr. 8, 1927	Route 1, Box 136X, Ukiah, Calif. 95482.	Wife	Orville Elliott.
Alice Elliott	Nov. 5, 1950	do	Daughter	Do.
Roger Elliott	Jan. 10, 1932	do	Son	Do.
Iris Ann Elliott	May 17, 1953	do	Daughter	Do.
Luellen Elliott	Aug. 12, 1954	do	do	Do.
Betty Lou Ray	Oct. 16, 1943	765 N. Pine St., Ukiah, Calif. 95482.	do	Catherine Feliz San Diego.
David San Diego	Dec. 21, 1954	do	Son	Do.
Julia Andrea Billy	Sept. 8, 1961	523 Ashwood Dr., Santa Rosa, Calif. 95401.	Daughter	Dennis Billy.
Candice Lynn Carmela Billy.	Dec. 19, 1952	do	do	Do.
Carole Francis Feliz	Apr. 26, 1940	P.O. Box 532, Hopland, Calif. 95449.	do	Necho Feliz, Sr.
Diane Ray	June 9, 1947	249 Gobbi St., Ukiah, Calif. 95482.	do	Ruby Feliz Ray Po
Donald Ray	Feb. 27, 1951	do	Son	Do.
Rita Ann Ray	July 16, 1952	do	Daughter	Do.
Mabel Knight	Jan. 10, 1910	c/o Lake County Indian Health, 150 Third St., Lakeport, Calif. 95453.	Wife	Arthur Knight.
Rosalie Elliott	Feb. 13, 1930	General Delivery, Hopland, Calif. 95449.	do	Rayfield Elliott.
Raymond Ferry	Dec. 11, 1949	3426 38th St., Sacramento, Calif. 95817.	Son	Edna Silva Fallis.
Edmond Ferry	Feb. 16, 1951	do	Son	Do.
Cynthia Daniels	Feb. 15, 1939	3651 Branch Rd., Hopland, Calif. 95449.	Daughter	Kate Ball Daniels
Frances Daniels	Aug. 9, 1947	P.O. Box 466, Hopland, Calif. 95449.	do	Do.

Deletion of dependent family members	Date of birth	Address	Relationship to distributee	Distributee
Louis Garry Billy	July 27, 1950	4374 Sebastopol Rd., Santa Rosa, Calif. 95401.	Son	Richard Billy.
Emilio (Gascon) Imay	Sept. 8, 1947	Route 1, Box 40, Hopland, Calif. 95449.	Son	Delphine Elliott Gascon.
Gladys Knight	May 26, 1940	Route 1, Box 34, Hopland, Calif. 95449.	Daughter	Florence Elliott Anderson.
Ronald Knight	Oct. 29, 1941	13150 Felix Dr., Hopland, Calif. 95449.	Son	Do.
Rickey Knight	Apr. 9, 1943	do	Son	Do.
Alfredo Knight	Mar. 12, 1945	do	Son	Do.
Elliott Lopez	Aug. 4, 1952	314 19th St., Sacramento, Calif. 95814.	Son	Huberta Elliott Carrillo.
Darrell Lopez	Aug. 5, 1954	do	Son	Do.
Wanda Carrillo	Apr. 30, 1956	316 21st St., Sacramento, Calif. 95814.	Daughter	Do.
Brenda Carrillo	Aug. 7, 1957	do	do	Do.
Lisa Ann Carrillo	Aug. 16, 1959	353 East 13th St., Salt Lake City, Utah 84706.	do	Do.
Eddie F. Knight	Sept. 15, 1948	650 Pine Rd., Redwood Valley, Calif. 95470.	Son	William Knight.
Gail T. Knight	Apr. 1, 1956	198 Doolin Dr., Ukiah, Calif. 95482.	Daughter	Do.
Delores Knight	Apr. 4, 1960	P.O. Box 755, Windsor, Calif. 95492.	do	Do.

This notice becomes effective March 16, 1977.

RAYMOND V. BUTLER,
Acting Commissioner of Indian Affairs.

[FR Doc.77-7543 Filed 3-15-77;8:45 am]

Bureau of Reclamation

[Int. FES 77-8]

RIO GRANDE—VELARDE TO CABALLO DAM, RIO GRANDE AND MIDDLE RIO GRANDE PROJECTS, OPERATION AND MAINTENANCE PROGRAM

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the Operation and Maintenance Program for the Rio Grande-Velarde to Caballo Dam, Rio Grande and Middle Rio Grande Projects, New Mexico.

The environmental statement concerns: (1) O&M activities such as channel stabilization, floodway rectification, maintenance of the conveyance channels, cleared floodway, and previously cleared areas along the Rio Grande from Velarde to Caballo Dam; and (2) proposed construction of the Bernardo-San Acacia Conveyance and Protective Works (12 miles), Drain Units 10 and 11 connections and San Antonio Drain extension (13 miles), and phreatophyte clearing (4,155 acres).

Copies are available for inspection at the following locations:

Office of Assistant to the Commissioner, Ecology, Room 7622, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240. Telephone (202) 343-4991.

Division of Engineering Support, Technical Services Branch, E&R Center, Denver Federal Center, Denver, Colorado 80225. Telephone (303) 234-3022.

Office of the Regional Director, Bureau of Reclamation, Herring Plaza, Box H-4377, Amarillo, Texas 79101. Telephone (806) 376-2404.

Albuquerque Planning Office, Bureau of Reclamation, P.O. Box 252, Albuquerque, New Mexico 97103. Telephone (505) 766-2272.

Upper Rio Grande Basin Projects Office, Bureau of Reclamation P.O. Box 252, Albuquerque, New Mexico 87103. Telephone (505) 766-3381.

Rio Grande Project Office, Bureau of Reclamation, P.O. Box Drawer P, El Paso, Texas 79952. Telephone (915) 543-7741.

Single copies of the final statement may be obtained on request to the Commissioner of Reclamation, Regional Director, Albuquerque Planning Officer, or Project Superintendents. Please refer to the statement number above.

Dated: March 11, 1977.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.77-7785 Filed 3-15-77;8:45 am]

Fish and Wildlife Service

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: University of California, Museum of Vertebrate Zoology, 2593 Life Sciences Building, Berkeley, California 94720, Dr. James L. Patton.

OMB NO. 42-R1429

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
import 200 tissue samples from Galapagos tortoises (Geochelone elephantopus) for scientific research

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Dr. James L. Patton
Museum of Vertebrate Zoology
2593 Life Sciences Building
University of California
Berkeley, California 94720
(415) 642-3567

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

☒ MR. ☐ MRS. ☐ MISS ☐ MS.	HEIGHT	WEIGHT
	5'9"	165lbs
DATE OF BIRTH: 21 June 1941	COLOR HAIR: blond	COLOR EYES: blue
PHONE NUMBER WHERE EMPLOYED: (415) 642-3567	SOCIAL SECURITY NUMBER: 579-54-5739	

OCCUPATION: Assoc. Curator and Assoc. Prof.

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:
Museum of Vertebrate Zoology
2593 Life Sciences Building
University of California
Berkeley, California 94720

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
a) importation from Ecuador to Berkeley, CA., via Miami, Fl.
b) maintenance of samples at Mus. Vert. Zool., Univ. Calif. Berkeley

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit number(s))

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of document)
a) Charles Darwin Foundation, letter
b) Ecuador, permit letter

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE: 20 Jan. 1977
11. DURATION NEEDED: 6 months

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (By law) James L. Patton — DATE: 23 December 1976

3-200 (6-74)

ATTACHMENTS

DR. JAMES L. PATTON,
Museum of Vertebrate Zoology,
University of California,
Berkeley, Calif. 94720

Title 50 CFR, Section 17.22(a):

(1) Authorization is requested for the importation of 200 tissue samples of Galapagos Tortoises (*Geochelone elephantopus*) from the Galapagos Islands, Ecuador, to Berkeley, California, via Miami, Florida.

(2) Tissue samples will be taken from animals in wild, natural populations as well as from animals in captive breeding herds. Of the latter, some of these were born in captivity, others were removed from the wild for breeding purposes. The breeding colonies are at Academy Bay, Isla Santa Cruz, Galapagos, under the joint supervision of the Charles Darwin Research Station and the Parque Nacional de Galapagos, Ecuador.

(3) Tissue samples, primarily blood, will be taken from living animals with no harm to the animal.

(4) All specimens, captive or wild, are in the Galapagos Islands, Ecuador.

(5) The tissue samples will be housed in the Frozen Tissue Collection of the Museum of Vertebrate Zoology, University of California, Berkeley, and all research performed will be accomplished in the biochemical laboratories of that same institution. The Museum, founded in 1908, is an Organized Research Unit of the University of California-Berkeley, and is the largest such institution in the western U.S. Its staff members serve as both curators in the Museum and as regularized faculty in the Department of Zoology.

(6) Not applicable.

(7) Attached are copies of correspondence from the following officers of the Charles Darwin Foundation and the Government of Ecuador providing written permission for the collection of the tortoise tissue samples:

(a) Ing. Teodoro Suarez M., Director General de Desarrollo Forestal, Ministerio de Agricultura y Ganaderia, Quito, Ecuador (with English translation appended);

(b) Dr. Peter Kramer, President, Charles Darwin Foundation;

(c) Dr. David Snow, Secretary, CDF Scientific Advisory Committee;

(d) Dr. Stig Jeppesen, Assistant Director, Charles Darwin Research Station

(8) Permission is requested to import and maintain tissue samples of Galapagos tortoises as an aid to the extensive propagation program of the tortoises developed by the Ecudoran Park Service and the Charles Darwin Foundation and carried out at the CDRS, Academy Bay, Isla Santa Cruz, Galapagos. At the specific request of both of these organizations, I will collect tissue samples from animals of known population origin (there are 14 known races of tortoises, 11 still extant) and will use these samples as a source of material for the determination of genetic markers characterizing each of the extant populations. Specifically, biochemical techniques employing identification of enzymes and other proteins will be used, such as starch gel electrophoresis and immunology. This project will aid in two major ways. First, by comparing levels of genetic variability between animals from wild populations with those from the breeding pens, an assessment of the potential detrimental effects of inbreeding can be made. Adjustments in the breeding program can then be developed to alleviate such problems. Second, the characterization of populations by simple genetic markers will enable the identification as to population origin the thousands of Galapagos tortoises maintained in zoological gardens around the world. Hence, proper breeding programs which will insure the survival of specific races can be initiated.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-623-07; please refer to this number when submitting comments. All relevant comments received by April 15, 1977 will be considered.

Dated: March 11, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc.77-7626 Filed 3-15-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant:

Steven R. Lorenz, 2710 Stevens Street, La Crescenta, California 91214.

OMB NO. 42-R1670

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☐ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
IMPORTATION OF PAIR OF RESTRICTED BIRDS FOR THE PURPOSE OF breeding them.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
STEVEN ROSS LORENZ
2710 STEVENS La Crescenta CA
91214
213-248-5053

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

☒ MR. ☐ MRS. ☐ MISS ☐ MS.	HEIGHT 5-7	WEIGHT 140
DATE OF BIRTH 2-23-50	COLOR HAIR BLACK	COLOR EYES BRN
PHONE NUMBER WHERE EMPLOYED 1-213-474555	SOCIAL SECURITY NUMBER 556-58-2376	
OCCUPATION PROGRAMMER		

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
2710 STEVENS LaCrescenta, VIA CANADA to U.S. International AIR port At Los Angeles, CA

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit numbers)
PRT 2-136

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☒ NO
(If yes, list jurisdictions and type of documents)
I have not as yet applied for any permits neither has the sending party in Canada, but he is expected to do so soon.

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE
2/1/77

11. DURATION NEEDED
1 year

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (in ink) Steven Ross Lorenz

DATE 12/11/76

La Crescenta Calif., Feb. 1, 1977.

Reply to letter Jan. 28, 1977.
DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

DEAR SIR: Per your request that I supply information required by 50 CFR 17,22(a) (7), I will attempt to do so.

On Nov. 11 or thereabouts I sent a letter to Jack Schuiteman, R.R. No. 2 Devlin, Ontario, Canada inquiring on his offer to sell year old White eared pheasants, Crossoptilon crossoptilon drouyni. He later answered my letter and stated their price at $1000 pr. He had several other orders and did not know if he would have enough sexable birds. He also requested a deposit to reserve the birds if he did have a pair. I wrote him a second letter and explained to him that I was still interested in the birds but would not include a deposit because of the uncertainty of getting the necessary permits. If I do not get the permit this year or if Mr. Schuiteman has sold all of his birds I would like the permit to cover next year.

STEVEN R. LORENZ.

12 ATTACHMENTS

1. Permit to import 1 pair (2) White eared pheasant, *Crosoptilan C. drouny.*

2. Captive bread birds. To be imported across State and International borders.

3.—

4. Captive born in Canada.

5. 1 of 2 possible cages: A 12 x 6 x 6 cage that was to be used to house a pair of Brown eared and photo per that permit or a 9 x 8 x 6 cage that now stands besides this. Both well planted with sand and gravel floor.

6. My resume of experience is much the same as in the previous permit application with the addition the intention of breeding Satyr Tragopan pheasants this spring.

6. iii Applicant will participate in a cooperative breeding program.

6. iv Size will accommodate 2 medium size pheasants in separate compartments.

Constructed of wood and soft inside protection.

6. v No deaths to eared pheasants have occurred in the last 5 years but a Satyr

Tragopan Cock died of a broken neck when an animal scared him off his perch one night. A solid wall is now being added to the side of the cage that the pheasants favor most.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-556-07; please refer to this number when submitting comments. All relevant comments received by April 15, 1977 will be considered.

Dated: March 11, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-7625 Filed 3-15-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: San Diego Zoological Garden, P.O. Box 551, San Diego, California 92112; Charles L. Bieler, Director.

OMB NO. 42-R1870

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED
Import one (1) female Ceylonese elephant Elaphus maximus ceylanicus endangered species for long term captive breeding project.

3. APPLICANT (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
San Diego Zoological Garden
P.O. Box 551
San Diego, California 92112
Phone: 714-231-1515

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: WEIGHT:
DATE OF BIRTH: COLOR HAIR: COLOR EYES:
PHONE NUMBER WHERE EMPLOYED: SOCIAL SECURITY NUMBER:
OCCUPATION:

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
Public Zoo - Wildlife exhibition, research programs in addition to educational and related activities.

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.: Charles L. Bieler, Director, 714-231-1515
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED:

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Import from Colombo, Sri Lanka to San Diego, California

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit number(s))
1962 - 10 (under 1944 law issued 1962)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? XX YES ☐ NO
(If yes, list jurisdictions and type of documents)
Sri Lanka export permit

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF:
$ not required

10. DESIRED EFFECTIVE DATE: ASAP

11. DURATION NEEDED: Until terminated

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink): Charles L. Bieler
DATE: 17 December 1976

3-200
11-74

ZOOLOGICAL SOCIETY OF SAN DIEGO,
December 17, 1976.

DIRECTOR (FWS/LE),
U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C.

DEAR SIR: The San Diego Zoological Garden requests an endangered species permit to import one female Ceylonese elephant, *Elaphus maximus ceylanicus*.

1. Common and scientific names of the species or subspecies, number, age and sex of the wildlife to be covered in the permit.

We hope to receive permission to import one orphaned young female Ceylonese elephant, *Elaphus maximus ceylanicus* declared orphaned, rescued and surplus by the Department of Wildlife, Colombo, Sri Lanka (Ceylon). This mammal would be approximately 6-18 months of age.

2. Copy of the contract or other agreement under which such wildlife is to be imported, showing the country of origin, name and address of the seller or consignor, date of the contract, number and weight (if available), and description of the wildlife.

Negotiations for this orphaned, rescued female Ceylonese elephant, *Elaphus maximus ceylanicus* began with our letter to Dr. Atapattu dated 14 December 1976 and with receipt of a letter dated 29 September 1976 from the Department of Wildlife Conservation (DWC), Colombo, Sri Lanka. Our first offer to purchase the orphaned elephant was made on 29 October 1976 and confirmed by the DWC on 25 November 1976 (see attachments).

Additionally, we have a colleague, Mr. W. L. de Alwis, Director, Colombo Zoological Gardens, Sri Lanka, to act as our representative in this transaction. We were concerned about the orphan's welfare and safety. Having a personal representative in Sri Lanka assures us that the animal would be in good health, condition and would be able to make the journey safely.

The female Ceylonese elephant would be a rescued orphan provided by the Department of Wildlife Conservation, No. 54 Chatham Street, Colombo, Sri Lanka, Dr. C. W. M. Aponso, Director (telephone 28036) and Dr. Shelton Atapattu, Assistant Director (telephone 28929).

The specific animal to be imported is not yet available for exact description. We hope to import a recently weaned female in perfect condition, weighing approximately 300-400 pounds and standing 38"-46" at the shoulder.

3. A full statement of justification for the permit including details of the project or other plans for utilization of the wildlife in relation to a zoological, educational, scientific, or propagational purposes as appropriate and the planned disposition of the wildlife upon termination of the project.

The San Diego Zoological Gardens is deeply concerned with the conservation of wildlife, particularly those types designated as threatened or endangered. Our activities and programs reflect that commitment. Our mammalian breeding record is increasing yearly as well as our success with various groups (i.e. ungulates, primates and felines). We are constantly learning, and ways to improve our husbandry techniques are being periodically reviewed. We learn by first hand experience and by sharing information with colleagues. Previous endangered species applications have documented our commitment to wildlife and detailed our expertise with various wildlife types.

When sexually mature, this elephant will be used in a breeding program. It has been documented that Ceylonese elephants require from 8-10 years to reach puberty in

nature (McKay, G.M., behaviour and Ecology of the Asiatic Elephant in Southeastern Ceylon, Smithsonian Institution Press, No. 125, 1973). It is reasonable to assume that a similar length of time would be required in captivity, although with adequate nutrition there are indications that captive animals reach puberty somewhat earlier (McKay, G.M., 1973). By the time this animal reaches sexual maturity we will be in a position to begin a captive propagation program.

Recently, the Calgary, Alberta, Canada Zoo imported three baby Ceylonese elephants from the same source, a male and two females. They have expressed their desire to propagate this species and to cooperate with the San Diego Zoo in a propagation program. We currently have one female Ceylonese elephant "Sumithi" which we received from the National Zoo of Sri Lanka in 1968. Sumithi was a hand raised orphaned elephant which we acquired through the assistance of Mr. W. L. de Alwis, the director of the National Zoo in Sri Lanka. Sumithi is in excellent health and condition and is on display in our large elephant enclosure. In addition, our San Diego Wild Animal Park, an 1800 acre second campus belonging to the Zoological Society of San Diego, presently has a young male Indian elephant, *Elaphus marimus*.

Our willingness to share data is reflected in the publications of the professional staff and in our participation with AAZPA's International Species Inventory System.

The propagation of Asiatic elephants is not only possible but probable in captivity. Through the pioneering efforts of the Portland, Oregon zoo with *Elaphus marimus*, the basic requirements, nutrition and husbandry have been established. Their propagation efforts are well known and documented. Information gained from their project will be used as guidelines for our propagation program. We currently have existing facilities, experience and expertise to begin this work.

Any offspring produced in the course of this activity would be incorporated into the propagation program at San Diego Zoological Garden, or if deemed neecssary, dispersed to other qualified facilities interested in similar objectives and with similar programs.

4. A Description and the Address of the Institution or Other Facility Where the Wildlife Will be Used or Maintained.

The Ceylonese elephant will be held at the San Diego Zoo. This institution is owned by the City of San Diego but is managed and operated by a California nonprofit corporation known as the Zoological Society of San Diego. The postal address is: San Diego Zoo, Box 551, San Diego, California 92112.

5. A Statement That at the Time of Application the Wildlife to be Imported Is Still in the Wild, Was Born in Captivity or Has Been Removed From the Wild.

At this time the particular animal to be imported is still in the wild. However, the Wildlife Conservation Department of Sri Lanka has an ongoing orphan elephant rescue program and we would be importing an animal acquired through their program.

6. A Resume of the Applicant's Attempts to Obtain the Wildlife to be Imported From Sources Which Would Not Cause the Death or Removal of Additional Animals From the Wild.

Since these elephants are rescued animal orphans, the removal of these from Sri Lanka under the conditions stated appears to be sound management by the Conservation Department.

Any specimens captured and offered by the Sri Lanka Conservation Department would not be removed from the wild to fill a request by the San Diego Zoo. The animals are only removed as part of an ongoing rescue program. A potential specimen would only be selected from animals in captivity at the time an offer is made.

(v) For the Five Years Preceding the Date of This Application Provide a Detailed Description of all Mortalities Involving the Species Covered in the Application and Held by the Applicant, if any (or any Other Wildlife of the Same Genus or Family Held by the Applicant), Including the Causes of Such Mortality and the Steps Taken to Avoid or Decrease Such Mortalities.

No mortalities have occurred.

7(i). A Complete Description, Including Photographs or Diagrams of the Area and Facilities in Which the Wildlife Will be Housed.

Self explanatory photographs and diagrams are enclosed. The elephant will be in the Children's Zoo facility initially, then transferred to the main elephant enclosure and barn.

(ii) A Brief Resume of the Technical Expertise Available, Including any Experience the Applicant or his Personnel may Have had in Propagating the Species or Closely Related Species to be Imported.

See attached.

(iii). A Statement of the Applicant's Willingness to Participate in a Cooperative Breeding Program, and to Maintain or Contribute Data to a Studbook.

The San Diego Zoological Garden would be willing to cooperate in breeding programs established for this species and would be willing to contribute data to a studbook for elephants. We currently contribute to existing studbooks relating to those species held by the San Diego Zoological Garden.

(iv). A Detailed Description of the Type, Size and Construction of the Container; Arrangements for Feeding, Watering, and Otherwise Caring for the Wildlife in Transit; and the Arrangements for Caring for the Wildlife on Importation into the United States.

The Ceylonese elephant will be air transported from Colombo, Sri Lanka (Ceylon) on Air Ceylon to London, England. From London we will use a direct flight to Los Angeles, California on Trans World Airlines (with Seaboard World Airlines the alternate in the event TWA cannot be used). Transportation from the port of entry (Los Angeles International Airport) to the San Diego Zoo will be made by zoo truck driven by an experienced zoo driver and accompanied by a veterinarian and/or curator or their designees. From Colombo, Sri Lanka the elephant will be personally accompanied by the assistant curator of mammals, Mark S. Rich, or another qualified zoo individual. This will insure adequate food and fluid intake by the elephant en route. The anticipated travel time is not in excess of two days, the entire trip being accompanied by qualified zoological personnel.

The shipping crate will exceed the minimum standards required by the International Air Transport Association (IATA). The shiping crate will be provided by the Department of Wildlife Conservation, Sri Lanka (Ceylon) who are experienced in the construction of these containers. The shipping crate will have feeding and watering facilities built in. At Los Angeles the animal will be met by our custom house brokers, James G. Wiley Co. This company is experienced with such animal transactions and has acted as our broker for years. The San Diego Zoological Garden is a licensed zoological garden by the USDA, license No. 93-C-40.

I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter I, Title 50, and I further certify that the information sub-

mitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to the criminal penalties of 18 U.S.C. 1001.

Sincerely,

MARK S. RICH,
Assistant Curator of Mammals.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-560-07; please refer to this number when submitting comments. All relevant comments received by April 15, 1977 will be considered.

Dated: March 11, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, United States Fish and Wildlife Service.

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (P.L. 93-205).

Applicant: Regional Director, Region 3, U.S. Fish and Wildlife Service, Federal Building, Ft. Snelling, Twin Cities, Minnesota 55111.

OMB NO. 42-R1370

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Request authority to collect and transport endangered mussels caught incidental to official field investigations in Region III.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Jack E. Hemphill, Director
Region III
U.S. Fish and Wildlife Service
Federal Bldg., Ft. Snelling
Twin Cities, MN 55111
Phone: 612/725-3563 *and designated assistants

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS. | HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Environment field offices in Region 3.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit numbers)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☒ NO
(If yes, list jurisdictions and type of documents)

9. CERTIFIED CHECK OR MONEY ORDER (If applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE
as soon as possible

11. DURATION NEEDED
Infinite

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (Do not print) Jack E. Hemphill — DATE JAN 3 1977

*designated assistants will be furnished in writing to the ES Office, Wash. D.C.

To: CHIEF, FEDERAL WILDLIFE PERMIT, OFFICE, *Washington, D.C.*
From: ASSISTANT REGIONAL DIRECTOR, AFA, Twin Cities, MN.
Subject: Endangered Species Application PRT-2-579

February 22, 1977.

In your memorandum of February 4, you pointed out the need to amend our application for an endangered species permit to include the Curtis' pearly mussel (*Epioblasma florintina curtisi*). Please consider this a request to do so. Also, if not readily apparent on the permit, it will be necessary for the permit to state the permit is applicable to Mr. Hemphill's written designee(s).

D. H. RASMUSSEN,

Item 12—Attachments, 50 CFR 17.22(a)

1. We are seeking a permit to collect post-larval Higgin's eye pearly mussel (*Lampsilis higginsi*) of both sexes. The collecting method to be used (crowfoot-bar dredge or brail) is not selective as to sex, but smaller and younger individuals will be taken with less frequency. No larvae will be taken. We propose to take as few as is necessary to establish the presence of the Higgins' eye pearly mussel in a particular mussel bed, generally less than five individuals per bed. Our purpose is to provide special protection to mussel beds containing endangered species and significant populations of other mussel species.

2. The animals we propose to collect are currently in the wild.

3. *L. higginsi* is difficult to identify, as are most of the mussels. To assure accurate identification of the mussels collected, specimens from each sample site are sent to Dr. David Stansbery at the Ohio State University Museum. One to five *L. higginsi* from each mussel bed will be sent to Dr. Stansbery for positive identification. Any additional individuals collected from the same mussel bed will be immediately returned to the river.

4. N/A.

5. Ohio State University Museum, Museum of Zoology, 1813 North High, Columbus, Ohio 43210.

6. N/A.

7. No contracts or agreements are involved.

8. (i) Biologists of the Rock Island Area Office, as part of their normal duties in the review of federally funded or permitted water resource activities, sample areas of the Mississippi River to locate and determine the species composition of freshwater mussel beds. During 1975, we collected *L. higginsi* at two locations and they could be found again at any time during routine sampling at other areas.

(ii) Sampling is conducted from April to October annually at selected sites. The non-species descriminante crowfoot-bar dredge or brail, the same technique used for the commercial harvest of freshwater mussels, will be used for sample collection. Not every mussel bed will be sampled every year.

(iii) When we know where *L. higginsi* occurs, we will be able to give those areas permits and water resource development special protection in our review of federal projects. We may also make a contribution toward the identification of critical habitat for the species.

(iv) Any specimen not identified as Higgins' eye pearly mussel in the field will be sent to Dr. Stansbery for identification and become part of the Ohio State University Museum collection.

Attachment as required by #12.

(1) Sampson's pearly mussel (*Epioblasma sampsoni*); White cat's paw pearly mussel (*Epioblasma sulcata*); Tuberculed-blossom pearly mussel (*Epioblasma torulosa*); Pink mucket pearly mussel (*Lampsilis orbiculata*); Higgins eye pearly mussel (*Lampsilis higginsi*); Fat pocketbook pearly mussel (*Potamilus capax*).

The number, age, and sex of such species cannot be determined in advance.

(2) The wildlife sought is still in the wild.

(3) The endangered freshwater mussels are taken incidental to specimens collected for identification purposes in connection with official investigations under authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), and at request of other Federal agencies concerning suspected illegal works in navigable waters of the United States.

Identification is a problem in the field in that freshwater mussels are extremely difficult to identify. Accurate classification is required by a qualified expert, usually at a University. During transportation and storage, there appears to be no practical method to keep live mussels alive or to return same to the stream after identification has been made.

We would like to have the shells retained at the Environment field offices throughout the Region as a guide for identification. The endangered mussel specimens will be utilized at various educational institutions for teaching and research purposes.

The environment field offices are located at:

Twin Cities, MN, E. Lansing, MI, Lebanon, OH, Rock Island, IL, Green Bay, WI.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-579-07; please refer to this number when submitting comments. All relevant comments received by April 15, 1977 will be considered.

Dated: March 11, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 77-7623 Filed 3-15-77; 8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (P.L. 93-205).

Applicant: National Zoological Park, Smithsonian Institution, Washington, D.C. 20009. Dr. Theodore H. Reed.

OMB NO. 42-R1670

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Import two male and four female live proboscis monkey, Nasalis larvatus, for the purpose of research, propagation and educational display.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
National Zoological Park
Smithsonian Institution
Washington, D. C. 20009

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
Zoological Park
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
Theodore H. Reed. D.V.M. Director
(202) 381-7222
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
National Zoological Park
Washington, D. C. 20009

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit numbers)
PRT 5-3-X; PRT 8-142-C

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of documents)
Indonesia, correspondence

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$

10. DESIRED EFFECTIVE DATE
Immediately

11. DURATION NEEDED
Through 1977

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
17.22

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (To use) — DATE 22 Nov 76

3-200
(6/74)

NATIONAL ZOOLOGICAL PARK,
Washington, D.C., November 22, 1976.

Attn: Permit Branch, Wildlife Permit Office.

MR. LYNN A. GREENWALT,
Director, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C.

DEAR SIR: (1) Import into the United States one (1) male and two (2) female live adult proboscis monkeys, *Nasalis larvatus*, now and on (1) male and two (2) females of this species later.

(2) All of the animals are wild-born, and are specimens confiscated by the conservation department of Indonesia (see attached correspondence).

(3) N.A. Proboscis monkeys are not available from U.S. or European zoos.

(4) Removed from the wild in Kalimantan, Indonesia.

(5) The monkeys will be housed at the U.S. National Zoological Park, Washington, D.C.

(6) (i) The six proboscis monkeys will be maintained in two identical exhibit cages in the Monkey House of the National Zoological Park (see photographs). Each cage is composed of an inside and outside exhibit area and two small shift cages. Indoor exhibit cages are 5.0 m long×3.0 m wide×3.7 m high with a cement floor and impervious wall material. Indoor visitor viewing is through a full length glass wall. Outdoor cages measure 5.5 m long×4.6 m wide×2.8 m high with a cement floor, rock back wall, and barred side and front walls. Public viewing is from behind a guardrail and through the barred front of the cages. Indoor-outdoor access can be controlled if necessary. The exhibit cage units are provided with cage furniture composed of wooden poles and

ropes. The furniture has been designed to accommodate the normal locomotor behavior of proboscis monkeys. We constantly have available to us the leafy material (bamboo, maple, mulberry, beech, willow) necessary to the successful maintenance of this specialized form. The diet will be our basic folivore arrangement for howler monkeys, Colobinae monkeys, red panda, giant panda, tree kangaroo, with appropriate modifications.

(ii) See previous permit applications for resumes of the persons who will be involved with the animals. In addition, the National Zoo has sponsored two recent conferences relevant to primates: "Ecology and Behavior of Arboreal Folivores" (May 1975) and "The Biology and Conservation of the Callitrichidae" (August 1975).

(iii) We would be willing to participate in a captive breeding program (see attached correspondence) and to contribute data to a studbook. Data on all specimens will be entered in the computer of the International Species Inventory System (ISIS).

(iv) Each specimen will be shipped by air in a separate container exceeding minimum International Air Transport Association (IATA) Live Animal Regulations. The routing will be as direct as possible from Jakarta to Washington, D.C. through an authorized port of entry.

(v) We have kept two genera of this family in the past five years (Subfamily Colobinae). There have been no mortalities in the *Presbytis senex*.

In the *Colobus guereza* there have been three deaths: a female imported 16 January 1967 died 9 March 1971 of pyschological inanition (a senile barren female, rejected by the group and housed separately); a female imported 29 November 1966 died 8 March 1975 of inanition and sepsis with undetermined underlying causes (gave birth eight times and aborted once while at the National Zoo); and a stillborn full-term fetus on February 26, 1974. Currently, the colony consists of seven animals, all born at the National Zoo except for one imported male.

(7) See attached. All specimens will be accompanied by legal export documents from Indonesia.

(8) This permit is for the importation into the United States of two male and four female proboscis monkeys (*Nasalis larvatus*). All animals are wild-born specimens confiscated and well acclimated by the conservation department of Indonesia. They will be shipped by air as directly as possible to Washington, D.C. where they will be placed in specially prepared exhibit cages.

The use of confiscated monkeys and the proposed cooperative captive breeding program with the Jakarta Zoo will aid the cause of this endangered species in Indonesia. The use of these unique monkeys in public exhibits at and in ongoing education programs at the National Zoo will greatly promote endangered species education in the United States. The monkeys will also form the basis for a research program to develop captive husbandry and propagation techniques. The experienced, highly trained and capable staff of the National Zoo provides the best chance that sustained captive breeding will be achieved. It is hoped that education and sustained captive breeding will help to preserve monkeys in the wild.

Upon their death, the specimens will be offered to the Smithsonian Institution's Natural History Museum. In this way, they will continue to contribute to the advancement of science and to public education.

Sincerely,

THEODORE H. REED, D.V.M.,
Director.

Attachments:

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-500-07; please refer to this number when submitting comments. All relevant comments received by April 15, 1977 will be considered.

Dated: March 11, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-7622 Filed 3-15-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Dr. Paul B. Holden, BIO/WEST, Inc., P.O. Box 3226, Logan, Utah 84321.

OMB NO. 42-R1670

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (to be only used)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Collect and return unharmed to the point of capture Colorado squawfish and humpback chubs (endangered species) for scientific research. Preserve up to 25 specimens of each, but no more than 2 from any 10-mile reach of stream.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Dr. Paul B. Holden
BIO/WEST, Inc.
P.O. Box 3226
Logan, Utah 84321
(801) 752-4202

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☒ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: 5'10" | WEIGHT: 165
DATE OF BIRTH: Feb. 11, 1944 | COLOR HAIR: brown | COLOR EYES: blue
PHONE NUMBER WHERE EMPLOYED: (801) 752-4202 | SOCIAL SECURITY NUMBER: 395-42-8485
OCCUPATION: Fishery Research Biologist, Senior Aquatic Ecologist and Pres. of BIO/WEST, Inc.
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OF KIND OF BUSINESS, AGENCY, OR INSTITUTION
N/A
NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Scientific collecting in Upper Colorado River Basin of Colorado, New Mexico, Wyoming, and Utah, in the Green and Colorado Rivers

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☐ YES ☒ NO
(If yes, list license or permit numbers)

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☒ NO
(If yes, list jurisdictions and type of documents)
State permits are required but are contingent on receiving a federal permit.

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF: $ N/A

10. DESIRED EFFECTIVE DATE: March 15, 1977

11. DURATION NEEDED: December 31, 1977

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink): Paul B. Holden
DATE: January 28, 1977

3-200
16-74

GPO 835-042

ATTACHMENT

1. Endangered fish to be studied: Colorado squawfish—*Ptychocheilus lucius;* Humpback chub—*Gila cypha.*

Unlimited numbers of all ages and both sexes will be captured and returned unharmed to the point of capture. In addition, permission is sought to preserve up to 25 individuals of various ages and sex of each species. Specimens accidentally killed by capture techniques will be preserved, although the likelihood of such an occurrance is small.

2. All fish to be captured will be wild fish in their native habitat.

3. Fish will be collected by seines and D.C. electrofishing gear. All collecting procedures and handling will be done in such a manner as to assure mortality is minimized. Dr. Holden spent 1968–1971 studying these species in the upper Colorado River basin returning most specimens unharmed to the site of collection. In 1973, he collected the first brood stock of Colorado squawfish for the U.S. Fish and Wildlife Service. In 1976, he led the Colorado Squawfish Recovery Team on a trip on the Green River, Utah, to capture additional brood stock. Therefore, Dr. Holden is very knowledgeable of techniques used to capture rare Colorado basin fishes without harming them needlessly.

4. N/A.

ATTACHMENT

5. Preserved species will be placed in institutions at the discretion of the Service; the most likely repository is the U.S. Fish and Wildlife Service laboratory in Ft. Collins, Colorado.

6. N/A.

7. The activities sought in applying for this permit are needed for a study awarded to BIO/WEST, Inc. by the U.S. Fish and Wildlife Service, Office of Biological Services, Western Energy and Land Use Team, Ft. Collins, Colorado. The project is entitled, "Habitat requirements of rare fishes," Project No. 24, Phase II. (See Appendix.) Field work is anticipated to start in the latter part of March, 1977 and continue for 24 months thereafter.

8. Fish will be collected with seines and D.C. electrofishing gear from various habitat types in the upper Colorado River basin. Fish will be identified, counted, and returned to the place of capture. These data will be analyzed to determine habitat preferences of the fish, as well as the importance of various habitat types. These analyses will help determine the habitat needs of the endangered species. This information is needed to restore populations of these species to former abundance. Similarly it is needed to determine impacts of various proposed water development projects on the fishes and their habitat. This information is needed as there are many proposed impacts, yet we know little of the actual needs of the rare fishes.

CONTRACT/PROGRAM-ADVICE AWARDED

Category 2.

WELUT No. 024–76 (Western Water Allocation Funds).

Title: Aquatic Endangered Species.

Project Officer: Bob Raleigh.

Contractors: Phase I—Ecology Consultants, Inc., Fort Collins, Colorado. Phase II—Bio West, Logan, Utah.

The primary objective is an ecosystem study of the present status, distribution and habitat requirements of important endemic, endangered and threatened fishes of the Upper Colorado and Missouri Basins.

The scope of this project is focused on the Colorado River Basin from Glen Canyon Dam upstream and the Missouri River Basin from Sioux City, Iowa upstream. Annotated and indexed bibliographies of all published and available unpublished technical information including current studies pertaining to aquatic fauna, flora, and habitat characteristics of the two river systems will be compiled. In addition to the Project 30 bibliographies the contractor will identify any additional existing publications and data by contacting the appropriate libraries, state and federal agencies, universities, private firms and individuals. Project emphasis will be on endangered, threatened and selected endemic fish of the area, but all technical information pertinent to the river ecosystem and habitat characteristics of these fish should be included.

The compiled data base will be used to construct base maps and overlays of past and present distributions including spawning and rearing areas of selected fish species and locations of past and present field studies. The compiled data base will be evaluated to determine data gaps regarding the ecology, migrations, habitat parameters, etc. needed to describe the distribution and habitat requirements of target fishes. Critical habitat characteristics will be identified where sufficient data exist by comparing characteristics of areas currently utilized to those areas from which the species has been recently eliminated.

A series of detailed study proposals for short-term studies will be prepared. The studies will be designed to fill specific data gaps concerning the distribution, ecology, and habitat requirements of target fish. Field studies based on the study proposals will be conducted following approval by the Project Officer.

Initiation Date: Estimate December 1976.

Completion Date: December 1978.

Products: 1. An indexed and annotated bibliography of published and unpublished technical information regarding aquatic fauna of the Upper Colorado and Missouri River systems; a separate bibliography for each system.

2. A set of maps and overlays for each river system delineating distribution, spawning and rearing area, physical and chemical characteristics and locations of past and present field studies.

3. An evaluation report of the ecosystem of each river system based on the compiled data base.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2–622–07; please refer to this number when submitting comments. All relevant comments received by April 15, 1977 will be considered.

Dated: March 11, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-7621 Filed 3-15-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: International Crane Foundation, City View Road, Baraboo, Wisconsin 53913; George W. Archibald, Director.

OMB NO. 42-R1670

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Importation of 1 Siberian crane (endangered species) for breeding and propagation purposes at ICF, Baraboo, Wisconsin

Importation of 8 Siberian crane eggs for hatching, and adult Siberian cranes for breeding

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
International Crane Foundation
City View Road
Baraboo, Wi 53913
phone: 608-356-3553

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS. | HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
non-profit, research and educational institution

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
George W. Archibald, Director

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED
Wisconsin

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
International Crane Foundation
City View Road
Baraboo, Wisconsin 53913

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMITS ☐ YES ☐ NO
(If yes, list license or permit numbers)
none

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☐ NO
(If yes, list jurisdictions and type of documents)
not required

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF

10. DESIRED EFFECTIVE DATE: Feb 14, 1977

11. DURATION NEEDED: 2 years (Feb 14,1979)

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
attachments

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (for use) Mildred L. Zantow
Administrator, ICF — Mildred L. Zantow — DATE January 11, 1977

3-200 GPO 895-842

INTERNATIONAL CRANE FOUNDATION,
January 10, 1977.

THE DIRECTOR,
Department of the Interior, U.S. Fish and Wildlife, Washington, D.C.

DEAR SIRS: The Siberian Crane is one of the world's rarest and most critically endangered species of birds numbering less than 350 individuals in the wild and 11 in capavity. The International Crane Foundation is attempting to establish a viable captive population, a Species Bank, of Siberian Cranes at ICF headquarters in central Wisconsin. There is a single Siberian Crane maintained in captivity in Japan. The bird is nine (9) years old, in excellent physical condition and is maintained at the Hirakawa Zoo in Kagoshima, Japan. ICF has been trying to secure this crane on a breeding loan from the people of Kagoshima since 1972. The Japanese repeatedly stalled on the proposal.

On September 22, 1972 we received an import permit (ES-279) from the USDI for the import of the crane. The permit was amended on May 28, 1974 authorizing the import, and amended again on April 3, 1975, regarding the import of Japanese crane eggs included under the original permit. Unfortunately the Japanese Government failed to comply with export arrangements and the rare crane remained at the Hirakawa Zoo.

We recently received a communication from the Director of the World Wildlife Fund—Japan, that the Japanese are willing and indeed anxious to send the crane to ICF in the immediate future in view of the outstanding propagation success achieved for rare crane species by ICF in 1976. We contacted USDA regarding quarantine and import permits from their office. Dr. G. P. Pierson of USDA informed that their permit would be immediately forthcoming and that the quarantine facilities are prepared to receive the crane in Honolulu, February 14. We then contacted Mr. Larry La Rochelle of your department regarding the amending of our USDI import permit. Mr. La Rochelle informed that the permit cannot be amended and that proceedings to receive the permit at all would have to be reinitiated involving approximately a three (3) months time period. We wish to urge that USDI reconsider this case and amend the original permit to allow the crane Honolulu entry February 14, 1977.

If the crane is imported February 14, it will be in a breeding confine until March 14 and shipped to ICF exactly the same time the wild Siberian cranes leave their wintering grounds in India on their 500 mile migration to arctic breeding grounds in Russia. If the Siberian crane from Japan arrives at ICF in mid-March, and there is a strong possibility a reproductive result can be achieved from that individual in 1977. However, if we must wait three (3) months for the USDI import permit there is no chance of the crane breeding in 1977, and the Japanese may in fact, decide not to send it to us at all.

Last year we imported a male Japanese crane on February 10, to Honolulu and the bird arrived at ICF March 10. Four (4) chicks were reared from that bird in 1976. These four (4) chicks represent approximately two percent (2%) increase in the world population of the Japanese crane.

We hope you sympathize with this case and that provisions can be made to have our import permit amended in the near future.

Thank you for your cooperation.

Sincerely,

MILDRED L. ZANTOW,
Administrator.

Enclosed: Request for permit.

Attachment covering Rules and Regulations under Title 50, Wildlife and Fisheries, paragraph 17.22.

1. The endangered species involved in the permit request is the Siberian Crane (*Grus leucogeranus*)

2. The adult Siberian Crane to be imported is in captivity in Japan. It is being held at Hirakawa Zoo. The Siberian Crane eggs are in the wild and will be gathered by Dr. Vladimir Flint.

3. and 4. The adult Siberian Crane is a single crane which migrated into Japan and did not migrate back to the breeding grounds. The International Crane Foundation has been trying to import this crane for a period of 5 years. The Japanese people have now decided to permit the crane to be loaned to ICF for breeding purposes only. It is urgent that we accept their offer while they are willing to send the bird.

The eggs to be obtained from the Siberian Crane in Russia are vital to the propagation of the species and is in compliance with the detente with the Zoological Museum in Moscow. The International Crane Foundation is to establish a species bank for returning these very endangered cranes to the wild as soon as the habitat is restored.

5. The International Crane Foundation, a non-profit breeding, research and educational organization in Baraboo, Wisconsin will be caring for and propagating these cranes.

6. A complete description of ICF headquarters and confines is on file in the USDI along with many many photographs of the entire 65 acres of the foundation.

7. We are under the constant watchful care and guidelines of the US Fish and Wildlife Animal Health Laboratory in Madison,

Wisconsin. They have complete current records of all our stock and maintain health checks constantly to assure safety of the cranes.

8. All contracts of loan on all cranes received at the International Crane Foundation are on file and all progeny will be handled in compliance with the loan agreements and the USDI and the USDA regulations.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-632-07; please refer to this number when submitting comments. All relevant comments received by April 15, 1977 will be considered.

Dated: March 11, 1977.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc.77-7620 Filed 3-15-77;8:45 am]

National Park Service

APPOMATOX COURT HOUSE NATIONAL HISTORICAL PARK

Availability of Draft General Management Plan and Environmental Review

The National Park Service has prepared a Draft General Management Plan and Environmental Review for Appomattox Court House National Historical Park.

The Plan discusses proposals for future development and management of Appomattox Court House National Historical Park. The Environmental Review analyzes the impacts on the resources, visitors and the region that would be associated with the actions proposed in the Plan.

Written comments on the Plan and the Environmental Review are invited and will be accepted for a period on or before April 30, 1977. Comments should be addressed to the Regional Director, Mid-Atlantic Region, or the Superintendent, Appomattox Court House National Historical Park at the addresses given below.

Copies are available from or for inspection at the following locations:

Mid-Atlantic Regional Office, National Park Service, 143 S. Third Street, Philadelphia, Pennsylvania 19106.

Superintendent, Appomattox Court House National Historical Park, P.O. Box 218, Appomattox, Virginia 24522.

Dated: February 28, 1977.

BENJAMIN J. ZERBEY,
Acting Regional Director, Mid-Atlantic Region.

[FR Doc.77-7743 Filed 3-15-77;8:45 am]

BOOKER T. WASHINGTON NATIONAL MONUMENT

Availability of Draft Master Plan and Environmental Assessment

The National Park Service has prepared a Draft Master Plan and Environmental Assessment for Booker T. Washington National Monument.

The Plan discusses proposals for future development and management of Booker T. Washington National Monument. The Environmental Assessment analyzes the impacts on the resources, visitors and the region that would be associated with the actions proposed in the Plan.

Written comments on the Plan and the Environmental Assessment are invited and will be accepted for a period on or before May 15, 1977. Comments should be addressed to the Regional Director, Mid-Atlantic Region, or the Superintendent, Booker T. Washington National Monument at the addresses given below.

Copies are available from or for inspection at the following locations:

Mid-Atlantic Regional Office, National Park Service, 143 S. Third Street, Philadelphia, Pennsylvania 19106.

Superintendent, Booker T. Washington National Monument, Route 1, Box 195, Hardy, Virginia 24101.

Dated: March 1, 1977.

BENJAMIN J. ZERBEY,
Acting Regional Director, Mid-Atlantic Region.

[FR Doc.77-7744 Filed 3-15-77;8:45 am]

ENVIRONMENTAL ASSESSMENTS AND STATEMENTS

Recension of Guidelines for Preparation and Review

Notice is hereby given that the National Park Service hereby rescinds the guidelines for preparation and review of environmental assessments and statements dated July 29, 1974. Notice of these guidelines was published in the FEDERAL REGISTER on May 19, 1976, at 41 FR 20601-20602.

The rescinded guidelines have been replaced by National Park Service "Environmental Assessments and Statements Guideline" dated November 1976, copies of which are available from the National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

Dated: March 9, 1977.

GARY EVERHARDT,
Director, National Park Service.

[FR Doc.77-7745 Filed 3-15-77;8:45 am]

Office of Hearings and Appeals

[Docket No. M 77-119]

ELECTROMET FUEL

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), Electromet Fuel, Route 8, Box 292C, Morgantown, West Virginia 26505, has filed a petition to modify the application of 30 CFR 75.1710 cabs or canopies; electrical face equipment, to its Pohey Mine No. 1, located in Monongalia County, West Virginia.

The Substance of Petitioner's statement is as follows:

1. Under provisions of the Public Law, Petitioner is filing a formal petition to modify the application of a mandatory safety standard as it applies to shuttle cars and roof bolters presently being operated at this mine. The installation of canopies on this type of mining equipment would not guarantee any more protection to the operator but would, in fact, constitute a hazard.

2. The nature of the Redstone coalbed with its many rolling clay veins and sharp local dips cause the mining height and clearance to vary considerably, making it almost impossible to operate this type of equipment with any degree of safety with canopies properly mounted. Also, the shuttle car operator has very limited vision while loading, tramming, and unloading with these canopies on, requiring him to lean out of his cab to gain needed vision, thereby exposing himself and endangering his unseen fellow workers.

3. Therefore, Petitioner is asking for an investigation to be conducted and a waiver to operate this equipment without canopies until this matter can be resolved.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before April 15, 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.

DAVID TORBETT,
Acting Director, Office of Hearings and Appeals.

MARCH 7, 1977.

[FR Doc.77-7642 Filed 3-15-77;8:45 am]

[Docket No. M 77-120]

J & J MINING CO., 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), J & J Mining Co., Inc., Route 8, Box 292C, Morgantown, West Virginia 26505, has filed a petition to modify the application of 30 CFR 75.1710, cabs or canopies; electrical face equipment, to its J & J Mine No. 3, located in Monongalia County, West Virginia.

The substance of Petitioner's statement is as follows:

1. Under provisions of the Public Law, Petitioner is filing a formal petition to modify the application of a mandatory safety standard as it applies to shuttle cars and roof bolters presently being operated at this mine. The installation of canopies on this type of mining equipment would not guarantee any more protection to the operator but would, in fact, constitute a hazard.

2. The nature of the Redstone coalbed with its many rolling clay veins and sharp local dips cause the mining height and clearance to vary considerably, making it almost impossible to operate this type of equipment with any degree of safety with canopies properly mounted. Also, the shuttle car operator has very limited vision while loading, tramming, and unloading with these canopies on, requiring him to lean out of his cab to gain needed vision, thereby exposing himself and endangering his unseen fellow workers.

3. Therefore, Petitioner is asking for an investigation to be conducted and a waiver to operate this equipment without canopies until this matter can be resolved.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before April 15, 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.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

MARCH 7, 1977.

[FR Doc.77-7641 Filed 3-15-77;8:45 am]

[Docket No. M 77-100]

METCO, 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. section 861(c) (1970), Metco, Inc., Box 1528, Wise, Virginia 24293, has filed a petition to modify the application of 30 CFR 75.1710, cabs or canopies; electrical face equipment, to its Metco Mine No. 1, located in Wise County, Virginia.

The substance of Petitioner's statement is as follows:

1. Petitioner's equipment consists of the following:

(a) One Long-Airdox coal loader, height from ground is 25 inches.

(b) One AR-4 Elkhorn scoop, height from ground is 25 inches.

(c) One roofbolting machine manufactured by Paul's Repair Shop, Grundy, Virginia, height from ground is 24 inches.

(d) One Epling cutting machine, height from ground is 26 inches.

(e) One Long-Airdox scoop manufactured by Long Airdox, height from ground is 32 inches.

2. This is a non-agreement mine and a copy of this letter has been posted on the mine bulletin board.

3. Relief from compliance with this portion of the code is requested for the following reasons:

(a) At present the coal height (Norton Seam) ranges from 38 to 56 inches with rolls and swags that vary in elevation from 2 to 6 feet in short distances. However, according to the Virginia Iron Coal & Coke Company, Coeburn, Virginia, engineering section, the coal height in some cases will reduce to 20 inches further back in the unmined section.

(b) Installation of canopies on this type equipment will probably impair operator vision/flexibility and increase the probability of collision type accidents.

(c) Also, due to the rolls in the coal seam and changing heights of the seam, it would be almost impossible to design and install canopies which would effectively provide the operator any additional protection.

(d) Informal discussions with the miners (averaging 10 years mining experience each) who operate this equipment reveal that in their opinion, installation of canopies on this type equipment would create danger to them as opposed to improving personal safety.

4. In view of the above, it is believed that installation of canopies on this equipment to be used in this mine could possibly compromise rather than enhance safety. Consequently, Petitioner requests that relief from compliance with this portion of the regulations be granted.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments within 30 days from the date of publication of this notice in the FEDERAL REGISTER. 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.

DAVID TORBETT,
Acting Director,
Office of Hearings and Appeals.

MARCH 7, 1977.

[FR Doc.77-7644 Filed 3-15-77;8:45 am]

[Docket No. 77-111]

PLATEAU MINING CO., 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), Plateau Mining Co., Inc., 101 East Tennessee Avenue, Oak Ridge, Tennessee 37830 has filed a petition to modify the application of 30 CFR 77.1605, loading and haulage equipment; installations, to its Plateau Mine No. 1, located in Campbell County, Tennessee.

The substance of Petitioner's statement is as follows:

1. The property and grounds on which operator and Petitioner is operating is land which is owned by the Tennessee Valley Authority, a governmental agency.

2. The land on which the mining operations of Petitioner are presently being operated has been mined for a period of many years, the bench of the existing road has been utilized without berms and guardrails.

3. The surface of the roadway and the adjoining land which would be necessary to be developed to install the berm as required is made of solid rock material and would require much blasting of the roadway.

4. Installation of guardrails and berms, except where needed, would take away portions of the usable driving surface and would thereby render the roadways more dangerous than if berms and guardrails were not installed.

5. Where steep portions do not have berms, their installation would occupy such a large portion of the existing useable roadway as to greatly diminish the road's usefulness for hauling. Widening the roadway would entail blasting the existing stable rock highwall. Guardrails would have to be installed on the fill material and it would be very difficult to make them substantial to a reasonable degree of safety.

6. Petitioner has an excellent safety record in its hauling and traveling over said roadway which record results from proper maintenance, supervised traffic systems, and the condition of vehicles using the roadway.

7. The installation of berms and guardrails in this particular situation would involve great expense and for the reasons stated in the forgoing paragraphs would not provide additional safety for the operation.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before April 15, 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.

DAVID TORBETT,
Director,
Office of Hearings and Appeals.

MARCH 7, 1977.

[FR Doc.77-7643 Filed 3-15-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 77-3-48; Dockets 29123 and 27592 Agreements C.A.B. 26484 and 26485]

INTERNATIONAL AIR TRANSPORT ASSOC., TRAFFIC CONFERENCE 2

Passenger Fares and Currency Matters

Issued under delegated authority March 8, 1977.

Agreements have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of Traffic Conference 2 of the International Air Transport Association (IATA). Agreement C.A.B. 26484 was adopted by mail vote; Agreement C.A.B. 26485 was adopted at the Composite Traffic Conference held in Cannes, France during February 1977.

Agreement C.A.B. 26484 would amend various resolutions of the TC2 Limited Agreement (Middle East-Africa) to extend the limited agreement to include Ethiopa. Agreement C.A.B. 26485 would establish reduction factors on local selling fares between points within Europe, and is intended to relate local currency selling fares more closely to fluctuating foreign exchange values.

We will approve the agreements insofar as they affect fares that are combinable with fares to/from the United States and thus have indirect application in air transportation as defined by the Act.

Pursuant to authority duly delegated by the Board's Regulations, 14 CFR 385.14, it is not found that Agreements C.A.B. 26484 and C.A.B. 26485 are adverse to the public interest or in violation of the Act, provided that approval is subject, where applicable, to conditions previously applied by the Board.

Accordingly, *it is ordered*, That: Agreements C.A.B. 26484 and C.A.B. 26485 be and hereby are approved.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-7778 Filed 3-15-77;8:45 am]

[Order 77-3-56; Docket 30333]

KODIAK-WESTERN ALASKA AIRLINES, INC.

Order to Show Cause Regarding Service Mail Rates Increase

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 10th day of March, 1977.

By this order the Board proposes to establish a new final service mail rate for the transportation of mail over the intra-Alaska routes of Kodiak-Western Alaska Airlines, Inc. (KWA) on and after January 11, 1977.

By petition filed January 11, 1977, KWA requested that the Civil Aeronautics Board set a fair and reasonable rate of increased compensation for the transportation of mail by aircraft on its certificated routes consisting of a terminal charge of seven cents per pound of mail and a linehaul charge of $4.00 per mail ton-mile to be effective January 1, 1977. Subsequently, KWA amended its petition to correct certain clerical errors, changing the proposed rates to six cents per pound of mail and $3.72 per mail ton-mile.[1] The proposed rates are based on the carrier's analyses of reported operating results for the year ended June 30, 1976.

In support thereof, KWA asserts that its operating costs have increased substantially since calendar year 1969 [2] and, except for the relief granted by way of a fuel surcharge, there has been no corresponding increase in its service mail rate to compensate for those cost increases. Additionally, the rate inadequacy is further compounded because KWA is currently on a sliding-scale mail rate whereby the yield declines with increased mail volume which has almost tripled since 1969. Moreover, the carrier is faced with a critical financial crisis which would be helped by the requested rate increase.

On February 7, 1977, the U.S. Postal Service (Postal Service) filed an answer to KWA's petition objecting to the rates proposed therein and proposing a single-element rate of $5.23 per mail ton-mile on and after January 1, 1977. In support thereof, the Postal Service states that KWA, as a Group I air carrier, is not required to report certain costs in detail in Form 41 schedules making it infeasible to identify sufficiently and acceptably allocate these costs among mail, nonmail, terminal, and linehaul elements. Accordingly, the Postal Service has computed an overall allocation of common economic costs from which it derived its rate proposal.

The Board has reviewed all of the pleadings and our analysis of KWA's reported operations indicates that a rate increase is warranted. The carrier has experienced an increase of over 26 percent in system revenue ton-mile unit costs since fiscal year 1969 and has been unable to offset these higher costs through increased productivity. Also, at the time the sliding-scale rates were established, no one anticipated the rapid growth in KWA's mail volume. We believe that the rate proposed by the Postal Service falls within the zone of reasonableness and constitutes the fair and reasonable rate for the intra-Alaska mail services of KWA. However, in reaching this conclusion we have confined our determination to the peculiar facts of this case and do not pass upon the appropriateness of any particular allocation methodology which may underlie the Postal Service's cost calculations used in arriving at this rate.

Basically, there are two areas where the Postal Service determination differs from that of the applicant. First, the Postal Service has properly eliminated recognized nonmail costs such as Passenger Service, Reservations and Sales, Advertising and Publicity, and that portion of General and Administrative expense related thereto. Second, instead of a multielement rate, the Postal Service has proposed a single-element rate.

In our view, the establishment of a multielement rate is no longer necessary for KWA's mail transport services. Usually, multielement rates are employed in order to provide a reasonable rate taper for ratemaking units with significantly different lengths of haul or for a single carrier whose length of haul fluctuates markedly from year to year. This is not the case with KWA whose reported average stage length has not varied more than one mile over the last three fiscal years. The Postal Service proposal to establish a single-element rate based on common economic costs does not, therefore, appear to be unreasonable.

On March 2, 1977, KWA filed a Motion for Immediate Action and for Other Relief, citing its present cash-flow crisis and financial need circumstances. The carrier also requested, inter alia, that the Board immediately set a temporary mail rate of not less than $5.23 per billed great-circle mail ton-mile. Based on the information available, we can see no reason, nor has KWA given any justification to the contrary, why the rate being proposed herein should not be made final. In fact, KWA states that it finds the $5.23 rate "clearly reasonable." Accordingly, we tentatively conclude that it would be appropriate to fix a final service mail rate for KWA in this proceeding.

KWA and the Postal Service have both proposed an effective date of January 1, 1977, the beginning date of a Postal Service accounting period, and, in the past, the Board has for administrative expediency fixed the effective dates for service mail rates to coincide with the beginning of a 28-day Postal Service accounting period. However, the proposed effective date of January 1, 1977, predates the filing date of the petition instituting this proceeding. The United States Supreme Court has rule that the Board is not authorized to adjust retroactively closed final mail rates.[3] If we were to adhere to the policy of making a rate effective at the beginning of a postal Service accounting period, the rate proposed herein would not become effective until January 29, 1977. This action would de-

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[1] This equates to a single-element rate of aproximately $5.73 per mail ton-mile.

[2] The base period underlying its current rate fixed by Order 73-2-6, February 1, 1973, as amended for a fuel surcharge by Order 75-11-67, November 19, 1975.

[3] *Transcontinental & Western Air, Inc.* v. *C.A.B.*, 336 U.S. 601 (1949).

prive KWA of more than $3,000 of mail pay and, in view of KWA's critical financial condition, we believe this would impose an unfair burden on the carrier. Therefore, the mail rate formulated herein will be established on and after January 11, 1977, the carrier's petition date.

On the basis of the foregoing, the Board tentatively finds and concludes that the fair and reasonable rate of compensation to be paid by the Postmaster General on and after January 11, 1977, to Kodiak-Western Alaska Airlines, Inc. pursuant to section 406 of the Federal Aviation Act of 1958, as amended, for the transportation of mail by aircraft over its routes, the facilities used and useful therefor, and the services connected therewith, is $5.23 per great-circle mail ton-mile.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a) and 406 thereof, and the Board's Procedural Regulations, 14 CFR Part 302.

It is ordered, That: 1. All interested persons, and particularly Kodiak-Western Alaska Airlines, Inc. and the Postmaster General, are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final service mail rates specified above to be effective on and after January 11, 1977;

2. Further procedures shall be in accordance with the Rules of Practice, 14 CFR, Part 302, and if there is any objection to the rates or to the related findings and conclusions proposed herein, notice thereof shall be filed within 10 days after the date of service of this order, and if notice is filed, written answer and supporting documents shall be filed within 30 days after the date of service of this order;

3. If notice of objection is not filed within 10 days, or if notice is filed and answer is not filed within 30 days after service of this order, or if an answer timely filed raises no material issue of fact, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of an order fixing final service mail rates and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the rates herein specified;

4. If notice of objection and answer are timely filed presenting issues for hearing, issues going to the establishment of the fair and reasonable rates herein shall be limited to those specifically raised by such answers except as otherwise provided in 14 CFR, section 302.-307; and

5. This order shall be served upon Kodiak-Western Alaska Airlines, Inc. and the Postmaster General.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-7780 Filed 3-15-77;8:45 am]

[MA 1]

MEETING

Cancellation

MARCH 10, 1977.

The March 15, 1977 meeting announced on March 8, 1977 will not take place. On March 10, 1977 the petitioning party requested withdrawal of its Petition for Reconsideration.

SUPPLEMENTARY INFORMATION: The Board has not yet issued final regulations implementing the open meeting provisions of the Government in the Sunshine Act.

However, so that the public will have the required notice for all meetings held after the effective date of the Sunshine Act (March 12, 1977), the Board will follow the announcement procedures set forth in § 310b.4 (PDR-44) of its proposed rules until final rules have been adopted.

The following Members have voted that agency business requires that this meeting be cancelled and that no earlier announcement of the change was possible:

Chairman John E. Robson
Member G. Joseph Minetti
Member Lee R. West
Member R. Tenney Johnson

Vice Chairman Richard J. O'Melia did not participate.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-7776 Filed 3-15-77;8:45 am]

[MA 2]

MEETING

MARCH 10, 1977.

Time and date: 10:00 a.m.—March 17, 1977.
Place: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.
Subject: 1. Docket 30314, SPDR-53 Part 370—Employee Responsibilities and Conduct. 2. Docket 29712, Air California and Docket 29831, Pacific American Airlines, Inc.—applications for disclaimer of jurisdiction or exemption to perform certain interstate contract flights.
Status: Open.
Person to contact: Phyllis T. Kaylor, The Secretary, (202) 673-5068.
Supplementary information: The Board has not yet issued final regulations implementing the open meeting provisions of the Government in the Sunshine Act.

However, so that the public will have the required notice for all meetings held after the effective date of the Sunshine Act (March 12, 1977), the Board will follow the announcement procedures set forth in § 310b.4 (PDR-44) of its proposed rules until final rules have been adopted.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-7777 Filed 3-15-77;8:45 am]

CIVIL SERVICE COMMISSION

ADVISORY COMMITTEE ON ADMINISTRATIVE LAW JUDGES, ET AL.

Annual Comprehensive Review

In the matter of annual comprehensive review of Advisory Committee on Administrative Law Judges, Committee on Private Voluntary Agency Eligibility, and Federal Prevailing Rate Advisory Committee.

Pursuant to the provisions of section 7(b) of the Federal Advisory Committee Act (Pub. L. 92-463), the Civil Service Commission is conducting a comprehensive review of advisory committees. The President, in his February 25, 1977 memorandum for the Heads of Executive Departments and Agencies on the Review of Advisory Committees, asked that each agency "provide for open and public participation in its review process to the maximum extent consistent with an expeditious review." The purpose of this notice is to seek this public advice.

COMPREHENSIVE REVIEW COVERAGE

In his memorandum, the President directed that the review be based on the premise that committees not created expressly by statute should be abolished except those (1) for which there is a compelling need; (2) which will have truly balanced membership; and (3) which conduct their business as openly as possible consistent with the law and their mandate. He also urged agencies to confer with Congress about abolishing any advisory committees created by statute which do not meet these standards.

In addition to the three points in the President's memorandum, the Federal Advisory Committee Act requires that each advisory committee be reviewed to determine whether:

1. The committee is carrying out its purpose;

2. Consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

3. It should be merged with other advisory committees; or

4. It should be abolished.

There are three advisory committees to the Commission as follows:

1. Advisory Committee on Administrative Law Judges;

2. Committee on Private Voluntary Agency Eligibility; and

3. Federal Prevailing Rate Advisory Committee.

Following is a brief description of the purpose and operations of each of these committees:

ADVISORY COMMITTEE ON ADMINISTRATIVE LAW JUDGES

The committee was established on August 26, 1976. It makes recommendations to the Commission for improvements in managerial effectiveness and utilization of administrative law judges in the Federal Government, in connection with recruitment and selection, selective certification procedures, productivity, standards of performance, and trends in legislation requiring formal hearings under the Administrative Procedures Act and increases in the number of administrative law judges.

During calendar year 1976, the committee held three meetings, each open to the public. It has submitted one report, recommending: (1) removal of administrative law judges from the coverage of

the Veterans Preference Act; (2) abandonment of the practice of selective certification; (3) revisions to types of qualifying experience; and (4) modifications to requirements of recency of qualifying experience. The committee has thirteen members as follows: three Government attorneys, three administrative law judges, two U.S. Circuit Court Judges, the chairman of a Federal regulatory agency, two private attorneys and two law school professors. For further information contact Arthur L. Burnett, Assistant General Counsel, Legal Advisory Division, Office of the General Counsel, U.S. Civil Service Commission, Room 5H22, 1900 E Street, NW., Washington, D.C. 20415. Telephone 202–632–5421.

COMMITTEE ON PRIVATE VOLUNTARY AGENCY ELIGIBILITY

The committee was established October 19, 1961, and its charter was most recently renewed November 19, 1976. It reviews applications and supplementary financial and accounting data from national voluntary agencies and makes recommendations to the Chairman of the Commission on which agencies should be authorized to solicit on the job in Federal installations. It also makes recommendations regarding certain other matters relating to fund-raising appeals when requested.

During 1976, the committee held two meetings, both open to the public, and reported on its activities to the Chairman of the Commission. The committee has five members as follows: three representatives of Federal employee unions and management representatives from two Federal agencies. For further information contact Joseph S. Patti, Assistant to the Assistant Executive Director for Regional Operations, U.S. Civil Service Commission, Room 5532, 1900 E Street, NW., Washington, D.C. 20415. Telephone 202–632–5544.

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

The committee was established August 19, 1972, by Public Law 92–392, and its charter was most recently renewed on October 5, 1976. It studies the prevailing rate wage system in the Federal Government and advises the Commission on such matters as policy for determining pay rates, including the planning of surveys and the gathering and analysis of data.

During 1976, the committee held 27 meetings, each of which was closed to the public as provided for by the Federal Advisory Committee Act because the committee is exclusively engaged in what is essentially collective bargaining on questions concerning the Federal Wage System.

The committee submitted four reports during 1976 as follows: (1) Annual Report; (2) Establishment of Pay Policy for Corps of Engineers, U.S. Army, Prevailing Rate Employees Operating Navigation Lock and Dam Equipment and Flood Control Dams; (3) Providing for Special Schedule of Wages for Natchez Trace Parkway, Blue Ridge Parkway, and Great Smoky Mountains National Park; and (4) Clarifying Instructions for Environmental Differentials. The membership of the committee is provided for by law as follows: the chairman, one member from the Office of the Secretary of Defense, two members from the military departments, one member from another Government agency, and employee of the Civil Service Commission, and five members representing employee organizations having the largest number of prevailing rate employees. For further information contact Albert F. Wiecjorek, Secretary, Federal Prevailing Rate Advisory Committee, Room 1338, 1900 E Street, NW., Washington, D.C. 20415. Telephone 202–632–9710.

Members of the public who wish to do so are invited to submit comments on those items covered in the comprehensive review as outlined above. These comments should be received by April 1, 1977. Send comments to Donald J. Biglin, the Advisory Committee Management Officer, U.S. Civil Service Commission, Room 5554, 1900 E Street, NW., Washington, D.C. 20415.

DONALD J. BIGLIN,
Advisory Committee Management Officer.

[FR Doc.77–7808 Filed 3–15–77;8:45 am]

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

Annual Comprehensive Review

Pursuant to the provisions of section 7(b) of the Federal Advisory Committee Act (Public Law 92–463), the Civil Service Commission is conducting a comprehensive review of advisory committees. The President, in his February 25, 1977 memorandum for the Heads of Executive Departments and Agencies on the Review of Advisory Committees, asked that each agency "provide for open and public participation in its review process to the maximum extent consistent with an expeditious review." The purpose of this notice is to seek this public advice.

COMPREHENSIVE REVIEW COVERAGE

In his memorandum, the President directed that the review be based on the premise that committees not created expressly by statute should be abolished except those (1) for which there is a compelling need; (2) which will have truly balanced membership; and (3) which conduct their business as openly as possible consistent with the law and their mandate.

In addition to the three points in the President's memorandum, the Federal Advisory Committee Act requires that each advisory committee be reviewed to determine whether:

1. Each committee is carrying out its purpose;

2. Consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

3. It should be merged with other advisory committees; or

4. It should be abolished.

The Civil Service Commission provides committee management support to the President's Commission on White House Fellowships. Following is a brief description of the purpose and operations of this advisory committee to the President:

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

This committee provides gifted and highly motivated young Americans with firsthand experience in the process of governing the nation and a sense of personal involvement in the leadership of the society.

The Commission was established by Executive Order 11183, October 3, 1964, as amended, and was most recently continued by Executive Order 11948, December 20, 1976. During 1976, the Commission held twelve closed meetings and one partially closed meeting. Those portions of Commission meetings which determine policy are open to the public; those dealing with confidential character references are closed.

The Commission received and processed applications from 2864 persons applying for the 1976–77 program. It recommended to the President seventeen men and women for selection as White House Fellows, and the President accepted the Commission's recommendations and appointed them on May 24, 1976. As part of its mandate, the Commission set policies for the educational program of the Fellows including meetings with over 300 leaders in government, education, and arts. There is no set number of members on the Commission. It includes men and women from government, industry, various professions, and academic endeavors. For further information contact W. Landis Jones, Director, President's Commission on White House Fellowships, Room 1308, 1900 E Street, NW., Washington, D.C. 20415. Telephone 202–653–6263.

Members of the public who wish to do so are invited to submit comments on those items covered in the comprehensive review as outlined above. These comments should be received by April 1, 1977. Send comments to Donald J. Biglin, the Advisory Committee Management Officer, U.S. Civil Service Commission, Room 5554, 1900 E Street, NW., Washington, D.C. 20415.

DONALD J. BIGLIN,
Advisory Committee Management Officer.

[FR Doc.77–7807 Filed 3–15–77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

COMPUTER PERIPHERALS, COMPONENTS AND RELATED TEST EQUIPMENT TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory

Committee will be held on Tuesday, April 19, 1977, in Room 4833, Main Commerce Building, 14th and Constitution Avenue N.W., Washington, D.C. The Executive Session will convene at 9 a.m. and the General Session will convene at 1:30 p.m.

The Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974 and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to 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, world-wide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer peripherals, components and related test equipment, including technical data related thereto, and including those whose export is subjet to multilateral (COCOM) controls.

The Committee meeting agenda has four parts:

EXECUTIVE SESSION

(1) Discussion of matters properly classified under Executive Order 11652, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

GENERAL SESSION

(2) Opening remarks by the Chairman.
(3) Presentation of papers or comments by the public.
(4) Discussion of work program, including classification methods for foreign availability and technical classification.

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 (1), the Acting Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 27, 1977, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. 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, Room 3012, Domestic and International Business Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202–377–4196.

The Complete Notice of Determination to close portions of the series of meetings of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on February 8, 1977, (42 FR 7978).

Dated: March 8, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, Department of Commerce.

[FR Doc.77-7661 Filed 3-15-77;8:45 am]

ELECTRONIC INSTRUMENTATION TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Electronic Instrumentation Technical Advisory Committee will be held on Tuesday, April 5, 1977, at 9:00 a.m. in Room 5230, Main Commerce Building, 14th and Constitution Avenue NW., Washington, D.C.

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973. On October 7, 1975, the Acting Assistant Secretary for Administration 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. section 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, world-wide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to electronic instrumentation, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls.

The Committee meeting agenda has four parts:

GENERAL SESSION

(1) Opening remarks by the Chairman.
(2) Presentation of papers or comments by the public.
(3) Report of the Microprocessor Instrumentation Subcommittee.

EXECUTIVE SESSION

(4) 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 (4), the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 8, 1976, pursuant to section 10(d) of the Federal Advisory Committee Act as amended by section 5(c) of the Government In the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. 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 area code 202–377–4196.

The complete Notice of Determination to close portions of the series of meetings of the Electronic Instrumentation Technical Advisory Committee and of any subcommittees thereof was published in the FEDERAL REGISTER on December 28, 1976 (41 FR 56377).

Dated: March 10, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, Department of Commerce.

[FR Doc.77-7724 Filed 3-15-77;8:45 am]

NUMERICALLY CONTROLLED MACHINE TOOL TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Numerically Controlled Machine Tool Technical Advisory Committee will be held on Wednesday, April 6, 1977, at 10 a.m. in Room 5230, Main Commerce Building, 14th and Constitution Avenue NW., Washington, D.C.

The Numerically Controlled Machine Tool Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974 and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to 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 numerically controlled machine tools, 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) Discussion of work program of the Committee.
(4) Reports of work groups on:
a. Dimensional inspection machines;
b. Accuracy definition;
c. Control unit performance criteria; and
d. Accuracy values.

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 27, 1977, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. 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 series of meetings of the Numerically Controlled Machine Tool Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on February 1, 1977 (42 FR 5991).

Dated: March 8, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, Department of Commerce.

[FR Doc.77-7662 Filed 3-15-77;8:45 am]

National Bureau of Standards

COMMERCIAL STANDARD

Action on Proposed Withdrawal

In accordance with section 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10, as revised; 35 FR 8349 dated May 28, 1970), notice is hereby given of the withdrawal of Commercial Standard CS 132-46, "Hardware Cloth."

It has been determined that this standard is technically inadequate and that revision would serve no useful purpose. The subject matter of CS 132-46 is adequately covered by American Society for Testing and Materials ANSI/ASTM A740-76, "Standard Specification for Hardware Cloth (Woven or Welded Galvanized Steel Wire Fabric)." This action is taken in furtherance of the Department's announced intentions as set forth in the public notice appearing in the FEDERAL REGISTER of January 28, 1977, (42 FR 5460) to withdraw this standard.

The effective date for the withdrawal of this standard will be May 16, 1977. This withdrawal action terminates the authority to refer to this standard as a voluntary standard developed under the Department of Commerce procedures.

Dated: March 10, 1977.

ERNEST AMBLER,
Acting Director.

[FR Doc.77-7740 Filed 3-15-77;8:45 am]

National Oceanic and Atmospheric Administration

PRE-ACT ENDANGERED SPECIES PRODUCTS

Issuance of Certificates of Exemption

On January 18, 1977, notice was published in the FEDERAL REGISTER (42 FR 3341) that applications had been filed with the National Marine Fisheries Service by Charles F. McAlpine of Anchorage, Alaska and Morgan J. Levine of Nantucket, Massachusetts for Certificates of Exemption to engage in certain commercial activities with respect to their declared inventories of pre-Act endangered species products. Notice is hereby given that on March 14, 1977, as authorized by the provisions of the Endangered Species Act of 1973, as amended, (Pub. L. 94-359), and the regulations issued thereunder (50 CFR Part 222, Subpart B), the National Marine Fisheries Service issued Certificates of Exemption to Charles F. McAlpine, McAlpine Fur Trading Co., 819 West Fourth Avenue, Anchorage, Alaska 99501 and Morgan J. Levine, The Four Winds, Straight Wharf, Nantucket, Massachusetts 02554. The Certificates of Exemption are available for review during normal business hours in the Office of the Enforcement Division, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20007.

WINFRED H. HEIBOHM,
Associate Director, National Marine Fisheries Service.

MARCH 9, 1977.

[FR Doc.77-7806 Filed 3-15-77;8:45 am]

Office of the Secretary

ADVISORY COMMITTEES

Renewal

During late 1976 and January 1977, in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), and Office of Management and Budget Circular A-63 (revised) and after consultation with the Office of Management and Budget, it was determined that continuation and rechartering of the following 24 advisory committees was in the public interest in accordance with duties imposed on the Department by law. Copies of the new charters of these committees were subsequently filed with the appropriate Congressional committees and were furnished the Library of Congress.

RENEWED COMMITTEES

Advisory Board to the U.S. Merchant Marine Academy

Advisory Committee on East-West Trade
Building Technology Advisory Committee
Census Advisory Committee on Agriculture Statistics
Census Advisory Committee of the American Economic Association
Census Advisory Committee of the American Marketing Association
Census Advisory Committee of the American Statistical Association
Census Advisory Committee on Population Statistics
Census Advisory Committee on the Spanish Origin Population for the 1980 Census
Commerce Technical Advisory Board (CTAB)
Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee
Computer Systems Technical Advisory Committee
Exporters' Textile Advisory Committee
Importers' Textile Advisory Committee
Industry Advisory Committee on Metal Scrap Problems
Management-Labor Textile Advisory Committee
Marine Fisheries Advisory Committee
National Bureau of Standards Visiting Committee
National Public Advisory Committee on Regional Economic Development
Numerically Controlled Machine Tool Technical Advisory Committee
President's Export Council Subcommittee on Export Administration
Public Advisory Committee for Trademark Affairs
Semiconductor Manufacturing and Test Equipment Technical Advisory Committee
Semiconductor Technical Advisory Committee

However, all Department of Commerce advisory committees, including the above, will soon be intensely reviewed pursuant to Section 7(b) of the Federal Advisory Committee Act, the President's memorandum of February 25, 1977, and implementing Office of Management and Budget instructions.

Any inquiries regarding this notice may be directed to Mr. Robert T. Jordan, Office of Organization and Management Systems, Room 5026, Main Commerce Building, Washington, D.C. 20230, Telephone: 202–377–4217.

Dated: March 10, 1977.

GUY W. CHAMBERLIN, Jr.,
Acting Assistant Secretary for Administration.

[FR Doc.77–7831 Filed 3–15–77;8:45 am]

ADVISORY PANELS FOR THE GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Establishment

In accordance with the Provisions of the Federal Advisory Committee Act (5 U.S.C. APP. I (Supp. V, 1975)) and Office of Management and Budget Circular A–63 of March 1974, and after consultation with OMB, the Department of Commerce has determined that the establishment of the following Advisory Panels for the Gulf of Mexico Fishery Management Council is in the public interest in connection with the performance of duties imposed on the Department by the Fishery Conservation and Management Act of 1976, Public Law 94–265 (16 U.S.C. 1852):

1. Billfishes/Pelagic Sharks Advisory Panel
2. Shallow Water Shrimp Fishery Advisory Panel
3. Groundfish Advisory Panel
4. Reef Fishes Advisory Panel
5. Migratory Coastal Pelagic Fishery Advisory Panel

The Panels will provide the Council with pragmatic advice and counsel of the people most affected by the Council's management activities on matters of fishery management policy, on the preparation of fishery management plans, on their review prior to submission to the Secretary, and on their effectiveness in operation.

The Panels will consist of a minimum of nine (9) and not more than twenty (20) members, who are either actually engaged in the harvest, processing or consumption of, or who are knowledgeable and interested in the conservation and management of fishery resources. Members of the Panels will be appointed by the Gulf of Mexico Fishery Management Council.

The Panels will function solely as advisory bodies, and in compliance with the provisions of the Federal Advisory Committee Act. Copies of each Council's Charter will be filed under the Act, March 31, 1977. Inquiries regarding this notice may be addressed to the Committee Liaison Officer, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Rockville, Maryland, 20852.

Dated: March 10, 1977.

GUY W. CHAMBERLIN, Jr.,
Assistant Secretary for Administration.

[FR Doc.77–7830 Filed 3–15–77;8:45 am]

COMMERCE TECHNICAL ADVISORY BOARD

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 the Commerce Technical Advisory Board will hold a meeting on Wednesday, April 6, 1977 from 9:00 a.m. to 5:00 p.m. and Thursday, April 7, 1977 from 8:30 a.m. to 12 noon, in Room 4830, U.S. Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C.

The Board was established to study and evaluate the technical activities of the Department of Commerce and recommend measures to increase their value to the business community. Tenative agenda items include:

Public health and economic considerations in the management of energy shortages.
U.S. Technology Policy.
Reports by Chairman, ERDA Task Force on Demonstration Projects as a Commercialization Incentive.

The meeting will be open to public observation. The public may submit written statements or inquiries to the Chairman before or after the meeting. A limited number of seats will be available to the public and to the press on a first-come, first-served basis.

Copies of minutes and materials distributed will be made available for reproduction, following certification by the Chairman, in accordance with the Federal Advisory Committee Act, at the U.S. Department of Commerce Central Reference and Inspection Facility, Washington, D.C. 20230.

Further information may be obtained from Mrs. Florence S. Feinberg, Administrator, Room 3865, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377–5065.

Dated: March 9, 1977.

BETSY ANCKER-JOHNSON,
Assistant Secretary for Science and Technology.

[FR Doc.77–7829 Filed 3–15–77;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

Meeting

AGENCY: Consumer Products Safety Commission.

ACTION: Notice of Meeting.

SUMMARY: This notice, in accordance with the requirements of the Government in the Sunshine Act (Pub. L. 94–409) and the Commission's Rules for Meetings (16 CFR 1012), announces a meeting of the Commission on March 8, 1977. The Commission, on March 8, 1977, determined that Agency business required calling the meeting, and that no earlier announcement was possible.

The meeting was held in order for the Commission staff to brief the Commission on a Risk Assessment performed by the National Cancer Institute regarding the flame-retardant chemical "Tris." For additional information contact Sheldon D. Butts, Assistant Secretary, Consumer Product Safety Commission, Suite 300, 1111 18th St., N.W., Washington, D.C. 20207, telephone 202) 634–7700.

Dated: March 10, 1977.

SADYE E. DUNN,
Secretary.

[FR Doc.77–7753 Filed 3–15–77;8:45 am]

MINIATURE CHRISTMAS TREE LIGHTS

Intent To Initiate Standards Development; Meeting

This notice announces that the Consumer Products Safety Commission intends to begin a proceeding to develop a consumer product safety standard for miniature Christmas tree lights and similar miniature decorative lights within the next thirty days. The Commission also announces that packets of information regarding the standards development proceedings are available to members of the public from the Office of the Secretary of the Commission. In addition, this notice invites potential offerors to attend a meeting with mem-

bers of the Commission staff, on Thursday, April 7, 1977 at 10 a.m. in Room 456, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland. Participants in this meeting will discuss procedures and requirements to be followed in submitting existing standards or offers to develop standards, as well as the technical information in the packet and approaches considered promising by the Commission.

The Commission begins proceedings to develop consumer products safety standards under section 7 of the Consumer Product Safety Act (15 U.S.C. 2056) by publishing a notice in the FEDERAL REGISTER inviting all interested persons to submit to the Commission either (1) one or more existing standards as a recommended consumer product safety standard or (2) an offer to develop a recommended consumer product safety standard. Under the act, and the Commission's regulations governing the development of standards (16 CFR Part 1105), existing standards or offers to develop standards must be submitted to the Commission within 30 days after the date of this future publication of a notice of proceeding in the FEDERAL REGISTER.

On August 10, 1976, the Consumer Product Safety Commission preliminarily determined that miniature Christmas tree lights present unreasonable risks of injury from fire and shock and that a consumer product safety standard is necessary to reduce or eliminate these risks of injury. In order to present as much background information as possible to prospective offerors and to any offeror(s) selected by the Commission to develop a standard, the Commission has developed a packet containing injury data, engineering analyses, economic data, and other relevant information. However, since only 30 days are provided by statute for prospective offerors to review the Commission procedures, become familiar with the technical background information and study the approaches toward the development of a standard for Christmas tree lights considered promising by the Commission, the Commission has decided to publish this advance notice of intent to initiate a standards development proceeding.

All persons who may be interested in submitting existing standards of offers to develop standards are invited to obtain copies of the packet of information regarding Christmas tree lights, the Commission's regulations on the submission of offers and the development of standards, and a draft FEDERAL REGISTER notice beginning the proceeding. Copies may be obtained from the Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street NW., Washington, D.C. 20207. The Commission plans to begin the development of a consumer product safety standard for miniature Christmas tree lights and similar miniature decorative lights by publishing the notice of proceeding in the FEDERAL REGISTER on Thursday, March 31, 1977.

Date: March 11, 1977.

SHELDON D. BUTTS,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc.77-7752 Filed 3-15-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

PRIVACY ACT OF 1974

New Systems of Records

The Department of the Air Force systems of records notices as prescribed by the Privacy Act of 1974 have been published in the FEDERAL REGISTER as follows: FR Doc. 75-21075 (40 FR 35403) August 18, 1975 FR Doc. 75-22752 (40 FR 39677) August 28, 1975; FR Doc. 75-22754 (40 FR 39711) August 28, 1975; FR Doc. 76-26296 (41 FR 2954) January 20, 1976; FR Doc. 76-21185 (41 FR 30979) July 26, 1976; FR Doc. 77-6500 (42 FR 12459) March 4, 1977.

Notice is hereby given that the Department of the Air Force has submitted two proposed new systems of records on February 10, 1977 pursuant to the provisions of Office of Management and Budget (OMB) Circular No. A-108, Transmittal Memorandum No. 1, dated September 30, 1975 and Transmittal Memorandum No. 3, dated May 17, 1976, which provide supplemental guidance to Federal agencies regarding the preparation and submission of reports of their intention to establish or alter systems of personal records as required by the Privacy Act of 1974 (Pub. L. 93-579, 5 U.S.C. 552a(o)). This OMB guidance was set forth in the FEDERAL REGISTER (40 FR 45877) on October 3, 1975.

The Department of the Air Force invites public comment to be considered on all parts of the following proposed new records systems. Interested persons are invited to submit written data, views and arguments to the system manager identified in the particular record system notice on or before April 15, 1977. The systems will be effective, within 30 days, as proposed without further notice, unless comments are received which result in a contrary determination and requiring republication for further comments.

03506 DPMYA

System name:

Military Service Inventory Research Program.

System location:

At Air Force Military Personnel Center, Randolph Air Force Base, TX 78148.

Authority for establishing system:

Title 10, U.S. Code, Sections 505, 508, 510, and 3012; and for disclosure of your social security number Presidential Executive Order 9397.

Categories of individuals covered by the system:

Certain applicants for enlistment into each service.

Categories of records in the system:

Background interest tests results, group data analysis.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used in research analysis to further refine enlistment standards for the Armed Forces. Specific use: Used in a research manner to evaluate interest variables on enlistee performance.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained on magnetic tapes. Maintained on disks.

Retrievability:

Filed by Social Security Account Number (SSAN).

Safeguards:

Records are accessed by custodian of record system.

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties.

Retention and disposal:

Retained on computer magnetic tape until superseded, obsolete, no longer needed for reference, or on inactivation, then purged and destroyed by degaussing.

System manager(s) and address:

Asst. for Personnel Plans, Programs and Analysis at Air Force Military Personnel Center, Randolph Air Force Base, TX 78148.

Notification procedure:

Requests from individuals should be addressed to the Systems Manager.

Record access procedures:

Individual can obtain assistance in gaining access from the Systems Manager.

Contesting record procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the Systems Manager.

Record source categories:

Information obtained from individual.

Systems exempted from certain provisions of the act:

None.

F17607 DPMS

System name:

Nonappropriated Fund Instrumentalities (NAFIs) Financial System

System location:

At any of the following: Air Force Military Personnel Center, Randolph AFB TX 78148, MAJCOM headquarters and SOAs, and Air Force NAFIs when deemed appropriate and necessary and approved by the appropriate commander. System exists within approximately 1,300 NAFIs which include resale and revenue-sharing NAFIs, general welfare and recreational NAFIs, membership association NAFIs, and special NAFIs. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notice.

Categories of individuals covered by the system:

All personnel, who are members of membership associations or authorized patrons of any of the above NAFIs, and with whom financial transactions are conducted including the extension of credit in accordance with Air Force regulations or those whose personal checks are returned to the NAFI by the banking system and are dishonored for such reasons as insufficient funds, closed accounts, invalid signatures, bank errors, etc. In accordance with appropriate Air Force regulations concerning NAFI participation, the above personnel may include, but are not limited to, active duty and retired military members and their dependents, members of US reserve components and Federally recognized National Guard units, Air Force, Army, or Naval Academy cadets; military members of foreign governments on duty with the DOD; DOD civilians and their dependents, other Federal Government employees working on the military installations and their dependents, employees of Federal Government agencies working at the installation, contractor employees, technical representatives, and others who are authorized logistic support and work at the installation and where membership or usage would be in the best interest of the installation, retired Federal Government service civilian personnel (civil, foreign service, etc.) who were members/participants of a NAFI at time of retirement, commissioned members of the American Red Cross, U.S. Public Health Service, and the U.S. Environmental Sciences Administration, unremarried spouses and children of deceased active duty or retired members of the US Armed Forces, and certain other categories of individuals identified by authorized personnel who directly support Air Force mission requirements. Also, all personnel employed by or assigned to the NAFI in any manner who are involved in any financial transaction involving the NAFI whether internal or external, including but not limited to, the receipt or control of cash or other property.

Categories of records in the system:

Records necessitated by or resulting from financial transactions with authorized members, patrons, vendors, or those otherwise entitled to utilize or deal with a NAFI service. Such records include, but are not limited to, subsidiary account ledgers maintained on individual members/authorized patrons who are charged dues and/or extended credit including the use of billeting type facilities prior to payment, form(s) on which a record of delinquent accounts or dishonored checks and their disposition are maintained; and records of package liquor or other sales or services. Records necessitated for or by internal/external financial record keeping or asset control, including but not limited to the receipt and control of cash, custody for tangible property, and any actions taken as a result of any irregularity.

Authority for maintenance of the system:

10 United States Code 8012, Secretary of the Air Force: powers and duties; delegation by; 5 United States Code 301, Departmental regulations; Executive Order 9397, November 22, 1943, Number System for Accounts Relating to Individual Persons.

Purpose:

Financial management of NAFIs.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To record charges and credits of members and others authorized credit. To prepare billing statements or furnish data to an outside party to prepare billing statements. To maintain a record of dishonored checks. To assist in collecting all amounts due in accordance with established Air Force procedures. To compile a statistical quarterly report on dishonored checks and statistical data on delinquent accounts receivable for use with the financial reports. To verify eligibility to engage in financial transactions with NAFIs, including package liquor and other sales and extension of credit. To form a data base within the financial system of the NAFIs. Utilized by personnel responsible for conducting Air Force morale, welfare, and recreation (MWR) financial transactions. May be provided to commercial or nonprofit concerns conducting activities in support of, similar to, or in furtherance of, the Air Force programs involved. May be provided to any DOD component of any part thereof and, upon request, to any other federal, state, and local governmental agencies in the pursuit of their official duties. May also be used for other lawful purposes including law enforcement and/or litigation.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Maintained in visable file binders/cabinets. Also, may be maintained on computer records.

Retrievability:

Filed by name and/or social security account number (SSAN); form title or computer product control number.

Safeguards:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Personnel are properly screened and cleared for need-to-know. Records are stored in secured buildings or locked cabinets or rooms.

Retention and disposal:

Subsidiary accounts receivable are retained throughout the life cycle of credit sales and for a long as an individual remains in an active member/authorized patron status. Those forms used in connection with delinquent accounts or dishonored checks are retained until no longer needed. Record disposal for these and all other maintained records is in accordance with AFM 12–50.

System manager(s) and address:

Assistant Deputy Chief of Staff Personnel for Military Personnel, Randolph AFB, T– 78148.

Notification porcedure:

Individuals may contact the appropriate nonappropriated fund financial management branch (NAFFMB) or the appropriate operating branch/section manager in order to exercise their rights under the Act. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Forces systems notice.

Record access procedures:

Same as procedures for notification.

Contesting recording procedures:

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the systems manager.

Record source categories:

Individual members/patrons/users of a service themselves, charge slips, payment receipts, checks, and other authorized financial forms and records.

Systems exempted form certain provisions of the act:

None.

MAURICE W. ROCHE,
Director, Correspondence and Directives OASD (Comptroller).

MARCH 11, 1977.

[FR Doc.77–7731 Filed 3–15–77;8:45 am]

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

MARCH 7, 1977.

The USAF Scientific Advisory Board Science and Technology Advisory Group, Air Force Systems Command, and the Armament Development and Test Center Advisory Group will hold a meeting on April 6 and 7, 1977 from 8:30 a.m. to 4:30 p.m. and April 8, 1977 from 8:30 a.m. to 11:30 a.m. at the Armament Development and Test Center, Eglin AFB, Florida, in Building 1, Room 204.

The Groups will receive classified briefings and participate in classified discussions relating to Air Force Laboratories Anti-Armor Technology Programs.

The meetings concern matters listed in section 552(b) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly the meetings will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at 202-697-8404.

FRANKIE S. ESTEP,
Air Force Federal Register, Liaison Officer, Directorate of Administration.

[FR Doc.77-7725 Filed 3-15-77;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

GENERAL TECHNICAL ADVISORY COMMITTEE

Meeting

MARCH 11, 1977.

Pursuant to provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given that the General Technical Advisory Committee will hold a meeting on April 14, 1977, at the Marriott Twin Bridges Hotel, Chesapeake Ballroom, Route 1 and Interstate 95, Arlington, Virginia. The meeting will be open to the public and will begin at 9:00 a.m.

The following agenda items will be discussed:

9:00-9:15—Opening Remarks by Dr. William E. Shoupp, Chairman, General Technical Advisory Committee.
9:15-9:30—Welcoming Remarks by Dr. Philip C. White, Assistant Administrator for Fossil Energy.
9:30-10:00—Environmental Protection Agency (EPA) Program Role in Regard to Fossil Energy Programs by Dr. Stephen J. Gage, Deputy Assistant Administrator, Office of Energy, Minerals and Industry, Environmental Protection Agency.
10:00-10:15—GTAC Discussion on the above subject.
10:15-10:45—Council on Environmental Quality (CEQ) Program Role in Regard to Fossil Energy Programs by Mr. Charles P. Eddy, Senior Staff Member for Energy Programs, Council on Environmental Quality.
10:45-11:00—GTAC Discussion on the above subject.
11:00-11:30—Program of Division of Technology Overview, Assistant Administrator for Environment and Safety by Dr. Nathaniel F. Barr, Director, Division of Technology Overview.
11:30-11:45—GTAC Discussion on the above subject.
11:45-12:15—Fossil Energy Environmental Development Plans by Mr. Marvin I. Singer, Director, Division of Environmental and Socioeconomic Programs.
12:15-12:30—GTAC Discussion on the above subject.
12:30-1:15—Recess for lunch.
1:30-2:00—Budget Presentation (Fiscal Year 1978) by Dr. Philip C. White, Assistant Administrator for Fossil Energy.
2:00-2:30—GTAC Discussion on the above subject.
2:30-3:00—Analytical Efforts in Support of Coal-Derived Electric Utility and Industrial Fuels Strategy by Mr. Harry Johnson, Director, Office of Program Planning and Analysis.
3:00-3:30—GTAC Discussion on the above subject.
3:30-4:00—Subcommittee Preliminary Reports: Offshore Oil and Gas Technology, Underground Coal Gasification.
4:00-4:45—GTAC General Discussion.

In order to prepare for the General Technical Advisory Committee meeting on April 14, 1977, the Subcommittees on Offshore Oil and Gas Technology, and Underground Coal Gasification will hold meetings on April 13, 1977, in Room 4222C at the Energy Research and Development Administration, 20 Massachusetts Avenue NW., Washington, D.C. 20545. No agenda is provided for these meetings. However, the Subcommittee on Offshore Oil and Gas Technology will meet from 2:00-4:00 p.m., to explore the general offshore technology area and provide an independent assessment of ERDA's possible role. Research, development, test and evaluation directed to advances or improvements in the following areas are offered as examples: (1) The conditions and environments which Off Shore Systems encounter and methods of obtaining the information necessary; (2) technology needs relating to new environments (Arctic, very deep water, etc.) and new types of operations (seafloor power stations, subsea completions, etc.) and development of effective initiatives to prevent technology shortfalls; (3) delineation of the necessary engineering information relative to foundations, structures and materials; and (4) evaluate the socioeconomic problems connected with Off Shore Systems emphasizing the relation between development and regulation processes.

The Subcommittee on Underground Coal Gasification will meet from 4:30-6:30 p.m., and will discuss the market potential for low-Btu gas from underground coal gasification, and which industries may be interested or involved.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in agenda items, scheduled above, the following requirements shall apply:

(a) Persons wishing to submit written statements on agenda items may do so by mailing 12 copies thereof, postmarked no later than May 7, 1977, to Mr. George Fumich, Jr., Secretary, General Technical Advisory Committee, U.S. Energy Research and Development Administration, Fossil Energy, Washington, D.C. 20545. Comments shall be based on the above agenda items. Minutes of the meeting will be kept open for 30 days for the receipt of written statements for the record.

(b) Information as to whether the meeting has been rescheduled or relocated can be obtained by a prepaid telephone call on April 12, 1977, to the Office of the Secretary of the Committee on 202-376-4644 between 8:30 a.m. and 5:00 p.m., eastern time.

(c) Questions at the meeting may be propounded only by members of the General Technical Advisory Committee.

(d) Seating to the public will be made available on a first-come, first-served basis.

(e) The use of still, movie, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Copies of the minutes will be made available for copying, following their certification by the Chairman, in accordance with the Federal Advisory Committee Act, at the Energy Research and Development Administration's Public Document Room, 20 Massachusetts Avenue NW., Washington, D.C. 20545, upon payment of all charges required by law.

HARRY L. PEEBLES,
Deputy Advisory Committee Management Officer.

[FR Doc.77-7761 Filed 3-15-77;8:45 am]

HEAVY WATER SALES

Notice of Sales Resumption and Price Charge

Notice is hereby given that pursuant to the authority of the Atomic Energy Act of 1954, as amended, effective upon publication of this notice in the FEDERAL REGISTER and until further notice, the United States Energy Research and Development Administration (ERDA) is resuming the sale of heavy water. Sales of heavy water were temporarily discontinued in August 1976 to permit ERDA to complete its evaluation of operating modes at production levels necessary to meet demand requirements. The following notices concerning heavy water are hereby superseded: 37FR5266, dated March 11, 1972, and 39FR13910, dated April 18, 1974 (both published by the Atomic Energy Commission), and 41FR-35020, dated August 18, 1976 (published by ERDA).

1. The sales price for heavy water is established at $97.00 per pound, f.o.b. ERDA's facility (Savannah River Plant, South Carolina). This price reflects a reduced operating mode to bring production levels in line with demands for heavy water. ERDA will be willing to negotiate a lower price for the sale of substantial quantities of heavy water which would require operation of ERDA's heavy water facility at a higher production level. In the event of a negotiated contract containing such a lower price, the lower price will be made effective for deliveries to all customers of heavy water produced from the ERDA facility after it attains the higher production level. Additional charges will continue to be made to customers for packaging and handling.

2. In view of the limited U.S. production capacity, ERDA has not attempted to meet worldwide long-term requirements for this material as it has for enriched uranium. However, to the extent

heavy water is available in excess of the needs of ERDA-sponsored programs, ERDA will contract to supply heavy water for peaceful purposes to domestic and overseas customers on a first-come, first-served basis.

ROBERT D. THORNE,
Acting Assistant Administrator for Nuclear Energy.

[FR Doc.77-7882 Filed 3-15-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00045]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770), notice is hereby given that a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel will be held from 9:30 a.m. to 4:30 p.m. daily on Friday, April 1, 1977, and Saturday, April 2, 1977. The meeting will be held at the Conrad Hilton Hotel, Parlor 418, 720 South Michigan Avenue, Chicago, Illinois.

The Scientific Advisory Panel is authorized in accordance with section 25(d) of FIFRA as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.). In accordance with section 25(d), the Scientific Advisory Panel will comment on the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) prior to implementation. The purpose of the meeting is to discuss the following topics:

1. Organizational activities of the Panel.
2. Development of guidelines for assembly and presentation of basic scientific information necessary for assessment of the impact of regulatory actions on health and the environment.

The meeting will be open to the public. Any member of the public wishing to attend or submit a paper should contact Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pestcide Programs (WH-567), Room E315, Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460 (telephone: 202/755-4851). Interested persons are permitted to file written statements before or after the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. Written or oral statements will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit four copies of a summary no later than March 30, 1977.

Individuals who wish to file written statements are advised to submit ten copies of statements to the Executive Secretary in a timely manner to ensure appropriate consideration by the Panel.

Dated: March 11, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-7730 Filed 3-15-77;8:45 am]

[PRL 699-2]

SCIENCE ADVISORY BOARD, EXECUTIVE COMMITTEE, AD HOC STUDY GROUP ON RECOMBINANT DNA ACTIVITIES

Meeting

The Executive Committee of the Science Advisory Board of the U.S. Environmental Protection Agency has established an ad hoc Study Group to evaluate the scientific bases of several areas of recombinant DNA research and its subsequent exploitation. It should be noted that, at this time, the Agency has not established any particular regulatory policy regarding DNA recombinant activities.

The Study Group will explore four areas of inquiry: (1) the types of recombinant DNA activities that are properly the subject of EPA interest with respect to policy making or even ultimate regulatory action; (2) environmental issues related to recombinant DNA, with special emphasis on criteria for organism selection for experimentation, and monitoring possibilities for these organisms in the environment; (3) problems of response capabilities should an accidental discharge of recombinant DNA materials arise; and (4) relationships between recombinant DNA activities and legal mandates and/or constraints of the Toxic Substances Control Act of 1976.

The Study Group plans to hold an open meeting on April 5-6, 1977, to explore only the first two areas at this time. The meeting will occur in Room 2117 of Waterside Mall, 401 M Street, SW., Washington, D.C., beginning each day at 9:00 a.m.

The Study Group wishes to hear from interested parties who can provide substantive information on potential benefits and risks for recombinant DNA. The Study Group desires to obtain reasoned scientific analyses of the potential benefits to society and the potential environmental hazards associated with recombinant DNA research and its subsequent exploitation. The Study Group also its interested in comments on the adequacy of the physical containment approach (P1 through P4) and the comparable biological approach of using "enfeebled" organisms, as well as the arguments that natural selection would eliminate any genotypes that might be developed.

Because of the strong interests of public groups, industrial groups, professional societies, and individual scientists, and the anticipated large number of presenters, it is essential that parties who wish to present information to the Study Group, contact the Science Advisory Board Secretariat by March 22, 1977. Please ask for Dr. Joel L. Fisher. His number is 703-557-7710. Presenters should be prepared to give the following specific information at the time of their telephone contact: name, professional affiliation or group affiliation, mailing address, telephone number for contact during business hours, field of scientific expertise, the nature of the proposed presentation, and the availability prior to the meeting of a prepared statement. This last item is critically important. In order to prepare for this meeting, statements of presenters should be available by April 1, 1977 so that the Science Advisory Board Staff may arrange for duplication and distribution of these statements to Study Group members and reasonable numbers of interested parties. The presenters should also indicate what if any audiovisual equipment they may need. All presentations will be scheduled and presenters notified by Dr. Fisher. The Study Group wishes to stress that scientific, substantive inputs are wanted; this is not a forum for public debate. The Study Group is an information-gathering arm of the Agency's Science Advisory Board and has no responsibility to advise on public policy per se. The Study Group anticipates that there will be opportunities for audience participation in the discussions.

Persons who wish only to attend should pre-register by contacting the Science Advisory Board Secretariat at 703-557-7710 and asking for Miss Osborne. Because of limited seating capacity, persons who have not pre-registered and been confirmed by Miss Osborne or Dr. Fisher run the risk of being excluded from the sessions should the room become overcrowded.

THOMAS D. BATH,
Staff Director.

MARCH 11, 1977.

[FR Doc.77-7805 Filed 3-15-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

ADVISORY COMMITTEES

Annual Comprehensive Review

The Federal Communications Commission has twenty advisory committees which are currently chartered under the Federal Advisory Committee Act, Public Law 92-463. As required by Section 7(b) of the Public Law, this agency is undertaking its annual review of the activities and responsibilities of each committee to determine whether, in each case, (1) a committee is indispensable to Commission proceedings and should therefore be continued, (2) there are more effective ways of performing the tasks or studies for which a committee is responsible, or (3) the tasks or studies assigned to a committee, as expressed in the committee charter, have been completed, thereby permitting termination of the committee.

Transmittal Memorandum No. 5 to the Office of Management and Budget Circular No. A-63 requires that Federal agencies provide a means by which mem-

bers of the public may participate in the review process. Accordingly, we invite comments from interested members of the public on the need for and performance of FCC advisory committees.

Seventeen of the twenty current FCC advisory committees were established to assist the Commission in its preparations for the 1979 General World Administrative Radio Conference (WARC) of the International Telecommunication Union. The WARC committees advise the Commission on anticipated future (1980 to the year 2000) frequency requirements in the specific radio service with which they are concerned, examine pertinent provisions of the international radio regulations, and recommend changes to the regulations. The seventeen WARC preparatory committees are as follows:

WARC Advisory Committee for Amateur Radio
WARC Advisory Committee for Aural-AM
WARC Advisory Committee for Aural-FM
WARC Advisory Committee for Auxiliary Broadcast Services
WARC Advisory Committee for Citizens Radio Service
WARC Advisory Committee for Domestic Land Mobile Radio
WARC Advisory Committee for Fixed Satellite
WARC Advisory Committee for High Frequency Fixed
WARC Advisory Committee for International Broadcast
WARC Advisory Committee for Land Mobile Radio
RTCM Special Committee No. 69/WARC Advisory Committee for Maritime Mobile Service
WARC Advisory Committee for Private Microwave
WARC Advisory Committee for Radio Astronomy
WARC Advisory Committee for Radio Relay (Common Carrier)
WARC Advisory Committee for Broadcasting Satellite Service (11.7-12.2 GHz Frequency Band)
WARC Advisory Committee for Television
WARC Industry Advisory Committee

There are three additional FCC advisory committees:

Radio Technical Commission for Marine Services, chartered to advise the FCC and Executive Departments and Agencies on matters related to maritime communications, practices and needs in marine communications, and present and projected systems for improving telecommunication facilities;

National Industry Advisory Committee, chartered to advise the Commission on emergency communication policies, plans, systems and procedures for all FCC licensed and regulated communications in order to provide emergency communication services under conditions of crisis or war;

Personal Use Radio Advisory Committee, chartered to advise the Commission on potential solutions to the interference and enforcement problems currently being experienced in the Citizens Band Radio Service.

It is requested that individuals wishing to comment on any of the above FCC advisory committees submit written statements to Bernard I. Kahn, Advisory Committee Management Officer, Federal Communications Commission, 1919 M St., N.W., Room 414, Washington, D.C. 20554. Comments should be specific in nature and address particular committees. To permit thorough consideration of all public comments prior to preparation of our report to the Office of Management and Budget (due April 15, 1977), comments should be received no later than April 6, 1977. Records maintained at the Commission pertaining to advisory committees are available for public inspection. Individuals wishing to review committee files should contact the Advisory Committee Management Officer at the address shown above or by telephone (202-632-7513).

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-7737 Filed 3-15-77;8:45 am]

INDUSTRY ADVISORY COMMITTEE

Meeting

A meeting of the Industry Advisory Committee to the Federal Communications Commission Steering Committee for the 1979 General World Administrative Radio Conference is schdeuled to be held on Thursday, April 7, 1977, at 9:30 a.m. in Room A-110 of the Commission's offices located at 1229 20th Street NW., Washington, D.C.

The purposes of the meeting are to review a draft of the Fifth Notice of Inquiry in Dockt No. 20271 which continues the refinement of proposed allocation changes for the 1979 Conference; to receive reports from the several functional committee chairmen in the areas of technical, operational, allocations and procedures; to receive short briefings on the status of ancillary preparations for the Conference from Commission and Executive Branch representatives; and to receive a briefing on the results of the recently concluded Broadcasting-Satellite Conference.

Membership on the Committee is limited to Commission invitation; however, attendance at this meeting will be open to the general public and any written comments will be accepted.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-7736 Filed 3-15-77;8:45 am]

[Docket No. 20097]

REGULATORY POLICIES CONCERNING RESALE AND SHARED USE OF COMMON CARRIER SERVICES AND FACILITIES

Memorandum Opinion and Order Deferring Date for Filing of Revised Tariffs

Adopted: March 8, 1977.

Released: March 10, 1977.

1. The American Telephone & Telegraph Company, in connection with its petition for review of our decision in Docket No. 20097, has filed a motion for stay with the United States Court of Appeals for the Second Circuit. That Court will hear arguments on the motion on March 22, 1977. At the request of our General Counsel, in order to accommodate the Court's schedule for hearing and deciding the stay motion, we are deferring sua sponte the filing date for tariffs in this proceeding from March 15 to March 23. This action does not constitute a reconsideration of our order adopted March 3 denying AT&T's Request for Stay Pending Judicial Review. We are merely delaying the tariff filing date five days to accommodate the Court's March 22 hearing on the request for judicial stay.

2. *Accordingly, it is ordered*, That revised tariffs consistent with our orders in Docket No. 20097 be filed not later than March 23, 1977, to be effective 90 days from the date of filing.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-7735 Filed 3-15-77;8:45 am]

FEDERAL DEPOSIT INSURANCE CORPORATION

BOARD OF DIRECTORS

Meeting; Change in Subject Matter

On Tuesday, March 8, 1977, the Federal Deposit Insurance Corporation announced that its Board of Directors would meet in closed session at 11:45 a.m. on Tuesday, March 15, 1977, pursuant to sections 552b(d)(4) and 552b(c)(8), (9)(A)(ii), and (10) of title 5, United States Code to consider, among other things, recommendations with respect to the initiation of cease-and-desist proceedings against two insured State nonmembers banks.

On the basis of advice from the Corporation's Division of Bank Supervision and Legal Division, the Board of Directors has decided to consider a recommendation with respect to the continuation of a termination-of-insurance proceeding against one bank and recommendations with respect to the initiation of cease-and-desist proceedings against a total of six insured State nonmember banks whose names and locations are authorized to be exept from disclosure under the provisions of sections 552b(c)(8) and (9)(A)(ii) and 552b(d)(4) of title 5 of the United States Code.

The time and place of the meeting remain unchanged.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[FR Doc.77-7739 Filed 3-15-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

COMPUTATION OF LANDED COSTS: TRANSPORTATION

Modification to Instructions to Form FEA-F-701-M-0, Correction

On March 1, 1977, the Federal Energy Administration (FEA) issued a notice modifying the instructions to Form FEA-

F-701-M-0 (42 FR 12913, March 7, 1977). Due to an oversight, the instructions to Column (k) of Schedule (B), were, in item (b), incorrect. Instead of requiring adjustments for delivered sales to be entered in Column (j), item (b) should read as follows:

b. For delivered sales, where adjustment has been made pursuant to 10 CFR § 212.84 (e)(3) to impute an f.o.b. value, enter adjustment in (k) for transportation.

In all other respects, the notice remains the same.

Issued in Washington, D.C., March 11, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-7797 Filed 3-11-77;4:57 pm]

STRATEGIC PETROLEUM RESERVES

Extension of the Review and Comment Period for Three Draft Environmental Impact Statements

On January 10, 1977 (42 FR 2120), and January 27, 1977 (42 FR 5124), the Federal Energy Administration (FEA) published notices in the FEDERAL REGISTER, concerning availability of draft site-specific EIS's for three (3) sites that are being considered for the storage of Strategic Petroleum Reserves. These sites are the: Central Rock Limestone Mine, Ashland County, Kentucky (DES 76-9); the Ironton Limestone Mine, Lawrence County, Ohio (DES 76-10); and the Kleer Salt Mine, Van Zandt County, Texas (DES 77-2).

Single copies of the site-specific EIS's were made available through the FEA Office of Communications and Public Affairs, Room 2134, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461. Copies of the draft statements are also available for public review in the FEA Information Access Reading Room, Room 2107, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, between 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Comments were requested to be received by FEA on the Central Rock and Ironton EIS's by February 24, 1977, and on the Kleer Mine EIS by March 7, 1977. Pursuant to a request by the U.S. Environmental Protection Agency, the FEA has granted an extension of the review and comment period to March 22, 1977, for the Ironton and Central Rock EIS, and to March 29, 1977, for the Kleer Mine EIS.

Interested persons are invited to submit data, views, or arguments with respect to the Central Rock Mine or Ironton Mine Draft's EIS's and the Kleer Mine Draft EIS to Executive Communications, Box KB or KI respectively, Room 3309, Federal Energy Administration, Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on documents submitted to FEA Executive Communications with the designation, "Draft EIS for (name of site)." Fifteen copies should be submitted. All comments should be received by FEA by the above-mentioned dates, 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., March 11, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-7796 Filed 3-11-77;8:45 am]

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN ADVISORY COUNCIL

Request for Comments Regarding Review of Need for Council

MARCH 11, 1977.

This Notice is in pursuance of the recent request of the Office of Management and Budget (OMB) advising of the concern expressed by the President "about the number and usefulness of Federal Advisory Committees" and his ordering "a government-wide, zero-base review of all committees, with the presumption that all committees should be abolished except those (1) for which there is a compelling need; (2) which have truly balanced membership; and (3) which conduct their business as openly as possible consistent with the law and their mandate".

To assist in the foregoing, the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation have been requested to "review the need for, and the accomplishments of" the Federal Savings and Loan Advisory Council. The results of such review will be submitted "not later than April 15, 1977" for Presidential and OMB review. OMB is required under the Federal Advisory Committee Act (Pub. L. 92-463) to review annually each advisory committee to determine whether the committee is carrying out its purpose, whether its responsibilities should be revised, whether it should be merged with other advisory committees or whether it should be abolished.

The Federal Savings and Loan Advisory was created pursuant to authority contained in section 8a of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1428a), (1) to confer with said Board and said Corporation "on general conditions and on special conditions affecting the Federal Home Loan Banks and their members and such Corporation" and (2) to "request information, and to make recommendations with respect to matters within the jurisdiction" of the Board and the Corporation.

The Board and the Corporation hereby request any comments and/or recommendations respecting the continuation, or abolition of the Federal Savings and Loan Advisory Council or respecting a revision of its responsibilities and membership, be submitted in writing—not later than April 11, 1977 to

Office of the Secretary, Federal Home Loan Bank Board, Room 830, 320 First Street, N.W., Washington, D.C. 20552.

GARTH MARSTON,
Chairman.

[FR Doc.77-7675 Filed 3-15-77;8:45 am]

FEDERAL MARITIME COMMISSION

CITY OF OAKLAND AND UNITED STATES LINES, INC.

Agreements Filed

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before April 5, 1977. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreements filed by:

J. Kerwin Rooney, Port Attorney, Port of Oakland, P.O. Box 2064, 66 Jack London Square, Oakland, California 94604.

Agreements Nos. T-2758-1 and T-2758-2, between City of Oakland and United States, Inc., (USL), amend the basic agreement between the parties which provides for the 25-year assignment to USL of approximately 20 acres of premises located in the Middle Harbor Terminal Area for use in connection with USL's operations.

Agreement No. T-2758-1 provides for a permanent roadway through Area "C" of the premises. The text of the basic agreement has been amended by: (1) redefining the description of Area "C"; (2) adjusting compensation provision; and (3) making other related changes.

Agreement No. T-2758-2 provides for the construction of certain additional improvements in Areas "A", "B" and "C" pursuant to paragraph 12(d) of the basic agreement. The basic agreement has also been amended by making an adjustment to the total project cost and revising a factor in the computation of the minimum annual compensation.

By order of the Federal Maritime Commission.

Dated: March 11, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-7790 Filed 3-15-77;8:45 am]

PORT OF SEATTLE AND SEA-LAND SERVICE, INC.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before April 5, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

H. H. Wittren, Manager, Waterfront Real Estate, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Agreement No. T-3414, between the Port of Seattle (Port) and Sea-Land Service, Inc., (Sea-Land), covers the lease of property at the Port of Seattle, Washington, now occupied and being used by Sea-Land under the terms of approved lease Agreement No. T-2005, as amended, and provides for the enlargement of the leased premises and for the amortization of direct costs for additional improvements to the premises. The lease will supersede Agreement No. T-2005, as amended. The agreement is for a term of five years (with five additional successive five-year renewal options). As compensation, Sea-Land shall pay monthly rental and amortization to the Port according to a schedule outlined in the agreement. Sea-Land agrees to spend approximately $1,500,000.00 for certain intended improvements on the premises. Sea-Land also agrees that it will file such concurrence instruments as may be appropriate to insure that its terminal operations, for which it publishes separate terminal charges, are subject to all the provisions of Seattle terminal tariff, but not including the service and facilities charges. Port reserves the right to use the premises when such use will not unreasonably interfere with Sea-Land's operations. If the Port should use the premises, all terminal charges in connection with said use shall accrue to the benefit of the Port.

By Order of the Federal Maritime Commission.

Dated: March 11, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-7791 Filed 3-15-77;8:45 am]

JAPAN/KOREA-ATLANTIC AND GULF FREIGHT CONFERENCE

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commision for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126, or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., San Juan, Puerto Rico and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before March 28, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Charles F. Warren, Esq., 1100 Connecticut Avenue, NW., Washington, D.C. 20036.

Agreement No. 3103-64 would extend the presently approved intermodal authority of the Japan/Korea-Atlantic and Gulf Freight Conference, as set forth in Article 1 of the conference agreement, for an unlimited period beyond the present expiration date of April 21, 1977. Additionally, the conference is amending Article 1 to remove the requirement that its superseding intermodal tariff shall have rates, terms and conditions of carriage comparable to those of its member lines' intermodal tariffs.

By order of the Federal Maritime Commission.

Dated: March 11, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-7792 Filed 3-15-77;8:45 am]

FEDERAL POWER COMMISSION

[Project No. 2146]

ALABAMA POWER CO.

Application for Change in Land Rights

MARCH 10, 1977.

Public notice is hereby given that an application was filed on January 25, 1977, under the Federal Power Act, 16 U.S.C. §§ 791a-825r, by Alabama Power Company (Applicant) (Correspondence to: Mr. Jesse S. Vogtle, Senior Vice President, Alabama Power Company, P.O. Box 2641, Birmingham, Alabama 35291) for a change in land rights at the Logan Martin Development of Coosa River Project No. 2146. The proposed change in land rights would be located in the Town of Riverside, St. Clair County, Alabama.

The Applicant requests Commission authorization to grant an easement over project lands and waters to Moss-Thornton Company, Inc. for the installation of a sewage outfall pipeline to serve its proposed Riverside Cove Development to be located on the western shore of Logan Martin Reservoir in the Town of Riverside between U.S. Highway 78 and Insterstate Highway 20 in Section 35, T. 16, S, R. 4 E., Huntsville Principal Meridian St. Clair County, Alabama.

The outfall line would be an eight-inch diameter steel, welded joint, epoxy-coated line extending to the center of the reservoir, with a 50-foot long plugged diffuser section at the outer end discharging effluent upward through perforations. The line would be submerged and anchored in place with concrete collars.

The ultimate capacity of the outfall line would be 150,000 gallons per day of chlorinated effluent from a secondary, step-aeration sewage treatment plant. This discharge would be attained in three stages of 50,000 gallons per day as construction of the Riverside Cove Development takes place over the coming 10 to 15 years.

The proposed construction of the Riverside Cove Development would consist of apartments, condominiums, and commercial buildings involving dredging of 155,000 cubic yards of material from below the 446-foot contour project boundary and the filling of portions of non-project land adjacent to the Logan Martin Reservoir above the 466-foot contour project boundary upwards to elevation 475 feet (m.s.l.).

The Applicant has requested the shortened procedure pursuant to § 1.32(b) of the Commission's Rules of Practice and Procedure, 18 CFR § 1.32(b) (1976).

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 May 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 to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by sections 308 and 309 of the Federal Power Act (16 U.S.C. 825g, 825h) and the Commission's rules of practice and procedure, specifically § 1.32(b) (18 CFR 1.32(b)), (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 pleader requests that the shortened procedure of § 1.32(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.77-7692 Filed 3-15-77;8:45 am]

[Docket No. RP77-40 (PGA77-4a)]

ALABAMA-TENNESSEE NATURAL GAS CO.

Proposed PGA Rate Adjustment

MARCH 10, 1977.

Take notice that on February 28, 1977, 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, Twenty-first 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 a decrease in 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:	*21st revised sheet No. 3-A*
G-1:	
Demand	$1.78
Commodity	109.80¢
SG-1:	
Commodity	122.80¢
I-1:	
Commodity	115.65¢

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 March 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-7686 Filed 3-15-77;8:45 am]

ATLANTIC RICHFIELD CO., ET AL.

[Docket No. G-10739, et al.]

Notice of Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates [1]

MARCH 8, 1977.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 4, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.³	Pressure base
G-10739 D 2-17-77	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Texas Eastern Transmission Corp. (certain property in the Chicolette Creek, et al. fields, Lavaca, et al., Counties, Tex.).	(1)	------
G-16367 B 1-10-77	Mobil Oil Corp., Three Greenway Plaza East, suite 800, Houston, Tex. 77046.	Transwestern Pipeline Co. (Feldman Field, Hemphill County, Tex.).	(2)	------
CI63-704 D 1-13-77	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Tennessee Gas Pipeline Co. (Northeast Loma Novia and South Lundell Fields, Duval County, Tex.).	(3)	------
CI64-363 B 10-8-76	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	Arkansas Louisiana Gas Co. (certain lease in West Vixen Field, Caldwell Parish, La.).	(4)	------
CI72-308 C 1-31-77	TransOcean Oil, Inc., 1700 First City East Bldg., 1111 Fannin, Houston, Tex. 77002.	Michigan Wisconsin Pipe Line Co. (block 296, Eugene Island Area, offshore Louisiana).	[4] [6] 97.0¢	14.73
CI73-66 C 2-14-77	Kerr-McGee Corp., P.O. Box 25861, Oklahoma City, Okla., 73125.	El Paso Natural Gas Co. (Viking (Morrow/Upper) Field, Wheeler County, Tex.).	[7] [8] $1.533406	14.73
CI75-36 C 12-3-76	Arkla Exploration Co., P.O. Box 21734, Shreveport, La. 71151.	Arkansas Louisiana Gas Co. (fast No. 1-12 well in sec. 12, Township 18 North, Range 12 West, Blaine County, Okla.).	[8] [9] $1.5414	14.65
CI76-144 C 2-7-77	Amoco Production Co., 500 Jefferson Bldg., P.O. Box 3092, Houston, Tex. 77001.	Transwestern Pipeline Co. (Potash Eddy Field, Eddy County, N. Mex.).	[10] 56.4233¢	14.65
CI77-177[5] A 1-13-77	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79105.	El Paso Natural Gas Co. (undesignated Morrow Field, Eddy County, N. Mex.).	[8] [11] $1.43	14.73
CI77-245 (CS71-1015) B 1-31-77	John Oil & Gas Co., P.O. Box 7665, Shreveport, La. 71107.	United Gas Pipe Line Co. (Southwest Bourg Field, Terrebonne Parish, La.).	[12]	------
CI77-250 A 2-10-77	Pioneer Production Corp., P.O. Box 2542, Amarillo, Tex. 79105.	El Paso Natural Gas Co. (La Huerta Field, Eddy County, N. Mex.).	[8] [9] $1.44	14.73
CI77-261 A 2-7-77	Highland Resources, Inc., 800 San Jacinto Bldg., Houston, Tex. 77002.	Michigan Wisconsin Pipe Line Co. (Ship Shoal Area, blocks 290 and 291, offshore Louisiana).	[13] [14] $1.44	14.73
CI77-263 A 2-7-77	Kewanee Oil Co., P.O. Box 2230, Tulsa, Okla. 74101.	Michigan Wisconsin Pipe Line Co. (Eugene Island Area, block 296, offshore Louisiana).	[8] [13] $1.43	14.73
CI77-267 A 2-9-77	Napeco Inc., 122 South Michigan Ave., Chicago, Ill. 60603.	Natural Gas Pipeline Co. of America (Thornwell Area, Jefferson Davis Parish, La.).	[8] [15] $1.7561	14.73 14.65
CI77-268 A 2-9-77	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79105.	Natural Gas Pipeline Co. (2 undesignated fields (Morrow and Wolfcamp), Eddy County, N. Mex.).	[8] [9] $1.44	14.65
CI77-270 A 2-14-77	Union Oil Co. of California, Union Oil Center, room 904, P.O. Box 7600, Los Angeles, Calif. 90051.	Natural Gas Pipeline Co. of America (sec. 3-18S-34E, La Rica (Morrow) Field, Lea County, N. Mex.).	[8] [16] 143.2170¢	14.65
CI77-271 A 2-14-77	Sohio Petroleum Co., 50 Penn Pl., suite 1100, Oklahoma City, Okla. 73118.	Southern Natural Gas Co. (Bayou des Glaises Field, Iberville Parish, La.).	[17] 66.4565¢	15.025
CI77-272 A 2-14-77	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79105.	Natural Gas Pipeline Co. (White City Penn Field and an undesignated White City Penn Field, Eddy County, N. Mex.).	[8] [9] 1.44¢	14.65
CI77-275 A 2-17-77	Amoco Production Co., Security Life Bldg., Denver, Colo. 80202.	Cities Service Gas Co. (Deadman Wash and Wildcat Fields, Sweetwater County, Wyo.).	[8] [18] 98.9371¢ [19] 14.73	14.65
CI77-277 A 2-7-77	Columbia Gas Development Corp., P.O. Box 1350, 2223 West Loop South, Houston, Tex. 77001.	Columbia Gas Transmission Corp. (platform "A", block 266, West Cameron Area, offshore Louisiana).	[4] [13] $1.90	15.025
CI77-279 (CI73-485) B 2-10-77	CIG Exploration, Inc., Five Greenway Plaza East, Houston, Tex. 77046.	Colorado Interstate Gas Co. (South Buffalo Field, Harper County, Okla.).	[20]	------
CI77-280 A 2-11-77	Ashland Oil, Inc., P.O. Box 1503, Houston, Tex. 77001.	Michigan Wisconsin Pipe Line Co. (Ship Shoal Area, blocks 290 and 291 offshore, Louisiana).	[13] [14] $1.44	14.73

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.
See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI77-281 A 2-14-77	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	Michigan Wisconsin Pipe Line Co. (Hugoton-Anadarko Area, Sherman County, Tex.).	[8, 12] 144.0¢	14.65
CI77-282 A 2-14-77	Shell Oil Co., Two Shell Plaza, P.O. Box 2099, Houston, Tex. 77001.	El Paso Natural Gas Co. (Bisti Field, San Juan County, N. Mex.).	[8, 12] 144.0¢	14.73
CI77-283 A 2-14-77	Amoco Production Co., 500 Jefferson Bldg., P.O. Box 3092, Houston, Tex. 77001.	PGP Gas Products, Inc. (Pecos Valley and Abell Fields, Pecos and Ward Counties, Tex.).	[19] 64.5220¢ [6, 20] 118.3050¢	14.65
CI77-284 A 2-14-77	William Herbert Hunt Trust Estate, 1401 Elm, Dallas, Tex. 15220.	Montana-Dakota Utilities Co. (Boxcar Butte Field, L. C. Haugen No. 1 well, McKenzie County, N. Dak.).	[7] 175.4673¢	14.73
CI77-285 (CI60-349) B 2-15-77	Sun Oil Co., 2 Northpark East, P.O. Box 29, Dallas, Tex. 75221.	South Texas Natural Gas Gathering Co., (Donna Field, Hidalgo County, Tex.).	(18)	-----
CI77-286 A 2-16-77	MRT Exploration Co., 9900 Clayton Rd., St Louis, Mo. 63124.	Mississippi River Transmission Corp. (Little Washita Field, Grady County, Okla.).	[8, 5] $1.541386	14.65
CI77-287 A 2-16-77	Texas Gas Exploration Corp., P.O. Box 52310, Houston, Tex. 77052.	Texas Gas Transmission Corp. (block 314 Eugene Island Area, offshore Louisiana).	[8, 12] $1.5256	14.73
CI77-288 A 2-16-77	Pennzoil Louisiana and Texas Offshore, Inc., P.O. Box 2967, Houston, Tex. 77001.	Sea Robin Pipeline Co. (block 128, South Marsh Island Area, South Addition, offshore Louisiana).	[8, 12] $1.7798	15.025
CI77-289 (CI68-1394) B 2-16-77	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Natural Gas Pipeline Co. of America (West Cameron Area, offshore Louisiana).	(13)	-----
CI77-290 A 2-16-77	Chevron U.S.A., Inc., P.O. Box 599, Denver, Colo. 80201.	El Paso Natural Gas Co. (SEMU No. 67 well, NE¼SW¼, sec. 24, T-20-S, R-37-E, and wells "A" No. 7 well, SE¼NW¼, sec. 1, T-25-S, R-36-E, Lea County, N. Mex.).	[22] 59.6123¢	14.73
CI77-291 (G-7207) B 2-16-77	Chevron U.S.A., Inc. (formerly Chevron Oil Co., Western Division), P.O. Box 599, Denver, Colo. 80201.	El Paso Natural Gas Co. (various fields, Lea County, N. Mex.).	(23)	-----
CI77-292 (CI70-572) B 2-17-77	Oklahoma Natural Gas Co. (operator), et al. 624 South Boston Ave., Tulsa, Okla. 74119.	Natural Gas Pipeline Co. of America (East Grand Valley Field, Beaver County, Okla.).	(13)	-----
CI77-293 A 2-18-77	Dorchester Exploration, Inc., 1100 Midland National Bank Tower, Midland, Tex. 79701.	Arkansas, Louisiana Gas Co. (Rambo, North Smackover Field, Cass County, Tex.).	[8, 5] $1.7028	14.65
CI77-294 A 2-22-77	Amoco Production Co., Security Life Bldg., Denver, Colo. 80202.	Cities Service Gas Co. (Wamsutter Area, Carbon and Sweetwater Counties, Wyo.).	[8, 9, 16] 180.0750¢ @ 14.73	14.65
CI77-295 A 2-22-77	Hamilton Brothers Oil Co., suite 2000, 1600 Broadway, Denver, Colo. 80202.	El Paso Natural Gas Co. (Wolfcamp Formation, Eddy County, N. Mex.)	[16, 12] $1.00975	14.73
CI77-296 (CI72-174) B 2-23-77	Morris Cannan, 16th floor, Milam Bldg., San Antonio, Tex. 78205.	Texas Eastern Transmission Corp. (Burnell Field, Bee County, Tex.).	(25)	-----
CI77-297 A 2-24-77	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Columbia Gas Transmission Corp. (Lirette Field, Terrebonne Parish, La.).	[8, 12] 184.0¢	15.025

[1] Leases surrendered.

[2] By partial assignment dated Oct. 28, 1976, Mobil assigned to Enserch Exploration, Inc., all its rights in the subject acreage. Enserch subsequently drilled a well which is productive of oil with no merchantable gas.

[3] Exxon assigned interest in the Welder "C" lease to Petroleum Corp. of Texas, a small producer, who after attempting to operate the lease plugged the well.

[4] Nonproductive lease released.

[5] For wells commenced after Jan. 1, 1973, and prior to Jan. 1, 1975.

[6] Subject to upward and downward Btu adjustment and gathering.

[7] Includes 144.0 cents base price plus 11.6757 cents tax increment and (−)2.3351 cents Btu adjustment.

[8] Subject to adjustments pursuant to opinion No. 770, as amended.

[9] Applicant proposes to collect the national rate in accordance with opinion No. 770, as amended.

[10] Subject to upward and downward Btu adjustment.

[11] Applicant filed an amendment application on Jan. 14, 1977, deleting Valle Felix No. 1 well from its original application.

[12] Applicant is willing to accept a permanent certificate in accordance with opinion No. 770, as amended.

[13] Well(s) plugged and abandoned.

[14] Plus 4.0 cents per thousand cubic feet transportation costs.

[15] Includes $1.44 base price, $0.1168 tax reimbursement plus Btu adjustment.

[16] Subject to upward Btu adjustment, plus 1.0 cent-per-year escalation pursuant to opinion No. 699-JH.

[17] Applicant and purchaser are affiliated.

[18] Depleted and plugged.

[19] Includes 52.7122 cents base price, 4.2738 cents tax, 12.5369 cents Btu adjustment, less 5.0000 cents charge for compressing and purifying.

[20] Includes 93.4895 cents base price, 7.5802 cents tax, 22.2353 cents Btu adjustment, less 5.0000 cents charge for compressing and purifying.

[21] Despite contract price, Applicant requests certification at applicable national rate.

[22] Includes 53.0 cents base price, 4.882 cents tax reimbursement, 2.0159 cents Btu adjustment.

[23] Reclassification of well.

[24] Includes base price of 141.0 cents, 6.0625 cents tax reimbursement and 30.0125 cents Btu adjustment.

[25] Nonproductive.

[FR Doc.77-7529 Filed 3-15-77;8:45 am]

[Docket No. CP77-126]

COLUMBIA GAS TRANSMISSION CORP.

Order Allocating Portion of Natural Gas Imported Under Previously Extended Limited Term Authorization

MARCH 9, 1977.

On February 16, 1977, Columbia Gas Transmission Corporation (Columbia) filed an emergency application pursuant to section 3 of the Natural Gas Act, Part 153 of the Commission's regulations and § 1.7(b) of the Commission's rules of practice and procedure for an amendment to the Commission's orders issued in the above-styled proceeding on January 18, 1977, and February 1, 1977. On February 20, 1977, the Commission issued its "Order Extending Limited Term Authorization to Import Natural Gas" from Canada authorizing Columbia to import an additional 12 Bcf over and above the import volumes authorized by the Commission's Order issued on January 18, 1977, in the above-styled proceeding. The latter order permitted Columbia to import 250,000 Mcf per day that it had contracted to purchase from Trans-Canada Pipelines Ltd. (Trans-Canada) for a period of approximately sixty days from the date of authorization. As a part of this February 20, 1977, order the Commission invited interstate pipelines experiencing emergency conditions to request partial allocation of this additional import authorization.

On February 24, 1977, Equitable Gas Company (Equitable) pursuant to the notice and order concurrently issued by the Commission on February 20, 1977, in the above-styled proceeding filed for an allocation of 25,000 Mcf per day of the additional natural gas that Columbia was authorized to import from Canada under the latter order. Transcontinental Gas Pipe Line Corporation (Transco) on February 24, 1977, also tendered a request for an unspecified allocation of this import gas.

Following receipt of these two requests the Commission by order of February 28, 1977, prescribed expedited procedures to consider whether those requesting allocation of the additional importation volumes can make a showing that they have either an equivalent or greater relative need for this imported gas than does Columbia. The Commission held that if Transco or Equitable desire to be afforded an allocation of this gas these pipeline companies must not only show that they are entitled to an allocation but further show with specificity the volumetric size of the allocation which may be justified. The Commission then set a public hearing in this matter to commence on March 2, 1977, directing the Presiding Administrative Law Judge to thereafter certify the record and his recommendations to the Commission.

Hearings were held on March 2 and 3, 1977, followed on March 7, 1977, by the certification of record and recommendations of Presiding Administrative Law Judge Allen C. Lande. He recommended that Equitable's request for an allocation of 25,000 Mcf/d through March 1977, be granted, based upon a showing of greater relative need, and that payback by Equitable to Columbia be rejected.

For the reasons set forth below we grant Equitable's request and therefore order Columbia to deliver to Equitable commencing on March 10, 1977, 25,000 Mcf/d of its additional Canadian imported gas through March 31, 1977. In this latter regard Columbia and Equitable should immediately ascertain the most expeditious and inexpensive means for accomplishing such deliveries, whether through common interstate pipeline suppliers (Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation) or interconnected distribution or transmission facilities.

As a preliminary matter we note that Transco has decided not to pursue its request for an allocation of this imported gas (Tr. 9). Accordingly we deny its request since, as we already found in the February 28, 1977, order its request standing alone is deficient.

Before assessing the record evidence we note that both the Presiding Administrative Law Judge and Commission Staff (Tr. 173–1974), having the benefit of first-hand contact with the respective evidentiary presentations of Equitable and Columbia, supported Equitable's request. Such counsel is of valuable assistance and deserves considerable weight.

As a final prefatory matter, the relative need standard ascribed to such allocation proceedings by the Commission is not prone to facile implementation, especially in the present expedited context. We are dealing here with a very short-term curtailment time-frame in which the imminent curtailment of priority 1 human needs requirements of January and early February has been replaced by consideration of possible deliveries to priority 2 industrial customers in March. Moreover, we are faced with differing curtailment plans which make it difficult to reach a common ground for comparison. For example, Equitable operates under a 467–B type plan in West Virginia set by the state commission (Tr. 47) and under a combination end-use, pro-rata plan in Pennsylvania (Tr. 47–48). The resale customers of Columbia operate under curtailment plans prescribed by the state commissions of Pennsylvania, West Virginia, Kentucky, Maryland, Ohio, Virginia and New York. What is gleaned from the above is that our present comparative determination must out of necessity be somewhat qualitative, although we find that Equitable has satisfied the requirement of "specificity" set out in our February 28, 1977, order.

Turning to the record, while it is difficult to find with complete certainty that Equitable's need for this 25,000 Mcf/d of imported gas is greater than that of Columbia, we do find that it is at least equivalent to Columbia's need. During January and February 1977, Equitable was curtailing all industrial and commercial requirements down to plant protection levels and was experiencing priority 1 curtailment (Tr. 26–29, 53–55). Substantial unemployment (Tr. 31) and school closings (Tr. 59) resulted. Receipt of this 25,000 Mcf/d will permit Equitable to serve about 30% of its priority 2 industrial process load, which should significantly reduce unemployment (Tr. 30–31). Equitable plans to divide this 25,000 Mcf/d as follows: 12,000 Mcf/d for small commercial load, 3,000 Mcf/d for small industrial load, and 10,000 Mcf/d for industrial process. (Tr. 37). No requirements below priority 2 would be served in March (Tr. 49). Moreover, Equitable has acted reasonably in regards to attaching short-term emergency supplies, notwithstanding Columbia's criticism in this regard on cross-examination of Equitable's witness.

This state of curtailment for Equitable is of like magnitude with that of Columbia as a system and with that of its subsidiary, Columbia Gas of Pennsylvania (Tr. 34, 68–69, 134, 139–140). We therefore find that it is in the public interest to allocate 25,000 Mcf/d for the remainder of this month (approximately 525,000 Mcf) to Equitable out of the 12 Bcf previously authorized for Columbia to import from TransCanada. No payback obligation is warranted.

The Commission further finds: (1) Under the current supply and weather conditions, the public interest requires that the Commission allocate the emergency supply of natural gas being imported from Canada pursuant to the Commission order of February 20, 1977.

(2) The supply from Canada should be equitably allocated between Columbia and Equitable, with the latter receiving 25,000 Mcf/d for the remainder of this month, in order to best facilitate the rapid resumption of high priority service for those interstate pipeline presently before us.

The Commission orders: (A) A certificate is herein issued allowing the delivery of 25,000 Mcf/d through March 31, 1977, from Columbia to Equitable, such volumes being the equitably allocated share of an additional 12 Bcf of gas authorized to be imported from Canada by Columbia by order of February 20, 1977.

(B) The imported gas allocated to Equitable shall not be used to displace alternate fuel capability or to cause other gas to displace alternate fuel capability.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-7696 Filed 3-15-77;8:45 am]

[Docket No. RP72-157 (PGA77-5)]

CONSOLIDATED GAS SUPPLY CORP.

Proposed Changes in Gas Tariff

MARCH 10, 1977.

Take notice that Consolidated Gas Supply Corporation (Consolidated) on March 3, 1977 tendered for filing proposed changes in its FPC Gas Tariff, Second Revised Volume No. 1, pursuant to its PGA clause for rates to be effective April 1, 1977. The proposed rate decrease would produce approximately $3.6 million less annually in jurisdictional revenues.

Consolidated states that the PGA filing was triggered by a rate decrease filed by Tennessee Gas Pipeline Company on February 25, 1977 for effectiveness February 1, 1977. Consolidated has included in its filing rate changes made by Texas Eastern Transmission Corporation (Texas Eastern) (decrease) and Transcontinental Gas Pipe Line Corporation (Transco) (increase) both for effectiveness March 1, 1977. The filings of Texas Eastern and Transco did not trigger a PGA filing.

Consolidated states that any over collections for the period February 1, 1977 through March 31, 1977 will be put into Account 191, Unrecovered Purchased Gas Costs to be flowed through under the terms of its PGA Clause.

Consolidated requests a waiver of the 30-day notice requirements contained in its PGA clause since it did not receive the triggering supplier's revised rates in sufficient time to make a timely filing, and further asks for a waiver of any other of the Commission's Rules and Regulations in order to permit Twenty-First Revised Sheet Nos. 8 and 9 to become effective as proposed.

Copies of this filing were served upon Consolidated's jurisdictional customers, as well as interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, 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 March 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-7688 Filed 3-15-77;8:45 am]

[Docket Nos. CP73-258, CP73-260]

EL PASO EASTERN CO. AND EL PASO NATURAL GAS CO.

Supplement and Amendments

MARCH 9, 1977.

Take notice that on March 1, 1977, El Paso Eastern Company (El Paso Eastern), P.O. Box 1440, Houston, Texas 77001, filed in Docket No. CP73-258 a supplement pursuant to Section 3 of the Natural Gas Act to its pending application in said docket to import liquefied natural gas (LNG) from Algeria setting forth the location of El Paso LNG Terminal Company's (LNG Terminal) proposed receiving, storage and vaporization facilities which are to be the point of receipt for gas imported by El Paso Eastern and in Docket No. CP73-259 an amendment to its pending application in said docket for a certificate of public convenience and necessity so as to authorize the sale of natural gas to El Paso Natural Gas Company (El Paso Natural). Take further notice that on March 1, 1977, El Paso Natural filed in Docket No. CP73-260 an amendment to its pending application in said docket for a certificate of public convenience and necessity to authorize the construction and operation as an extension of its interstate pipeline system approximately 463 miles of new pipeline and related compressor horsepower. The proposals are more fully set forth in the supplement and the amendments which

are on file with the Commission and open to public inspection.

On October 15, 1976, El Paso Eastern filed in Docket No. CP73-258 an amendment to its pending application pursuant to Section 3 of the Natural Gas Act so as to authorize the importation into the United States from Algeria of an annual quantity of LNG containing 410,625,000 Btu's for a twenty-year period after an initial buildup to commence in 1983 and with first regular delivery in early 1984. This is equivalent to 1,000,000 Mcf of vaporous gas daily at 1,125 Btu's per cubic foot.[2]

El Paso Eastern by its supplement to its pending application in Docket No. CP73-258 sets forth the point of importation of the LNG into the United States. It is stated that LNG Terminal would construct LNG terminal facilities known as the LaSalle Terminal in the vicinity of Matagorda Bay on the Texas Gulf Coast. It is further stated that LNG Terminal was concurrently filing an application pursuant to Section 7(c) of the Natural Gas Act to construct and operate the LaSalle Terminal.[3] In addition El Paso by its amendment to its pending application in Docket No. CP73-259 proposes to sell 65 percent of the natural gas resulting from regasification at the LaSalle Terminal to El Paso Natural for resale. The price of the gas is estimated to $323 per million Btu. It is stated that El Paso Eastern was concurrently filing an application for a certificate of public convenience and necessity authorizing the sale of the remaining 35 percent of the gas resulting from regasification at the LaSalle Terminal to United LNG Company (United LNG), a wholly-owned subsidiary of United Gas Pipe Line Company (United), for resale.[4]

El Paso Natural by its amendment to its pending application in Docket No. CP73-260 proposes to construct and operate as an extension of its interstate pipeline system approximately 463 miles of new pipeline and related compressor horsepower extending in a southeasterly direction across Texas from a point of connection at the outlet of its Waha Plant in Reeves County, Texas, to the outlet of LNG Terminal's LaSalle Terminal and by means of such extension to transport United LNG's 35 percent of the gas regasified at the LaSalle terminal for delivery into United's interstate system near Victoria, Texas, and its own 65 percent of the regasified gas for delivery to its existing customers in west Texas, New Mexico, and Arizona, and at delivery points on the boundary between Arizona and Nevada, and Arizona and California. It is stated that El Paso Natural would construct approximately 31 miles of 36-inch pipeline, approximately 432 miles of 30-inch pipeline, five compressor stations totaling 55,950 horsepower, one spare 3,730 horsepower compressor unit, and miscellaneous metering and interconnection facilities at an estimated cost of $255,186,813, which cost would be financed 70 percent by debt and 30 percent by equity funds.

Any person desiring to be heard or to make any protest with reference to said supplement and amendments should on or before April 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. Persons who have heretofore filed need not do so again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-7685 Filed 3-15-77;8:45 am]

[Docket Nos. RP72-155 and RP76-59 (PGA77-2)]

EL PASO NATURAL GAS CO.

Proposed Change in Rate Pursuant to Purchased Gas Cost Adjustments

MARCH 10, 1977.

Take notice that El Paso Natural Gas Company ("El Paso") on February 25, 1977, tendered for filing a notice of change in rates for jurisdictional gas service rendered to customers served by its interstate gas system. Such service is rendered under rate schedules affected by and subject to Article 19, Purchased Gas Cost Adjustment Provision ("PGAC") contained in the General Terms and Conditions applicable to El Paso's FPC Gas Tariff, Original Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A, and under rate schedules affected by and subject to the PGAC—Clean High Pressure Gas Provision ("PGAC-CHPG") contained in El Paso's FPC Gas Tariff, Original Volume No. 2A.

El Paso states that the instant notice of change in rates is occasioned solely by, and will compensate El Paso only for, increases in the cost of purchased gas (including gas produced from leases acquired after October 7, 1969) which will become effective on or before April 1, 1977, applied to volumes purchased for the twelve (12) month period ending December 31, 1976.

El Paso further states that the annualized increase in purchased gas costs under the instant PGAC is $65,000,730, based upon adjusted purchased gas volumes for the twelve (12) month period ending December 31, 1976. When applied to El Paso's interstate system total sales volumes for the same period, the purchased gas cost increase equates to 5.69¢ per Mcf, which amount will be uniformly applied to all rate schedules contained in El Paso's Original Volume No. 1 tariff and those special rate schedules contained in El Paso's Third Revised Volume No. 2 and Original Volume No. 2A.[1]

In addition, El Paso states that its Account 191, Unrecovered Purchased Gas Cost, contains a balance of $49,217,474, applicable to increases in purchased gas cost, as of December 31, 1976. Included in said Account 191 balance is an estimated amount of $17,020,805 attributable to increased gas costs which El Paso will recover by means of its special Opinion Nos. 770 and 770-A surcharge during the period January 1, 1977, through September 30, 1977.[2] El Paso states that in order to avoid a double recovery of the $17,020,805 by the proposed surcharge adjustment, El Paso has reduced its December 31, 1976, Account 191 balance of $49,217,474 by said $17,020,805 for purposes of determining the surcharge adjustment to be effective on and after April 1, 1977, by utilizing the net adjusted unrecovered gas cost amount of $32,196,669. Such adjusted cost, when applied to El Paso's jurisdictional sales volumes for the same period, produce an additional adjustment in rates of 6.13 cents per Mcf to be applied as a surcharge to all rate schedules affected by such PGAC. El Paso further states that after eliminating the currently effective surcharge rate of 4.00 cents per Mcf made effective December 1, 1976, the net adjustment to its currently effective rates attributable to this instant PGAC notice of change is an increase of 7.82 cents per Mcf.

El Paso states that the Account 191 balance includes an amount of $2,762,679 attributable to purchases made during the six month period ending December 31, 1976, from certain reversionary interest owners subject to Opinion No. 737, as amended, issued July 11, 1975, at

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[1] Notice of El Paso Eastern's amendment to its pending application in Docket No. CP73-258 was published in the FEDERAL REGISTER on November 9, 1976 (41 FR 49529).

[2] LNG Terminal on March 1, 1977, filed an application in Docket No. CP77-269 for a certificate of public convenience and necessity authorizing the construction and operation of the LaSalle Terminal.

[3] El Paso Eastern filed an application for a certificate of public convenience and necessity authorizing the sale of gas to United LNG on March 1, 1977, in Docket No. CP77-270.

[1] The special rate schedules subject as to this PGAC adjustment are Rate Schedules X-7, X-14, X-25, X-30, X-33 and X-35 of El Paso's FPC Gas Tariff, Third Revised Volume No. 2, and Rate Schedules FS-25, FS-26, FS-27, FS-28, FS-30, FS-35 and F-45 of El Paso's FPC Gas Tariff, Original Volume No. 2A.

[2] Such special surcharge rate is 2.69 cents per Mcf and was designed to recover increased gas costs in the amount of $19,383,371 resulting from Opinion Nos. 770 and 770-A increases during the period July 27, 1976, through November 30, 1976, and not reflected in El Paso's rates until December 1, 1976. Such surcharge adjustment was included as a part of the special PGAC filing made by El Paso on November 22, 1976, and made effective on December 1, 1976, by order issued November 30, 1976, at Docket Nos. RP72-155 and RP76-59 (PGA77-1).

Docket Nos. CP75-209 and CI75-594. Further, El Paso states that included in El Paso's annualized gas cost adjustment is $7,115,017 subject to possible refund by El Paso, which $7,115,017 is comprised of emergency purchases made at rate levels in excess of the national rate levels in the amount of $253,504 and $6,861,513 attributable to purchases made from the reversionary interest owners subject to said Opinion No. 737.

El Paso states the current adjustment applicable to those Original Volume No. 2A special rate schedules affected by the PGAC-CHPG [*] is an increase of 21.1732 cents per Mcf. Such current adjustment is comprised of an increase in the weighted average purchased cost of clean, high-pressure gas equating to 10.2844 cents per Mcf and a surcharge adjustment of 10.8888 cents per Mcf, representing the unrecovered purchased gas cost balance contained in Account 191 as of December 31, 1976, adjusted to eliminate the remaining amounts applicable to the special Opinion Nos. 770 and 770-A surcharge under the PGAC-CHPG. Based upon sales volumes under such special rate schedules for the twelve months ended December 31, 1976, said increase of 10.2844 cents per Mcf will increase revenues by $123,096 and based upon the gas sales volumes under the special rate schedules subject to the PGAC-CHPG for the six months period ending December 31, 1976, the surcharge adjustment of 10.8888 cents per Mcf will recover during the six month period subsequent to April 1, 1977, $62,372 of the unrecovered purchased gas cost recorded in Account 191. El Paso states that as a result of eliminating the currently effective surcharge rate of 4.4913 cents per Mcf made effective on December 1, 1976, the net adjustment to the currently effective rates applicable to the affected spcial rate schedules is an increase of 16.6819 cents per Mcf attributable to the instant PGAC-CHPG notice of change.

El Paso states that the Account 191 balance applicable to the PGAC-CHPG includes an amount of $40,679, attributable to purchases made during the six month period ending December 31, 1976, and that included in El Paso's PGAC-CHPG gas cost adjustment is $506,640 subject to possible refund which amounts are attributable to purchases made from the aforementioned reversionary interest owners.

El Paso has requested waiver of all applicable rules and regulations of the Commission as may be necessary to permit the tendered tariff sheets to become effective on April 1, 1977.

El Paso states copies of the filing and attachments have been served upon all parties of record in Docket Nos. RP72-155 and RP76-59, and, otherwise, upon all affected customers and interested state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before March 25, 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. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-7691 Filed 3-15-77;8:45 am]

[Docket No. E77-48]

EMERGENCY NATURAL GAS ACT OF 1977

Supplemental Emergency Order

By order issued March 4, 1977, pursuant to section 6 of the Emergency Natural Gas Act of 1977, Pub. L. 95-2 (91 Stat. 4 (1977)), I denied, without prejudice, the request of Natural Gas Pipeline Company of America (Natural) to make certain emergency purchases. The order further stated that, where expenditures were made prior to February 22, 1977, for the purpose of delivering such gas supplies to Natural, Natural could make such purchases consistent with the doctrine of "Colorado Interstate Gas Company," Docket No. E77-31 (February 28, 1977).

On March 9, 1977, Natural submitted a supplemental petition in which it set forth information indicating that Pioneer Natural Gas Company (Pioneer), Good Hope Refineries, Inc. (Good Hope), and Coronado Transmission Company (Coronado) had made expenditures prior to February 22, 1977, for the purpose of delivery of the subject gas supplies to Natural. Based upon the information submitted by Natural, I find that the proposed purchases from Pioneer, Good Hope and Coronado satisfy the "Colorado Interstate" criteria. Therefore, I authorize Natural to make such purchases notwithstanding Order No. 6.

Natural also states that it has agreed to pay transportation charges of (i) 5 cents per Mcf to Mississippi River Transmission Company (Mississippi) in order to receive the gas from Pioneer and (ii) 15 cents per Mcf to Fuel Marketing, Inc. (Fuel Marketing) in order to pay for the installation and operation of facilities required to receive gas from Coronado. Since the parties have agreed upon the transportation charges to be paid, I find no reason to fix other charges and authorize Mississippi and Fuel Marketing to transport the subject gas supplies for Natural as described in Natural's March 9, 1977 petition.

Natural also requests permission to make emergency purchases from Aminoil, U.S.A. (Aminoil), and other indepndent producers in the Sacramento Basin Area, California. Natural's petition states that Aminoil will obtain the release of a portion of this gas from intrastate commerce and that facilities will be constructed to deliver the gas to Natural. These statements fail to satisfy the criteria of "Colorado Interstate, supra," and "United Gas Pipe Line Company," Docket No. E77-33 (March 3, 1977), which require that the construction of facilities had been commenced or that a formal written release of gas from an intrastate contract had been obtained prior to February 22, 1977.

Natural shall submit weekly reports as required by Order No. 4.

This order is issued pursuant to the authority delegated to me by the President in Executive Order No. 11969 (February 2, 1977), and shall be served upon Natural, Pioneer, Good Hope, Coronado, Fuel Marketing, Mississippi, and Aminoil. This order shall also be published in the FEDERAL REGISTER.

This order and authorization granted herein are subject to the continuing authority of the Administrator under Pub. L. 95-2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,
Administrator.

MARCH 10, 1977.

[FR Doc.77-7722 Filed 3-15-77;8:45 am]

[Docket No. E77-51]

EMERGENCY NATURAL GAS ACT OF 1977

Emergency Order

On March 9, 1977, Panhandle Eastern Pipe Line Company, Panhandle) filed, pursuant to section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 (1977)), a request for an order authorizing an emergency purchase of aproximately 30,000 Mcfd of natural gas from Good Hope Refineries, Inc. (Good Hope). Panhandle is purchasing the subject volumes as agent for its customers, Indiana Gas Company, Inc. (Indiana Gas), and Citizens Gas and Coke Utility (Citizens Gas). Total volumes expected to be delivered are 4.5 Bcf with 2.5 Bcf to be delivered to Indiana Gas and 2.0 Bcf to be delivered to Citizens Gas.

Panhandle will purchase the subject volumes at a price of $2.25 per MMBtu. I find this price to be fair and equitable in accordance with Order No. 2.

Good Hope will deliver these volumes through Southern Gas Transmission Corporation (Southern Gas) to Trunkline Gas Company (Trunkline) at a point where the pipelines of Trunkline and Southern Gas cross. Trunkline will deliver the volumes to Panhandle at Tuscola, Illinois, and Panhandle will deliver to Indiana Gas and Citizens Gas. Trunkline will construct facilities necessary to receive these volumes from Southern Gas. In addition, Panhandle

[*] The special rate schedules subject to PGAC-CHPG are Rate Schedules PS-3, PS-6, PS-7, PS-10 and PS-32.

and Trunkline will receive total transportation charges of 20 cents per Mcf plus 4 percent of the volumes transported for compressor fuel.

I find that contractual provisions between Southern Gas and its producers, transporters and other suppliers of gas may prohibit the sale of natural gas in interstate commerce and the commingling of its intrastate pipeline gas supplies with gas moving in interstate commerce. The transportation an delivery of gas for which Panhandle seeks approval may result in some commingling of interstate natural gas with Southern Gas' normal intrastate pipeline system gas supplies and with gas owned by other third parties. This order shall be considered as applying to all such commingled gas. Under the provisions of section 9(b), (c) of Pub. L. 95-2 (91 Stat. at 9) the suppliers of such gas which is so commingled, may not terminate existing contracts with such other parties or require a redetermination of the prices provided in such contracts by reason of this transaction. Contractual termination, prohibition or redetermination provisions in any such contracts referred to above are not enforceable by reason of section 9 of Pub. L. 95-2 since Good Hope and Southern Gas are selling, delivering and transporting gas for Panhandle pursuant to section 6(a) of that Act. Good Hope, Southern Gas and any third person whose gas is commingled with Panhandle's gas shall refer all relevant information concerning any attempt to terminate existing contracts or require a redetermination of prices to the Adminisrator for appropriate action.

According to the official files of the Federal Power Commission, Good Hope and Southern Gas are not classified as natural gas companies within the meaning of the Natural Gas Act. Section 6(b)(1) of the Act provides in part that "[t]he provisions of the Natural Gas Act shall not apply * * * to any sale to an interstate pipeline * * * under the authority of subsection (a) or to any transportation by an intrastate pipeline in connection with such sale * * *." 91 Stat. at 8. In addition, section 6(c)(2) provides:

> Compliance by any pipeline with any order under this subsection shall not subject such pipeline to regulation under the Natural Gas Act or to regulation as a common carrier under any provision of state law.

Thus, the sale, delivery and transportation of this gas will not subject Good Hope and Southern Gas to the provisions of the Natural Gas Act or to regulation as a common carrier under state law.

Panhandle advises that Indiana Gas and Citizens Gas have advised that they are not serving any uses set forth in 18 CFR 2.78(a)(1)(iv)-(ix) and that the sale complies with Order No. 6. The approval of this sale is conditioned upon the submission of sworn statements by Indiana Gas and Citizens Gas that the subject purchase complies with Order No. 6.

Pursuant to section 6(a) of the Act, I authorize Good Hope to sell gas to Panhandle as agent for Indiana Gas and Citizens Gas. Pursuant to section 6(c)(1) of the Act, I authorize Trunkline to construct the facilities necessary to receive this gas from Southern Gas. Since the parties have agreed upon the transportation charges, I find no basis on which to fix other charges.

Indiana Gas and Citizens Gas shall submit weekly reports as required by Order No. 4.

This order is issued pursuant to the authority delegated to me by the President in Executive Order No. 11969 (February 2, 1977), and shall be served upon Panhandle, Good Hope, Southern Gas, Trunkline, Indiana Gas and Citizens Gas. This order shall also be published in the FEDERAL REGISTER.

This order and authorization granted herein are subject to the continuing authority of the Administrator under Pub. L. 95-2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,
Administrator.

[FR Doc.77-7718 Filed 3-15-77;8:45 am]

[Docket No. E77-52]

EMERGENCY NATURAL GAS ACT OF 1977

Emergency Order

On March 9, 1977, Raton Natural Gas Company (Raton) filed, pursuant to section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 1977)), an application for authorization to purchase 300 Mcfd and up to 500 Mcfd from Independent Gas Service Company for a period of thirty (30) days.

Raton proposes to purchase the subject volumes at a price of $2.25 per Mcf inclusive of all adjustments. To the extent such price exceeds $2.25 per MMBtu, it is not fair and equitable in accordance with Order No. 2.

Independent will deliver the subject volumes to Greely Gas Company (Greely) which will deliver to Colorado Interstate Gas Company (CIG). CIG will deliver to Raton. Raton advises that there will be no charges for the subject transportation and that deliveries will be made through existing facilities.

Raton advises and I find that the gas made available by Independent and the transportation of such gas by Greely will result in commingling of interstate natural gas with the gas delivered by Independent and Greely's normal interstate system gas supply and with volumes of gas owned by other parties. The contractual provisions between Greely and its producers, transporters and other suppliers of gas prohibit the sale of natural gas in interstate commerce and the commingling of their intrastate pipeline system gas supplies with gas moving in interstate commerce. The sale, transportation and delivery of gas for which Raton seeks approval may result in some commingling of interstate natural gas with Greely's normal intrastate gas supplies and with gas owned by other third parties. This order shall be considered as applying to all such commingled gas. Under the provisions of section 9(b), (c) of Pub. L. 95-2 (91 Stat. at 9), the suppliers of such gas, which is so commingled, may not terminate existing contracts with Greely or such other parties or require a redetermination of the prices provided in such contracts by reason of this transaction. Contractual termination, prohibition or redetermination provisions in any such contracts referred to above are not enforceable by reason of section 9 of Pub. L. 95-2 since Independent and Greely are selling, delivering and transporting gas for Raton pursuant to section 6(a) of that Act. Independent and Greely and any third person whose gas is commingled with Raton's gas shall refer all relevant information concerning any attempt to terminate existing contracts or require a redetermination of prices to the Administrator for appropriate action.

According to the official files of the Federal Power Commission, Independent and Greely are not classified as natural gas companies within the meaning of the Natural Gas Act. Section 6(b)(1) of the Act provides in part that "[t]he provisions of the Natural Gas Act shall not apply * * * to any sale to an interstate pipeline * * * under the authority of subsection (a) or to any transportation by an intrastate pipeline in connection with such sale * * *." 91 Stat. 4, 8. In addition, section 6(c)(2) provides:

> Compliance by any pipeline with any order under this subsection shall not subject such pipeline to regulation under the Natural Gas Act or to regulation as a common carrier under any provision of state law.

Thus, the sale, delivery and transportation of this gas will not subject Independent and Greely to the provisions of the Natural Gas Act.

Order No. 6 provides in part that, subsequent to February 22, 1977, no interstate pipeline may contract for gas pursuant to section 6 of the Act if, contemporaneously with the execution of such contract, the interstate pipeline is serving directly or indirectly any uses classified in Priorities 4 through 9 as defined by the Federal Power Commission in 18 CFR 2.78(a)(1)(iv)-(ix). Ration's filing does not demonstrate that it will not serve such uses directly or indirectly. Therefore Raton's authority to purchase gas from Independent is conditioned upon Raton's submission of a sworn statement that, based upon information reasonably available to it at the time of execution of the contract, it was not serving any uses classified in Priorities 4 through 9 indirectly as well as directly.

I authorize Independent to sell gas to Raton at a price not to exceed $2.25 per MMBtu, and authorize and order Greely and CIG to transport and deliver gas to Raton on the above-stated terms and conditions.

Raton shall submit weekly reports as required by Order No. 4.

This order is issued pursuant to the authority delegated to me by the President in Executive Order No. 11969 (Feb-

ruary 2, 1977), and shall be served upon Raton, Independent, Greely and CIG. This order shall also be published in the FEDERAL REGISTER.

This order and authorization granted herein are subject to the continuing authority of the Administrator under Pub. L. 95-2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,
Administrator.

MARCH 10, 1977.

[FR Doc.77-7719 Filed 3-15-77;8:45 am]

[Docket No. E77-53]

EMERGENCY NATURAL GAS ACT OF 1977

Emergency Order

On March 10, 1977, El Paso Natural Gas Company (El Paso) filed, pursuant to section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 (1977)), an application requesting a determination that El Paso may purchase, under Order No. 6, those supplies for which an oral agreement was executed on or before February 22, 1977, and, in some cases, formal written agreements to purchase such gas were executed. For the reasons set forth below, I grant in part and deny in part El Paso's requests.

"Natural Gas Pipeline Company of America," Docket No. E77-48 (March 4, 1977), "United Gas Pipe Line Company," Docket No. E77-33 (March 2, 1977), and "Colorado Interstate Gas Company," Docket No. E77-31 (February 28, 1977), delineate certain sales which may be made notwithstanding Order No. 6. Those cases permit purchases to be made where (i) construction of facilities to be used solely to deliver the gas to the proposed purchaser had commenced prior to February 22, 1977; (ii) a binding contract for the sale of such gas supplies had been executed prior to February 22, 1977, and the purchaser had obtained a long term dedication of the gas reserves under the Natural Gas Act (15 U.S.C. 717, et seq.) following the emergency purchase; or (iii) the seller had obtained a formal written release of gas from an existing intrastate contract prior to February 22, 1977. These cases also state that oral agreements will not be accepted unless the type of detrimental reliance set forth above can be demonstrated.

El Paso's filing demonstrates that El Paso had actually executed formal written agreements for some purchases prior to February 22, 1977. In some cases, deliveries had also commenced on or before February 22, 1977. These purchases, from John Yates, et al. (John Yates), Antweil, et al. (Antweil), Yates Petroleum Corporation (Yates), Aminoil U.S.A., Inc. (Aminoil), Samedan, et al. (Samedan), Depco, Inc. (Depco), Sabine Production Company (Sabine), B. Bennett (Bennett), and Inexco Oil Company (Inexco), may be made at fair and equitable prices pursuant to Order No. 2 notwithstanding Order No. 6.

The proposed purchases from Yates Petroleum Corporation, et al. (Yates, et al.) and Monsanto Company (Monsanto) do not satisfy the criteria of the above cases. There are no written contracts for these purchases and no indication that the construction of facilities for El Paso to receive these gas supplies had commenced on or before February 22, 1977. Thus, these proposed purchases do not satisfy the criteria of the above-cited cases and may not be made under Order No. 6.

El Paso also states that, if not otherwise permitted to make these purchases, it would agree to the condition in "Colorado Interstate" that equivalent volumes be made available to any interstate pipeline or local distribution company which would be entitled to receive gas under section 4(a) of the Act (91 Stat. 4, 5). This condition in "Colorado Interstate" was not an independent basis for approving that purchase. Rather it was a condition imposed on a purchase which was approved because Colorado Interstate had demonstrated a detrimental reliance on Order No. 2. El Paso has not demonstrated such a reliance with respect to its proposed purchases from Yates, et al., and Monsanto.

El Paso shall submit weekly reports as required by Order No. 4.

This order is issued pursuant to the authority delegated to me by the President in Executive Order No. 11969 (February 2, 1977), and shall be served upon El Paso, John Yates, Antweil, Yates, Aminoil, Yates, et al., Samedan, Depco, Sabine, Bennett, Inexco and Monsanto. This order shall also be published in the FEDERAL REGISTER and shall remain in effect unless and until Order No. 6 is modified or rescinded.

This order and authorization granted herein are subject to the continuing authority of the Administrator under Pub. L. 95-2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,
Administrator.

MARCH 10, 1977.

[FR Doc.77-7720 Filed 3-15-77;8:45 am]

[Docket No. E77-54]

EMERGENCY NATURAL GAS ACT OF 1977

Emergency Order

On March 10, 1977, Texas Gas Transmission Corporation (Texas Gas), as agent for certain of its customers,[1] filed, pursuant to section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 (1977)), an application for authorization to transport natural gas which it is purchasing for certain of its customers and to construct the facilities necessary to receive this gas into its pipeline system.

Texas Gas, as agent, executed a contract on February 16, 1977, with Breathitt Gas Transmission Corporation (Breathitt) for the purchase of approximately 100 to 150 Mcfd from leasehold interests owned or controlled by Breathitt in Hopkins County, Kentucky. The total price to be paid by Texas Gas, as agent, is $2.25 per MMBtu. Thus, the proposed price is fair and equitable in accordance with Order No. 2.

Texas Gas will construct a meter station and related facilities at an estimated cost of $6,600 in Hopkins County, Kentucky, to receive the gas from Breathitt. These costs will be paid on a pro-rata basis by Texas Gas' customers which receive these volumes. In addition, Texas Gas' proposed transportation rates are based upon the cost data supporting the settlement rates in Texas Gas' most recent Federal Power Commission rate case in Docket No. RP76-17 and the retention of a percent of the transported volumes for compressor fuel and company use and loss. I find no basis on which to fix other charges since the parties have agreed upon the transportation charges and payment of the construction costs.

Breathitt advises and I find that contractual provisions between Breathitt and its producers, transporters and other suppliers of gas prohibit the sale of natural gas in interstate commerce and the commingling of its intrastate pipeline system gas supplies with gas moving in interstate commerce. The transportation and delivery of gas for which Texas Gas seeks approval may result in some commingling of interstate natural gas with Breathitt's normal intrastate pipeline system gas supplies and with gas owned by other third parties. This order shall be considered as applying to all such commingled gas. Under the provisions of section 9 (b), (c) of Pub. L. 95-2 (91 Stat. at 9), the suppliers of such gas, which is so commingled, may not terminate existing contracts with Breathitt or such other parties or require a redetermination of the prices provided in such contracts by reason of this transaction. Contractual termination, prohibition or redetermination provisions in any such contracts as referred to above are not enforceable by reason of section 9 of Public Law 95-2 since Breathitt is selling, delivering and transporting gas for Texas Gas pursuant to section 6(a) of that Act. Breathitt and any third person whose gas is commingled with Texas Gas' gas shall refer all relevant information concerning any attempt to terminate existing contracts or require a redetermination of prices to the Administrator for appropriate action.

According to the official files of the Federal Power Commission, Breathitt is not classified as a natural gas company within the meaning of the Natural Gas Act. Section 6(b)(1) of the Act provides in part that "[t]he provisions of the Natural Gas Act shall not apply * * * to any sale to an interstate pipeline * * * under the authority of subsection (a) or to any transportation by an intrastate pipeline in connection with such sale * * *." 91 Stat. at 8. In addition, section 6(c)(2) provides:

Compliance by any pipeline with any order under this subsection shall not subject such pipeline to regulation under the Nat-

[1] These customers are local distribution companies and interstate pipelines as defined in sections 2 (1), (5) of the Act (91 Stat. 4).

ural Gas Act or to regulation as a common carrier under any provision of state law.

Thus, the sale, delivery and transportation of this gas will not subject Breathitt or any person supplying gas to Breathitt to the provisions of the Natural Gas Act or to regulation as a common carrier under state law.

Based upon the foregoing, Texas Gas is authorized to purchase gas, as agent, from Breathitt, to construct facilities to receive such gas and to transport such gas for certain of its customers. This authorization is conditioned on (i) Texas Gas' submission of the names of the customers for which it is acting as agent, (ii) those customers agreeing to submit reports as required by Order No. 4 and (iii) such customers certifying that they are entitled to purchase gas under the provisions of Order No. 6.

This order is issued pursuant to the authority delegated to me by the President in Executive Order No. 11969 (February 2, 1977), and shall be served upon Texas Gas and Breathitt. This order shall also be published in the FEDERAL REGISTER.

This order and authorization granted herein are subject to the continuing authority of the Administrator under Pub. L. 95-2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,
Administrator.

MARCH 10, 1977.

[FR Doc.77-7721 Filed 3-15-77;8:45 am]

[Docket No. ER77-196]

FLORIDA POWER CORP.

Order Accepting for Filing and Suspending Proposed Tariff Sheets and Establishing Procedure

MARCH 10, 1977.

By letter dated February 11, 1977, Florida Power Corporation (Florida) submitted for filing proposed increased rates under its FPC electric tariff which provides rates for full requirements service, partial requirements service, and transmission service. Under the present tariff Florida currently provides only full requirements service to 14 municipal and 9 cooperative customers. Additionally, Florida proposes to change rates for two partial requirements customers served under separate contracts, the Reedy Creek Utilities Company and the City of Wauchula. The base rates in these contracts remain unchanged, but the fuel adjustment base index is changed to reflect Period II fuel cost levels. There are currently no customers receiving transmission or partial requirements service under the tariff.

The company stated that its filing is necessitated by the anticipated placing in service on February 28, 1977, of its new Crystal River Unit No. 3, a nuclear unit, which is expected to have large cost effects, particularly fuel cost reduction. The company stated that it has sold 10 percent of its 100 percent interest in the unit to a group of small utilities and that it anticipated that on February 28, it will initiate partial requirements and transmission service to five full requirements customers, and transmission service to a number of other owners of Crystal River No. 3.

Florida claims that the proposed increase amounts to $5,508,117 or 6.7 percent if 1976 fuel costs are projected into the test period as proposed by Florida for this purpose.

The proposed rates for full and partial requirements service consist of (1) a customer charge; (2) a flat demand charge for full and two step demand charge for partial requirements; and (3) a two step energy charge for full and a flat energy charge for partial requirements, with variations for four different delivery voltages varying from 230/115 kV to under 12 kV. The transmission rate provides separately for bulk and subtransmission service and for firm and non-firm service. The rate for bulk transmission (above 69 kV) is a flat rate per kW for firm service and a flat energy charge for non-firm service. The rate for subtransmission is also at a flat rate per kW which increases as the voltage delivery level lowers from 69 kV to below 12 kV delivery. Where changes have been made in rate design, Florida states such changes are related to cost of service and use characteristics. The fuel adjustment has been revised to reflect a lower base cost of fuel (1.448¢/kWh) based on the projected operation of the Crystal River Nuclear Unit.

The Company's case-in-chief is based on a test period consisting of the 12 months ended February 28, 1978. Florida's Statement N for this period indicates that the proposed rate increase will result in an earned rate of return in the range of 8.90 percent to 9.08 percent.

Public notice of the filing was issued on February 18, 1977, with comments, protests or petitions to intervene due on or before March 2, 1977. Subsequently, in a Notice of Extension of Time, issued March 2, 1977,[1] the period for filing comments, protests or petitions to intervene was extended until March 4, 1977.

On March 4, 1977, petitions to intervene in this docket were filed by the Seminole Electric Cooperative, Inc. (Seminole) and by various other wholesale customers of Florida Power[2] (Cities). Seminole and the Cities both allege interests in these proceedings, and assert that they will be directly affected by the outcome. The Commission's review indicates that both petitioners have interests sufficient to warrant intervention.[3] Accordingly, intervention shall be granted.

The Commission's review of Florida's proposed rate charges indicates that Florida's proposed rate increases have not been shown to be just and reasonable and therefore may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, the proposed rate increase should be accepted for filing and suspended for one day.

The Commission finds: (1) Florida's proposed rate increase should be accepted for filing and suspended for one day.

(2) Good cause exists to grant the petitions to intervene of Seminole and the Cities.

The Commission orders: (A) Florida's proposed rate increase is hereby accepted for filing and use thereof suspended for one day, or until March 14, 1977, at which time it may become effective, subject to refund, pending the outcome of the litigation thereon.

(B) Pursuant to the authority of the Federal Power Act, particularly sections 205 and 206 thereof, the Commission's rules of practice and procedure, and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates, charges, terms, and conditions of service included in Florida's FPC Electric Tariff as proposed to be revised by the subject filings.

(C) The Staff shall prepare and serve top sheets on all parties for settlement purposes on or before June 13, 1977. (See Administrative Order No. 157.)

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose, (See Delegation of Authority, 18 CFR 3.5 (d)), shall convene a settlement conference in this proceeding on a date certain within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Said Presiding Administrative Law Judge is hereby authorized to establish all procedural dates and to rule upon all motions (with the exceptions of petitions to intervene, motions to consolidate and sever, and motions to dismiss), as provided for in the Rules of Practice and Procedure.

(E) Florida shall file monthly with the Commission the report on billing determinants and revenues collected under under the presently effective rates and the proposed increased rates filed herein, as required by § 35.19a of the Commission regulations, 18 CFR § 35.19a.

(F) Seminole and the Cities are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *Provided, however,*

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[1] On February 28, 1977, the Commission received a joint Motion for extension of time filed by Seminole Electric Cooperative, Inc. and the Cities of Alachua, Bartow, Bushnell, Chattahoochee, Fort Meade, Lake Helen, Leesburg, Mount Dora, Newberry, Ocala, Quincy and Williston, Florida. Florida Power Corporation did not oppose the motion.

[2] The wholesale customers seeking to intervene are the Cities of Alachua, Bartow, Bushnell, Chattahoochee, Fort Meade, Lake Helen, Leesburg, Mount Dora, Newberry, Ocala, Quincy and Wilkiston, Florida.

[3] In their respective petitions to intervene, both Seminole and the Cities indicate that settlement agreements may soon be filed in this docket. Petitioners support acceptance by the Commission of Florida Power's filing and imposition by the Commission of only a one day suspension.

That participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; *And provided, further,* That the admission of such intervenors 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.

(G) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER and shall serve a copy thereof on the wholesale customers of Florida.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-7695 Filed 3-15-77;8:45 am]

[Docket No. RI77-37]

GREAT SOUTHERN OIL & GAS COMPANY, INC.

Petition for Special Relief

MARCH 10, 1977.

Take notice that on February 23, 1977, Great Southern Oil & Gas Company, Inc. (Petitioner), P.O. Box 52957, OCS, Lafayette, Louisiana, 70505, in Docket No. RI77-37, filed a petition for special relief pursuant to Section 2.76 of the Commission's General Policy and Interpretations. Petitioner requests relief from the nation-wide flowing gas rate established in Opnion No. 749 for the sale of natural gas to Columbia Gas Transmission Corporation from acreage in the West Gueydan Field, Vermilion Parish, Louisiana. Petitioner does not specify the proposed rate for the gas production. Petitioner states that unless the requested relief is granted, the project will be abandoned.

Petitioner further states that it acquired its interest in the subject acreage from Vermillion Irrigation Company which had, in turn, acquired all outstanding interest in the property from Cities Service Oil Company (Cities Service), Perry R. Bass and Edgewater Oil Company (Edgewater). Petitioner requests that the Edgewater, Perry R. Bass and Cities Service rate schedules be cancelled and that a single rate schedule covering the subject acreage be issued to Petitioner.

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 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.77-7689 Filed 3-15-77;8:45 am]

[Docket No. RP72-149 (PGA77-6)]

MISSISSIPPI RIVER TRANSMISSION CORP.

Proposed Change in Rates

MARCH 10, 1977.

Take notice that Mississippi River Transmission Corporation ("Mississippi") on February 24, 1977 tendered for filing six (6) copies of Fifty-Fifth Revised Sheet No. 3A to its FPC Gas Tariff, First Revised Volume No. 1, to become effective April 1, 1977.

Mississippi states that the instant tariff sheet is being submitted pursuant to the Purchased Gas Cost Adjustment Clause (PGA) of its tariff to provide for the recovery of amounts accumulated in its unrecovered purchased gas cost account and to update the base average unit cost of gas purchased from producers. Additionally, the tariff sheet reflects an adjustment to eliminate the effect of the special surcharge filed by United Gas Pipe Line Co. ("United") at Docket No. CP76-413, et al. Such surcharge expires March 31, 1977.

Mississippi submitted schedules containing computations supporting the rate changes proposed to become effective April 1, 1977. Mississippi states that copies of its filing were served on Mississippi's jurisdictional customers and the State Commission of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene unless such petition has previously been filed. Copies of the filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-7687 Filed 3-15-77;8:45 am]

[Docket No. RP74-100 etc. (PGA77-3)]

NATIONAL FUEL GAS SUPPLY CORP.

Proposed PGA Rate Adjustment

MARCH 10, 1977.

Take notice that on March 1, 1977, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FPC Gas Tariff, Original Volume No. 1, Eleventh Revised Sheet No. 4, proposed to be effective April 1, 1977.

National states that the sole purpose of this revised tariff sheet is to adjust National's rates pursuant to the PGA provisions in Section 17 of the General Terms and Conditions. National further states that such tariff sheet reflects an adjustment in National's rates of .10¢ per Mcf on Eleventh Revised Sheet No. 4.

It is stated 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 and 1.10). All such petitions or protests should be filed on or before March 25, 1977. Protests will be considered by the Commission in determining the appropriate 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.77-7690 Filed 3-15-77;8:45 am]

[Docket Nos. RP71-125 and RP76-106 (PGA 77-2a)]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Revision to Purchased Gas Cost Adjustment to Rates and Charges

MARCH 10, 1977

Take notice that on March 2, 1977, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheet, to be effective March 1, 1977:

Substitute Thirty-first Revised Sheet No. 5

Natural states the purpose of the filing is to reflect the reductions in pipeline supplier rate levels tracked in its January 14, 1977 PGA filing, in accordance with the Commission's letter order issued February 25, 1977 in the above referenced Docket. Subsequent to Natural's January 14, 1977 PGA filing two pipeline suppliers to Natural filed revised tariff sheets. Great Lakes Gas Transmission Company filed to reflect a decrease in the exchange rate for Canadian currency and United Gas Pipe Line Company filed to decrease its rates pursuant to a Commission order issued December 29, 1976. Natural states that the annual effect of these pipeline supplier decreases amounts to approximately $4.85 million and equates to a current PGA unit reduction of 0.47¢ per Mcf.

Copies of this filing were mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, 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 March 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-7694 Filed 3-15-77;8:45 am]

[Project No. 677]

SOUTHERN CALIFORNIA EDISON CO.

Issuance of Annual License

MARCH 9, 1977

On April 20, 1970, Southern California Edison Company, Licensee for the San Gorgonio No. 1 and No. 2 Project, FPC No. 344, located in Riverside and San Bernardino Counties, California, on the east and south forks of the Whitewater and San Gorgonio Rivers near the cities of Yucaipa and Banning, filed an application for a new license under section 15 of the Federal Power Act and Commission regulations thereunder. On February 9, 1976, Licensee amended its application to include, as a primary line of Project No. 344, the transmission line that is licensed as Project No. 677. The transmission line is located in Riverside County, California.

The license for Project No. 677 was issued effective March 16, 1926, for a period ending March 15, 1976. Since expiration of the original license, the project has been maintained and operated under an annual license, which will expire on March 15, 1977. In order to authorize the continued operation and maintenance of the project pending Commission action on Licensee's application for new license for Project No. 344, it is appropriate and in the public interest to issue an annual license to Southern California Edison Company.

Take notice that an annual license for Project No. 677 is issued to Southern California Edison Company for the period March 16, 1977, to March 15, 1978, or until the issuance of a new license for Project No. 344, or until Federal takeover, whichever comes first, for the continued operation and maintenance of Project No. 677 subject to the terms and conditions of the original license. Take further notice that if issuance of a new license for project No. 344 does not take place on or before March 15, 1978, a new annual license for Project No. 677 will be issued effective March 16 of each year, until such time as a new license for Project No. 344 is issued, or until Federal takeover, without further notice being given by the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-7683 Filed 3-15-77;8:45 am]

[Docket Nos. RP74-6 and RP72-74]

SOUTHERN NATURAL GAS CO.

Petition for Additional Grace Period To Install Fuel Facilities

MARCH 10, 1977.

Take notice that on August 30, 1976, MacMillan Bloedel Inc. (MacMillan), filed pursuant to §§ 1.7(b) and 1.10 of the Commission's rules of practice and procedure a request that it be given fourteen additional months from May 21, 1977 within which to install alternate fuel facilities at its plywood Mill.[1]

In Opinion No. 747-B, the Commission eliminated the firm-interruptible distinction for purposes of curtailment on the Southern Natural Gas Company (Southern) pipeline system. The Commission, however, stated that those firm requirements lacking installed alternate fuel facilities will be given a one year grace period from the date of Opinion No. 747-B to install such facilities. Such requirements were, therefore, to remain in Priority 3 until May 21, 1977 and, then, were to be reassigned to an appropriate category.

MacMillian states that it operates a linerboard mill, a lumber mill and a particle board mill at Pine Hill, Alabama. MacMillan states that it will be able to install new facilities at its lumber mill by May 21, 1977, but that it is not possible to acquire and install new dryers and a steam boiler for the plywood mill by May 21, 1977.

MacMillian states that it will require twenty-two months from September 1, 1976 to design and engineer new dryers for the plywood mill, procure the equipment and install and test it. MacMillian, therefore, requests that it be granted an additional fourteen months after May 21, 1977 within which to install new dryers and related facilities for the plywood mill.

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 would be filed on or before March 31, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-7693 Filed 3-15-77;8:45 am]

[1] This petition was filed as an alternative request to MacMillian's protest of a compliance tariff filing by Southern Natural Gas Company. Said protest was denied by Commission order issued January 4, 1977.

Investigation Certificates

[Docket No. CI77-298]

TENNECO INC.

Order Instituting Investigation

MARCH 8, 1977

On February 28, 1977, Tenneco Inc. (Tenneco) filed a petition pursuant to § 1.7(c) of the Commission's rules of practice and procedure for a declaratory order under the Natural Gas Act in order to resolve present uncertainties as to whether or not all necessary filings under the Natural Gas Act have been made, and all necessary authority thereunder obtained, in connection with release of natural gas from acreage or reservoirs under contract to Tennessee Gas Pipeline Company (Tennessee) for sale by independent producers to Channel Industries Gas Company (Channel). Tennessee is a division of Tenneco engaged in the transportation and sale of natural gas in interstate commerce. Channel, a subsidiary of Tenneco, is engaged in the transportation and sale of natural gas in intrastate commerce.

Tenneco states that these uncertainties have arisen as a result of an investigation by counsel for Tenneco in preparation for the defense of pending litigation against Tenneco, Channel and certain other affiliates of Tenneco in which certain customers of Channel claim, among other things, that in early 1975 Channel improperly released a claim against Tennessee for volumes of natural gas then owing to Channel as a result of certain balancing transactions between the two parties which had previously terminated. In the course of this investigation, Tenneco determined that since the inception of Channel's operations in 1965, Channel has purchased certain volumes of natural gas produced from acerage or reservoirs which are, or at one time had been under contracts to Tennessee. Tenneco states that, for the most part, the contracts, or amendments thereto, whereby the natural gas in question was released from Tennessee were filed by the producers with the Commission. Tenneco also states that, in certain of the transactions reviewed to date, however, is is unclear from the information presently available to Tenneco as to whether additional filings were necessary under the then prevailing circumstances, or, indeed, whether additional filings, presently unknown to Tenneco, were in fact made. According to Tenneco the investigation referred to above is still in progress.

Tenneco states that although for the most part, the sales of natural gas in question occurred over several years in the past, and in many instances were ceased some time ago due to termination of Channel's contracts with the produc-

ers, depletion of the fields or reservoirs, or otherwise, certain of such sales are presently continuing, in an aggregate average daily volume which, based on information available to date, may amount to an estimated 30,000 Mcf.

Although Tenneco's investigation is incomplete, it states that it is appropriate and in the public interest to seek immediately a determination by this Commission as to the issues presented, in order to determine the respective purchase rights of two affiliates. Tennessee and Channel, and to resolve any doubt, disagreement or controversy on the part of Tennessee, Channel or any third party as to whether or not all necessary filings were made, and all necessary authority obtained, under the requirements of the Act. Because the issues involve interpretations of the Natural Gas Act, and the Commission's rules and regulations thereunder, Tenneco states that this Commission has the exclusive and primary jurisdiction to make the determinations sought.

The five fields discussed in the petition are: (1) Sellingson Field, Jim Wells County, Texas (sales by Mobil, Sun, Arco and others), (2) Riverside-O'Neil Field, Nueces County, Texas (sales by Amaco), (3) Southwest Pheasant Field, Matagorda County, Texas (sales by Mobil and Arco), (4) Edinburg Field, Hidalgo County, Texas (sales by Mobil, Arco, and Sun), and (5) Chesterville Field, Colorado County, Texas (sales by Mobil and others).

Tenneco states that recent pronouncements of the Commission concerning certificate obligations, most of which are still subject to review in the Courts, indicate the need for expeditious resolution of questions raised by transactions of the nature of those detailed in the petition. Tenneco states that its inquiry is continuing toward a rapid conclusion, and Tenneco reserves the right to make supplemental filings.

We find it appropriate to institute an investigation into the matters set forth in Tenneco's February 28, 1977, petition. Accordingly, we shall require the affected producers to respond to all the issues raised in Tenneco's pleading.

The Commission finds: It is appropriate to institute an investigation into the matters raised in Tenneco's February 28, 1977, petition.

The Commission orders: (A) Pursuant to the provisions of the Natural Gas Act, particularly sections 4, 5, 7, 8, 10, 14, 15 and 16 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Natural Gas Act, an investigation is hereby instituted into the matters raised in Tenneco's February 28, 1977, petition filed in this docket.

(B) On or before March 14, 1977, the affected producers are directed to file responses to all the issues raised in Tenneco's February 28, 1977, pleading.

(C) Notices of intervention and petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C., 20426, on or before March 23, 1977, in accordance with the Commission's rules of practice and procedure.

(D) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-7682 Filed 3-15-77;8:45 am]

[Docket No. ER76-689]

WEST PENN POWER CO.

Filing of Settlement Agreement

MARCH 9, 1977.

Take notice that by letter dated February 22, 1977, West Penn Power Company and Allegheny Electric Cooperative tendered for filing a joint motion to certify to the Commission a Settlement Agreement in the above-captioned docket. The joint motion states that, under the terms of the filed Settlement Agreement, West Penn's annual revenues would be incerased approximately $347,519 or 15.8 percent effective July 18, 1976.

Any person desiring to be heard or to protest said Settlement Agreement should file comments with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, on or before March 28, 1977. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-7684 Filed 3-15-77;8:45 am]

FOREIGN CLAIMS SETTLEMENT COMMISSION

[Notice No. 2-77]

HUNGARIAN CLAIMS

Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of routine Commission business and other matters specified, as follows:

Date and time	*Subject matter*
Wednesday, March 23, 1977 at 10:30 a.m.	Consideration of Hungarian claims.
Thursday, March 24, 1977 at 10:00 a.m.	Oral hearings on objections to decisions issued under the Hungarian claims program.
Wednesday, March 30, 1977 at 10:30 a.m.	Consideration of Hungarian claims.
Thursday, April 7, 1977 at 10:30 a.m.	Do.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Executive Director, Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, D.C. 20579. Telephone: 202/653-6156

Dated at Washington, D.C. on March 11, 1977.

FRANCIS T. MASTERSON,
Executive Director.

[FR Doc.77-7670 Filed 3-15-77;8:45 am]

FEDERAL TRADE COMMISSION

[File No. 762-3060]

AMERICAN CONSUMER SERVICE, INC., ET AL.

Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Placement of Consent Agreement on Public Record for Comments.

SUMMARY: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34, 40 FR 15236, Apr. 4, 1975), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection ad copying at its principal office in accordance with § 4.9(b) (14) of the Commission's rules of practice (16 CFR 4.9(b) (14), 40 FR 15236, Apr. 4, 1975).

DATE: Comments must be received on or before May 13, 1977.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[File No. 762-3060]

AMERICAN CONSUMER SERVICE, INC. ET AL.

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the matter of American Consumer Service, Inc., a corporation, and Mark F. Thorne, and Thomas P. Sheehan, individually and as officers of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of American Consumer Service, Inc., a corporation, and Mark F. Thorne and Thomas P. Sheehan, individually and as officers of said corporation, and it now appearing that American Consumer Service, Inc., a corporation, and Mark F. Thorne and Thomas P. Sheehan, individually and as officers of said corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist

from the use of the acts and practices being investigated.

It is hereby agreed by and between American Consumer Service, Inc., by its duly authorized officer, and Mark F. Thorne and Thomas P. Sheehan, individually and as officers of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent American Consumer Service, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 101 East Carmel, Carmel, Indiana.

Proposed respondents Mark F. Thorne and Thomas P. Sheehan are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive: (a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60 days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby, and they understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that they may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

DEFINITIONS

"Product line" as used in this order shall mean one of the following categories: subcompact size automobiles; compact size automobiles; intermediate size automobiles; full size automobiles; luxury automobiles; trucks; stoves-ovens; refrigerators; freezers; disposals; air conditioners; dishwashers; washers; dryers; other appliances; televisions; record players; radios; recorders; wearing apparel; pharmaceuticals; jewelry; furniture; upholstered furniture; bedding; carpeting.

"Shopping service" as used in this order shall mean any service that provides instructions, booklets, pamphlets and any other information regarding merchandise that is purportedly made available for purchase through such service at less than normal retail prices.

II

It is ordered, That respondents American Consumer Service, Inc., a corporation, its successors and assigns, and its officers, and Mark F. Thorne and Thomas P. Sheehan, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or any other device in connection with the offering for sale, sale, and distribution of any memberships in a shopping service, or the door-to-door sale or distribution of any other products or services; or in the recruitment of sales representatives for said products or services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents' agents, representatives or employees are visiting the homes of families for the purpose of conducting surveys or opinion polls or for any purpose other than the sale of memberships in the shopping service, or misrepresenting in any manner, the nature of any prospective customer contact or situation.

2. Representing, directly or by implication, that memberships in the shopping service are being offered at a special price only to those individuals agreeing to write testimonials, or misrepresenting in any manner the terms and conditions of membership in the shopping service.

3. Representing, directly or by implication, that any article of merchandise is being given free or as a gift, or without cost or charge, in connection with the purchase of other merchandise, unless the stated price of the merchandise required to be purchased in order to obtain said article is the same or less than the customary and usual price at which such merchandise has been sold separately by respondents for a substantial period of time in the recent and regular course of their business: *Provided, however*, That respondents may offer other products or services as included in the cost of membership in the shopping service.

4. Representing, directly or by implication, that purchasers of memberships in a shopping service will save any stated dollar or percentage amount through use of the shopping service, unless respondents clearly and conspicuously disclose in connection with any savings representations that purchasers will not enjoy such savings until they have made enough purchases through the shopping service to result in savings that exceed the initial cost of membership in the service.

5. Representing, directly or by implication, to any prospective purchaser of a shopping service, that members of a shopping service will be able to purchase consumer products at prices that are below the local retail selling prices of such products, unless respondents clearly and conspicuously disclose, in connection with such claims, in a written form containing the following information, and that said form shall be retained by each prospective member:

(a) The number of local purchase transactions that have been made from each said product line through the shopping service;

(b) A comparison, expressed as an average percent, by product line of the local retail selling price of consumer products with the cost of the identical consumer products purchased through the shopping service including shipping, postage, and delivery as experienced by members of the shopping service who have purchased said consumer products through the shopping service during a specified period of time; and that

(c) Savings can only be enjoyed by the member if the shopping service is used; some people never use the shopping service and never enjoy any savings as a result.

6. Failing to disclose to all prospective purchasers, prior to purchase of a membership, in complete and accurate detail, all steps necessary to purchase all products available through the shopping service by every method such products are available to be purchased, or misrepresenting in any manner the ease with which the service can be used.

7. Representing, directly or by implication, that purchasers of memberships in a shopping service have recovered or will recover their cost of joining the shopping service within any specified period of time, unless respondents clearly and conspicuously disclose in connection with such representation, that to recover the cost of joining the shopping service members will have to obtain savings on purchases that equal their cost of joining the shopping service, and the percentage of members of the shopping service who have recovered the cost of joining the shopping service within the specified period of time.

8. Misrepresenting in any manner the type or duration of advice and assistance that respondents or their sales representatives will offer to members of the shopping service.

9. Representing, directly or by implication, either orally or in writing, that:

(a) Respondents are offering employment positions in a major, national corporation, or misrepresenting in any manner the size or nature of respondents' firm; and

(b) Individuals who reply to respondents' employment advertisements can or will receive a stated weekly or yearly income, unless the stated incomes have actually been achieved by at least 50 percent of past or current employees engaged in identical duties as those being advertised for, and such incomes are reasonably likely to be achieved by the person to whom the representation is made.

10. Failing to disclose, clearly and conspicuously, in all advertising for sales representatives, that:

(a) Respondents are recruiting persons for the sole purpose of soliciting or selling;

(b) Such soliciting or selling will be on a door-to-door basis, if such method of sale is included, to any extent, in the position for which persons are being recruited; and

(c) Compensation for persons so engaged is to be on a commission basis only, if such is the fact, or, if an income is advertised, the conditions and limitations thereto or upon the receipt of said income.

It is further ordered, That respondents shall establish a Consumer Service Representative who shall be responsible for answering inquiries from members of the shopping service with regard to the use of the service and for providing general assistance to such persons in connection with their use of the shopping service. Respondents shall employ at least one person to serve as a Consumer Service Representative and shall continue to employ at least one such person for at least one year after the date of respondents' last sale of a membership in a shopping service.

It is further ordered, That respondents disclose the following information clearly and conspicuously in all of respondents' sales presentations to prospective purchasers:

A. Membership in a shopping service is not necessary in order to make purchases from some of the mail order firms whose catalogs are made available by the shopping service to its members.

B. All orders placed through the shopping service must be paid for in advance by certified check or money order. The shopping service neither accepts nor extends credit.

C. Prospective purchasers of memberships in the shopping service will be required to sign a retail installment contract that may be assigned to a finance company if the full cost of the membership is not paid to respondents in one installment.

It is further order, That respondents shall accord to each member who signs a contract the right to cancel his membership within 120 days of the effective date of the membership contract. Upon notice of cancellation of a contract within 120 days of the effective date of the contract, respondents shall not receive, demand or retain more than an initial registration fee of $70.

It is further ordered, That respondents shall include in the contract in bold face type of at least ten (10) point the following provision:

CANCELLATION AND REFUND

You are free to cancel your membership at any time within 120 days of the date of this contract. You will have to pay only an initial registration fee of $70.

You may cancel the contract by mailing or delivering to American Consumer Service, Inc. a signed and dated copy of the "Notice of Cancellation" given to you at the time of purchase or by mailing or delivering to American Consumer Service, Inc. your own written letter of cancellation. Cancellation will be effective on the date of mailing. If, prior to cancellation, you have paid more than $70, the excess will be refunded to you within ten (10) business days.

It is further ordered, That respondents shall include in the contract a completed form in duplicate, which shall be attached to the contract and easily detachable, and which shall contain in bold face type of at least ten (10) point the following information.

NOTICE OF CANCELLATION

I hereby cancel this contract.

(Date)

(Buyer's Signature)

It is further ordered, That respondents, upon receipt of notice of cancellation within 120 days of the effective date of the contract, shall refund to the member all monies received in excess of $70 within ten (10) business days of receipt of the Notice of Cancellation.

It is further ordered, That the cancellation provisions of this order shall not affect any obligation upon respondents under the Federal Trade Commission Trade Regulation Rule Concerning a Cooling-Off Period for Door-to-Door Sales.

It is further ordered, That each individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment. In addition, for a period of ten years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale of shopping services, or of his affiliation with a new business or employment in which his own duties and responsibilities involve participation in the development of a sales presentation for use in the sale of shopping services. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

It is further ordered, That respondents maintain at all times in the future, for a period of not less than three (3) years, complete business records to be furnished upon request to the staff of the Federal Trade Commission, relative to the manner and form of their continuing compliance with all the above terms and provisions of this order.

It is further ordered, That respondents distribute a copy of this order to all operating divisions of said corporation, and also distribute a copy of this order to all corporate officers and all of respondents' personnel, agents or representatives concerned with advertising, promotion, solicitation, sale or distribution of a shopping service by respondents and secure from each such person a signed statement acknowledging receipt of said order.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

[File No. 762 3080]

AMERICAN CONSUMER SERVICE, INC.

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from American Consumer Service, Inc. and Mark F. Thorne and Thomas P. Sheehan, individually and as officers of the corporate respondent.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from

the agreement or make final the agreement's proposed order.

American Consumer Service, Inc. sells memberships in a shopping service that purportedly makes available to its members consumer products at prices that are below the normal retail prices of such products.

The major provisions of the complaint allege that respondents, in their offering for sale of memberships in the shopping service, misrepresented:

1. The savings available by the purchase of consumer products through the shopping service;

2. The time it would take members to recover the major portion of their initial investment;

3. The ease with which the shopping service could be used;

4. The types of consumer products available for purchase through the shopping service;

5. The assistance respondents would provide members after they joined the shopping service.

The complaint further alleges that respondents failed to disclose that catalogues represented as available only to members are actually available to the general public, shipping costs are not included in the price of products quoted to members, and the contract of purchase will be sold to a finance company.

The consent order prohibits respondents from making any of the misrepresentations alleged in the complaint and requires that affirmative disclosures be made of the facts which they had failed to disclose. Any claims that members can purchase items at below retail price must be based on data gathered from a compilation of products purchased by past members through the shopping service. Any savings claims must be accompanied by the reminder that no savings can be obtained until a sufficient number of purchases have been made to set off the original purchase price of membership. If claims are made about the possibility of recovering the cost of joining the service within any given time, they must be accompanied by a disclosure of the percentage of past members who have recovered the cost of joining within that time.

The order also requires respondents to employ a consumer service representative responsible for providing assistance to members in placing their orders. In addition, respondents are required to include a 120 day concellation provision in the contract. If a member submits a notice of cancellation within 120 days of signing the contract, respondents are entitled to no more than an initial registration fee of $70.

The complaint and order also address respondents' manner of recruiting sales personnel. They are prohibited from misrepresenting the size and nature of the firm, and are required to substantiate any income potential advertised, as well as to disclose that the jobs advertised are for door-to-door salesmen and that payment is on a commission basis if such is the case.

The order is designed to prohibit misrepresentations made by respondents as well as to require disclosure of all facts about the shopping service that are necessary to enable customers to make an intelligent decision as to whether or not to purchase a membership. The cancellation provision allows future members to obtain prompt refunds if they are dissatisfied with the shopping service.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify in any way their terms.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-7627 Filed 3-15-77;8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on March 4, 1977 (CAB), and March 9, 1977 (FMC). See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB and FMC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before April 4, 1977, and should be addressed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5033, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

CIVIL AERONAUTICS BOARD

CAB requests clearance of a devision to Schedule P-10 of Form 41, formerly designated "Payroll" and now retitled "Employment Statistics by Labor Category" and to Schedule P-1(a), "Interim Statement of Operations." Schedule P-10 which was previously filed on a quarterly basis will now be filed annually by the same respondents. Submission of Schedule P-10 is mandatory under section 407 of the Federal Aviation Act of 1958, as amended. In Schedule P-10 the column headed "No. 3—Number of Employees" and the column headed "Payroll At Annual Rates (52 calendar weeks);" subheaded "No. 4—Total All Employees," and "No. 5—Average Per Employee" will be eliminated and replaced by a column titled "Weighted Average Number of Full-Time Employees." The labor categories for which the number of employees are to be reported are the same as on the current Schedule P-10 with one additional labor category description "Other" added to include all employees whose salary is not chargeable to one of the various salary accounts; for example, "Other" would include those employees who work in transport-related operations and other activities for which a separate payroll account is not prescribed. CAB is also amending Schedule P-1(a), a monthly schedule, to include two new categories under "Other Information." These new categories are "Number of full-time employees" and "Number of part-time employees." CAB estimates potential respondents to be 36 certificated air carriers and reporting burden to average 7 hours annually per respondent.

FEDERAL MARITIME COMMISSION

FMC requests for the first time a clearance of section 21 Orders issued semi-annually to U.S. flag carriers transporting U.S. Department of Defense Cargoes pursuant to the Military Sealift Procurement System requesting reports from carriers on their vessel utilization factors for each six-month Military Sealift Command bidding cycle. The information is used by the Commission to establish a Uniform Capacity Utilization Factor (UCUF) for each Military Sealift Command trade route at least 30 days prior to each bid date for every six-month bid cycle, as required by 46 CFR 549.5(b)(1). FMC states that the number of bidding carriers has varied between 11 and 13 carriers, with an estimated average burden of 31 hours per semi-annual submission. FMC states that the next section 21 Order will be served to 12 carriers and the statistics will cover the six months ending June 30, 1977.

NORMAN F. HEYL,
Regulatory Reports, Review Officer.

[FR Doc.77-7723 Filed 3-15-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

PSYCHOLOGY EDUCATION REVIEW COMMITTEE

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory body scheduled to assemble during the month of April 1977:

PSYCHOLOGY EDUCATION REVIEW COMMITTEE

Date and time: April 11-12; 9:30 a.m. Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open meeting: Contact Mrs. Betty Wells, Parklawn Building, Room 9C23, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-3536.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute of Mental Health relating to psychology training and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:30 a.m. April 11 through adjournment at 4:00 p.m. April 12, the meeting will be open for administrative announcements and discussion of review criteria in the light of new program developments and priorities of the Institute.

Substantive information may be obtained from the contact person listed above. Attendance by the public will be limited to space available.

The NIMH Information Officer who will furnish upon request summaries of the meeting and rosters of the committee members is Mr. Edwin Long, Deputy Director, Division of Scientific and Public Information, NIMH, Room 15-105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-3600.

Dated: March 10, 1977.

CAROLYN T. EVANS,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc.77-7636 Filed 3-15-77;8:45 am]

National Institutes of Health

AD HOC SEARCH COMMITTEE FOR THE SELECTION OF DIRECTOR, NATIONAL CANCER PROGRAM AND NATIONAL CANCER INSTITUTE

Notice of Establishment

The National Institutes of Health announces the establishment on March 8, 1977, of the Ad hoc Search Committee for the Selection of the Director, National Cancer Program and National Cancer Institute, under the authority of 42 U.S. Code 217a, Section 222 of the Public Health Service Act, as amended. This Committee is governed by provisions of Public Law 92-463 which sets forth standards for the formation and use of advisory committees.

The Search Committee shall solicit recommendations for the position of Director, National Cancer Program and National Cancer Institute, from knowledgeable people in the medical sciences, particularly those involved in the various areas of cancer research. The members of the Committee shall advise the Secretary regarding the search for this individual.

Authority for this Committee shall expire on June 30, 1977.

Dated: March 11, 1977.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc.77-7985 Filed 3-15-77;11:31 am]

AD HOC SEARCH COMMITTEE FOR THE SELECTION OF DIRECTOR, NATIONAL CANCER PROGRAM AND NATIONAL CANCER INSTITUTE

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Ad hoc Search Committee for the Selection of Director, National Cancer Program and National Cancer Institute, in Room 610F, HEW South Portal Building, 200 Independence Avenue, S.W., Washington, D.C., on March 25, 1977, beginning at 8:30 a.m. This meeting will be open to the public from 8:30 a.m. to 9:00 a.m. to discuss administrative matters. Attendance by the public will be limited to space available. Persons interested in identifying names of candidates for the above position may send their suggestions, together with a current curriculum vitae for each recommendation, to Dr. Seymour Perry, Special Assistant to the Director, National Institutes of Health, Building 1, Room 111, Bethesda, Maryland 20014.

In accordance with provisions set forth in Section 552b(c)(6), U.S. Code and Section 10(d) of Public Law 92-463, the meeting of the committee will be closed from 9:00 a.m. to adjournment for the review, discussion and evaluation of candidates. These recommendations were received as a result of over 400 letters sent to various cancer societies, Cancer Board members, cancer centers, cancer hospitals, institutions, universities, and other relevant organizations. The discussion will reveal personal information about individuals and will reflect on their qualifications and competence. Hence, the holding of these discussions in public would constitute a clearly unwarranted invasion of personal privacy.

Additional information may be obtained from Dr. Seymour Perry, at the above address, phone (301) 496-2500.

Dated: March 14, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.77-7984 Filed 3-15-77;11:31 am]

INTERNATIONAL TRADE COMMISSION

[USITC SE-77-21A]

GOVERNMENT IN THE SUNSHINE

Additional Agenda Item

In deliberations held March 10, 1977, the United States International Trade Commission, acting on the authority of 19 U.S.C. 1335 in conformity with 19 C.F.R. 201.37, voted to add the following item to its agenda for the meeting of March 14, 1977:

2. Discussion and vote on remedy on Investigation TA-201-16 (Sugar)—to be taken up after 3 p.m.

Commissioners Minchew, Parker, Leonard, Moore, and Ablondi determined by recorded vote that Commission business requires the change in subject matter by addition of the agenda item, and affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Bedell abstained.

If you have any questions concerning the agenda for the March 14, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for by access to the public files of the Commission, or when such documents are not in such files, as provided for in Subpart C of the Commission's rules (19 C.F.R. 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with 19 C.F.R. 201.38(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

By order of the Commission:

Issued: March 11, 1977.

KENNETH R. MASON,
Secretary.

[FR Doc.77-7798 Filed 3-15-77;8:45 am]

[USITC SE-77-22]

GOVERNMENT IN THE SUNSHINE

Meeting

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on Monday, March 21, 1977, beginning at 9:30 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436. Except as hereinafter specified, the Commission plans to consider the following agenda items in open session:

1. Agenda for future meetings.
2. Minutes.
3. Knitting machines (Inv.337-TA-28)—see recommended determination from Judge Renick dated February 18, 1977.
4. Request for investigation on certain automobile equipment (Docket No. 431)—see memorandum dated February 28, 1977, from Commissioner Moore.
5. Hearing of the Subcommittee on Trade on certain bills to provide duty-free entry and temporary suspensions of duty—see memorandum dated February 23, 1977, from the General Counsel.
6. Any items left over from previous agenda.
7. Reorganization.
8. Discussion of a letter dated March 7, 1977, from the Chairman of the Subcommittee on Trade, requesting certain information.

If you have any questions concerning the agenda for the March 22, 1977, Com-

mission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for by access to the public files of the Commission, or when such documents are not in such files, as provided for in Subpart C of the Commission's rules (19 C.F.R. 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with 19 C.F.R. 201.38(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c) (2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with 19 C.F.R. 201.36(b) (2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the March 21, 1977, meeting with respect to the selection of personnel under reorganization (agenda item No. 7) 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.
Jayne L. Silva, Staff Assistant (if Mr. Mason is not available).
E. Bernice Morris, Staff Assistant.
Charles R. Ramsdale, Chief, Personnel Division.
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 meeting of March 21, 1977, was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d) (1) and in conformity with 19 C.F.R. 201.36 (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 19 C.F.R. 201.36(b) (2) and (6).

By order of the Commission:

Issued: March 11, 1977.

KENNETH R. MASON,
Secretary.

RUSSELL N. SHEWMAKER,
General Counsel.

[FR Doc.77-7793 Filed 3-15-77;8:45 am]

NATIONAL LABOR RELATIONS BOARD

MEETING

The National Labor Relations Board will meet on March 18, 1977, at 2:00 p.m. in the Board conference room, sixth floor, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570. The meeting agenda will consist of consideration of applicants qualified for appointment to administrative law judge. The meeting will be closed to public observation pursuant to the provisions of 5 U.S.C. Section 554(b) (c) (2) (internal personel rules and practices) and (c) (6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

Requests for information concerning this meeting may be made to: John C. Truesdale, Esquire, Executive Secretary, Washington, D.C. 20570, telephone number 202-254-9430.

Dated this 10th day of March 1977, in Washington, D.C.

JOHN C. TRUESDALE,
Executive Secretary.

[FR Doc.77-7650 Filed 3-15-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

STATE SCIENCE, ENGINEERING, AND TECHNOLOGY PROGRAM

Proposed Guidelines and Criteria

Notice is hereby given that the National Science Foundation is proposing the guidelines and criteria set out below to implement the State Science, Engineering, and Technology Program, authorized pursuant to Pub. L. 94-471. The Foundation invites and would appreciate written comments, suggestions, objections concerning the proposed guidelines and criteria from anyone who is interested. Please send such comments to:

Director, Intergovernmental Programs, Division of Intergovernmental Science and Public Technology, National Science Foundation, Washington, D.C. 20550.

The Foundation will consider all comments in formulating its final guidelines and criteria only if the comments are received on or before April 15, 1977. The comments received will be available for public inspection at the above address between the hours of 9:30 a.m. and 4:00 p.m., Monday through Firday (except holidays) until thirty days after the promulgation of the final guidelines and criteria.

In accordance with the provisions of OMB A-85 (revised) these proposed guidelines and criteria also have been made available to the Advisory Commission on Intergovernmental Relations for coordination with State and local government associations.

It is intended that the effective date of these guidelines and criteria will be the date of the promulgation of the final guidelines and criteria in the FEDERAL REGISTER or the date of the issuance by the Foundation of a Program Announcement on the State Science, Engineering, and Technology Program, whichever comes first.

The Text of Proposed Guidelines and Criteria is as follows:

SECTION 1 *Authority.* The Authority for the State Science, Engineering, and Technology (SSET) Program is The National Science Foundation Authorization Act for Fiscal Year 1977 (Pub. L. 94-471).

SEC. 2. *Purpose.* 2.1 The purpose of the State Science, Engineering, and Technology Program is to provide study grants for States to enable them "* * * to identify and analyze potentially useful ways in which States and local governments can increase their capabilities for using science, engineering, and technology in meeting the needs of their citizens * * *"

2.2 The SSET Program provides an authorization also "* * * for regional or national forums and workshops * * *" and "* * * for evaluation of the Intergovernmental Science Program * * *." These activities are not intended to be covered in these Guidelines.

SEC. 3. *Definitions*—3.1 *Applicant Organization.* The State agency, office, unit, or other organization designated by the Governor or the Legislative Leadership to apply for a study grant under the SSET Program and authorized to act as a grantee under an NSF award.

3.2 *Branch.* The Executive or Legislative Branch only of State Government

3.3 *Legislative Leadership.* The elected leader of each of the two houses of the Legislature of a State acting together; or if unicameral, of the single house.

3.4 *Performing Organization.* The agency, unit, or other organization identified in the application as the organization to carry out the majority or all of the work program activities identified in the application. The Performing Organization may be different from, but must be directly responsible to, the Applicant Organization.

3.5 *State.* Any of the several States of the United States As used herein, the term State may imply either Branch of State government or both according to the context.

SEC. 4. *Program Categories*—4.1 There are two optional Program Categories un-

der which a Branch of a State may apply for a study grant:

4.11 Development of a New Science, Engineering, and Technology Policy Management Assistance Mechanism (hereinafter called "Development of a Mechanism"); or

4.12 Improvement of an Existing Science, Engineering, and Technology Policy Management Assistance Mechanism (hereinafter called "Improvement of a Mechanism").

4.2 The choice of the Program Category option rests with the Applicant Organization and shall be so designated in the application.

4.3 The Program Category option, "Development of a Mechanism," is intended for Branches of State government where a science, engineering, and technology (SET) policy management assistance mechanism is not currently in existence, either in the development and testing stage or fully institutionalized with State resources.

4.4 The Program Category option, "Improvement of a Mechanism," is intended for Branches of State government where an SET policy management assistance mechanism is currently in existence but which may be strengthened by evaluating the existing mechanism and by considering alternative approaches in the range of issues addressed or in the structure, processes, procedures, and systems employed.

SEC. 5. *Program funding.* 5.1 The maximum Federal share of the cost of the study grant shall be $25,000 per Branch per State.

5.2 Matching funds shall be provided by the State on a two-third-Federal, one-third State basis in support of the total study grant effort.

5.3 At the option of the State, the required matching funds can be in the form of cash, or equivalent services and support, or a combination of the two.

5.4 Under the Program Category, "Improvement of a Mechanism," it is intended that the existing level of effort of State funds shall be maintained.

SEC. 6. *Designation of applicant organization.* 6.1 One application per Branch per State only may be submitted.

6.2 In the Executive Branch, the Governor shall designate the Applicant Organization.

6.3 In the Legislative Branch, the Legislative Leadership of both houses collectively shall designate the Applicant Organization (except for a unicameral Legislature wherein the Leadership of the single house shall so designate).

6.4 Joint proposals covering both Executive and Legislative Branches are permitted and, in such an instance both the Governor and the Legislative Leadership jointly shall designate the Applicant Organization.

SEC. 7. *Guidelines for submission*—7.1 *Abstract.* A concise abstract of about 200–250 words shall be provided clearly summarizing the Background Material section below and the proposed Work Program Activities.

7.2 *Project objective.* A concisely stated project objective shall be provided that is specific to the Branch of the State making the application and that is based on the objectives of the SSET Program as stated by Congress.

7.3 *Background material.* For the Program Category "Improvement of a Mechanism" only, a generalized description shall be provided of the existing SET policy management assistance mechanism of the Branch of the State.

7.4 *Work program activities.* A description of the work program activities to be undertaken under the study grant shall be provided, which will provide a plan and a program consistent with the needs and opportunities of the State and with the objectives of the SSET Program.

7.5 *Applicant organization.* The roles and responsibilities of the Applicant Organization and of the Performing Organization, if different, shall be described briefly and a graphic table of the location of the Organization(s) showing the relationship to the Governor or Legislative Leadership shall be provided.

7.6 *Performing personnel.* Qualifications shall be provided of the project director, project manager (if different), and senior policy and scientific staff proposed to be performing project work activities.

7.7 *Budget.* A detailed budget shall be provided showing costs for personnel, other direct costs, and indirect costs as well as items to be supported with Federal grant monies and with State matching funds.

7.8 *Endorsement.* A letter of endorsement of the application shall be provided from the Governor or Legislative Leadership.

SEC. 8. *Report.* 8.1 The Work Program Activities shall be designed and undertaken to produce a plan and program that will be incorporated in a Report.

8.2 The Report shall contain (1) the assessment of the advisability of developing or improving the policy formulation process in the Branch of the State for using the resources and methods of the scientific, engineering, and technology resource community in resolving critical and complex policy issues; (2) the description of the mechanism (structure, process, procedure), proposed to link the policy formulation process to science, engineering, and technological resources within and external to State government; and (3) the outline of the approach proposed to be employed in identifying priorities for policy research and analysis, whether reactive or anticipatory.

8.3 The Report shall be submitted to the Governor or Legislative Leadership of the Branch of the State for review in order that consideration will be given by such leadership to implementation of the plan and program contained therein as part of the policy formulation process of that Branch.

8.4 The Report shall be submitted to the Foundation, in order to meet the Congressional intent of "* * * evaluation by the Foundation and by the Office of Science and Technology Policy in the Executive Office of the President."

SEC. 9 *Format requirements.* The National Science Foundation shall develop and promulgate the format for submission requirements (such as forms and number of copies) as well as the earliest and latest dates, if any, for receipt of applications. In any event, however, at least sixty calendar days will be permitted between the promulgation of format requirements pursuant to these guidelines and the first closing date for applications.

SEC. 10. *Criteria for approval.* 10.1 In addition to the formatting requirements as may be promulgated pursuant to Section 9 above, all of the following requirements must be met before an award can be made under the SSET Program.

10.11 Applicant Organization is designated by the Governor or Legislative Leadership as appropriate.

10.12 Program Category is designated.

10.13 Abstract is provided.

10.14 Background material is provided on the existing SET policy management assistance mechanism, for the Program Category "Improvement of a Mechanism" only.

10.15 Work program activities are provided.

10.16 Report to be submitted as a final product is clearly defined.

10.17 Review of report by the Governor or the Legislative Leadership is provided.

10.18 Applicant Organization is related to the policy process of the Executive or Legislative Branch, as appropriate.

10.19 Performing personnel at the senior level are identified and biographic information on them is provided.

10.20 Proposed project period is specified.

10.21 Budget costs to be supported by Federal funds as well as to be borne by the State are identified.

10.2 In the event all of the above mentioned requirements are not met, the Applicant Organization shall be notified of the deficiencies of the submission and shall be given no less than sixty and no more than ninety calendar days to provide such additional information in such format as may be required to rectify such deficiencies.

SEC. 11. *Award notification.* 11.1 Notification instrument is an award letter.

11.2 No costs, reimbursable under the award or allowable as the required match, may be incurred prior to the date of the award letter.

SEC. 12. *Limitations.* Awards for study grants under the SSET Program are not a commitment that the Federal government will provide funds for the implementation of the plans and programs that result from these study grants.

SEC. 13. *Supplementary materials.* The National Science Foundation will provide selected background materials on Science Policy Management Assistance Mechanisms in the Executive and Legislative Branches of State government, in order to assist States both in the development of their applications and in the Work Program activities to be undertaken as part of the Study Grants. This background material will be issued along with the direct dispatch of the Program Announcement on the SSET Program to

the Governor and the Legislative Leadership.

ALFRED J. EGGERS, Jr.,
Assistant Director for Research Applications.

MARCH 9, 1977.

[FR Doc.77-7727 Filed 3-15-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[812-4078]

ANCHOR DAILY INCOME FUND, INC.

Application of Act for Exemption

Notice is hereby given that Anchor Daily Income Fund, Inc. ("Applicant"), Westminster at Parker, Elizabeth, New Jersey 07207, a Maryland corporation registered under the Investment Company Act of 1940 ("Act") as an open-end diversified management investment company, has filed on January 17, 1977 an application pursuant to Section 6(c) of the Act for an exemption from the provisions of Section 19(b) of the Act and Rule 19b-1 thereunder to allow it to distribute long-term capital gains more often than once every twelve months. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicant states that its investment objective is to generate as high a rate of current income as is consistent with low capital risk, which it seeks to achieve by investing exclusively in money market instruments, principally consisting of Treasury bills and notes and other United States Government obligations, bank certificates of deposit and commercial paper.

Applicant further states that it is designed to operate with a constant net asset value for each share. Applicant represents that each day Applicant is open for business all of Applicant's net income is declared as a dividend to shareholders of record at the close of business the preceding day, and that dividends are payable on the last business day of each calendar month in the form of additional shares at the net asset value per share at the close of business that day, or in cash at the option of the shareholder. It further represents that upon the withdrawal of the entire amount in any shareholder's account during the month, dividends declared but not yet paid to that account are paid at the same time and in the same manner as his final withdrawal; and that monthly, each shareholder receives a summary of his account, including information as to the dividends paid.

Applicant states that net income for dividend purposes, includes accrued interest and original issue and market discount earned since the last evaluation, plus or minus any short-term gains or losses on the sales of portfolio securities during the period, less Applicant's estimated expenses for the period. Applicant's net income is calculated immediately prior to the determination of Applicant's net asset value.

Applicant states that securities for which market quotations are readily available are valued at the mean between the most recent bid and asked prices or yield equivalent as obtained from one or more market makers for such securities and all other securities and assets are valued at values deemed best to reflect their fair value as determined in good faith by or under the supervision of officers of Applicant specifically so authorized by its Board of Directors.

Section 19(b) of the Act provides that it shall be unlawful in contravention of such rules, regulations, or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors for any registered investment company to distribute long-term capital gains, as defined in the Internal Revenue Code of 1954, more often than once every twelve months.

Rule 19b-1 thereunder states in part that no regulated investment company shall distribute more than one capital gain dividend, as defined in Section 852 (b)(3)(C) of the Code, with respect to any one taxable year of the company.

Section 6(c) authorizes the Commission to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than April 1, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-7701 Filed 3-15-77;8:45 am]

[811-2261]

ANCHOR RESERVE FUND, INC.

Filing of Application for an Order Declaring That Company Has Ceased To Be an Investment Company

Notice is hereby given that Anchor Reserve Fund, Inc. ("Applicant"), Westminster at Parker, Elizabeth, New Jersey 07207, registered as an open-end diversified management investment company under the Investment Company Act of 1940 ("Act"), filed an application on January 17, 1977 pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations set forth therein, which are summarized below.

Applicant was organized as a Delaware corporation on December 14, 1971, and registered under the Act by filing a Form N-8A Notification of Registration on January 10, 1972.

Applicant represents that pursuant to an Agreement and Plan of Reorganization approved by its shareholders on December 30, 1976, all of Applicant's assets and liabilities were acquired effective December 31, 1976, by Anchor Daily Income Fund, Inc. ("ADIF"), a Maryland corporation registered as an investment company under the Act. It is asserted that since that date Applicant has had no assets and has engaged in no activities other than those incidental to its winding up and dissolution.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than April 1, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed con-

temporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-7702 Filed 3-15-77;8:45 am]

[File No. 1-5337]

BUNDY CORP.

Application To Withdraw From Listing and Registration

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock ($5.00 par value) has become listed and registered on the New York Stock Exchange, Inc., and the Company has concluded that the advantage to be derived from dual listing on both exchanges is outweighed by the costs that would be incurred and the possible fragmentation of the trading market.

The American Stock Exchange, Inc. has not objected to this application.

Any interested person may, on or before March 31, 1977, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. An order granting the application will be issued after the date mentioned above, on the basis of the application and any other information furnished to the Commission, unless it orders a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-7703 Filed 3-15-77;8:45 am]

[File No. 1-7343]

BUNNINGTON CORP.

Application To Withdraw From Listing and Registration

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Boston Stock Exchange.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company (Common stock, $0.10 par value) has concluded that the potential benefits to be derived from rendering this security eligible only for trading over-the-counter (i.e., an increase in the number of market-makers and greater certainty that price quotation for this security will appear in the Over the Counter List of certain publications) outweigh the benefits that have been derived from listing. The Boston Stock Exchange has not objected to this application, and the Company will be subject to Section 12(g) reporting requirements.

Any interested person may, on or before April 4, 1977, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. An order granting the application will be issued after the date mentioned above, on the basis of the application and any other information furnished to the Commission, unless it orders a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-7704 Filed 3-15-77;8:45 am]

[SR-DTC-76-3]

DEPOSITORY TRUST CO.

Order Approving Rule Change Submitted Relating to the Establishment of the Fast Automated Securities Transfer ("FAST") Program

On April 12, 1976, the Depository Trust Company ("DTC") " Water Street, New York, N.Y. 10041, submitted, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), a proposed rule change, which would provide for the retention by transfer agents as custodians, pursuant to agreements between transfer agents and DTC, of securities held on deposit in DTC. In connection with the proposed rule change, DTC requested that the Commission continue its finding pursuant to paragraph (g) of Rules 8c-1 and 15c2-1 under the Act that the agreements, provisions and safeguards established by DTC are adequate for the protection of investors.

In accordance with Section 19(b) of the Act and Rule 19b-4 thereunder, notice of the proposed rule change was published in the FEDERAL REGISTER (41 FR 17823, April 28, 1976), and the public was invited to comment thereon. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 12353, April 20, 1976. A number of letters of comment were received and they were considered by the Commission when making its determination.

In addition, in letters dated December 8 and 17, 1976, January 21, 1977, March 3 and 4, 1977, which were incorporated in the proposed rule change and included in the public file, DTC provided additional information and made certain representations in connection with the FAST program.

The Commission has reviewed the submission and finds pursuant to paragraph (g) of Rules 8c-1 and 15c2-1 under the Act that the agreements, provisions, and safeguards established by DTC are adequate for the protection of investors. The Commission finds also that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and, in particular, with the requirements of Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change contained in File No. SR-DTC-76-3 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-7705 Filed 3-15-77;8:45 am]

[SR-DTC-77-1]

DEPOSITORY TRUST CO.

Order Approving Rule Change Submitted Relating to Repayment Options on Certain Debt Securities

On January 6, 1977, the Depository Trust Company ("DTC"), 55 Water Street, New York, New York 10041, submitted, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), a proposed rule change which would enable DTC participants to exercise repayment options on certain debt securities without withdrawing them from DTC.

In accordance with Section 19(b) of the Act and Rule 19b-4 thereunder, notice of the proposed rule change was

published in the FEDERAL REGISTER (42 FR 6865, February 4, 1977), and the public was invited to comment thereon. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 34-13215, January 28, 1977. No letters of comment were received.

The Commission has reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change contained in File No. SR-DTC-77-1 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 77-7706 Filed 3-15-77;8:45 am]

MIDWEST STOCK EXCHANGE, INC.

Application for Unlisted Trading Privileges and of Opportunity for Hearing

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the security of the company as set forth below, which security is listed and registered on one or more other national securities exchanges:

Bally Manufacturing Corporation, common stock, 66⅔ par value, File No. 7-4926.

Upon receipt of a request, on or before March 23, 1977 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which that person is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no request for a hearing with respect to the particular application is made, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-7709 Filed 3-15-77;8:45 am]

[File No. SR-NESDTCO-76-1]

NEW ENGLAND SECURITIES DEPOSITORY TRUST CO.

Order Approving Rule Change Relating to Collateralizing Options Transactions

On December 9, 1976, the New England Securities Depository Trust Company ("NESDTCO"), 53 State Street, Boston, Massachusetts 02109, submitted, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), a proposed rule change which would establish, and set fees for, a program permitting deposits of securities with NESDTCO to collateralize options transactions with The Options Clearing Corporation.

In accordance with Section 19(b) of the Act and Rule 19b-4 thereunder, notice of the proposed rule change was published in the FEDERAL REGISTER (42 FR 917, January 4, 1977), and the public was invited to comment thereon. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 34-13096, December 22, 1976. No letters of comment were received.

By letters dated February 2, 8, 25 and 28, 1977, NESDTCO provided additional information and made certain representations in connection with NESDTCO's program.

The Commission has reviewed the proposed rule change and representations with respect thereto made by NESDTCO and finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change contained in File No. SR-NESDTCO-76-1 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-7707 Filed 3-15-77;8:45 am]

[SR-NYSE-77-3]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

On February 1, 1977, the New York Stock Exchange, Inc. (the "NYSE"), 11 Wall Street, New York, New York 10005 filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] copies of a proposed rule change concerning the requirements applicable to issuers with stock listed on the exchange. The proposed rule change would require each domestic company with common stock listed on the NYSE,

[1] 15 U.S.C. 78s(b).
[2] 17 CFR 240.19b-4.

as a condition of initial and continued listing of its securities on the NYSE, to establish not later than June 30, 1978,[3] and maintain thereafter, an audit committee comprised solely of directors independent of management and free from any relationship that, in the opinion of the board of directors, would interfere with the exercise of independent judgment as a committee member.[4]

Notice of the proposed rule change, together with its terms of substance, was given in Securities Exchange Act Release No. 13245 (Feb. 4, 1977) and in the FEDERAL REGISTER (42 FR 8737 (Feb. 11, 1977)). Because of the substantial interest, evidenced by the more than sixty letters of comment included in the NYSE's rule filing, it seems clear that the NYSE independent audit committee proposal has been perceived as raising important issues. Accordingly, the Commission believes it appropriate to express at some length the reasons supporting its determination to approve the proposal under the Act.

The NYSE listing agreement, which has traditionally been a principal means by which the NYSE enforces its listing standards, was first adopted by the NYSE in 1899. That agreement, and the policies set forth in the NYSE Company Manual, have developed gradually over the years and impose a wide variety of requirements for initial and continued listing.[5] Those policies frequently require a listed company to take action which it would not otherwise be required to take and prevent a listed company from taking action which would otherwise be permitted.[6]

Furthermore, the NYSE has a general policy calling for timely and adequate disclosure of corporate affairs[7] and has in the past urged listed companies to consider the desirability of having at least two outside directors whose functions on the board would include giving particular attention to full disclosure of corporate affairs.[8]

Consistent with its overall approach to listing policies, the NYSE, and the accounting profession, major corporations and others, including the Commission, have for many years recognized the advantages of corporate audit committees.[9] Stronger support for audit committees independent of management developed in the wake of recent revelations of questionable and illegal corporate payments.[10] In particular, the Commission has urged strengthening the independence and vitality of corporate boards of directors and has suggested that, at least initially, those principles could be implemented by amending the listing requirements of the NYSE and other self-regulatory organizations, rather than by direct Commission action.[11] Following preliminary study by the NYSE staff, a proposal was submitted to the NYSE Board of Directors in November 1976, which approved it in principle and circulated it for comment by senior executives of listed companies and other interested parties. The NYSE's thorough procedure elicited broad par-

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[3] The rule change provides that domestic companies with common stock currently listed need not comply with the proposal's requirements until June 30, 1978. Any domestic company not currently listed, however, would be required to comply upon listing.

[4] An audit committee whose composition meets the requirements of the proposed rule change is sometimes referred to below as "an independent audit committee." The filing included supplementary material setting forth the NYSE's views on the application of the rule change in certain circumstances.

[5] For a general description of the development of the NYSE listing agreement, see NYSE Company Manual at A-27 et seq.

[6] For example, since 1926, the NYSE has refused to list non-voting common stock, and currently it will delist the voting common stock of a company which creates a class of non-voting common stock or fails to solicit proxies for meetings of its stockholders. Id., at xxi, A-280, A-134. As a matter of policy, the NYSE refuses to list a class of stock whose voting rights are subject to unusual restrictions. Id., at A-280 et seq. Certain redemption schemes are prohibited. Id., at A-30. In authorizing additional shares distributed by a stock dividend, a company can be required to transfer from earned surplus to permanent capitalization an amount equal to the fair value of such shares. Id., at A-235. A company whose board of directors is divided into more than three classes may not list its shares; if the board is divided into classes, they should be of approximately equal size and tenure, and the directors' terms of office should not exceed three years. Id., at A-280. Since 1940, listed preferred stock must have certain minimum provisions enabling holders to obtain board representation in the event of dividend default, and must be protected against compulsory change in rights and preferences. Id., at 281, 282. Shareholder approval is a prerequisite to listing securities to be used in connection with options or other remuneration plans for directors, officers, or employees; actions resulting in a change in the control of a company; and certain acquisitions. Id., at A-283, 284. Where stockholder approval is needed for listing any additional securities, over 50 percent of all securities entitled to vote must be represented in the vote, and approval must be by a majority of votes cast. Id., at A-284, 285. Before a class of securities eligible for continued listing may be delisted, the proposed withdrawal must have been approved by a substantial percentage of the outstanding shares (generally 66⅔ percent) and not opposed by a substantial number of individual holders (generally 10 percent of the individual holders). Id., at A-294.1, 294.2. The NYSE Company Manual's rules (and their administration) are, of course, required to be consistent with Section 6 of the Act, 15 U.S.C. 78f. Though, in limited cases, regulatory reasons may suggest different requirements for different classes of listed companies, any such measures are required to be developed and administered in a manner which accords fair procedures and is not unfairly discriminatory. See Sections 6(b)(5) and 6(b)(7) of the Act, 15 U.S.C. 78f(b)(5), 78f(b)(7). See also Securities Exchange Act Release No. 12094, n. 11 (Nov. 18, 1976), 41 FR 51804 (Nov. 24, 1976).

[7] NYSE Company Manual at A-18 et seq. For example, see the NYSE listing agreement, Part III, ¶4.

[8] NYSE Company Manual at B-23.

[9] The NYSE first suggested the concept of an audit committee in 1940, and in recent years has strongly recommended that each listed company form an audit committee preferably composed exclusively of outside directors. See NYSE, "Recommendations and Comments on Financial Reporting to Shareholders and Related Matters," 6 (December 1973). By 1973, about 80 percent of companies listed on the NYSE had appointed an audit committee, and another 13 percent had developed plans to do so. NYSE, "Response to the White Paper Questionnaire Concerning Recommendations and Comments on Financial Reporting to Shareholders and Related Matters," 3 (1973).

The Commission has also urged the formation of audit committee, composed of non-officer directors, to participate in arranging corporate audits. Accounting Series Release No. 19 (Dec. 5, 1940). In 1972, the Commission specifically endorsed the establishment by all publicly held companies of audit committees composed of outside directors. Securities Exchange Act Release No. 9548 (Mar. 23, 1972), 37 FR 6850 (Apr. 5, 1972). In 1974, in amending its rules to require disclosure in proxy statements of the existence or absence of audit committees, the Commission reiterated its support. Securities Exchange Act Release No. 11147 (Dec. 20, 1974), 40 FR 1012 (Jan. 6, 1975). The Commission most recently supported the idea in its "Report to the President on Regulatory Reform" (October 5, 1976).

The Executive Committee of the American Institute of Certified Public Accountants (the "AICPA") has made a similar recommendation to publicly-owned corporations generally. See AICPA "Executive Committee Statement on Audit Committees of Board of Directors" (July 1967). More recently, the Auditing Standards Executive Committee of the AICPA stated, among other things, that in certain instances involving illegal acts or errors or irregularities, matters coming to the auditor's attention should be brought to the attention of the board of directors or the audit committee for appropriate action. AICPA, "Statement on Auditing Standards No. 16" and "Statement on Auditing Standards No. 17" (January 1977).

[10] Undisclosed questionable or illegal corporate payments—both domestic and foreign—can cause serious breaches in both the operation of the securities laws' system of corporate disclosure and, correspondingly, in public confidence in the integrity of many public companies. The Commission has proposed legislation to enhance the accuracy of corporate books and records and the reliability of the audit process, both of which are fundamental to the system of corporate disclosure. See generally "Report of the Securities and Exchange Commission on Questionable and Illegal Corporate Payments and Practices," submitted to the Senate Committee on Banking, Housing and Urban Affairs (May 12, 1976). In recently publishing for comment rulemaking proposals with similar objectives, the Commission stated its belief that Congressional action would be the most desirable means of demonstrating a national commitment to ending the types of corporate misconduct uncovered, and ending defiance of the recordkeeping systems on which disclosure under the securities laws is premised. Securities Exchange Act Release No. 13185 (Jan. 19, 1977), 42 FR 4854 (Jan. 26, 1977).

[11] In a letter dated May 11, 1976, from Chairman Hills to NYSE Chairman Batten, the NYSE was urged to consider that suggestion.

ticipation by those potentially affected and resulted in a number of refinements in the proposal finally submitted to the Commission.

The NYSE's revision of its listing policies appears to be an appropriate way to implement, at this time, an independent audit committee requirement. Exchange rules are, among other things, required to be designed to remove impediments to and perfect the mechanisms of a free and open market, to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest.[12] In many cases of questionable corporate payments, there were elaborate efforts by corporate executives, including some directors, to conceal their activities from auditors, as well as from other company officials and members of the board, thereby undermining purposes of the Act with which exchanges (and other securities markets) are directly concerned. While independent audit committees will not eliminate all instances of abuse, their establishments can be an important step in a broader effort to remedy the problems of corporate accountability and disclosure that have been uncovered.[13]

Exchange listing policies, which govern the rights of issuers to obtain access to exchange securities markets, like other exchange rules have always been subject to Commission oversight.[14] At the same time, they have usually been developed by the exchange with the benefit of informal reaction by those who will be affected. As indicated above,[15] the NYSE in particular has developed listing policies to promote stronger standards of corporate governance.[16] While the current proposal applies only to domestic companies, their compliance should not be deemed to place them at any inappropriate competitive disadvantage.[17]

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular the requirements of Section 6 and the rules and regulations thereunder. The Commission also finds that good cause exists for approving the NYSE's proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, in view of the extensive comment procedures adopted by the NYSE in this matter.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-7708 Filed 3-15-77;8:45 am]

[70-5734]

NORTHEAST UTILITIES ET AL.

Post-Effective Amendment Regarding Financing of Nuclear Fuel Cores

Notice is hereby given that Northeast Utilities ("Northeast"), P.O. Box 270, Hartford, Connecticut 06101, a registered holding company; The Connecticut Light and Power Company, The Hartford Electric Light Company, and Western Massachusetts Electric Company, public-utility subsidiary companies of Northeast; and Northeast Nuclear Energy Company ("NNEC"), a subsidiary company of Northeast formerly known as The Millstone Point Company, have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the post-effective amendment to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By orders in this proceeding dated October 21, 1975, January 16, 1976, and October 22, 1976 (HCAR Nos. 19218, 19346, and 19726), the Commission authorized NNEC to engage in certain financing of its nuclear fuel cores and related transactions, including the issuance and sale through March 31, 1977, of up to $25,000,000 of short-term notes outstanding at any one time to a group of banks.

NNEC now requests an extension of time through March 31, 1978, and proposes to issue and sell notes to banks as previously authorized in the maximum aggregate amount of $25,000,000 outstanding at any one time as a continuing component of the nuclear fuel financing program.

NNEC had $23,000,000 of notes to banks outstanding at January 31, 1977. The proposed bank borrowings will be repaid in part from the proceeds of any future long-term nuclear financing; however, short-term borrowings will remain as a continuing part of the fuel financing program.

Although no formal commitments for NNEC's bank borrowings to be effected in continuance of the financing program have been made with any bank, NNEC expects that a portion of such borrowings will be effected from the following banks in the following maximum amounts:

	Maximum amount
The Connecticut Bank & Trust Co., Hartford, Conn	$10,000,000
Hartford National Bank & Trust Co., Hartford, Conn	7,000,000
The First National Bank of Boston, Mass	7,000,000
The Colonial Bank & Trust Co., Waterbury, Conn	3,000,000
Connecticut National Bank, Bridgeport, Conn	2,500,000
Total	29,500,000

The bank notes will each be dated the date of issue, will have a maximum maturity date of nine months with right of renewal, will bear interest at the prime rate in effect from time to time at the lending bank adjusted as of the date of any change in such rate, will be subject to prepayment at any time at NNEC's option without premium, and will be subordinated to any secured notes issued by NNEC. Compensating balances of up 10% of the credit line plus 10%

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[12] Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5).

[13] The importance of maintaining the truly independent character of the boards of directors of larger corporations has been illustrated by the Commission's recent experience with questionable payments problems. Significantly, in some of these cases no audit committee existed. In the others, with a single exception, audit committees either were operating only during a portion of time when the questionable payments were alleged to have been made or were not wholly independent of management. See "Report of the Securities and Exchange Commission on Questionable and Illegal Corporate Payments and Practices," supra n. 10.

[14] Formerly the Act dealt separately with listing standards. Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3) (1970) (amended 1975), gave the Commission authority to alter or supplement the rules of an exchange in respect of the listing or striking from listing of any security. As amended in 1975, Section 19 requires approval of new rules, which must conform to the requirements of the Act (and in particular the stanards now articulated in Section 6(b)), as well as authorizing revision of existing exchange rules.

[15] See n. 6, supra.

[16] In other instances as well, the Commission when appropriate looks to the private sector for leadership in establishing and improving standards. See Accounting Series Release No. 150 (Dec. 20, 1973), 39 FR 1260 (Jan. 7, 1974). The private sector can draw on resources of practical experience and expertise in formulating workable solutions. The NYSE, with ten public members on its board of twenty directors, is in a position to respond to practical considerations of corporate procedures and compliance as well as considerations of the public interest.

[17] It would, however, be helpful to have the NYSE's reasons for confining its proposal to domestic companies in order to assist the Commission in considering the appropriateness of extending the concept to foreign issuers. While the NYSE has previously provided special listing standards for foreign issurers in lieu of standards applicable to domestic issuers, it has articualted supporting reasons. See SR-NYSE-76-22, approved in Securities Exchange Act Release No. 12471 (May 20, 1976), 41 FR 21654 (May 28, 1976). In this case, however, its has not done so. At the same time, the current NYSE proposal is basically procedural, pertaining to governance of public corporations, and does not affect basic disclosure norms, which, in any event, have traditionally reflected adaptations for foreign issuers. Compare Form 10-K with Form 20-K, 17 CFR 249.310 and 320. Nevertheless the degree of adaptation fairly to be tolerated is a subject which deserves continuing attention. For example, it is currently proposed to bring the continuous disclosure provisions under the Act for foreign issuers (i.e., Form 20-K) more closely into line with those applicable to most domestic issuers (i.e., Form 10-K). See Securities Exchange Act Release No. 13056 (Dec. 10, 1976), 41 FR 55012 (Dec. 16, 1976). At the same time, the Commission notes that the NYSE's audit committee policy applies different standards for determining the independence of legal counsel, on the one hand, and the independence of other persons with relationships to the company, on the other. The Commission recommends that, in monitoring the implementation of its policy, the NYSE give further consideration to the need for assuring the independence of all members of the audit committee.

of the average borrowings are required by the above banks. The effective interest rate for the borrowings would be 7.81% based on a 6.25% prime rate.

It is stated that expenses in the amount of $500 will be incurred in connection with the proposed transactions and that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than March 24, 1977, request in writing a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-7710 Filed 3-15-77;8:45 am]

PHILADELPHIA STOCK EXCHANGE, INC.

Applications for Unlisted Trading Privileges and of Opportunity for Hearing

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the securities of the companies as set forth below, which securities are listed and registered on one or more other national securities exchanges:

The Grand Union Co., common stock, $5 par value.	File No. 7-4823.
Bally Manufacturing Corp., common stock, $0.66⅔ par value.	File No. 7-4924.

Upon receipt of a request, on or before March 23, 1977 from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C., 20549 not later than the date specified. If no one requests a hearing with respect to any particular applications, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-7711 Filed 3-15-77;8:45 am]

[File No. 1-6817]

SHEARSON HAYDEN STONE INC.

Application To Withdraw From Listing and Registration

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock ($0.10 par value) has become listed and registered on the New York Stock Exchange, Inc., and the Company has concluded that the advantage to be derived from dual listing on both exchanges is outweighed by the costs that would be incurred and the possible fragmentation of the trading market.

The American Stock Exchange, Inc. has not objected to this application, and this security remains listed and registered on the Pacific Stock Exchange, Inc.

Any interested person may, on or before March 31, 1977 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. An order granting the application will be issued after the date mentioned above, on the basis of the application and any other information furnished to the Commission, unless it orders a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-7713 Filed 3-15-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[License No. 04/04-0117]

COASTAL CAPITAL CO.

Application for a License as Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA), pursuant to § 107.102 of the regulations (13 CFR 107.-102 (1976)), under the name of Coastal Capital Company, 100 St. Joseph Street, Room 204, Mobile, Alabama 36602 for a license to operate in the State of Alabama as an SBIC, under the provisions of the Small Business Investment Act of 1958 (Act), as amended, (15 U.S.C. 661 et seq.).

The proposed officers and directors and major stockholders are as follows:

Chris C. Delaney, President, Director, 1005 Government Street, Mobile, Alabama 36604.
Thomas H. Davis, Jr., Vice President, Director, 324 Dalewood Drive, Mobile, Alabama 36608.
James Henry Gambill, Treasurer, Director, 4637 Channing Court, Mobile, Alabama 36608.
Verla Ledlow, Secretary, Director, Route 1, Box 139 L, Loxley, Alabama 36551.
John R. Dyas, Director, 2555 S. Durham Drive, Mobile, Alabama 36607.
Arthur C. Tonsmeire, Jr., Director, Route 3, Box 1054, Theodore, Alabama 36582.
William M. Lyon, Director, 120 West Pinebrook Drive, Mobile, Alabama 36608.
First Mobile Service Corporation, 100 percent.

The stock will all be owned by First Mobile Service Corporation, a wholly owned service corporation subsidiary of First Southern Federal Savings and Loan Association, which is a Federally chartered savings and loan association having no beneficial holders of 10 or more percent of its voting securities.

The applicant will begin operations with a capitalization of $500,000, which will be a source of equity capital and long-term loans for qualified small business concerns in the building industry and related fields. In addition to financial assistance, the applicant will provide consulting services to its clients.

The applicant will conduct its operations principally in the State of Alabama and in other areas wherever the need may arise.

Matters involved in SBA's consideration of the application include the general reputation and character of the proposed owners and management, including adequate profitability and financial soundness in accordance with the Act and regulations.

Notice is further given that any interested person may not later than March

28, 1977, submit written comments on the proposed company to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: March 7, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-7665 Filed 3-15-77;8:45 am]

[License No. 04/04-0125]

DESOTO CAPITAL CORP.

Filing of Application for a License as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration (SBA), pursuant to § 107.102 of the regulations (13 CFR 107.102 (1976)), under the name of De Sota Capital Corporation, Pine Creek Commercial Plaza, 9991 Old Highway 78, Suite 10, Olive Branch, Mississippi 38654, for a License to operate in the State of Mississippi as an SBIC, under the provisions of the Small Business Investment Act of 1958 (Act), as amended, (15 U.S.C. 661 et seq.).

The proposed officers and directors and major stockholders are as follows:

William B. Rudner, President, Director, 2195 Poplar Avenue, P.H. No. 2, Memphis, Tennessee 38104, 100 percent.

Walter A. Barrett, Secretary, Treasurer, 3715 Northwood Drive, Memphis, Tennessee 38111.

L. Quincy McPherson, Director, 441 No. 2 N. Highland, Memphis, Tennessee 38122.

J. Vincent Ciroli, Jr., Director, 5301 Moss Hollow Cove, Memphis, Tennessee 38128.

The Applicant will begin operations with a capitalization of $500,000, which will be a source of equity capital and long-term loans for qualified small business concerns in diversified industries. In addition to financial assistance the Applicant will provide consulting services to its clients.

The Applicant will conduct its operations principally in the State of Mississippi and in other areas wherever the need may arise.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, including adequate profitability and financial soundness, in accordance with the Act and regulations.

Notice is further given that any interested persons may, not later than April 15, 1977, submit written comments on the proposed company to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: March 7, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-7667 Filed 3-15-77;8:45 am]

[License No. 02/02-0151]

FAIRFIELD EQUITY CORP.

Filing of Application for Approval of Conflict of Interest Transaction

Notice is hereby given that Fairfield Equity Corporation (Fairfield), 200 East 42nd Street, New York, New York 10017, a Federal Licensee under the Small Business Investment Act of 1958, as amended, (the Act), has filed an application pursuant to § 107.1004 of the Regulations govering small business investment companies (13 CFR 107.1004 (1977)), for an exemption from the provisions of the conflict of interest regulation.

The exemption, if granted, will permit Fairfield to provide a $200,000 financing to W. H. Allen Publishers, Inc. (Allen), 730 Fifth Avenue, New York, New York 10019. The loan would be for five years at the rate of 12 percent per annum and would be fully secured by a guarantee from Allen's parent company. The financing will permit Allen to acquire a publishing business which would otherwise be liquidated with a loss of the business and employment for 60 to 70 people.

Messrs. Matthew Berdon and Ralph Fields, Fairfield's principal shareholders are officers and directors of Allen and shareholders and directors of its parent company. Accordingly, Messrs. Berdon and Fields are considered Allen's associates and the loan transaction will require an exemption pursuant to § 107.-1004(b)(1) of the regulations.

Notice is hereby given that any person may on or before April 15, 1977 submit, in writing, relevant comments on the proposed transaction to: Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in New York City.

Dated: March 9, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-7664 Filed 3-15-77;8:45 am]

SAN FRANCISCO DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration San Francisco District Advisory Council will hold a public meeting at 10:00 a.m., Thursday, March 31, 1977, at the Small Business Administration, 211 Main Street—4th Floor, San Francisco, California, in the District Director's Conference Room, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present. For further information, write or call Richard Segrave-Daly at the above address, 415-556-7490.

Dated: March 10, 1977.

ANTHONY S. STASIO,
Acting Assistant Administrator for Advocacy and Public Communications.

[FR Doc.77-7668 Filed 3-15-77;8:45 am]

DEPARTMENT OF STATE

Agency for International Development

GOODWILL INDUSTRIES OF AMERICA, INC.

Register of Voluntary Foreign Aid Agencies

In accordance with the regulations of the Agency for International Development concerning Registration of Agencies for Voluntary Foreign Aid (A.I.D. Regulation 3) 22 CFR Part 203, promulgated pursuant to section 621 of the Foreign Assistance Act of 1961, as amended, notice is hereby given that registration with the Advisory Committee on Voluntary Foreign Aid of the Agency for International Development has been approved for the following agency:

Goodwill Industries of America, Inc., 9200 Wisconsin Avenue, Washington, D.C. 20014.

Dated: March 3, 1977.

ALLAN R. FURMAN,
Acting Assistant Administrator for Population and Humanitarian Assistance.

[FR Doc.77-7646 Filed 3-15-77;8:45 am]

HOUSING GUARANTY PROGRAM FOR THE REPUBLIC OF PARAGUAY

Information for Investors

The Agency for International Development (A.I.D.) has advised the Saving & Loan Bank of Paraguay (the Borrower) that upon execution by an eligible U.S. investor acceptable to A.I.D. of an agreement to loan the Borrower an amount not to exceed $4,000,000 and subject to the satisfaction of certain further terms and conditions by the Borrower, A.I.D. will guaranty repayment to the investor of the principal and interest on such loan. The guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority, contained in section 222 of the Foreign Assistance Act of 1961, as amended (the Act). Proceeds of the loan will be used to finance housing for lower income families.

Eligible investors interested in extending a guaranteed loan to the Borrower should communicate promptly with:

Dr. Eligio T. Franco, President, Banco Nacional de Ahorro y Prestamo para la Vivienda, Asuncion, Paraguay, Cable address: BNAP.

Investors eligible to receive a guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic corporations, partnerships or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for a guaranty, the loan must be repayable in full no later than the thirtieth anniversary of the first disbursement of the principal amount thereof and the interest rate may be no higher than the maximum rate to be established by A.I.D.

The Borrower projects a schedule of approximately equal annual disbursements covering a maximum of a three year period from the date of the loan agreement and prospective Investors should consider this in proposing a guaranteed loan to the Borrower. In addition, the Investor must provide for the servicing of his loan, i.e., recordation and disposition of loan payments received from the Borrower.

Information as to eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Director, Office of Housing, Agency for International Development, Room 635, SA-12, Washington, D.C. 20523.

This notice is not an offer by A.I.D. or by the Borrower. The Borrower and not A.I.D. will select a lender and negotiate the terms of the proposed loan.

Dated: March 3, 1977.

PETER M. KIMM,
Director of Housing, Agency for International Development.

[FR Doc.77-7647 Filed 3-15-77;8:45 am]

Office of the Secretary

[Public Notice CM-7/40]

ADVISORY COMMITTEE ON THE LAW OF THE SEA

Partially Closed Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the Advisory Committee on the Law of the Sea will meet in closed session on Thursday, April 28 and in both open and closed sessions on Friday, April 29, 1977. The open session of the meeting will convene on Friday at 2:00 p.m. in the Loy Henderson Conference Room (formerly the International Conference Room), U.S. Department of State, 21st and C Street NW., Washington, D.C.

The purpose of the closed meeting is to discuss specific conference issues and formal planning and policy preparations for the U.S. Delegation to the 1977 New York Session of the Third United Nations Conference on the Law of the Sea. During these closed sessions, documents classified under the provisions of Executive Order 11652 will be discussed.

These documents relate to the issues which the United States will be negotiating at the Conference. The documents are exempt under 5 U.S.C. 552(b)(1), and are required to be withheld from disclosure in the public interest.

The issues cover such subjects as freedom of navigation on the high seas and in international straits, the nature of a deep seabeds mining regime and proposed deep seabed mining legislation, the breadth of the continental margin, the juridical status of the economic zone, fisheries, vessel source pollution, scientific research, dispute settlement, and other related topics involving U.S. national security matters. Premature disclosure of the contents of these documents could adversely affect our foreign relations interests and jeopardize the chances of obtaining a timely and satisfactory Law of the Sea Treaty.

The open session of the Advisory Committee meeting will discuss all principal agenda issues to be considered during the Third United Nations Conference on the Law of the Sea, including those issues stated above, but will not examine the classified items discussed during the closed session.

The Advisory Committee on the Law of the Sea represents a broad cross-section of industries, professions, academic disciplines and other public groups. As such, it will comprehensively review the proposals which will come before the Conference.

At the open session, beginning at 2:00 p.m. on April 28, the general public attending may participate in the discussion subject to instructions of the Chairman.

As entrance to the State Department is controlled, members of the public who wish to attend the open session should contact Mr. Peter Bernhardt by April 25 and provide their name and affiliation to facilitate their attendance. Mr. Bernhardt's telephone number is (area code 202) 632-9616.

Dated: March 3, 1977.

FRANK HODSOLL,
Director, Office of the Law of the Sea Negotiations.

[FR Doc.77-7645 Filed 3-15-77;8:45 am]

TENNESSEE VALLEY AUTHORITY

BOARD OF DIRECTORS

Public Meeting

The Board of Directors of the Tennessee Valley Authority will hold a meeting beginning at 10:30 a.m., Wednesday, March 16, 1977, in Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee 37902, to complete the Board's quarterly review of current and anticipated conditions and costs affecting TVA's power operations and the adequacy of revenues to meet the requirements of the TVA Act, and the tests and provisions of its bond resolutions; and to determine whether an adjustment of the rates and charges for the sale of electric power will be necessary during the quarter beginning April 1, 1977.

All of this meeting shall be open to public observation.

Mr. John Van Mol, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-343-4537.

Dated: March 7, 1977.

LYNN SEEBER,
General Manager.

[FR Doc.77-7648 Filed 3-15-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Waiver Petition No. HS-77-3]

GREEN MOUNTAIN RAILROAD CO.

Petition for Exemption From Hours of Service Act

The Green Mountain Railroad Company has petitioned the Federal Railroad Administration pursuant to 45 U.S.C. 64a(e) for an exemption, with respect to certain employees, from the Hours of Service Act, as amended, 45 U.S.C. 61-64(b).

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Attention: FRA Waiver Petition No. HS-77-3, Room 5101, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before April 29, 1977, will be considered before final action is taken on this petition. All comments received will be available for examination by interested persons during business hours in Room 5101, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

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

DONALD W. BENNETT,
Chairman, Railroad Safety Board.

[FR Doc.77-7800 Filed 3-15-77;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

ICE HOCKEY STICKS FROM FINLAND

Antidumping Proceeding Notice

AGENCY: United States Treasury Department.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether or not imports of ice hockey sticks from Finland

are being, or likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market.

EFFECTIVE DATE: This investigation will begin on March 16, 1977.

FOR FURTHER INFORMATION:

John Kugelman, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. (202-566-5492.)

SUPPLEMENTARY INFORMATION: On March 2, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from The Northland Group, Inc., a domestic producer of the subject merchandise, indicating a possibility that ice hockey sticks from Finland 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.).

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 ice hockey sticks from Finland are underselling the domestic product in the United States as a result of possible less-than-fair value prices. Furthermore, the petitioner has experienced a decline in sales, excess plant capacity, and financial losses, stemming in part from possible sales at less than fair value.

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 doing so, the United States Custom 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 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 § 153.30 of the Customs Regulations (19 CFR 153.30).

JOHN H. HARPER,
Acting Assistant Secretary of the Treasury.

MARCH 10, 1977.

[FR Doc.77-7729 Filed 3-15-77;8:45 am]

VETERANS ADMINISTRATION

PRIVACY ACT OF 1974

Revised System Notice

The Privacy Act of 1974 (5 U.S.C. 552a (e)(4)) requires that all agencies publish in the FEDERAL REGISTER, at least annually, a notice of the existence and character of their systems of records. Accordingly, the Veterans Administration published a notice of its inventory of personal records on September 7, 1976 (41 FR 37718). The proposed descriptions of records were adopted without change by notice published on page 48200 of the FEDERAL REGISTER of November 2, 1976.

Notice is hereby given that the Veterans Administration is changing the system of records entitled, "Veterans, Survivor and Dependent Automated Prescription Processing Records—VA" (56-VA119). The changes are designed to produce automated prescription and mailing labels, prescription work lists, refill and renewal notices, and visual as well as hardcopy prints of patient medication profiles, thus providing improved service in dispensing legally prescribed pharmaceuticals to the veteran outpatient population. An individual's well-being will be significantly enhanced through the pharmaceutical dispensing control measures incorporated in the system; specifically, duplicate prescriptions will be detected and the frequency of refills will be monitored, enabling professional medical and para-medical personnel to readily recognize situations or conditions which could have an adverse effect on individuals.

Data which could be used to make decisions on the rights, benefits, or entitlement of individuals are not to be included in the altered system. The rights, benefits, or entitlements of individuals for outpatient pharmacy services will have been determined prior to the individual's inclusion in the system.

The changes for the system in no way alter the purposes for which the information is used; therefore, the requirement to give 30 days prior notice of such change does not apply.

The first listed routine use statement for the system, which appeared on September 7, 1976 (41 FR 37750) has been deleted from this revised notice because it does not accurately describe how information in the system is used or disclosed under the Privacy Act.

A "Report on New System" and an advance copy of the revised system notice were sent, on December 21, 1976, to the Speaker of the House, the President of the Senate, the Privacy Protection Study Commission, and the Office of Management and Budget, as required by the provisions of 5 U.S.C. 552a(o) of the Privacy Act and guidelines issued by the Office of Management and Budget (40 FR 45877), October 3, 1975.

Notice is hereby given that this description is effective the date of final approval.

Approved: March 10, 1977.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

56VA119

System name:

Veterans, Survivor and Dependent Automated Prescription Processing Records—VA

System location:

Records are maintained at the Los Angeles, California area VA health care facilities (Wadsworth, Brentwood, and LA Outpatient Clinic); San Diego, California; Chicago (West Side), Illinois; Atlanta (Decatur), Georgia; Dallas, Texas; Minneapolis, Minnesota; and the VA data processing centers at St. Paul, Minnesota and Los Angeles, California. Locations planned as additions during Fiscal Year 1977 are Long Beach and Sepulveda, California. Address locations are listed in VA Appendix 1, "Addresses of Veterans Administration Facilities" published September 7, 1976 (41 FR 37718).

Categories of individuals covered by the system:

Veterans, survivors and dependents of certain veterans receiving medications from pharmacies at selected VA health care facilities.

Categories of records in the system:

Personal identification information; medication profiles, including prescription, recipient, ordering physician, etc.

Authority for maintenance of the system:

Title 38, United States Code, Chapter 17, Subchapter II, Sections 610, 611, and 612.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

1. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or carged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic tape and disk.

Retrievability:

Indexed by name and social security number.

Safeguards:

Access to the authorized VA Data Processing Centers (St. Paul, Minnesota, and Los Angeles, California) is restricted to authorized VA employees and authorized representatives of vendors.

Access to the computer rooms within the data processing centers is further restricted to especially authorized VA

employees and vendor personnel. Protection is provided by alarm systems as well as guard service.

Data in the system may be accessed from authorized remote terminals via a telecommunications network maintained by the VA on dedicated lines. The system recognizes authorized users by a health care facility identifier transmitted as a part of each data message.

The areas housing the telecommunications terminals will be secured by double locked doors. During those periods when pharmacy personnel are not present in the areas housing the terminal devices, only the Professional Staff Officer-of-the-Day and the Security Officer (at certain facilities) will possess keys or combination for gaining access through the double door security. Access to VA working and storage areas is restricted to VA employees on a "need to know" basis. Generally VA file areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service.

Retention and disposal:

Automated records are maintained on disk in an active status for nine (9) months and in a history status on tape for twenty-seven (27) months before disposal. Disposal is accomplished by erasure.

System manager(s) and address:

Director, Pharmacy Service (119), VA Central Office, 810 Vermont Avenue NW., Washington, D.C. 20420.

Notification procedure:

An individual seeking information concerning the existence or contents of a medical record pertaining to himself/herself must submit a written request or apply in person to the nearest VA health care facility. All inquiries must reasonably identify the system of records involved. Inquiries should include the individual's full name, social security number, approximate date(s) of medical care, and the location of the health care facility involved.

Record access procedures:

Veterans, beneficiaries, service personnel or duly authorized representatives seeking information regarding access to and contesting of "Veterans, Survivor and Dependent Automated Prescription Processing Records—VA" may contact the Director (119), Veterans Administration health care facility.

Contesting record procedures:

(See Notification Procedure above.)

Records source categories:

Patient's Medical Prescription (part of the Patient Consolidated Medical Record portion of the VA Medical Records System.)

[FR Doc.77-7787 Filed 3-15-77;8:45 am]

WAGE COMMITTEE

Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, notice is hereby given that meetings of the Veterans Administration Wage Committee will be held on:

THURSDAY, APRIL 7, 1977
THURSDAY, APRIL 21, 1977

The meetings will convene at 2:30 p.m. and will be held in Room 1144C, Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC.

The Committee's primary responsibility is to consider and make recommendations to the Chief Medical Director, Department of Medicine and Surgery, on all matters involved in the development and authorization of wage rate schedules for Federal Wage System (blue-collar) employees.

At these scheduled meetings, the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, the Federal Advisory Committee Act, as amended by Public Law 94-409, meetings may be closed to the public when they are concerned with matters listed under section 552b, Title 5, United States Code. Two of the matters so listed are those related solely to the internal personnel rules and practices of an agency (5 USC 552b(c)(2)), and those involving trade secrets and commercial or financial information obtained from a person and privileged or confidential (5 USC 552b(c)(4)).

Accordingly, I hereby determine that all portions of the meetings cited above will be closed to the public because the matters considered are related to the internal rules and practices of the Veterans Administration (5 USC 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 USC 552b(c)(4)).

However, members of the public who wish to do so are invited to submit material in writing to the Chairman regarding matters believed to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue NW., Washington, D.C.

Dated: March 10, 1977.

MAX CLELAND,
Administrator.

[FR Doc.77-7788 Filed 3-15-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 347]

ASSIGNMENT OF HEARINGS

MARCH 11, 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 135989 Sub 2, Coast Express, Inc., now assigned April 12, 1977 at Los Angeles, Calif., will be held in Room 8041, 300 N. Los Angeles, St.

MC 142405, Nevada Bulk Corp., now assigned April 13, 1977, at Las Vegas, Nev., will be held in the Court room 2, Federal Bldg. 300 Las Vegas Blvd., South.

MC 119789 Sub 298, Caravan Refrigerated Cargo, Inc., and MC 30844 Sub 573, Kroblin Refrigerated Xpress, Inc., now assigned April 20, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut St.

MC 113651 Sub 197, Indiana Refrigerated Lines, Inc., now assigned April 21, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut St.

MC 118535 Sub 91, Tiona Truck Line, Inc., now assigned April 19, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut Street.

MC 66886 Sub 51, Belger Cartage Service, Inc., now assigned April 18, 1977, at Kansas City, Mo., will be held in Room 609 Federal Office Bldg., 911 Walnut St.

MC 53965 Sub 118, Graves Truck Line, Inc., now assigned April 12, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut St.

MC-F12943, J. B. Hunt Transport, Inc.-Purchase-Bredehoeft Produce Co., Inc., now assigned April 13, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut St.

MC-F-12797, Santini Bros., Inc., dba the Seven Brothers & The Seven Santini Brothers-Purchase Trans Universal Van Lines, Inc., and MC 52022 Sub 10, Santini Bros. Inc., & The Seven Santini Bros., now assigned April 4, 1977, at New York, N.Y., will be held in Room E 2222, Federal Bldg., 26 Federal Plaza.

MC-F-13004, Behnken Truck Service, Inc.—Control—Kreider Truck Service, Inc., and FD 28361 Behnken Truck Service Inc., now assigned April 4, 1977, at St. Louis, Mo., will be held in the Court Room 3, 2nd Floor, 1114 Market St.

MC 138427 Sub 12, Smithway Market St.

MC 112822 Sub 407, Bray Lines, Inc., now assigned March 29, 1977 at St. Louis, Mo., will be held in Court Room 3, 2nd Floor 1114 Market Street.

MC 127198 Sub 2, C. F. Hearn, dba C. F. Hearn Trucking Co., now assigned April 18, 1977, at Raleigh, N.C., will be held in Room 225, Federal Bldg., 310 Newbern Avenue.

MC 130409, Charlotte Visitours, Inc., now assigned April 18, 1977, at Charlotte, N.C., will be held in the Library Auditorium, 310 N. Tryon St.

MC 4405 Sub 537, Dealers Transit, Inc. now assigned May 9, 1977 at Dallas, Texas is cancelled and reassigned for March 30, 1977 (1 day) at Kansas City, Missouri and will be held in Room 609, Federal Office Building, 911 Walnut Street.

No. 36420, Joint-Line Routing of Coal, CR and LN RR's now being assigned the 29th day of March, 1977 at the Offices of the Interstate Commerce Commission in Washington, D.C. for prehearing conference.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-7768 Filed 3-15-77;8:45 am]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Letter Notices

MARCH 4, 1977.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before March 28, 1977. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC-35890 (Sub-No. E18), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St., S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Indiana on and south of a line beginning at the Indiana-Ohio State line and extending along U.S. Highway 40, thence along U.S. Highway 40 to junction U.S. Highway 27, thence along U.S. Highway 27 to junction Interstate Highway 70, thence along Interstate Highway 70 to junction U.S. Highway 35, thence along U.S. Highway 35 to junction Indiana Highway 3, thence along Indiana Highway 3 to junction Indiana Highway 22, thence along Indiana Highway 22 to junction U.S. Highway 35, thence along U.S. Highway 35 to junction U.S. Highway 30, thence along U.S. Highway 30 to the Indiana-Illinois State line, to points in Arizona on and west of Mohave, Yavapai, Maricopa, Pinal, Pima and Santa Cruz counties. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E19), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Indiana on and south of a line beginning at the Illinois-Indiana State line and extending along U.S. Highway 24/52 to junction U.S. Highway 52, thence along U.S. Highway 52 to junction Interstate Highway 65, thence along Interstate Highway 65 to junction Interstate Highway 74, thence along Interstate Highway 74 to the Indiana-Ohio State line, to points in Nevada. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E20), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC. Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from Chicago, Ill., to points in Delaware. The purpose of this filing is to eliminate the gateway of Warren County, Pa.

No. MC-35890 (Sub-No. E21), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St., S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, between points in Ohio (except Williams, Fulton, Henry and Defiance Counties), on the one hand, and, on the other, points in Minnesota. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E22), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, between points in Ohio, on the one hand, and, on the other, points in Wisconsin on and north of Vernon, Sauk, Marquette, Green Lake, Winnebago, Calumet and Manitowoc Counties. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E23) filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, between points in Illinois on and south of a line beginning at the Illinois-Iowa State line, and extending along Interstate Highway 80, thence along Interstate Highway 80 to the Illinois-Indiana State line, and on and north of a line beginning at the Illinois-Missouri State line, and extendng along U.S. Highway 36, thence along U.S. Highway 36 to the Illinois-Indiana State line, on the one hand, and, on the other, points in Maryland. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E24), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Ohio, except points in Butler, Warren, Clinton, Highland, Brown, Clermont and Hamilton Counties, to points in Colorado, on and west of a line beginning at the Colorado-Wyoming State line, and extending along U.S. Highway 87, thence along U.S. Highway 87 to the Colorado-New Mexico State line. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. 25), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Lake, Porter, LaPorte, St. Joseph, Marshall, Starke, and Elkhard Counties, Ind., to points in James City, York, Surrey, Southampton, Isle of Wight and Nansemond Counties, and the cities of Norfolk, Portsmouth, Chesapeake, and Virginia Beach, Va. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E26), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Indiana on and north of a line beginning at the Indiana-Illinois State line and extending along U.S. Highway 24, thence along U.S. Highway 24 to the junction of Indiana Highway 124, thence along Indiana Highway 124 to the Indiana-Ohio State line, to points in Arizona. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E27), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC.,

Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Indiana on and north of a line beginning at the Indiana-Illinois State line and extending along Interstate Highway 70 to junction U.S. Highway 46, thence along U.S. Highway 46 to the Indiana-Ohio State line, to points in California. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E28), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Posey, Vanderburg, Gibson, Warrick and Spencer Counties, Ind., to points in Sonoma, Napa, Sacramento, Amador, Calaveras, Stanislaus, Santa Clara, Santa Cruz, San Mateo, Alameda, Centra Costa, Marin and Salano Counties, Calif. The purpose of this filing is to elimirate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E29), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from St. Joseph and Elkhart Counties, Ind., to points in Canadian, Oklahoma, Cleveland, McClain, Addo and Grady Counties, Okla. The purpose of this filing is to eleminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E30), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Indiana on and east of a line beginning at the Indiana-Michigan State line, and extending along U.S. Highway 421, thence along U.S. Highway 421 to junction U.S. Highway 30, thence along U.S. Highway 30 to the Indiana-Ohio State line, to points in Texas on and west of a line beginning at the Oklahoma-Texas, State line and extending along U.S. Highway 75, thence along U.S. Highway 75 to the Gulf of Mexico. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E31), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Indiana on and north of a line beginning at the Indiana-Ohio State line, and extending along U.S. Highway 30, thence along U.S. Highway 30 to the Illinois-Indiana State line, to points in New Mexico on and west of a line beginning at the New Mexico-Colorado State line, and extending along Interstate Highway 25, thence along Interstate Highway 25, to the New Mexico-Texas State line. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E32), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Ohio to points in Arizona. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E33), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from East Greenville, Pa., to points in Oklahoma, Texas, Kansas, and those points in Arkansas on and west of a line beginning at the Missouri-Arkansas State line, and extending along U.S. Highway 65, thence along U.S. Highway 65 to the Arkansas-Louisiana State line. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E34), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from those points in Ohio on and north of a line beginning at the West Virginia-Ohio State line, and extending along Interstate Highway 70, thence along Interstate Highway 70 to the Ohio-Indiana State line, to those points in Iowa on and west of a line beginning at the Iowa-Minnesota State line, and extending along U.S. Highway 71, thence along U.S. Highway 71 to the Iowa-Missouri State line. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-38590 (Sub-No. E35), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in York County, Pa., to points in Kansas, Oklahoma, and Texas. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E36), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St., S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Maryland to points in Kansas. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E37), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St., S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Minnesota to points in West Virginia. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E38), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St., S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from points in Indiana on and west of a line beginning at the Indiana-Michigan State line and extending along U.S. Highway 31, thence along U.S. Highway 31 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction U.S. Highway 421, thence along U.S. Highway 421 to junction Interstate Highway 74, thence west along Interstate Highway 74 to the Indiana-Illinois State line, to points in New Jersey, those points in New York, on and east of a line beginning at the St. Lawrence River and extending along New York Highway 12, thence along New York Highway 12 to junction Interstate Highway 90, thence along Interstate Highway 90 to junction Interstate Highway 87, thence along Interstate Highway 87 to the New York-New Jersey State line. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC-35890 (Sub-No. E39), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St., S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from Chicago, Ill., to points in Arizona; California; Utah, Nevada; Florida; to those points in Georgia on and south of Effingham, Liberty, Long, Wayne, Pierce,

Ware, Lanier, Lowndes, Brooks, Thomas, Grady and Decatur Counties. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC 35890 (Sub-No. E40), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from points in Warren County, Pa., to points in Missouri on and north and west of a line beginning at the Missouri-Illinois State line at the Mississippi River, and extending along Missouri Highway 47 to junction Missouri Highway 21, thence south along Missouri Highway 21 to Missouri-Arkansas State line. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC 35890 (Sub-No. E41), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel, (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, between points in New Jersey on and east and north of a line beginning at the Pennsylvania-New Jersey State line and extending south along U.S. Highway 206 to junction New Jersey Highway 27, thence along New Jersey Highway 27 to junction New Jersey Highway 571, thence along New Jersey Highway 571 to junction New Jersey Highway 33, thence east along New Jersey Highway 33 to the Atlantic Ocean, on the one hand, and, on the other, to those points in Missouri on and north and west of a line beginning at the Illinois-Missouri State line at the Mississippi River, and extending west along Missouri Highway 47 to junction Interstate Highway 70, thence west along Interstate Highway 70 to junction Missouri Highway 19, thence south along Missouri Highway 19 to junction U.S. Highway 50, thence along U.S. Highway 50 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction Missouri Highway 42, thence southwest along Missouri Highway 42 to junction Missouri Highway 17, thence along Missouri Highway 17 to junction U.S. Highway 60, thence east along U.S. Highway 60 to junction Missouri Highway 19, thence south along Missouri Highway 19 to the Missouri-Arkansas State line. The purpose of this filing is to eliminate the gateways of Warren County, Pa., and Grand Rapids, Mich.

No. MC 35890 (Sub-No. E42), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St., S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *New furniture*, between points in New Jersey, on the one hand, and, on the other, those points in Missouri on and north and west of a line beginning at the Missouri-Illinois State line at the Mississippi River, and extending south along U.S. Highway 61 to junction Missouri Highway 19, thence along Missouri Highway 19 to junction Missouri Highway 22, thence west along Missouri Highway 22 to junction U.S. Highway 124, thence along U.S. Highway 124 to junction Missouri Highway 5, thence south along Missouri Highway 5 to junction U. S. Highway 54 thence along U.S. Highway 54 to Missouri-Kansas State line. The purpose of this filing is to eliminate the gateways of Warren County, Pa., and Grand Rapids, Mich.

No. MC 108207 (Sub-No. E29) (correction), filed May 13, 1974, published in the FEDERAL REGISTER issues of April 21, 1976, May 19, 1976, and republished, as corrected, this issue. Applicant: FROZEN FOOD EXPRESS, P.O. Box 5888, Dallas, Tex. 75222. Applicant's representative: Mike Smith, (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, and meat by-products*, in vehicles equipped with mechanical refrigeration, from Wichita, Kans., to points in New Mexico, points in Arizona, and points in California on, south, and east of a line beginning at the Pacific Ocean and extending along California Highway 17 to junction U.S. Highway 101, thence along U.S. Highway 101 to junction California Highway 152, thence along California Highway 152 to junction California Highway 99, thence along California Highway 99 to junction California Highway 58, thence along California Highway 58 to junction Interstate Highway 15, thence along Interstate Highway 15 to the California-Nevada State line, (2) *meats, meat products and meat by-products* (except fresh meats), in vehicles equipped with mechanical refrigeration, (a) from points in Kansas on and east of U.S. Highway 183 (except those in the Kansas City, Kans. Commercial zone), points in Nebraska on and east of U.S. Highway 183, and Iowa (except Ottumwa), to points in New Mexico and Arizona and (b) from points in Kansas on and east of U.S. Highway 183 (except those in the Kansas City, Kans. Commercial Zone), points in Nebraska on and each of U.S. Highway 81, and Iowa (except Ottumwa), to points in California on, south, and east of a line beginning at the Pacific Ocean and extending along California Highway 17 to junction U.S. Highway 101, thence along U.S. 101 to Junction California Highway 152, thence along California Highway 152 to junction California 99, thence along California Highway 99 to junction California Highway 58, thence along California 58 to junction Interstate Highway 15, thence along Interstate Highway 15 to the California-Nevada State line.

(3) *Fresh meats*, in vehicles equipped with mechanical refrigeration, (a) from points in Kansas on and east of U.S. Highway 183 (except those in the Kansas City Commercial zone located in Kansas and except Coffeyville, Wichita, and Topeka, Kans.), points in Nebraska on and east of U.S. Highway 183, and points in Iowa, to points in New Mexico and Arizona and (b) from points in Kansas on and east of U.S. Highway 183 (except those in the Kansas City Commercial zone located in Kansas and except Coffeyville, Wichita, and Topeka, Kans.), points in Nebraska on and east of U.S. Highway 81, and points in Iowa, to points in California on, south, and east of a line beginning at the Pacific Ocean and extending along California Highway 17 to junction U.S. Highway 101, thence along U.S. Highway 101 to junction California Highway 152, thence along California Highway 152 to junction California Highway 99, thence along California Highway 99 to junction California Highway 58, thence along California Highway 58 to junction Interstate Highway 15, thence along Interstate Highway 15 to the California-Nevada State line, (4) *fresh carcass meat*, in vehicles equipped with mechanical refrigeration, from those points in the Kansas City, Kans., commercial zone which are in Kansas, to points in New Mexico, points in Arizona, and points in California on, south, and east of a line beginning at the Pacific Ocean and extending along California Highway 17 to junction U.S. Highway 101, thence along U.S. Highway 101 to junction California Highway 152, thence along California Highway 152 to junction California Highway 99, thence along California Highway 99 to junction California Highway 58, thence along California Highway 58 to junction Interstate Highway 15, thence along Interstate Highway 15 to the California-Nevada State line, and:

(5) *frozen foods*, in vehicles equipped with mechanical refrigeration, (a) from points in Kansas on and east of U.S. Highway 183, points in Iowa, and points in Nebraska on and east of U.S. Highway 183, to points in New Mexico and Arizona and (b) from points in Kansas on and east of U.S. Highway 183, points in Iowa, and points in Nebraska on and east of U.S. Highway 81, to points in California on, south, and east of a line beginning at the Pacific Ocean and extending along California Highway 17 to junction U.S. Highway 101, thence along U.S. Highway 101 to junction California Highway 152, thence along California Highway 152 to junction California Highway 99, tence along California Highway 99 to junction California Highway 58, thence along California Highway 58 to junction Interstate Highway 15, thence along Interstate Highway 15 to the California-Nevada State line. The purpose of this filing is to eliminate the *gateways* of those points in Texas on, east, and south of a line beginning at the Oklahoma-Texas State line and extending over U.S. Highway 281 to San Antonio, Tex., thence west along U.S. Highway 90 to Del Rio, Tex., and thence south over U.S. Highway 277 to the International Boundary line between the United States and Mexico for the Kansas City, Kans. operations and points in Texas for the remaining operations described above.

NOTE: The purpose of this correction is to state the correct Sub-No. E29 publication.

No. MC 115840 (Sub-No. E109), filed Febuary 24, 1977. Applicant: COLONIAL FAST FREIGHT INCORPORATED, P.O. Box 168, Concord, Tenn. 37922. Applicant's representative: Chester G. Groebel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Farm tractors and related machinery, tools, parts, and supplies*, moving in connection therewith (restricted to commodities which are transported on trailers), from New Orleans, La., to points in Arkansas, Florida, Georgia, Kentucky, North Carolina, South Carolina, Oklahoma, Tennessee, and points in Texas on, south, west and north of a line beginning at the Gulf of Mexico at or near Port Aransas and extending along Texas Highway 361 to junction U.S. Highway 181, thence along U.S. Highway 181 to junction Interstate Highway 35, thence along Interstate Highway 35 to junction U.S. Highway 79, thence along U.S. Highway 79 to junction Interstate Highway 45, thence along Interstate Highway 45 to junction Texas Highway 31, thence along Texas Highway 31 to junction U.S. Highway 80, thence along U.S. Highway 80 to the Texas-Louisiana State line. The purpose of this filing is to eliminate the gateway of Poplarville, Miss.

No. MC 117574 (Sub-No. E48), filed June 6, 1975. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, Pa. 17013. Applicant's representative: E. S. Moore, Jr., (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dredges, component parts of dredges, and dredging equipment*, which is also *industrial machinery and attachments, accessories and parts of such industrial machinery*, (1) between all points in Delaware; points in Caroline, Cecil, Harford, Kent, Queen Annes, and Talbot Counties, Md.; points in New Jersey; the New York Counties southeast of and including Dutchess and Oregan County; points in Pennsylvania on and south of a line beginning at the New York-Pennsylvania State line and extending along U.S. Highway 209, thence along to junction Interstate Highway 76, thence along Interstate Highway 76 to junction Interstate Highway 70, thence along Interstate Highway 70 to junction Interstate Highway 283, thence along Interstate Highway 283 to junction Pennsylvania Legislative Route 767, thence along Pennsylvania Legislative Route 767 to junction U.S. Highway 15, thence along U.S. Highway 15 to junction Maryland-Pennsylvania State line, on the one hand, and, on the other (a) points in Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming; (b) points in Alabama on and west of a line beginning at the Alabama-Georgia State line and extending along U.S. Highway 11 to junction U.S. Highway 231, thence along U.S. Highway 231 to junction U.S. Highway 31, thence along U.S. Highway 31 to junction U.S. Highway 29, thence along U.S. Highway 29 to the Alabama-Florida State line; (c) points in Florida on and west of U.S. Highway 29; (d) points in Maryland on and west of U.S. Highway 220; (e) points in Ohio on and west and south of U.S. Highway 422.

(f) Points in Pennsylvania on and west of a line beginning at the Pennsylvania-Ohio State line and extending along U.S. Highway 422 to junction U.S. Highway 22, thence along U.S. Highway 22 to junction U.S. Highway 522, thence along U.S. Highway 522 to junction Pennsylvania Highway 641, thence along Pennsylvania Highway 641 to junction U.S. Highway 11, thence along U.S. Highway 11 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction U.S. Highway 220, thence along U.S. Highway 220 to the Maryland-Pennsylvania State line; (g) points in Tennessee on and west of a line beginning at the Tennessee-Virginia State line and extending along U.S. Highway 11W to junction U.S. Highway 11, thence along U.S. Highway 11 to the Tennessee-Georgia State line; (h) points in Virginia on and west of a line beginning at the Virginia-West Virginia State line and extending along Virginia Highway 16, to junction U.S. Highway 19, thence along U.S. Highway 19 to the Tennessee-Virginia State line; (i) points in West Virginia on and west of a line beginning at the Maryland-West Virginia State line and extending along U.S. Highway 220, to junction U.S. Highway 50, thence along U.S. Highway 50 to junction U.S. Highway 19, thence along U.S. Highway 19 to junction U.S. Highway 119, thence along U.S. Highway 119 to the West Virginia-Virginia State line; (2) between points in Columbia, Delaware, Greene, Orange, Sullivan and Ulster counties, N.Y., on the one hand, and, on the other, (a) points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, Wyoming.

(b) Points in Delaware on and south of a line beginning at the Delaware-Maryland State line and extending along Delaware Highway 404 to junction Delaware Highway 18, thence along Delaware Highway 18 to the Atlantic Ocean; (c) points in Maryland on and south and west of a line beginning at the Pennsylvania-Maryland State line and extending along Interstate Highway 83 to junction Interstate Highway 695, junction Maryland Highway 2, thence thence along Interstate Highway 695 to along Maryland Highway 2 to junction U.S. Highway 50, thence along U.S. Highway 50 to junction U.S. Highway 301, thence along U.S. Highway 301 to the Virginia-Maryland State line; (d) points in Michigan on and south of a line beginning at the Michigan-Indiana State line and extending along U.S. Highway 12 to junction U.S. Highway 127, thence along U.S. Highway 127 to the Michigan-Ohio State line; (e) points in Ohio on and south and west of a line beginning at the Michigan-Ohio State line and extending along Ohio Highway 109, to junction Ohio Highway 18, thence along Ohio Highway 18 to junction Ohio Highway 100, thence along Ohio Highway 100 to junction Ohio Highway 95, thence along Ohio Highway 95 to junction Ohio Highway 13, thence along Ohio Highway 13 to junction U.S. Highway 36, thence along U.S. Highway 36 to junction Ohio Highway 83, thence along Ohio Highway 83 to junction U.S. Highway 22, thence along U.S. Highway 22 to the Ohio-Pennsylvania State line; (f) points in Pennsylvania on and west of a line beginning at the Ohio-Pennsylvania State line and extending along U.S. Highway 22 to junction Pennsylvania Highway 56, thence along Pennsylvania Highway 56 to junction Interstate Highway 76, thence along Interstate Highway 76 to junction Interstate Highway 83, thence along Interstate Highway 83 to the Pennsylvania-Maryland State line.

(g) Points in Virginia on and west of Virginia Highway 36 and U.S. Highway 301; (3) between points in Maryland on and east of Frederick and Montgomery Counties, on the one hand, and, on the other, (a) points in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin, Wyoming, and points in the following states: (b) points in Pennsylvania on and north and west of a line beginning at the Pennsylvania-New Jersey State line and extending along Pennsylvania Highway 132 to junction Interstate Highway 276, thence along Interstate Highway 276 to junction U.S. Highway 422, thence along U.S. Highway 422 to junction Pennsylvania Highway 61, thence along Pennsylvania Highway 61 to junction U.S. Highway 209, thence along U.S. Highway 209 to junction Pennsylvania Highway 34, thence along Pennsylvania Highway 34 to junction U.S. Highway 322, thence along U.S. Highway 322 to junction U.S. Highway 119, thence along U.S. Highway 119 to junction Pennsylvania Highway 85, thence along Pennsylvania Highway 85 to junction U.S. Highway 422, thence along U.S. Highway 422 to the Pennsylvania-Ohio State line.

(c) Points in Ohio, on and north and west of a line beginning at the Pennsylvania-Ohio State line and extending along U.S. Highway 422 to junction U.S. Highway 62, thence along U.S. Highway 62 to junction Interstate Highway 77,

thence along Interstate Highway 77 to junction U.S. Highway 22, thence along U.S. Highway 22 to junction Interstate Highway 75, thence along Interstate Highway 75 to the Ohio-Kentucky State line; (d) points in Kentucky on and north and west of a line beginning at the Ohio-Kentucky State line and extending along Interstate Highway 75 to junction U.S. Highway 27, thence along U.S. Highway 27 to the Kentucky-Tennessee State line; (e) points in Tennessee on and north and west of a line beginning at the Kentucky-Tennessee State line and extending along U.S. Highway 27 to the Tennessee-Georgia State line; (f) points in Georgia on and south and west of a line beginning at the Tennessee-Georgia State line and extending along U.S. Highway 27 to junction Georgia Highway 3, thence along Georgia Highway 3 to junction U.S. Highway 41 thence along U.S. Highway 41 to junction Georgia Highway 53, thence along Georgia Highway 53 to junction Georgia Highway 15, thence along Georgia Highway 15 to junction U.S. Highway 80, thence along U.S. Highway 80 to the Atlantic Ocean; (g) points in New Jersey on and north and west of a line beginning at the Pennsylvania-New Jersey State line and extending along New Jersey Highway 73, thence along New Jersey Highway 73 to junction New Jersey Highway 70, thence along New Jersey Highway 70 to junction New Jersey Highway 72, thence along New Jersey Highway 72 to the Atlantic Ocean.

(4) Between points in Florida, on the one hand, and, on the other, (a) points in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont; (b) points in Delaware on and north and west of Delaware Highway 8; (c) points in Maryland on and north and east of a line beginning at the Delaware-Maryland State line and extending along Maryland Highway 404 to junction U.S. Highway 50, thence along U.S. Highway 50 to the Maryland-Virginia State line, thence along the Maryland State line to U.S. Highway 220, thence along U.S. Highway 220 to the Maryland-Pennsylvania State line; (d) points in Ohio on and north and east of a line beginning at the Lake Erie and extending along Ohio Highway 14 to junction Ohio Highway 14A, thence along Ohio Highway 14A to junction Ohio Highway 45, thence along Ohio Highway 45 to the Pennsylvania-Ohio State line; (e) points in Pennsylvania on and north and east of a line beginning at the Pennsylvania-Ohio State line and extending along U.S. Highway 30 to junction Interstate Highway 76, thence along Interstate Highway 76 to junction U.S. Highway 220, thence along U.S. Highway 220 to the Pennsylvania-Maryland State line; (f) points in Virginia on and north of U.S. Highway 50; (g) points in West Virginia on and North and east of a line beginning at the Virginia-West Virginia State line and extending along U.S. Highway 50 to junction U.S. Highway 220, thence along U.S. Highway 220 to the West Virginia-Maryland State line.

(5) Between points in Idaho, Michigan, Minnesota, Montana, North Dakota, Oregon, South Dakota, Washington, Wisconsin and Wyoming; points in Ohio on and north of Interstate Highway 80; on the one hand, and, on the other, (a) points in Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont; (b) points in Maryland on and east of U.S. Highway 522; (c) points in New York on and east of a line beginning at the international Boundary line between the United States and Canada and extending along Interstate Highway 87 to junction New York Highway 8, thence along New York Highway 8 to junction New York Highway 12, thence along New York Highway 12 to junction New York Highway 17, thence along New York Highway 17 to junction U.S. Highway 15, thence along U.S. Highway 15 to the New York-Pennsylvania State line; (d) points in North Carolina on and east of a line beginning at the Virginia-North Carolina State line and extending along North Carolina Highway 39 to junction U.S. Highway 301, thence along U.S. Highway 301 to junction U.S. Highway 421, thence along U.S. Highway 421 to the Atlantic Ocean; (e) points in Pennsylvania on and east of a line beginning at the Pennsylvania-New York State line and extending along U.S. Highway 15 to junction U.S. Highway 522, thence along U.S. Highway 522 to the Pennsylvania-Maryland State line; (f) points in Virginia on and east of a line beginning at the Virginia-West Virginia State line and extending along U.S. Highway 522, to junction U.S. Highway 29, thence along U.S. Highway 29 to junction Virginia Highway 6, thence along Virginia Highway 6 to junction U.S. Highway 15, thence along U.S. Highway 15 to the Virginia-North Carolina State line; (g) points in West Virginia on and east of a line beginning at the West Virginia-Virginia State line and extending along U.S. Highway 522 to the West Virginia-Maryland State line.

(6) Between points in Maryland on and east of Anne Arundel, Charles and Prince Charles Counties, on the one hand, and, on the other, (a) points in Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin, and Wyoming; (b) points in Kentucky on and north and west of a line beginning at the Tennessee-Kentucky State line and extending along U.S. Highway 51 to junction U.S. Highway 62, thence along U.S. Highway 62 to junction Interstate Highway 65, thence along Interstate Highway 65 to junction Kentucky Highway 22, thence along Kentucky Highway 22 to junction Kentucky Highway 19, thence along Kentucky Highway 19 to the Kentucky-Ohio State line; (c) points in Mississippi on and north and west of a line beginning at Gulfport, Miss., at the Gulf of Mexico, and extending along U.S. Highway 49, to junction U.S. Highway 98, thence along U.S. Highway 98 to junction Interstate Highway 55, thence along Interstate Highway 55 to the Mississippi-Tennessee State line; (d) points in New Jersey on and north and west of a line beginning at the Pennsylvania-New Jersey State line and extending along New Jersey Highway 57, thence along New Jersey Highway 57 to junction U.S. Highway 46, thence along U.S. Highway 46 to junction Interstate Highway 80, thence along Interstate Highway 80 to the Hudson River; (e) points in Ohio on and north and west of a line beginning at the Kentucky-Ohio State line and extending along U.S. Highway 62 to junction U.S. Highway 50, thence along U.S. Highway 50 to junction U.S. Highway 23, thence along U.S. Highway 23 to junction U.S. Highway 22, thence along U.S. Highway 22 to junction Interstate Highway 70, thence along Interstate Highway 70 to the Ohio-West Virginia State line.

(f) Points in Pennsylvania on and north and west of a line beginning at the West Virginia-Pennsylvania State line and extending along Interstate Highway 70 to junction U.S. Highway 19, thence along U.S. Highway 19 to junction Pennsylvania Highway 28, thence along Pennsylvania Highway 28 to junction Pennsylvania Highway 56, thence along Pennsylvania Highway 56 to junction U.S. Highway 422, thence along U.S. Highway 422 to junction U.S. Highway 22, thence along U.S. Highway 22 to junction U.S. Highway 422, thence along U.S. Highway 422 to junction U.S. Highway 222, thence along U.S. Highway 222 to junction Pennsylvania Highway 100, thence along Pennsylvania Highway 100 to junction Pennsylvania Highway 212, thence along Pennsylvania Highway 212 to the Pennsylvania-New Jersey State line; (g) points in Tennessee, on and north and west of a line beginning at the Tennessee-Mississippi State line and extending along Interstate Highway 55 to junction U.S. Highway 51, thence along U.S. Highway 51 to the Tennessee-Kentucky State line; (h) points in West Virginia on and north and west of a line beginning at the Ohio-West Virginia State line, and extending along Interstate Highway 70, thence along Interstate Highway 70 to the West Virginia-Pennsylvania State line. (7) Between points in Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Hampton, Horry, Jasper, and Williamsburg Counties, S.C., on the one hand, and, on the other, points in Connecticut, Maine, Massachusetts, Michigan, New Hampshire, Oregon, Rhode Island, Vermont, Washington, and points in the following described states: (a) points in California on and north of a line beginning at the Nevada-California State line, and extending along Interstate Highway 80 to junction California Highway 20, thence along California Highway 20 to termination at the Pacific Ocean.

(b) Points in Delaware, on and north of a line beginning at the Delaware-New Jersey State line, and extending along Interstate Highway 95 to the Maryland-Delaware State line; (c) points in Idaho, on and west of a line beginning at the Idaho-Montana State line, and extending along U.S. Highway 191 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction U.S. Highway 93, thence along U.S. Highway 93 to the Nevada-Idaho State line; (d) points in Maryland on and north of a line beginning at the Delaware-Maryland State line, and extending along Interstate Highway 95, to junction Interstate Highway 695, thence along Interstate Highway 695 to junction Interstate Highway 70, thence along Interstate Highway 70 to junction Interstate Highway 81, thence along Insterstate Highway 81 to the Pennsylvania-Maryland State line; (e) points in Montana on and north of a line beginning at the International Boundary line between United States and Canada, and extending along Montana Highway 247 to junction U.S. Highway 2, thence along U.S. Highway 2 to junction U.S. Highway 191, thence along U.S. Highway 191 to junction Interstate Highway 90, thence along Interstate Highway 90 to the Montana-Idaho State line; (f) points in Nevada on and north and west of a line beginning at the Idaho-Nevada State line, and extending along U.S. Highway 93, thence along U.S. Highway 93 to junction U.S. Highway 40, thence along U.S. Highway 40 to junction Interstate Highway 80, thence along Interstate Highway 80 to the California-Nevada State line;

(g) Points in New Jersey on and north of a line beginning at the Cape May, thence along U.S. Highway 9 to junction New Jersey Highway 83, thence along New Jersey Highway 83 to junction New Jersey Highway 47, thence along New Jersey Highway 47 to junction New Jersey Highway 49, thence along New Jersey Highway 49 to junction Interstate Highway 29, thence along Interstate Highway 29 to the Delaware-New Jersey State line; (h) points in Ohio, on and north of a line beginning at the Pennsylvania-Ohio State line and extending along U.S. Highway 322 to junction Ohio Highway 11, thence along Ohio Highway 11 to Lake Erie; (i) points in Pennsylvania on and north of a line beginning at the Maryland-Pennsylvania State line, and extending along Interstate Highway 81 to junction Pennsylvania Highway 16, thence along Pennsylvania Highway 16 to junction U.S. Highway 30, thence along U.S. Highway 30 to junction Interstate Highway 76, thence along Interstate Highway 76 to junction U.S. Highway 19, thence along U.S. Highway 19 to junction Pennsylvania Highway 58, thence along Pennsylvania Highway 58 to the Ohio-Pennsylvania State line. (8) between points in Brunswick, Greensville, Dinwiddie, Nottowa, Amelia, Surry, Sussex, Prince, Southampton, George, Hopewell, Isle of Wright, Nansemond, Norfolk, Chesapeake, York, Hampton, New Port News, King William, Charles City, New Kent, James City, Westmoreland, Northumberland, Essex, Richmond, King and Queen, Gloucester, Lancaster, Middlesex, Mathews, Spotsylvania, Caroline, King George, Louisa, Hanover, Goochland, Henrico, Powhatan, Chesterfield Counties, Va., on the one hand, and, on the other, (a) points in Arizona, California, Colorado, Idaho, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin and Wyoming.

(b) Points in Arkansas on and north and west of a line beginning at the Arkansas-Missouri State line and extending along U.S. Highway 67 to junction U.S. Highway 70, thence along U.S. Highway 70 to the Oklahoma-Arkansas State line; (c) points in Connecticut on and north and west of a line beginning at the New York-Connecticut State line and extending along U.S. Highway 44 to junction Connecticut Highway 15, thence along Connecticut Highway 15 to the Massachusetts-Connecticut State line; (d) points in Illinois on and north of a line beginning at the Indiana-Illinois State line and extending along Illinois Highway 1, to junction U.S. Highway 45, thence along U.S. Highway 45 to junction Illinois Highway 146, thence along Illinois Highway 146 to junction Illinois Highway 3, thence along Illinois Highway 3 to junction Illinois Highway 146, thence along Illinois Highway 146 to the Missouri-Illinois State line; (e) points in Indiana on and north of a line beginning at the Ohio-Indiana State line and extending along U.S. Highway 50 to junction Indiana Highway 57, thence along Indiana Highway 57 to junction Indiana Highway 64, thence along Indiana Highway 64 to the Illinois-Indiana State line; (f) points in Massachusetts, on and north and west of a line beginning at the Connecticut-Massachusetts State line and extending along Massachusetts Highway 15, to junction Interstate Highway 90, thence along Interstate Highway 90 to the Atlantic Ocean; (g) points in Missouri, on and north of a line beginning at the Illinois-Missouri State line and extending along Missouri Highway 74, to junction Missouri Highway 25, thence along Missouri Highway 25 to junction U.S. Highway 60, thence along U.S. Highway 60 to junction U.S. Highway 67, thence along U.S. Highway 67 to the Arkansas-Missouri State line.

(h) Points in New York, on and north of a line beginning at the Pennsylvania-New York State line and extending along New York Highway 52 to junction New York Highway 209, thence along New York Highway 209 to junction New York Highway 44, thence along New York Highway 44 to Connecticut-New York State line; (i) points in Ohio, on and north of a line beginning at the West Virginia-Ohio State line and extending along Interstate Highway 70 to junction U.S. Highway 22, thence along U.S. Highway 22 to junction U.S. Highway 62, thence along U.S. Highway 62 to junction U.S. Highway 50, thence along U.S. Highway 50 to the Indiana-Ohio State line; (j) points in Oklahoma on and north and west of a line beginning at the Oklahoma-Arkansas State line and extending along U.S. Highway 70 to junction U.S. Highway 27, thence along U.S. Highway 27 to the Texas-Oklahoma State line; (k) points in Pennsylvania on and north of a line beginning at the Ohio-Pennsylvania State line and extending along Pennsylvania Highway 844, to junction Interstate Highway 70, thence along Interstate Highway 70 to junction Interstate Highway 76, thence along Interstate Highway 76 to junction Interstate Highway 81, thence along Interstate Highway 81 to junction U.S. Highway 6, thence along U.S. Highway 6 to junction Pennsylvania Highway 652, thence along Pennsylvania Highway 652 to the Pennsylvania-New York State line.

(l) Points in West Virginia, on and north of a line beginning at the Ohio-West Virginia State line and extending along West Virginia Highway 2, to junction U.S. Highway 27, thence along U.S. Highway 27 to the Pennsylvania-West Virginia State line; (m) points in Texas on and west of a line beginning at the Oklahoma-Texas State line and extending along U.S. Highway 271 to junction Texas Highway 24, thence along Texas Highway 24 to junction Interstate Highway 30, thence along Interstate Highway 30 to junction Interstate Highway 35, thence along Interstate Highway 35 to junction U.S. Highway 183, thence along U.S. Highway 183 to junction U.S. Highway 87, thence along U.S. Highway 87 to the Gulf of Mexico. The purpose of this filing is to eliminate the gateway of Carlisle, Pa.

No. MC129068 (Sub-No. E2), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from points in Oklahoma on, south, and west of a line beginning at the Texas-Oklahoma State line and extending along Interstate Highway 40 to junction U.S. Highway 283, thence along U.S. Highway 283 to junction Oklahoma Highway 152, thence along Oklahoma Highway 152 to junction Oklahoma Highway 6, thence along Oklahoma Highway 6 to junction Oklahoma Highway 55, thence along Oklahoma Highway 55 to junction U.S. Highway 183, thence along U.S. Highway 183 to junction Oklahoma Highway 9, thence along Oklahoma Highway 9 to junction Oklahoma Highway 54, thence along Oklahoma Highway 54 to junction Oklahoma Highway 19, thence along Oklahoma Highway 19 to junction U.S. Highway 277, thence along U.S. Highway 277 to junction Oklahoma Highway 17, thence along Oklahoma Highway 17 to junction Oklahoma Highway 65, thence

along Oklahoma Highway 65 to junction Oklahoma Highway 7, thence along Oklahoma Highway 7 to junction U.S. Highway 81, thence along U.S. Highway 81 to the Oklahoma-Texas State line, to points in Missouri. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC 129068 (Sub-No. E3), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from points in Oklahoma on and west of a line beginning at the Oklahoma-Texas State line and extending along U.S. Highway 287 to the Oklahoma-Colorado State line, to points in Missouri on and east of a line beginning at the Missouri-Arkansas State line and extending along Missouri Highway 19 to junction Missouri Highway 106, thence along Missouri Highway 106 to junction Missouri Highway 21, thence along Missouri Highway 21 to junction Missouri Highway 72, thence along Missouri Highway 72 to junction U.S. Highway 67, thence along U.S. Highway 67 to junction Missouri Highway 32, thence along Missouri Highway 32 to the Missouri-Illinois State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC 129068 (Sub-No. E4), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway, service, from points in Oklahoma bounded by a line beginning at the Oklahoma-Texas State line and extending along Interstate Highway 35 to junction U.S. Highway 77, thence along U.S. Highway 77 to junction U.S. Highway 70, thence along U.S. Highway 70 to junction U.S. Highway 81, thence along U.S. Highway 81 to the Oklahoma-Texas State line, to points in Missouri on and north of a line beginning at the Kansas-Missouri State line and extending along U.S. Highway 50 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction Interstate Highway 44, thence along Interstate Highway 44 to junction Missouri Highway 8, thence along Missouri Highway 8 to junction Missouri Highway 19, thence along Missouri Highway 19 to junction Missouri Highway 49, thence along Missouri Highway 49 to junction Missouri Highway 32, thence along Missouri Highway 32 to junction Missouri Highway 21, thence along Missouri Highway 21 to junction Missouri Highway 72, thence along Missouri Highway 72 to junction U.S. Highway 61, thence along U.S. Highway 61 to the Missouri-Illinois State line at or near Scott City, Mo. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC 129068 (Sub-No. E5), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from points in Oklahoma bounded by a line beginning at the Texas-Oklahoma State line and extending along Interstate Highway 40 to junction Oklahoma Highway 152, thence along Oklahoma Highway 152 to junction Oklahoma Highway 6 to junction Oklahoma Highway 55, thence along Oklahoma Highway 55 to junction U.S. Highway 183, thence along U.S. Highway 183 to junction Oklahoma Highway 152, thence along Oklahoma Highway 152 to junction Oklahoma Highway 58, thence along Oklahoma Highway 58 to junction U.S. Highway 66, thence along U.S. Highway 66 to junction U.S. Highway 183, thence along U.S. Highway 183 to junction Oklahoma Highway 47, thence along Oklahoma Highway 47 to junction U.S. Highway 283, thence along U.S. Highway 283 to junction Oklahoma Highway 33, thence along Oklahoma Highway 33 to the Texas-Oklahoma State line, to points in Missouri on and east of a line beginning at the Arkansas-Missouri State line and extending along Missouri Highway 17 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction U.S. Highway 60, thence along U.S. Highway 60 to junction Missouri Highway 95, thence along Missouri Highway 95 to junction Missouri Highway 32, thence along Missouri Highway 32 to junction Missouri Highway 5, thence along Missouri Highway 5 to junction U.S. Highway 54, thence along U.S. Highway 54 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction Missouri Highway 22, thence along Missouri Highway 22 to junction Missouri Highway 151, thence along Missouri Highway 151 to junction Missouri Highway 156, thence along Missouri Highway 156 to junction Missouri Highway "D", thence north along Missouri Highway "D" to La Belle, to junction Missouri Highway "K", thence along Missouri Highway "K" to junction Missouri Highway "E", thence east on Missouri Highway "E" to junction Missouri Highway "M", thence north along Missouri Highway "M" to junction Missouri Highway "D", thence east along Missouri Highway "D" to junction Missouri Highway 81, thence north along Missouri Highway 81 to the Iowa-Missouri State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC 129068 (Sub-No. E6), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobiled homes*, in secondary movements, in truckaway service, from points in Oklahoma bounded by a line beginning at Chickasha, Okla. and extending south along U.S. Highway 81 to junction Oklahoma Highway 7, thence west along Oklahoma Highway 7 to junction Oklahoma Highway 65, thence north along Oklahoma Highway 65 to junction Oklahoma Highway 17, thence west along Oklahoma Highway 17 to junction U. S. Highway 277, thence north along U.S. Highway 277 to junction Oklahoma Highway 19, thence west along Oklahoma Highway 19 to junction Oklahoma Highway 54, thence north along Oklahoma Highway 54 to junction Oklahoma Highway 9, thence east along Oklahoma Highway 9 to the point of beginning, to points in Missouri on and east of a line beginning at the Arkansas-Missouri State line and extending along Missouri Highway 17 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction U.S. Highway 60, thence along U.S. Highway 60 to junction Missouri Highway 95, thence along Missouri Highway 95 to junction Missouri Highway 32, thence along Missouri Highway 32 to junction U.S. Highway 65, thence along U.S. Highway 65 to junction Missouri Highway 7, thence along Missouri Highway 7 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction Interstate Highway 70, thence along Interstate Highway 70 to the Kansas-Missouri State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC 129068 (Sub-No. E7), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from points in Oklahoma bounded by a line beginning at the Waurika, Okla. and extending north along U.S. Highway 81 to Chickaska, Okla. to junction Oklahoma Highway 19, thence southeast along Oklahoma Highway 19 to junction Oklahoma Highway 76, thence south along Oklahoma Highway 76 to junction U.S. Highway 70, thence along U.S. Highway 70 to the point of beginning, to points in Missouri on and east of a line beginning at the Arkansas-Missouri State line and extending along Missouri Highway 17 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction Missouri Highway 17, thence along Missouri Highway 17 to junction Missouri Highway 52, thence along Missouri Highway 52 to junction U.S. Highway 65, thence along U.S. Highway 65 to junction U.S. Highway 50, thence along U.S. Highway 50 to junction U.S. Highway 169, thence along U.S. Highway 169 to junction U.S. High-

way 36, thence along U.S. Highway 36 to the Missouri-Kansas State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-7766 Filed 3-15-77;8:45 am]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Letter Notices

MARCH 11, 1977.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before March 28, 1977. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

No. MC 35890 (Sub-No. E43), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. SE., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from Eldred Townships, McKean County, Pa., to points in Missouri. The purpose of this filing is to eliminate the gateway of Chautauqua County, N.Y.

No. MC 35890 (Sub-No. E44), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. SE., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from Paramus, N.J., to points in Texas. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC 35890 (Sub-No. E45), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. SE., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from Paramus, N.J., to points in Arkansas. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC 35890 (Sub-No. E46), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. SE., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from Youngsville, Pa., to those points in Missouri on and north and west of a line beginning at the Mississippi River and extending along Missouri Highway 47, to junction Missouri Highway 21, thence along Missouri Highway 21 to the Missouri-Arkansas State line. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC 35890 (Sub-No. E47), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC. Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Pennsylvania on and south and west of a line beginning at the Pennsylvania-Ohio State line and extending along Interstate Highway 15 to the Pennsylvania-Maryland State line, to those points in Texas on and west of a line beginning at the Oklahoma-Texas State line and extending along U.S. Highway 75 to junction Interstate Highway 45, thence along Interstate Highway 45 to the Gulf of Mexico. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC 35890 (Sub-No. E48), filed September 16, 1975. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Pennsylvania on and north and east of a line beginning at the Ohio-Pennsylvania State line and extending along U.S. Highway 6 to junction U.S. Highway 322, thence along U.S. Highway 322 to junction Pennsylvania Highway 45, thence along Pennsylvania Highway 45 to junction U.S. Highway 15, thence along U.S. Highway 15 to junction U.S. Highway 11, thence along U.S. Highway 11 to junction Pennsylvania Highway 147, thence along Pennsylvania Highway 147 to junction Pennsylvania Highway 61, thence east and south along Pennsylvania Highway 61 and Interstate Highway 78, thence east along Interstate Highway 78 to junction Pennsylvania Highway 309, thence south along Pennsylvania Highway 309 to junction Pennsylvania Highway 412, thence east along Pennsylvania Highway 412 to junction Pennsylvania Highway 212, thence along Pennsylvania Highway 212 to Pennsylvania-New Jersey State line, to points in Arkansas on and west and south of a line beginning at the Missouri-Arkansas State line and extending along U.S. Highway 63 to junction U.S. Highway 167, thence along U.S. Highway 167 to junction U.S. Highway 67, thence along U.S. Highway 67 to junction U.S. Highway 65, thence along U.S. Highway 65 to the Arkansas-Mississippi State line. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC 35890 (Sub-No. E49), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. SE., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Pennsylvania on and north and east of a line beginning at the Ohio-Pennsylvania State line and extending along U.S. Highway 22 to junction Interstate Highway 76, thence along Interstate Highway 76 to junction Pennsylvania Highway 31, thence along Pennsylvania Highway 31 to junction U.S. Highway 219, thence along U.S. Highway 219 to junction Pennsylvania-Maryland State line, to points in Oklahoma on and south of a line beginning at the Arkansas-Oklahoma State line and extending along Arkansas Highway 9 to junction U.S. Highway 271, thence south and west along U.S. Highway 271 to the Texas-Oklahoma State line. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC 35890 (Sub-No. E50), filed September 16, 1976. Applicant: BLODGETT SERVICE, INC., Thirty-Sixth St. SE., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in New Jersey on and north of a line beginning at the Pennsylvania-New Jersey State line and extending along U.S. Highway 202 to junction U.S. Highway 22, thence along U.S. Highway 22 to junction Interstate Highway 287, thence along Interstate Highway 287 to the New Jersey-New York State line, to points in Arkansas on and north and west of a line beginning at the Missouri-Arkansas State line, and extending along Arkansas Highway 9 to junction U.S. Highway 65, thence along U.S. Highway 65 to junction U.S. Highway 167, thence along U.S. Highway 167 to junction U.S. Highway 79, thence along U.S. Highway 79 to the Arkansas-Louisiana State line. The purpose of this filing is to eliminate the gateways of Warren, Pa., and Grand Rapids, Mich.

No. MC 35890 (Sub-No. E51), filed September 16, 1976. Applicant: BLOD-

GETT FURNITURE SERVICE, INC., Thirty-Sixth St. SE., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Pennsylvania, to those points in Kansas on and north and west of a line beginning at the Kansas-Missouri State line and extending south along U.S. Highway 59 to junction Kansas Highway 4, thence along Kansas Highway 4 to junction Interstate Highway 35, thence along Interstate Highway 35 to junction Kansas Highway 99, thence along Kansas Highway 99 to junction U.S. Highway 50, thence along U.S. Highway 50 to junction Interstate Highway 35, thence along Interstate Highway 35 to junction Kansas Highway 177, thence along Kansas Highway 177 to junction U.S. Highway 54, thence along U.S. Highway 54 to junction Interstate Highway 35 to Kansas-Oklahoma State line. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC 35890 (Sub-No. E52), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. SE., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from those points in Missouri on and west and north of a line beginning at the Iowa-Missouri and extending south along Missouri Highway 15 to junction Missouri Highway 22, thence along Missouri Highway 22 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction Missouri Highway 124, thence along Missouri Highway 124 to junction Missouri Highway 5, thence along Missouri Highway 5 to junction Interstate Highway 70, thence west along Interstate Highway 70 to Missouri Highway 7, thence south along Missouri Highway 7 to junction Missouri Highway 2, thence along Missouri Highway 2 to the Kansas-Missouri State line, to points in Delaware. The purpose of this filing is to eliminate the gateways of Grand Rapids, Mich., and Warren County, Pa.

No. MC 35890 (Sub-No. E53), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, from points in Wisconsin to points in Delaware. The purpose of this filing is to eliminate the gateways of Grand Rapids, Mich., and Warren County, Pa.

No. MC 35890 (Sub-No. E54), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from Pittsburgh, Pa., to Kansas City, Mo. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC 35890 (Sub-No. E55), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from points in Pennsylvania on and north and east of a line beginning at the Pennsylvania-Ohio State line and extending along U.S. Highway 422 to junction Pennsylvania Highway 85, thence east along Pennsylvania Highway 85 to junction U.S. Highway 119, thence north along U.S. Highway 119 to junction U.S. Highway 322, thence east on U.S. Highway 322 to junction U.S. Highway 15, thence along U.S. Highway 15 to the Pennsylvania-Maryland State line, to those points in Missouri on and north and west of a line beginning at the Mississippi River and extending west along Missouri Highway 47 to junction Interstate Highway 70, thence west along Interstate Highway 70 to junction U.S. Highway 54, thence south along U.S. Highway 54 to junction Missouri Highway 73, thence along Missouri Highway 73 to junction U.S. Highway 65, thence south along U.S. Highway 65 to junction Missouri Highway 125, thence along Missouri Highway 125 to the Missouri-Arkansas State line. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC 35890 (Sub-No. E56), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, uncrated*, as defined in Appendix II to the Report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, from points in Pennsylvania on and north and east of a line beginning at the Ohio-Pennsylvania State line and extending along U.S. Highway 30 to junction Interstate Highway 76, thence along Interstate Highway 76 to intersection Pennsylvania Highway 219, thence south along Pennsylvania Highway 219 to the Pennsylvania-Maryland State line, to those points in Kansas on and north and west of a line beginning at the Kansas-Missouri State line and extending west along Interstate Highway 435 to junction Interstate Highway 35, thence along Interstate Highway 35 to junction U.S. Highway 59, thence south along U.S. Highway 59 to junction U.S. Highway 169, thence along U.S. Highway 169 to junction Kansas Highway 39, thence west along Kansas Highway 39 to junction Kansas Highway 99, thence south along Kansas Highway 99 to the Kansas-Oklahoma State line. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC 35890 (Sub-No. E57), filed September 16, 1976. Applicant: BLODGETT FURNITURE SERVICE, INC., Thirty-Sixth St. S.E., Grand Rapids, Mich. 49508. Applicant's representative: John F. Freel, (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from points in Pennsylvania on and east and north of a line beginning at the Ohio-Pennsylvania State line and extending along U.S. Highway 422 to junction U.S. Highway 119, thence south along U.S. Highway 119 to junction Pennsylvania Highway 56, thence south along Pensylvania Highway 56 to junction Interstate Highway 70, thence south along Interstate Highway 70 to the Pennsylvania-Maryland State line, to those points in Missouri on and north and west of a line beginning at the Mississippi River and extending along U.S. Highway 24 to junction U.S. Highway 63, thence south along U.S. Highway 63 to junction Missouri Highway 124, thence west along Missouri Highway 124 to junction Missouri Highway 5, thence west along Missouri Highway 5 to junction U.S. Highway 54, thence west along U.S. Highway 54 to junction Missouri Highway 39, thence south along Missouri Highway 39 to the Arkansas-Missouri State line. The purpose of this filing is to eliminate the gateway of Grand Rapids, Mich.

No. MC 107515 (Sub-No. E506), filed January 27, 1975. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O Box 308, Forest Park, Ga. 33050. Applicant's representative: R. M. Tettlebaum, Suite 375, 3379 Peachtree Rd. N.E., Atlanta, Ga. 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods, fresh and cured meats, dairy products* (as described in the Appendix to the report in *Modification of Permits—Packing House Products*, 46 M.C.C. 23), *fresh fruits and vegetables, canned fruit juices, citrus products, not canned and not frozen*, in vehicles equipped with mechanical refrigeration, (A) From points in Florida to points in Michigan, Minnesota, and Wisconsin; (B) From points in Florida on and east of a line beginning at the Florida-Georgia State line, and extending along U.S. Highway 319, thence along U.S. Highway 319 to the Gulf of Mexico, to points in Illinois, Indiana, Iowa, and those points in Missouri on and north of a line beginning at the Illinois-Missouri State line, and extending along U.S. Highway 50, thence along U.S. Highway 50 to the Missouri-Kansas State line; (C) From points in Florida on and west of a line beginning at the Florida-Georgia State line, and extending along U.S. Highway 319 to the Gulf of Mexico, to points in Ohio; (D) From points in Florida on and south and west of a line beginning at the Georgia-Florida State line, and extend-

ing along Interstate Highway 75 to its junction with Sunshine State Parkway, thence along Sunshine State Parkway to junction U.S. Highway 192, thence along U.S. Highway 192 to junction U.S. Highway 1, thence along U.S. Highway 1 to junction Florida Highway 60, thence along Florida Highway 60 to the Atlantic Ocean, to points in Ohio.

(E) From points in Florida to points in Ohio on and north and west of a line beginning at the Ohio-West Virginia State line, and extending along Interstate Highway 70 to junction Ohio Highway 83, thence along Ohio Highway 83 to junction Ohio Highway 78, thence along Ohio Highway 78 to junction Ohio Highway 13, thence along Ohio Highway 13 to junction Ohio Highway 346, thence along Ohio Highway 346 to junction Ohio Highway 124, thence along Ohio Highway 124 to junction U.S. Highway 23, thence along U.S. Highway 23 to the Ohio-Kentucky State line; (F) From points in Florida to points in Indiana on and north and east of a line beginning at the Indiana-Kentucky State line, and extending along Indiana Highway 135 to junction U.S. Highway 150, thence along U.S. Highway 150 to junction U.S. Highway 231, thence along U.S. Highway 231 to junction Indiana Highway 54, thence along Indiana Highway 54 to the Indiana-Illinois State line; (G) From points in Florida to those points in Illinois on and north of a line beginning at the Indiana-Illinois State line, and extending along U.S. Highway 150, thence along U.S. Highway 150 to the Illinois-Iowa State line; (H) From points in Florida to those points in Iowa on, north and east of a line beginning at the Iowa-South Dakota State line, and extending along Iowa Highway 3 to junction U.S. Highway 218, thence along U.S. Highway 218 to junction Interstate Highway 80, thence along Interstate Highway 80 to the Iowa-Illinois State line. The purpose of this filing is to eliminate the gateways of Atlanta, Ga., and Louisville, Ky.

No. MC 112070 (Sub-No. E93), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, (a) Between those points in Indiana on and north of a line beginning at the Indiana-Ohio State line, and extending along Indiana Highway 6, thence along Indiana Highway 6 to the Illinois-Indiana State line, on the one hand, and, on the other, to those points in New Mexico on and west of a line beginning at the Colorado-New Mexico State line, and extending along U.S. Highway 85, to junction U.S. Highway 84, thence along U.S. Highway 84 to junction U.S. Highway 66, thence along U.S. Highway 66 to junction U.S. Highway 54, thence along U.S. Highway 54 to junction U.S. Highway 285, thence along U.S. Highway 285 to the New Mexico-Texas State line; (b) Between points in Indiana, on the one hand, and, on the other, to those points in New Mexico on and west of a line beginning at the New Mexico-Colorado State line, and extending along Interstate Highway 25, thence along Interstate Highway 25 to the New Mexico-Texas State line; (c) Between points in Indiana, on the one hand, and, on the other, points in Utah. The purpose of this filing is to eliminate the gateways of points in Illinois, Denver, Colo., and points within 10 miles thereof.

No. MC 112070 (Sub-No. E94), filed June 4, 1974. Applicant: GRAY MOVING & STORAGE, INC., 1290 South Pearl, Denver, Colo. 80210. Applicant's representative: D. R. Gray (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, (a) Between points in Michigan, on the one hand, and, on the other, points in Utah; (b) Between points in Michigan, on the one hand, and, on the other, points in New Mexico, except Curry, Roosevelt and Lea Counties. The purpose of this filing is to eliminate the gateways of points in Illinois, Iowa, and Denver, Colo., and points within 10 miles thereof.

No. MC 129068 (Sub-No. E8), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from points in Oklahoma bounded by a line beginning at Cordell and extending east along Oklahoma Highway 152 to junction Oklahoma Highway 58, thence south along Oklahoma Highway 53 to junction Oklahoma Highway 19, thence west along Oklahoma Highway 19 to junction Oklahoma Highway 54, thence north along Oklahoma Highway 54 to junction Oklahoma Highway 9, thence west along Oklahoma Highway 9 to junction U.S. Highway 183, thence north along U.S. Highway 183 to the point of beginning, to points in Missouri on, north, and east of a line beginning at the Arkansas-Missouri State line and extending along U.S. Highway 65 to junction Missouri Highway 13, thence along Missouri Highway 13 to junction Missouri Highway 7, thence along Missouri Highway 7 to junction U.S. Highway 71, thence along U.S. Highway 71 to junction Interstate Highway 70, thence along Interstate Highway 70 to the Kansas-Missouri State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC 129068 (Sub-No. E9), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from points in Oklahoma bounded by a line beginning at Chickasha and extending east along U.S. Highway 62 to junction Oklahoma Highway 39, thence east along Oklahoma Highway 39 to junction U.S. Highway 77, thence south along U.S. Highway 77 to junction Oklahoma Highway 74, thence south along Oklahoma Highway 74 to junction Oklahoma Highway 29, thence west along Oklahoma Highway 29 to junction U.S. Highway 81, thence north along U.S. Highway 81 to the point of beginning, to points in Missouri on and east of a line beginning at the Missouri-Illinois State line at or near Cape Girardeau and extending along U.S. Highway 61 to junction Missouri Highway 77, thence along Missouri Highway 77 to junction U.S. Highway 62, thence along U.S. Highway 62 to junction Missouri Highway 102, thence along Missouri Highway 102 to junction Missouri Highway 77, thence along Missouri Highway 77 to the Missouri-Kentucky State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC 129068 (Sub-No. E10), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from points in Oklahoma bounded by a line beginning at Chickasha and extending east along U.S. Highway 62 to junction Oklahoma Highway 39, thence east along Oklahoma Highway 39 to junction U.S. Highway 77, thence south along U.S. Highway 77 to junction Oklahoma Highway 74, thence south along Oklahoma Highway 74 to junction Oklahoma Highway 19, thence west along Oklahoma Highway 19 to junction U.S. Highway 81, thence north along U.S. Highway 81 to the point of beginning, to Hannibal, Mo. and Louisiana, Mo. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC–129068 (Sub-No. E11), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, (1) from points in Oklahoma bounded by a line beginning at Blanchard and extending south along Oklahoma Highway 76 to junction Oklahoma Highway 39, thence west along Oklahoma Highway 39 to junction U.S. Highway 62, thence northeast along U.S. Highway 62 to the point of beginning, to points in Missouri on and east of a line beginning at the Missouri-Arkansas

State line and extending along Missouri Highway 25 to junction U.S. Highway 61, thence along U.S. Highway 61 to junction Missouri Highway 51, thence along Missouri Highway 51 to the Missouri-Illinois State line, (2) from points in Oklahoma bounded by a line beginning at Blanchard and extending south along Oklahoma Highway 76 to junction Oklahoma Highway 39, thence west along Oklahoma Highway 39 to junction U.S. Highway 62, thence northeast along U.S. Highway 62 to the point of beginning, to St. Louis, Mo., (3) from points in Oklahoma bounded by a line beginning at Blanchard and extending south along Oklahoma Highway 76 to junction Oklahoma Highway 39, thence west along Oklahoma Highway 39 to junction U.S. Highway 62, thence northeast along U.S. Highway 62 to the point of beginning, to points in Missouri on, north, and east of a line beginning at the Missouri-Illinois State line at or near Louisiana, Mo. and extending along U.S. Highway 54 to junction Missouri Highway 154, thence along Missouri Highway 154 to junction Missouri Highway 19, thence along Missouri Highway 19 to junction Missouri Highway 154, thence along Missouri Highway 154 to junction Missouri Highway 15, thence along Missouri Highway 15 to junction Missouri Highway 156, thence along Missouri Highway 156 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction Missouri Highway 6, thence along Missouri Highway 6 to junction Missouri Highway 5, thence along Missouri Highway 5 to the Missouri-Iowa State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC–129068 (Sub-No. E12), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from points in Oklahoma bounded by a line beginning at Amadarko and extending east along U.S. Highway 62 to junction U.S. Highway 81, thence north along U.S. Highway 81 to junction Oklahoma Highway 152, thence west along Oklahoma Highway 152 to junction U.S. Highway 281, thence south along U.S. Highway 281 to point of beginning, to points in Missouri on and east of a line beginning at the Missouri-Iowa State line and extending along Missouri Highway 5 to junction U.S. Highway 136, thence along U.S. Highway 136 to junction Missouri Highway 149, thence along Missouri Highway 149 to junction Missouri Highway 6, thence along Missouri Highway 6 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction U.S. Highway 24, thence along U.S. Highway 154, thence along Missouri Highway 154 to junction Missouri Highway 19, thence along Missouri Highway 19 to junction Interstate Highway 70, thence along Interstate Highway 70 to junction Interstate Highway 244, thence along Interstate Highway 244 to junction Interstate Highway 55, thence along Interstate Highway 55 to junction U.S. Highway 67, thence along U.S. Highway 67 to junction Missouri Highway 53, thence along Missouri Highway 53 to junction Missouri Highway 25, thence along Missouri Highway 25 to the Missouri-Arkansas State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC–129068 (Sub-No. E13), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from Gray, Okla., to points in Missouri on and east of a line beginning at the Missouri-Arkansas State line and extending along U.S. Highway 63 to junction Missouri Highway 19, thence along Missouri Highway 19 to junction Missouri Highway 106, thence along Missouri Highway 106 to junction Missouri Highway 21, thence along Missouri Highway 21 to junction Missouri Highway 72, thence along Missouri Highway 72 to junction U.S. Highway 67, thence along U.S. Highway 67 to junction Missouri Highway 32, thence along Missouri Highway 32 to the Missouri-Illinois State line at or near Ste. Genevieve, Mo. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC–129068 (Sub-No. E14), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from points in Oklahoma bounded by a line beginning at the Oklahoma-Texas State line and extending north along U.S. Highway 183 to junction U.S. Highway 62, thence west along U.S. Highway 62 to junction Oklahoma Highway 44, thence south along Oklahoma Highway 44 to the Oklahoma-Texas State line, to points in Kansas on and east of a line beginning at the Oklahoma-Kansas State line and extending along Kansas Highway 179 to junction Kansas Highway 14, thence along Kansas Highway 14 to junction U.S. Highway 160, thence along U.S. Highway 160 to junction U.S. Highway 281, thence along U.S. Highway 281 to junction Kansas Highway 18, thence west along Kansas Highway 18 to junction unnumbered highway at Natoma, thence north along unnumbered highway to junction Kansas Highway 9 at Cedar, thence along Kansas Highway 9 to junction U.S. Highway 183, thence along U.S. Highway 183 to junction U.S. Highway 36, thence along U.S. Highway 36 to the Kansas-Colorado State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC–129068 (Sub-No. E15), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from points in Oklahoma bounded by a line beginning at Maud and extending north and east along Oklahoma Highway 59 to junction Oklahoma Highway 99, thence south along Oklahoma Highway 99 to junction Oklahoma Highway 59, thence east along Oklahoma Highway 59 to junction U.S. Highway 270, thence east along U.S. Highway 270 to junction U.S. Highway 75, thence north along U.S. Highway 75 to junction Oklahoma Highway 9, thence west along Oklahoma Highway 9 to junction Oklahoma Highway 99, thence south along Oklahoma Highway 99 to junction Oklahoma Highway 59, thence south along Oklahoma Highway 59 to the point of beginning, to points in Kansas on, north, and west of a line beginning at the Nebraska-Kansas State line and extending along U.S. Highway 281 to junction U.S. Highway 24, thence along U.S. Highway 24 to junction U.S. Highway 283, thence along U.S. Highway 283 to junction Interstate Highway 70, thence along Interstate Highway 70 to junction U.S. Highway 40, thence along U.S. Highway 40 to junction Kansas Highway 27, thence along Kansas Highway 27 to junction Kansas Highway 96, thence along Kansas Highway 96 to the Kansas-Colorado State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC–129068 (Sub-No. E16), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from points in Oklahoma on and south of a line beginning at the Oklahoma-Arkansas State line and extending along U.S. Highway 70 to junction Oklahoma Highway 3, thence along Oklahoma Highway 3 to junction Oklahoma Highway 1, thence along Oklahoma Highway 1 to junction Oklahoma Highway 7, thence along Oklahoma Highway 7 to junction U.S. Highway 77, thence along U.S. Highway 77 to junction Interstate Highway 35, thence along Interstate Highway 35 to the Oklahoma-Texas State line, to points in Kansas on and west of a line beginning at the Oklahoma-Kansas State line and extending along Kansas Highway 1 to junction U.S. Highway 160,

thence along U.S. Highway 160 to junction U.S. Highway 281, thence along U.S. Highway 281 to the Kansas-Nebraska State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC-129068 (Sub-No. E17), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from points in Oklahoma on and south of a line beginning at the Oklahoma-Texas State line and extending along U.S. Highway 77 to junction U.S. Highway 70, thence along U.S. Highway 70 to junction U.S. Highway 81, thence along U.S. Highway 81 to the Oklahoma-Texas State line, to points in Kansas on and north of a line beginning at the Oklahoma-Kansas State line and extending along U.S. Highway 54 to junction Kansas Highway 61, thence along Kansas Highway 61 to junction U.S. Highway 81, thence along U.S. Highway 81 to junction U.S. Highway 40, thence along U.S. Highway 40 to junction Kansas Highway 10, thence along Kansas Highway 10 to the Kansas-Missouri State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC-129068 (Sub-No. E18), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from Oklahoma City, Okla., to points in Kansas on, north, and west of a line beginning at the Kansas-Colorado State line and extending along U.S. Highway 36 to junction Kansas Highway 27, thence along Kansas Highway 27 to the Kansas-Nebraska State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

No. MC-129068 (Sub-No. E19), filed December 1, 1976. Applicant: GRIFFIN TRANSPORTATION, INC., 3002 South Douglas Blvd., Oklahoma City, Okla. 73150. Applicant's representative: I. E. Chenoweth, 420 South Main St., Tulsa, Okla. 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used mobile homes*, in secondary movements, in truckaway service, from points in Oklahoma bounded by a line beginning at McAlester and extending south along U.S. Highway 69 to junction Oklahoma Highway 3, thence west along Oklahoma Highway 3 to junction U.S. Highway 75, thence north along U.S. Highway 75 to junction U.S. Highway 270, thence east along U.S. Highway 270 to the point of beginning, to points in Kansas on and west of a line beginning at the Kansas-Oklahoma State line and extending along U.S. Highway 83 to junction U.S. Highway 56, thence along U.S. Highway 56 to junction U.S. Highway 281, thence along U.S. Highway 281 to junction U.S. Highway 40, thence along U.S. Highway 40 to junction U.S. Highway 183, thence along U.S. Highway 183 to the Kansas-Nebraska State line. The purpose of this filing is to eliminate the gateway of Lawton, Okla.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-7767 Filed 3-15-77;8:45 am]

[Ex Parte No. 241; Rule 19, Exemption No. 133]

MISSOURI PACIFIC RAILROAD CO.

Exemption Under Provision of Mandatory Car Service Rules

To: All Railroads.

It appearing, that there are substantial shortages of fifty-foot plain boxcars on the lines of the Missouri Pacific Railroad Company (MP); that there is an available supply of such cars on the National Railways of Mexico (NdeM); that the NdeM has consented to use by the MP of certain of these cars; and the MP has secured clearance from the United States Customs Service for use of these cars provided they are interchanged from and to the NdeM exclusively by the MP; and that use of these cars by the MP will substantially relieve boxcar shortages on the MP.

It is ordered, that, pursuant to the authority vested in me by Car Service Rule 19, plain boxcars owned by the National Railways of Mexico (NdeM) identified herein may be used by the Missouri Pacific Railroad Company (MP) without regard to the requirements of Car Service Rules 1 and 2.

It is further ordered, that NdeM plain boxcars identified herein available empty on lines other than the MP must be returned to the MP either loaded or empty and may not be returned to the NdeM by any line other than the MP, regardless of the requirements of Car Service Rules 1 and 2; and

It is further ordered, that this exemption is applicable to freight cars owned by the NdeM identified as follows:

NdeM 100000—101999.
NdeM 104000—104999.

Effective March 10, 1977, and continuing in effect until further order of the Commission.

Issued at Washington, D.C., March 9, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-7769 Filed 3-15-77;8:45 am]

[Notice No. 134]

MOTOR CARRIER TRANSFER PROCEEDINGS

MARCH 16, 1977.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212a(b) in connection with transfer application under Section 212a(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-77007. By application filed March 3, 1977, JOHN B. McNABB, an individual, d.b.a. McNABB FARMS, P.O. Box 4366, Pocatello, ID 83201, seeks temporary authority to transfer the operating rights of JOHN L. SMITH, an individual, P.O. Box 186, Moreland, ID 83256, under section 210a(b). The transfer to JOHN B. McNABB, an individual, d.b.a. McNABB FARMS, of the operating rights of JOHN L. SMITH, an individual, is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-7763 Filed 3-15-77;8:45 am]

[Notice No. 133]

MOTOR CARRIER TRANSFER PROCEEDINGS

MARCH 16, 1977.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under Section 212a(b) in connection with transfer application under Section 212a(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-76997. By application filed February 28, 1977, GEORGE WILLIAM SIGRIST, an individual, d.b.a. SIGRIST TRUCKING COMPANY, 700 Homewood Drive, Pocomoke City, MD 21851, seeks temporary authority to transfer the operating rights of WILLIAM G. LANKFORD II, an individual, d.b.a. WILLIAM G. LANKFORD II, R.F.D. No. 1, Pocomoke City, MD 21851, under section 210a(b). The transfer to GEORGE WILLIAM SIGRIST, an individual, d.b.a. SIGRIST TRUCKING COMPANY, of the operating rights of WILLIAM G. LANKFORD II, an individual, d.b.a. WILLIAM G. LANKFORD II, is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-7764 Filed 3-15-77;8:45 am]

[Notice No. 132]

MOTOR CARRIER TRANSFER PROCEEDINGS

MARCH 16, 1977.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under

Section 212a(b) in connection with transfer application under Section 212a (b) and Transfer Rules, 49 CFR Part 1132.

No. MC–FC–76996. By application filed March 1, 1977, M & T TRANSPORT, INC. (M & T), 7397 Richmond Road, Easy Syracuse, NY 13057, seeks temporary authority to transfer the operating rights of LAKELAWN TRANSPORT CORP. (Lakelawn) P.O. Box 1366, Syracuse, NY 13201, under Section 210a(b). The transfer to M & T TRANSPORT, INC. (M & T) of the operating rights of LAKELAWN TRANSPORT CORP. (Lakelawn) is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-7765 Filed 3-15-77;8:45 am]

[Vol. No. 6]

PETITIONS FOR MODIFICATION, INTERPRETATION OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

Correction

In FR Doc. 6222 appearing in the issue of Thursday, March 3, 1977 on page 12296 the following corrections should be made:

1. On page 12301, the 2nd column, last paragraph, 1st line should read:

No. MC 112750 (Sub-No. 336), filed * * *.

2. On page 12304, 1st column, 2nd paragraph, 1st line should read:

No. MC 133119 (Sub-No. 110) filed Jan. * * *.

3. On page 12305, the 2nd column, 1st paragraph, 1st line should read:

No. MC 135082 (Sub-No. 41), filed * * *.

federal register

WEDNESDAY, MARCH 16, 1977

PART II

COMMODITY FUTURES TRADING COMMISSION

■

BONA FIDE HEDGING TRANSACTIONS OR POSITIONS

Proposed Revisions

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 1]

BONA FIDE HEDGING TRANSACTIONS OR POSITIONS

Proposed Rulemaking and Request for Comment

The Commodity Futures Trading Commission ("Commission") is considering the revision of the definition of "bona fide hedging transactions or positions" provided in § 1.3(z) of its regulations, 17 CFR 1.3(z) (1976). In conjunction with this proposal, the Commission is also considering the revision of § 1.48 of its regulations, 17 CFR 1.48 (1976), which specifies certain reporting requirements for persons classifying positions as bona fide hedging under § 1.3(z) (4) of the current definition, and the issuance of a new § 1.47, which would contain the requirements for classifying certain other positions as bona fide hedging under proposed revised § 1.3(z). The Commission requests public comment on these proposed amendments of its regulations.

BACKGROUND

Section 4a of the Commodity Exchange Act ("Act"), 7 U.S.C. 6a (Supp. V, 1975), authorizes the Commission to establish limits on the trading and positions of any person in contracts for future delivery on or subject to the rules of any contract market. As amended by section 404 of the Commodity Futures Trading Commission Act of 1974 ("CFTC Act"), Pub. L. 93-463, 88 Stat. 1389, 1413, that section further provides that such limits shall not "apply to transactions or positions which are shown to be bona fide hedging transactions or positions" as such terms shall be defined by the Commission. Prior to the enactment of the CFTC Act, the terms bona fide hedging transactions or positions were defined in section 4a(3) of the Act.

The various congressional committee reports on H.R. 13113, the bill which became the CFTC Act, reveal the general intent of Congress in authorizing and directing the Commission to define bona fide hedging transactions and positions. The report of the Committee on Agriculture of the House of Representatives stated that:

> The goal of the Committee in replacing the so-called "mechanical test" of hedging in section 4a(3) of the present Act was to free the Commission to define hedging in a manner more consistent with the times and practices of the industry. It is not the intent of the Committee that it be used to overtly restrict industry use of the futures market for hedging.[1]

That report also expressed an intent that the provisions of the present definition:

> * * * not be abandoned without positive alternatives and clear consideration by the Commission of the effects of such abandonment and determination that such action would be consistent with the purposes of the current Act as amended by H.R. 13113.[2]

[1] *H.R. Rep. No. 93-975*, 93d Cong., 2d Sess. 31 (1974).

[2] *Ibid.*, 31.

The Senate Committee on Agriculture and Forestry noted:

> The Committee wishes to emphasize that, in giving the Commission authority to define hedging, it does not intend that hedging be defined in such a manner as to deny traditional legitimate users of the futures market an opportunity to continue to hedge. The Committee felt that the Commission should have the authority to define hedging because the current definition is too narrow to permit certain businessmen the opportunity to hedge legitimately on the market.[3]

As directed by section 404 of the CFTC Act, the Secretary of Agriculture amended the general regulations under the Act by adopting an interim definition of bona fide hedging transactions or positions in a new § 1.3(z) of the regulations in March 1975 (40 FR 11560, March 12, 1975). In August 1975 the Commission solicited public comment on a definition of bona fide hedging (40 FR 34627, August 18, 1975), and in October 1975 the Commission adopted the Secretary of Agriculture's definition with only minor changes (40 FR 48688, October 17, 1975). At that time, the Commission stated that the prior definition was being adopted as an interim measure only. The Commission also noted that it was assigning the topic of bona fide hedging transactions or positions to its recently appointed Advisory Committee on the Economic Role of Contract Markets for further study and that the staff had been directed to draft a proposed new definition. On January 8 and 9, 1976, the Commission held public hearings on the definition of bona fide hedging transactions and positions in New York City.[4]

In proposing the new definition of bona fide hedging transactions and positions which is set forth below, the Commission has carefully reconsidered the concepts embodied in the current definition and has considered, among other things:

1. The expressed intent of Congress concerning the provision of the CFTC Act which authorizes and directs the Commission to define hedging.

2. The responses to the request for comment which was published in the FEDERAL REGISTER on August 18, 1975.

3. The presentations submitted at the public hearings held by the Commission on the subject of a hedging definition on January 8 and 9, 1976.

4. The recommendations of the Commission's Advisory Committee on the Economic Role of Contract Markets.[5]

In the Commission's judgment these sources indicate that a broader definition of hedging is both necessary and desirable. However, in proposing a new definition, the Commission has also been mindful of its general responsibilities for orderly, competitive markets and the fact that the commercial utility from futures trading markets depends upon the orderly functioning of the markets. In the Commission's opinion, the proposed revision of § 1.3(z), along with proposed new § 1.47 of the regulations and proposed revised § 1.48 of the regulations, would provide for increased commercial access to the markets, in a manner which will be consistent with the general purposes of the Act, and increased commercial utilization of futures trading.

[3] *S. Rep. No. 93-1131*, 93d Cong., 2d Sess. 26 (1974).

[4] A notice of these public hearings was published in the FEDERAL REGISTER (40 F.R. 58684, December 18, 1976).

[5] *See Report of the Commodity Futures Trading Commission Advisory Committee on the Economic Role of Contract Markets*, July 17, 1976, U.S. Government Printing Office, 1976-0-221-606.

SUMMARY OF PROPOSED AMENDMENTS

Proposed definition of bona fide hedging. The definition of hedging contained in the proposed § 1.3(z) of the regulations is divided into three paragraphs. Paragraph (1) sets forth a general description of transactions and positions which the Commission would consider as bona fide hedging under economically appropriate circumstances. Specific conditions concerning purchases and sales for future delivery in excess of limits in effect pursuant to section 4a of the Act are set forth in paragraphs (2) and (3) of the proposed definition.

Paragraph (2) of the proposed definition enumerates specific transactions and positions which the Commission views as conforming to the general definition of bona fide hedging in paragraph (1) without further consideration as to the particulars of the case. The list of transactions and positions included in paragraph (2) differs from those listed in the current § 1.3(z) in the following manner.

First, reference to transactions and positions in commodities which are not subject to limits currently in effect pursuant to section 4a of the Act have been eliminated.

Second, proposed paragraph (2) contains a general provision for "cross-commodity" hedging, i.e., purchases and sales for future delivery which are offset by positions which are not the same quantity of the same cash commodity. Classifying such purchases and sales as bona fide hedging under the proposed enumeration in paragraph (2) would be allowed for all but the five last trading days of any particular future. In view of this general provision, specific cases of cross-commodity hedging which are contained in the current definition are not enumerated in proposed paragraph (2). However, under the general provision in the proposed paragraph, these specific cases would be subject to the limitation concerning the five last trading days.

Third, under the specific enumeration in proposed paragraph (2), sales or purchases for future delivery which are offset respectively by anticipated production or unfilled anticipated requirements for manufacturing, processing or feeding would not be considered bona fide hedging during the five last days of trading in any contract for future delivery. This restriction concerning the five final days of trading is not contained in the current definition of hedging.

Finally, all purchases and sales by governments are excluded from the enumeration of specific transactions and positions contained in proposed paragraph (2). It should be noted that any purchase or sale specifically mentioned in the current definition of bona fide hedging, but excluded from the enumeration in proposed paragragh (2), could be exempted by the Commission from its limits on trading and positions under the provisions of the third paragraph of the proposed definition.

Paragraph (3) of the proposed definition of bona fide hedging provides that for purposes of determining exemptions from limits on transactions and positions fixed pursuant to section 4a of the Act the Commission may recognize as bona fide hedging purchases and sales other than those specifically enumerated in proposed paragraph (2). Proposed paragraph (3) requires that any person requesting permission to classify such purchases or sales as hedging provide the Commission with evidence that such transactions meet the requirements of the general definition in paragraph (1) of proposed § 1.3(z) and will be consistent with the general objectives of the Act. The purpose of this paragraph is to provide flexibility in application of the general definition and to avoid an extensive specialized listing of enumerated bona fide hedging transactions and positions in paragraph (2) of the proposed definition.

Other Revisions

Proposed new § 1.47 sets forth the requirements for classifying positions as bona fide hedging under the provisions of paragraph (3) of proposed § 1.3(z), i.e., for those cases which are not specifically enumerated as bona fide hedging in paragraph (2) of the proposed definition. Proposed § 1.47 provides that in these cases certain information must be filed thirty days in advance of considering such purchases and sales as bona fide hedging for the first time. It also specifies the method of determining the maximum transactions and positions which may be considered as bona fide hedging pursuant to paragraph (3) of the proposed definition.

The Commission is also proposing revisions in § 1.48 of the regulations in order to conform its requirements to proposed revisions in § 1.3(z) and new § 1.47, and to codify the existing procedures employed under the current regulation.

Discussion of Proposed § 1.3(z)

Paragraph (1). The Commission believes that many commercial enterprises and the general public may view its definition of hedging as the official guideline for commercial risk-shifting use of the futures market. Since the substance of the present definition was drafted for use in the Commodity Exchange Act of 1936 for application to domestically-produced agricultural commodities, the Commission is concerned that the definition may constitute an artificial barrier to full utilization of modern-day risk management strategies available in the diverse variety of futures markets now in existance and under regulation. This may be the case both in the instances where limits have not been established pursuant to section 4a of the Act, and where the transactions and positions being considered by potential market users would not be in excess of such limits.

Paragraph (1) of the proposed revision of section 1.3(z) therefore provides a general conceptual definition of the nature of transactions and positions which the Commission feels would constitute bona fide hedging. As such, it sets out the basic conditions which must be met by a bona fide hedging transaction or position; i.e., it must be economically appropriate to risk reduction, such risks must arise from operation of a commercial enterprise, and the price fluctuations of the futures contracts used in the transaction must be substantially related to fluctuations of the cash market value of the assets, liabilities or services being hedged.

Paragraph (1) of the proposed definition describes risks arising from changes in the value of assets, liabilities, or services attendant to the operation of a commercial business. This is a departure from the language of the current definition which refers to offsetting positions in the same commodity. The proposed language will still permit persons to classify offsetting positions as bona fide hedging. However, the Commission understands that many business firms calculate their price risk exposure, less on the basis of risk related to a single transaction and more on the basis of net risk related to changes in the values reflected on balance sheets. In addition, the existence of futures markets for both source and product commodities—such as livestock and livestock feed, or soybeans and soybean oil and meal—afford business firms increased opportunities to hedge the value of services as well as the value of commodities. Accordingly, the Commission believes that the terms "assets," "liabilities" and "services" more adequately reflect the items which business firms may attempt to hedge. While the Commission believes that this proposed language is more appropriate than that in the present definition, it requests specific comment on these proposed changes.

This general definition is intended to describe the broad scope of risk-shifting transactions which may be possible in the diverse types of futures contracts now under regulation. However, paragraph (1) of the proposed definition also provides that transactions and positions exceeding limits currently in effect pursuant to section 4a of the Act must meet the conditions specified in paragraphs (2) and (3) in order to qualify as bona fide hedging.

Paragraph (2). Paragraph (2) of the proposed revision of § 1.3(z) enumerates certain specific transactions and positions which the Commission considers to be within its general definition of bona fide hedging set out in paragraph (1). For two reasons, however, this enumeration does not include all of the specific transactions and positions which may qualify as bona fide hedging. First, references to transactions and positions in markets where there are no limits currently in effect pursuant to section 4a of the Act have been eliminated. The Commission does not believe it is necessary at this time to enumerate transactions and positions which would be considered bona fide hedging in markets where it currently has no limits. References to bona fide hedging transactions and positions in paragraph (2) of proposed § 1.3(z) are therefore limited in scope to the seven domestically-produced agricultural commodities or commodity groups which have such limits in effect.*

Second, for certain types of bona fide hedging transactions and positions in excess of limits established pursuant to section 4a of the Act, the Commission feels that it needs more specific information to determine that such purchases and sales are economically appropriate and are consistent with the general definition of bona fide hedging which is set forth in paragraph (1) of proposed § 1.3(z). As explained below, paragraph (3) (non-enumerated cases) of proposed § 1.3(z) provides that, upon specific request, the Commission will consider whether certain transactions and positions not specifically described in paragraph (2) constitute bona fide hedging. This would include, for instance, purchases and sales by governments.

Enumerated Transactions Versus Current Definition

The specific transactions and positions listed in paragraph (2) of the proposed regulation as enumerated bona fide hedging transactions and positions differ from those listed in the current definition in § 1.3(z). First, paragraph (2) of the proposed definition contains a general provision for cross-commodity hedging, provided that the value of the cash and the offsetting futures positions are substantially related and the futures position is not maintained beyond the last five trading days of any particular future. In view of this general provision, the Commission finds it unnecessary to include in paragraph (2) of the proposed definition certain specific purchases and sales which are included in the current definition. These include:

1. Sales of a commodity for future delivery as a hedge against the ownership or fixed-price purchase of any product or by product of such commodity.

2. Purchases of a commodity for future delivery which shall not exceed:

a. The bushel value equivalent of corn reflecting such person's unfilled anticipated requirements for seed corn or sweet corn processing;

* Currently there are limits fixed pursuant to section 4a of the Act in effect for cotton, potatoes, eggs, soybeans, corn, wheat, and grain (defined to include oats, barley, and flaxseed). If at a subsequent date position and trading limits are imposed for additional commodities, the provisions of paragraph 1.3(z)(2) would apply to transactions and positions in those commodities.

b. The wheat equivalent of such person's unfilled anticipated requirements of flour for baking;

c. The corn equivalent of such person's unfilled anticipated requirements of dry corn milling products for use in further processing or manufacturing.

3. Sales for future delivery of any product or byproduct which is offset by the ownership or fixed-price purchase of the source commodity.

These specific purchases and sales would be covered by the general provision for cross-commodity hedging in paragraph (2) of the proposed definition, provided the values of the futures and cash positions are substantially related.[7] However, they will be subject to the restriction concerning the five last days of trading in any particular future. The Commission believes that there is little commercial need to maintain cross-hedge positions during the last five trading days of any expiring contract. In addition, it is the Commission's view that if classification of cross-commodity positions as bona fide hedging in excess of its limits is to be generally permitted, this restriction is necessary to guarantee the integrity of the markets. Specific exemptions from the five-day restriction could be requested pursuant to paragraph (3) of proposed § 1.3(z) and proposed § 1.47. The Commission requests specific comment on these proposed requirements for cross-commodity hedges during the final trading days of any contract, including whether the requirements should apply at an earlier point in the expiring contract such as the last ten days of trading.

Second, paragraph (2) of proposed § 1.3(z) does not contain the specific reference to sales for future delivery which are offset by up to eighteen months' anticipated sugar cane production. At this time the Commission has no limits on transactions and positions for contract markets in sugar. As noted above, the Commission does not believe that it is necessary to enumerate specific bona fide hedging transactions and positions for commodities where such limits are currently not in effect. It does not intended, however, that any such omissions should in any way affect the commercial utilization of futures markets.

Third, the current definition of hedging includes sales or purchases for future delivery which are offset, respectively, by anticipated production or unfilled anticipated requirements for manufacturing, processing or feeding. Paragraph (2) of the proposed definition lists such sales and purchases, but contains the special conditions respecting the last five days of trading in any particular futures contract. Under proposed paragraph (2), transactions and positions offsetting anticipated production may not be classified as bona fide hedging during the last five days of trading. In the case of unfilled anticipated requirements, offsetting transactions and positions during the last five trading days of any particular contract are limited in magnitude to a person's unfilled anticipated requirements for the current and next succeeding month.

This proposed limitation on anticipatory positions during the last five days of trading under paragraph (2) results from the Commission's consideration of the general commercial utility of such positions during the last five days of trading and of its responsibility for orderly markets. The Commission believes that there is little commercial need to maintain during the last five trading days of any futures contract a long anticipatory position which exceeds two months' unfilled requirements. Similarly, it is the Commission's view that there is little commercial need to maintain during the last five trading days of any futures contract a short position which offsets anticipated production. Accordingly, the Commission is proposing that any such anticipatory purchases or sales which would exceed its limits during the last five trading days of any future should be examined on an individual basis as provided for in paragraph (3) of the proposed new definition. However, the Commission requests specific comment on these proposed requirements for anticipatory hedges during the final trading days of any contract, including whether the requirements should apply at an earlier point in the expiring contract, such as the last ten days of trading.

Fourth, purchases or sales by governments or their agents are excluded from the transactions and positions enumerated in paragraph (2) of proposed § 1.3(z). The Commission believes that it requires additional information to determine if such purchases and sales are in conformity with its definition of bona fide hedging.

Accordingly, such purchases and sales are covered by paragraph (3) of proposed § 1.3(z) as non-enumerated cases.

Paragraph (3). As noted above, paragraph (2) of proposed § 1.3(z) may not include all of the specific types of transactions and positions which the Commission would consider as conforming to its definition of bona fide hedging. Accordingly, paragraph (3) of the proposed regulation provides that for purposes of determining exemptions from limits set pursuant to section 4a of the Act, persons may request that the Commission make a determination whether specific transactions and positions which are not listed in paragraph (2) of the proposed regulation may be considered bona fide hedging transactions and positions. Two general categories of transactions and positions which the Commission may consider as bona fide hedging upon specific request are described in proposed paragraph (3), but consideration would not be limited to these categories.

One of the general categories listed in proposed § 1.3(z)(3)—purchases and sales by agents of the owner of the cash commodity—concerns cases mentioned in the public comments and hearings which the Commission feels reasonably assured would constitute bona fide hedging under economically appropriate circumstances. The other general category listed in proposed paragraph (3) involves sales and purchases by governments or their agents. The Commission feels that specific information needs to be considered before it makes a determination that purchases and sales by agents of the owner of the cash commodity or by a government or its agent constitute bona fide hedging. This information would be obtained under the requirements of proposed new section 1.47 which would apply to all purchases and sales to be considered as bona fide hedging under the provisions of paragraph (3) of the proposed definition. Proposed section 1.47 requires that information describing the purchases and sales be filed thirty days in advance of their classification as hedging for the first time.

Commission consideration of hedging gross positions. The previous statutory definition of bona fide hedging transactions or positions contained in section 4a of the Act before amendment by the CFTC Act and the present definition permit persons to classify as hedging any purchase or sale for future delivery which is offset by their gross cash position irrespective of their net cash position. The House Committee on Agriculture directed the Commission's attention to this practice of "double hedging."[8] Accordingly, in its request for comment on the definition of bona fide hedging (40 FR 34627, August 18, 1975), the Commission requested specific comment on the hedging of gross rather than net cash positions, and upon the justification of this practice. In response to this specific request, a number of persons provided commentary and examples to demonstrate that net cash positions do not necessarily measure total risk exposure due to differences in the timing of cash commitments, the location of stocks, and differences in grades or types of the cash commodity. These statements noted that in these cases the hedging of gross cash positions does not constitute "double hedging."[9] Similar views were submitted to the Commission at its hearings on bona fide hedging on January 8 and 9, 1976.

The Commission has considered these comments and does not intend at this time to alter the provisions of the present definition with respect to the hedging of gross cash positions.

Discussion of Proposed New § 1.47

Proposed new section 7.47 of the regulations sets forth the requirements for considering transactions and positions as bona fide hedging pursuant to paragraph (3) of proposed § 1.3(z). The requirements would therefore apply only to those purchases and sales which would exceed the Commission's limits on trans-

[7] In addition, it should be noted that with respect to sales for future delivery of a product or byproduct no limits on transactions or positions are currently in effect pursuant to section 4a of the Act.

[8] *H.R. Rep. No. 93-975*, 93d Cong., 2d Sess. 32 (1974).

[9] The one commentator who suggested that bona fide hedge positions should be limited to net cash positions did not provide any reason for this position.

actions and positions and which are not enumerated in paragraph (2) of the proposed definition of bona fide hedging.

GENERAL REQUIREMENTS

Paragraph (a) of proposed section 1.47 provides that any person who wishes to avail himself of the provisions of § 1.3(z)(3) of the regulations for purposes of making purchases or sales in excess of limits then in effect pursuant to section 4a of the Act shall file certain statements for the Commission's consideration. All or a portion of the transactions and positions described in these statements shall not be considered as bona fide hedging if the person filing is notified to this effect by the Commission wtihin thirty days after the initial statement is filed under paragraph (b) or within ten days after a supplemental statement is filed under paragraph (c). The Commission may request the person notified to submit additional specific information concerning all or the specified portion of the transactions and positions described in the statement. In this event the transactions and positions which are subject to further inquiry will not be considered as bona fide hedging by the person filing until the Commission has considered the additional materials requested and notified the person of its determination.

INITIAL FILINGS

Paragraph (b) of proposed § 1.47 provides that persons shall initially file information at least 30 days in advance of the date the transactions and positions would exceed limits then in effect pursuant to section 4a of the Act. This paragraph provides a general requirement that the information filed demonstrate that the purchases or sales are in conformity with the definition of bona fide hedging transactions and requires submission of specific information for those classes of transactions and positions specifically enumerated in paragraph (3) of proposed § 1.3(z), *i.e.*, purchases and sales by governments and by agents of persons owning the cash commodity. The purpose of these requirements is to enable the Commission to determine whether the sales or purchases conform to its proposed definition of bona fide hedging transactions or positions. The Commission feels that the thirty-day notice period is necessary to allow adequate consideration of the materials submitted.

Persons filing information under § 1.47 which also concerns the hedging of unfilled anticipated requirements for processing, manufacturing, or feeding would also be required to furnish the information required under § 1.48 of the regulations. (Section 1.48 sets out general reporting requirements concerning all long anticipatory hedges in commodities where there are limits set pursuant to section 4a of the Act.) Thus, for example, an agent desiring to classify as hedging a position against unfilled anticipated requirements would supply the information required under proposed § 1.47 and the information generally required under § 1.48 for all anticipatory hedges.

SUBSEQUENT FILINGS

Under paragraph (c) of proposed § 1.47, persons would be required to file supplemental reports when they wish to classify as bona fide hedging transactions or positions amounts exceeding those specified in their most recent filing or those specified by the Commission pursuant to paragraph (a). Supplemental information would be required at least ten days in advance of the date that the person wishes to exceed those amounts. Since the Commission would have already considered the basic economic concepts embodied in the original filing, it believes that ten-days advance notice is sufficient to consider the new request.

Paragraph (e) of proposed § 1.47 also provides that the Commission may request that the initial filing be supplemented with current information at any time. In some cases a person's supplemental filings under paragraph (c) may be infrequent and the Commission may wish to obtain more current information for purposes of market surveillance.

MAXIMUM POSITIONS

Paragraph (d) of proposed § 1.47 specifies the maximum purchases and sales which a person may consider as bona fide hedging pursuant to § 1.3(z)(3) of the proposed hedging definition. It provides that such purchases and sales shall not exceed the lesser of the current level of the cash position being hedged or the maximum amounts specified in the person's most recent filing or as specified by the Commission pursuant to paragraph (a). As provided in paragraph (c), when the amount of the cash position a person wishes to hedge exceeds the amount stated in the person's most recent filing or specified by the Commission, supplemental reports must be filed.

Because some of the purchases and sales referred to under this paragraph may represent cross-commodity hedges, paragraph (d) provides that current cash positions are to be measured in the "value equivalent" of the commodity for future delivery. Value equivalent refers to the number of units of the commodity for future delivery which are approximately equal in value to the units of the cash position being hedged.

DISCUSSION OF PROPOSED § 1.48

Section 1.48 of the regulations presently provides the requirements for considering purchases for future delivery as bona fide hedges against unfilled anticipated requirements for processing or manufacturing or feeding under § 1.3(z)(4) of the regulations. The proposed revisions in § 1.48 are designed (a) to conform its requirements for reporting to the proposed revisions in the hedging definition and proposed § 1.47 and (b) to codify existing procedures employed by the Commission under the current regulation.

GENERAL REQUIREMENTS

A new paragraph (a) of proposed § 1.48 retains the current requirement that any person who wishes to exceed trading and position limits then in effect pursuant to section 4a of the Act for purposes of hedging unfilled requirements shall file certain statements with the Commission. In addition, proposed paragraph (a) codifies the Commission's practice with respect to the extent to which a person may consider the unfilled anticipated requirements described in their most recent filings to represent an offset to long futures contracts for purposes of bona fide hedging. The proposed paragraph provides that all or a specified portion of the unfilled anticipated requirements described in the required statements shall not be considered as offsetting positions for the purpose of bona fide hedging if the Commission notifies the person to that effect within ten days after the person files the information required in paragraphs (b) or (c). In addition, the proposed paragraph provides that the Commission may request the person notified to submit additional information concerning all or the specified portion of the unfilled anticipated requirements described in the filing. These unfilled anticipated requirements may not be considered as an offset for bona fide hedging until the Commission considers any additional information supplied and further notifies the person of its determination.

INITIAL FILINGS

The requirements for initial information in paragraph (b) of proposed § 1.48 differ from those in paragraph (a) of the current § 1.48 only in that specific requirements concerning the information be supplied by persons hedging unfilled anticipated requirements of seed corn, sweet corn, flour and dry corn milling products have been deleted. These requirements concern particular cases of the cross-commodity hedging of unfilled anticipated requirements which are included in the current definition. In view of the proposed revisions in the current definition, the language of paragraph (b) has been expanded to cover all cross-commodity hedging of unfilled anticipated requirements rather than only the specific cases currently allowed.

SUBSEQUENT FILINGS

Proposed § 1.48 also contains revised requirements concerning supplemental reports. The current § 1.48 requires that persons file the required information at least once a year or immediately whenever a person's anticipated requirements change. The proposed revision requires that supplemental reports are to be filed when a person wishes to exceed the level supported by their most recent filing of anticipated requirements. This is consistent with the requirements for the filing of supplemental reports contained in proposed § 1.47. The effect of this proposed change is that persons normally would have to file supplemental reports when they find the prior level established

with the Commission to be restrictive rather than every twelve months or whenever their anticipated requirements change.

MAXIMUM POSITIONS

In view of the revised requirements for filing supplemental reports, paragraph (d) concerning maximum positions has been added to proposed § 1.48. This paragraph makes explicit that purchases for future delivery classified as hedges against unfilled anticipated requirements shall in no case exceed a person's actual current unfilled anticipated requirements. Thus, if a person's actual anticipated requirements decrease from the level most recently filed with the Commission, the amount which he is allowed to consider as hedging is correspondingly decreased. Proposed new paragraph (d) also provides that a person's long position classified as hedging against unfilled requirements shall not exceed the amount supported by the level of requirements supplied in the person's most recent filing.

The requirements of section (c) of the current § 1.48 concerning purchases and liquidation have been deleted in the proposed revision because paragraph (1) of proposed § 1.3(z) provides similar requirements for all bona fide hedging transactions and positions.

In consideration of the foregoing, the Commission proposes to amend Part 1 of Chapter I of Title 17 of the Code of Federal Regulations by amending § 1.3 (z) and § 1.48 and by adopting a new § 1.47 to read as follows:

* * * * *

§ 1.3 Bona Fide Hedging Transactions and Positions.

* * * * *

(z) * * *

(1) *General Definition.* Bona fide hedging transactions and positions shall mean transactions or positions in a contract for future delivery on any contract market, where such transactions or positions represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, and where they arise from:

(i) The potential change in the value of assets which a person owns, produces, manufacturers, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising.

(ii) The potential change in the value of liabilities which a persons owes or anticipates incurring, or

(iii) The potential change in the value of services which a person provides, purchases or anticipates providing or purchasing.

Notwithstanding the foregoing, no transactions or positions shall be classified as bona fide hedging for purposes of section 4a of the Act unless their purpose is to offset price risks incidental to commercial cash or spot operations and such positions are established and liquidated in an orderly manner in accordance with sound commercial practices and unless the provisions of paragraphs (z) (2) and (3) of this section and §§ 1.47 and 1.48 of the regulations have been satisfied.

(2) *Enumerated Hedging Transactions.* The definition of bona fide hedging transactions and positions in paragraph (1) of this section includes, but is not limited to, the following specific transactions and positions except for transactions made by and positions held by a government or a duly authorized agent of a government.

(i) *Sales* of any commodity for future delivery on a contract market which do not exceed in quantity:

(A) ownership or fixed-price purchase of the same cash commodity by the same person; and

(B) twelve months' anticipated production of the same commodity by the same person provided that no such position is maintained in any future during the five last trading days of that future.

(ii) *Purchases* of any commodity for future delivery on a contract market which do not exceed in quantity:

(A) the fixed-price sale of the same cash commodity by the same person;

(B) the quantity equivalent or fixed-price sales of the cash products and by-products of such commodity by the same person; and

(C) twelve months' unfilled anticipated requirements of the same cash commodity for processing, manufacturing or feeding by the same person, provided that such transactions and positions in the five last trading days of any one future do not exceed the person's unfilled anticipated requirements of the same cash commodity for that month and for the next succeeding month.

Sales and purchases for future delivery described in paragraphs (z) (2) (i) and 2(ii) of this section may also be offset other than by the same quantity of the same cash commodity, provided that the value and fluctuations in value of the position for future delivery are substantially related to the value and fluctuations in value of the actual or anticipated cash position, and provided that the positions in any one future shall not be maintained during the five last trading days of that future.

(3) *Non-Enumerated cases.* Upon specific request made in accordance with § 1.47 of the regulations, the Commission may recognize transactions and positions other than those enumerated in paragraph (z) (2) of this section as bona fide hedging in such amounts and under such terms and conditions as it may specify in accordance with the provisions of § 1.47. Such transactions and positions may include, but are not limited to:

(i) *Governmental purchases or sales.* Purchases or sales for future delivery on any contract market which are owned or controlled by a government or a duly authorized agent of a government.

(ii) *Purchases or sales by agents.* Purchases or sales for future delivery on any contract market by a person who does not own or who has not contracted to sell or purchase the offsetting cash commodity at a fixed price, provided that the person is responsible for the merchandising of the cash position which is being offset.

* * * * *

§ 1.47 Requirements for classification of purchases or sales of contracts for future delivery as bona fide hedging under § 1.3(z)(3) of the regulations.

(a) Any person who wishes to avail himself of the provisions of § 1.3(z) (3) of the regulations and to make purchases or sales of any commodity for future delivery in any commodity in excess of trading and position limits then in effect pursuant to section 4a of the Act shall file statements with the Commission in conformity with the requirements of this section. All or a specified portion of the transactions and positions described in these statements shall not be considered as bona fide hedging if such person is so notified by the Commission:

(1) Within 30 days after the Commission is furnished the information required under paragraph (b) of this section; or

(2) Within 10 days after the Commission is furnished with the information required under paragraph (c) of this section.

The Commission may request the person notified to file specific additional information with the Commission to support a determination that all, or the specified portion, of the transactions and positions be considered as bona fide hedging transactions and positions. In such cases, the Commission shall consider all information so filed and, by notice to such person, shall specify the extent to which the Commission has determined that the transactions and positions may be classified as bona fide hedging.

In no case shall transactions and positions described be considered as bona fide hedging if they exceed the levels specified in paragraph (d) of this section.

(b) *Initial Statement.* Initial statements concerning the classification of transactions and positions as bona fide hedging pursuant to § 1.3(z) (3) shall be filed with the Commission at least 30 days in advance of the date that such transactions or positions would be in excess of limits then in effect pursuant to section 4a of the Act. Such statements shall describe the transactions and positions and demonstrate their conformity with the definition of bona fide hedging which is contained in § 1.3(z) (1). Such statements shall set forth in detail information which will demonstrate that the purchases and sales are economically appropriate to the reduction of risk exposure attendant to the conduct and management of a commercial enterprise and, depending upon the nature of the transactions and positions, shall include where applicable the following types of information:

(1) Statements filed by an agent, concerning a futures position which would

offset a cash position which the agent does not own or has not contracted to buy or sell, shall contain information describing all contractual arrangements between the agent filing and the person who owns the commodity or holds the cash market commitment being offset.

(2) Statements filed by governments or their agents shall contain information demonstrating that the purchases or sales for future delivery correspond to those described in § 1.3(z)(2) of the regulations, or alternatively the economic appropriateness of such purchases or sales to risk reduction in accordance with the definition of bona fide hedging transactions and positions contained in § 1.3(z)(1). Agents of governments shall file information concerning the identity of the government and the nature of the agent relationship. All such statements (a) shall contain, and upon request of the Commission shall be supplemented by, such other information which is necessary to enable the Commission to make a determination whether the particular purchases and sales for future delivery fall within the scope of those described in § 1.3(z)(1) of the regulations, and (b) shall include a statement concerning the maximum size of positions for future delivery (both long and short) which will be acquired any time during the next fiscal year or marketing season of the person filing or on whose behalf the filing is made. Statements concerning long futures positions to be acquired against unfilled anticipated requirements for manufacturing, processing or feeding shall also include the information required under § 1.48 of the regulations.

(c) *Supplemental Reports.* Whenever the purchases or sales which a person wishes to classify as bona fide hedging shall exceed the amount provided in the person's most recent filing pursuant to this section or the amount previously specified by the Commission pursuant to paragraph (a) of this section, such person shall file with the Commission a statement which updates the information provided in the person's most recent filing and provides the reasons for this change at least ten days in advance of the date that person wishes to exceed those amounts.

(d) *Maximum Purchases and Sales.* Purchases and sales for future delivery considered bona fide hedging pursuant to § 1.3(z)(3) of the regulations shall at no time exceed the lesser of:

(1) The value equivalent (in terms of the commodity for future delivery) of the current cash position described in the information most recently filed pursuant to this section, or

(2) The maximum level of long or short open positions provided in the information most recently filed pursuant to this section or most recently specified by the Commission pursuant to paragraph (a) of this section.

(e) *Updated Reports.* Reports updating the information required pursuant to this section also shall be filed with the Commission upon specific request.

* * * * *

§ 1.48 Requirements for classification of purchases for future delivery as bona fide hedging of unfilled anticipated requirements under § 1.3(z)(2)(ii)(cc) of the regulations.

(a) Any person who wishes to avail himself of the provisions of § 1.3(z)(2)(ii)(cc) of the regulations and to make purchases for future delivery in any commodity in excess of trading and position limits then in effect pursuant to section 4a of the Act for the purposes of hedging unfilled anticipated requirements for manufacturing, processing or feeding shall file statements with the Commission in conformity with the requirements of this section. All or a specified portion of the unfilled anticipated requirements described in these statements shall not be considered as offsetting positions for bona fide hedging transactions and positions if such person is so notified by the Commission within ten days after the Commission is furnished with the information required under paragraph (b) or (c) of this section. The Commission may request the person notified to file specific additional information with the Commission to support a determination that the statement filed accurately reflects unfilled anticipated requirements for manufacturing, processing or feeding. In such cases, the Commission shall consider all additional information so filed and, by notice to such person, shall specify its determination as to what portion of the requirements described constitutes unfilled anticipated requirements for the purposes of bona fide hedging. In no case shall such transactions and positions which offset unfilled anticipated requirements be considered bona fide hedging if they exceed the levels specified in paragraph (d) of this section.

(b) *Initial Statement.* Initial statements concerning the classification of transactions and positions as bona fide hedging pursuant to § 1.3(z)(2)(ii)(cc) shall be filed with the Commission at least ten days in advance of the date that such transactions or positions would be in excess of limits then in effect pursuant to section 4a of the Act. Such statements shall show the person's unfilled anticipated requirements for processing or manufacturing or feeding for a specified operating period not in excess of one year and shall set forth in detail that person's unfilled anticipated requirements and explain the method of determination thereof, including, but not limited to, the following information:

(1) Annual requirements of such commodity for processing or manufacturing or feeding for the three complete fiscal years preceding the current fiscal year;

(2) Anticipated requirements of such commodity for processing or manufacturing or feeding for a specified operating period not in excess of one year;

(3) Inventory and forward purchases of such commodity, including any quantity in process of manufacture and finished goods and byproducts of manufacture or processing (in terms of such commodity);

(4) Unfilled anticipated requirements of such commodity for processing or manufacturing or feedings for a specified period not in excess of one year.

Persons hedging unfilled anticipated requirements which are not the same quantity or are not the same commodity as the commodity to be purchased for future delivery shall furnish this information both in terms of the actual commodity used for manufacturing, processing or feeding and in terms of the commodity to be purchased for future delivery. In addition, such persons shall explain the method for determining the ratio of conversion between the amount of the actual unfilled anticipated requirements and the amount of commodity to be purchased for future delivery. Persons feeding livestock and poultry shall provide the number of cattle, hogs, sheep, or poultry expected to be fed during the specified period, not to exceed one year, and the derivation of their annual requirements based upon these numbers. Persons filing as an agent shall furnish this information on the basis of the fiscal or operating year of the person on whose behalf the filing is made.

(c) *Supplemental Reports.* Whenever the purchases or sales which a person wishes to consider as bona fide hedging of unfilled anticipated requirements shall exceed the amounts described by the figures for requirements furnished in the most recent filing pursuant to this section or the amounts determined by the Commission to constitute unfilled anticipated requirements pursuant to paragraph (a) of this section, such person shall file with the Commission a statement which updates the information provided in the person's most recent filing and supplies the reason for this change at least ten days in advance of the date that person wishes to exceed these amounts.

(d) *Maximum Purchases.* Purchases for future delivery considered as bona fide hedges pursuant to § 1.3(z)(2)(ii)(cc) shall at no time exceed the lesser of:

(1) A person's unfilled anticipated requirements as described by the information most recently filed pursuant to this section or determined by the Commission pursuant to paragraph (a) of this section, or

(2) A person's actual current unfilled anticipated requirements for the length of time specified in the information most recently filed pursuant to this section.

(e) *Updated Reports.* Reports updating the information required pursuant to this section shall also be filed with the Commission upon specific request.

(Secs. 4a and 8a, Commodity Exchange Act (7 U.S.C. 6a and 12a (Supp. V, 1975).)

Interested persons may participate in this proposed rulemaking proceeding by submitting comments in written form to

the Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C., 20581; Attention: Secretariat. All comments received on or before May 16, 1977 will be considered before the Commission takes final action on the proposal. Copies of all comments received respecting the proposal will be available for inspection at the Commission's office in Washington, D.C.

Issued in Washington, D.C. on March 9, 1977.

For the Commission.

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

[FR Doc.77-7554 Filed 3-15-77;8:45 am]

federal register

WEDNESDAY, MARCH 16, 1977

PART III

FEDERAL ELECTION COMMISSION

■

ADVISORY OPINION REQUESTS

FEDERAL ELECTION COMMISSION

[Notice 1977-15, AOR 1977-10]

ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. 437f(c) and the procedures reflected in Part 112 of the Commission's Proposed Regulations, published on August 25, 1976 (41 FR 35954), Advisory Opinion Request 1977-10 has been made public at the Commission. Copies of AOR 1977-10 were made available on March 10, 1977. These copies of the advisory opinion request were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street NW., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A description of the request recently made public as well as the identification of the requesting party follows hereafter:

AOR 1977-10: Does a contribution occur when a State party committee donates a copy of a computer tape containing names and addresses of registered voters within the State of an incumbent Senator from that State if the Senator's intentions are to use the tape solely for the purpose of sending constituent mailings.

Requested by Senator Dewey F. Bartlett, United States Senate, Washington, D.C. 20515.

Dated: March 11, 1977.

VERNON W. THOMSON,
Chairman for the
Federal Election Commission.

[FR Doc.77-7759 Filed 3-15-77;8:45 am]

federal register

WEDNESDAY, MARCH 16, 1977

PART IV

OFFICE OF MANAGEMENT AND BUDGET

■

BUDGET RESCISSIONS AND DEFERRALS

OFFICE OF MANAGEMENT AND BUDGET

BUDGET RESCISSIONS AND DEFERRALS

Withdrawal and Revisions

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I am withdrawing one previously proposed rescission and reporting revisions to three deferrals previously transmitted.

The withdrawal is for the business loan and investment fund of the Small Business Administration. Two of the revised deferrals are increases which relate to programs in the Department of Defense while the third reflects a decrease in a Department of Transportation deferral. The combined effect of these revisions is to increase the amount deferred by $27.7 million.

The details of the rescission withdrawal and each deferral are contained in the attached reports.

Jimmy Carter

The White House, March 9, 1977.

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission #	Item	Budget Authority
	Other Independent Agencies:	
	Small Business Administration	
R77-13A	Business loan and investment fund	---
Deferral #		
	Defense-Military:	
D77-10C	Military construction	424,240
	Defense-Civil:	
D77-12A	Miscellaneous permanent accounts-Wildlife conservation, etc., military reservations	515
	Transportation:	
	Federal Aviation Administration	
D77-25B	Facilities and equipment (Airport and airway trust fund	278,095
	Subtotal, deferrals	702,850
	Total, rescissions and deferrals	702,850

SUMMARY OF SPECIAL MESSAGES
FOR FY 77
(in thousands of dollars)

	Rescissions	Deferrals
Eighth special message:		
New items	---	---
Changes to amounts previously submitted	-60,000	27,740
Effect of the eighth special message	-60,000	27,740
Previous special messages	1,100,378	7,048,140
Total amount proposed in special messages	1,040,378 (in 13 rescission proposals)	7,075,880 (in 52 deferrals)

NOTE: All amounts listed represent budget authority except for $134,807,092 consisting of two general revenue sharing deferrals of outlays only (D77-26 and D77-27A). Reports for D77-26 and D77-27A are included in the special messages of October 1, 1976, and December 3, 1976, respectively.

R77-13A

SUPPLEMENTARY REPORT

Report Pursuant to Sec. 1014(c) of P.L. 93-344

This report updates Rescission No. R77-13 transmitted to the Congress on January 17, 1977, and printed as House Document 95-48.

The requested rescission of $60,000,000 for the section 7(a) Regular Business Loan program of the Small Business Administration is hereby withdrawn. The funds had not been administratively reserved pending Congressional action on the requested rescission. The funds will now be committed.

D77-10C

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D77-10B transmitted to the Congress on January 17, 1977, and printed as House Document 95-48.

This revision reflects a net increase of $36,588,000 in the amount to be deferred in fiscal year 1977 for the Military Construction and Family Housing, Defense, appropriations. The increase is due to cost savings after completion of prior-year projects, and contract award savings resulting from favorable bids of projects currently under construction. The total amount now deferred is $424,239,837.

The slight decrease of $2,864,000 in total budgetary resources reflects a change in anticipated reimbursements.

Deferral No: D77-10C

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Defense	New budget authority (P.L. 94-367): $3,451,306,000
Bureau:	Other budgetary resources: 2,971,711,746*
Appropriation title & symbol: See Coverage section below	Total budgetary resources: 6,423,017,746*
	Amount to be deferred: Part of year: $ 304,307,837*
	Entire year: 119,932,000*
OMB identification code: See Coverage section below	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other
Type of account or fund: ☒ Annual	Type of budget authority: ☒ Appropriation
☐ Multiple-year (expiration date)	☐ Contract authority
☒ No-year	☐ Other

Coverage

Account title	Appropriation Symbol	OMB Identification code	Amount Deferred*
Military Construction, Army	21X2050	21-2050-0-1-051	$135,550,000
Military Construction, Navy	17X1205	17-1205-0-1-051	74,527,904
Military Construction, Air Force	57X3300	57-3300-0-1-051	89,396,000
Military Construction, Defense Agencies	97X0500	97-0500-0-1-051	11,138,000
Military Construction, Army National Guard	21X2085	21-2085-0-1-051	39,634,000
Military Construction, Air National Guard	57X3830	57-3830-0-1-051	19,855,000
Military Construction, Army Reserve	21X2086	21-2086-0-1-051	24,914,000
Military Construction, Naval Reserve	17X1235	17-1235-0-1-051	13,671,000
Military Construction, Air Force Reserve	57X3730	57-3730-0-1-051	8,209,933
Family Housing, Defense	97X0700	97-0701-0-1-051	7,344,000
Family Housing, Defense	9770700	97-0701-0-1-051	-0-
			$424,239,837

*Revised from previous report.

Justification*

The above amounts in the listed no-year appropriations are currently deferred under provisions of the Antideficiency Act (31 U.S.C. 665) which authorizes the establishment of reserves for contingencies.

Due to the long period of time required to construct facilities, the Congress makes appropriations for this purpose available until expended. The above funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with either other Federal agencies or local government agencies; and cost savings. Funds will be apportioned for individual projects throughout the year upon completion of project design and/or coordination. Funds from cost savings will be apportioned in 1978 for their original purpose--construction projects--but not necessarily at the original base.

Estimated effects

These deferrals have no programmatic or budgetary effect because the funds could not be obligated at this time, even if they were made available.

Outlay effect

There is no outlay effect resulting from this deferral since funds could not be used if made available.

*Revised from previous report.

D77-12A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014 (c) of P. L. 93-344

This report updates Deferral No. D77-12 transmitted to the Congress on October 1, 1976, and printed as House Document 94-650.

This report for Wildlife Conservation, Military Reservations, reflects an increase in actual unobligated balances brought forward on October 1, 1976, over the previously estimated balances. Receipts are also expected to be higher than previously estimated. The amount now deferred is $515,343.

Deferral No: D77-12A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Defense	New budget authority (16 U.S.C. 670f (a)): $ 838,000*
Bureau:	Other budgetary resources: 504,343*
Appropriation title & symbol: See Coverage section below	Total budgetary resources: 1,342,343*
	Amount to be deferred: Part of year: $ ____
OMB Identification code: * 97-9922-0-2-303	Entire year: 515,343*
Grant program: ☐ Yes ☒ No	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Coverage*

Wildlife Conservation, etc., Military Reservations, Army	21X5095	$416,447
Wildlife Conservation, etc., Military Reservations, Navy	17X5095	89,944
Wildlife Conservation, etc., Military Reservations, Air Force	57X5095	8,952
		$515,343

Justification

These are permanent appropriations. The budgetary resources consist of anticipated receipts and unobligated balances generated from hunting and fishing fees collected on military reservations, pursuant to 16 U.S.C. 670. They may be used only in accordance with the purpose of the law - to carry out a program of natural resource conservation.

Since apportionments have been made for all known program requirements, prudent financial management requires the deferral of the balance of the funds, which could not be used effectively during the current year even if made available for obligation. These funds are being deferred under the provisions of the Antideficiency Act (31 U.S.C. 665). Full apportionment is not requested by the Services because (1) installations may be accumulating funds over a period of time to fund a major project, and (2) there is a seasonal relationship between the collection of fees and their subsequent expenditure. Most of the fees are collected during the

* revised from previous report.

winter and spring months, while most of the program work is performed during the summer and fall months. This necessitates that funds collected in a prior year be deferred in order to be available to finance the program during the summer and fall months. Additional amounts will be apportioned if program requirements are identified.

Estimated Effects

These deferrals have no programmatic or budgetary effect because the funds could not be obligated if made available.

Outlay Effect

There is no outlay effect of this deferral because the funds could not be used if made available.

D77-25B

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D77-25A, transmitted to the Congress on January 17, 1977, and printed as House Document No. 95-48.

This revision reflects a change in the amount deferred from $287,095,484 to $278,095,484. The decrease in the deferral of $9,000,000 is the result of releasing additional funds for facilities and equipment projects in 1977. This release makes correct the indication (appearing in a footnote to the deferral report) that no multiple-year funds in their last year of availability are deferred.

Deferral No: D77-25B

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Department of Transportation	New budget authority (P.L. 94-387): $200,000,000
Bureau: Federal Aviation Administration	Other budgetary resources: 310,495,484 *
Appropriation title & symbol: Facilities and equipment (Airport and airway trust fund) 69X8107, 695/78107, 696/88107, 697/98109	Total budgetary resources: 510,495,484 *
	Amount to be deferred: Part of year: $; Entire year: 278,095,484 *
OMB identification code: 69-8107-0-7-405	Legal authority (in addition to sec. 1013): [X] Antideficiency Act; [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual; [X] Multiple-year 695/78107 Sept 30, 1977, 696/88107 Sept 30, 1978, 697/98109 Sept 30, 1979 (expiration date); [X] No-year	Type of budget authority: [X] Appropriation 1/; [ ] Contract authority; [ ] Other

Justification

Funds from this account are used to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the national airway system. Projects financed from this account include construction of buildings and purchase of new equipment for new or improved air traffic control towers, automation of the enroute airway control system, and expansion and improvement in the navigational and landing aid systems. These funds were appropriated in the Department of Transportation and Related Agencies Appropriation Acts of 1977 and prior years. The estimated total cost for each project is traditionally included in the budget submission and appropriation for the year in which it is requested. Because of the lengthy procurement and construction time for interrelated new facilities and complex equipment systems, it is not possible to obligate all funds necessary to complete each project in the year funds are appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This deferral action is consistent with the Congressional intent to provide multi-year funding for the total costs of these projects and is taken under provisions of the Antideficiency Act (31 U.S.C. 665) which authorize the establishment of reserves for contingencies.

* Revised from previous report.
1/ None of these funds are deferred.

Estimated Effects

This deferral action is consistent with normal operations for this program. The amount deferred could not be economically used if made available in fiscal 1977 because of the planned multi-year procurement, construction and installation cycle.

Outlay Effect

There is no outlay effect of this deferral because the funds would not be used if made available.

[FR Doc.77-7671 Filed 3-11-77;11:05 am]

BUDGET RESCISSIONS AND DEFERRALS

Cumulative Report, March 1977

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (P.L. 93-344). Section 1014(e) provides for a monthly report listing all current year budget authority with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This month's report gives the status as of March 1, 1977, of the 13 rescissions and 52 deferrals contained in the first seven special messages transmitted to the Congress for fiscal year 1977. These messages were transmitted to the Congress on July 29, September 22, October 1, November 5, December 3, 1976, and January 7, and 17, 1977.

RESCISSIONS (TABLE A AND ATTACHMENT A)

Nine rescissions totaling $1,001.3 million in FY 1977 budget authority are presently pending before the Congress. Table A summarizes the status of rescissions proposed as of March 1, 1977. Attachment A shows the history and status of each rescission proposed for fiscal year 1977.

DEFERRALS (TABLE B AND ATTACHMENT B)

As of March 1, 1977, $4,474.8 million in 1977 budget authority was being deferred from obligation and another $59.5 million in 1977 obligations was being deferred from expenditure. Table B summarizes the status of existing deferrals. Attachment B shows the history and status of each deferral proposed during fiscal year 1977.

INFORMATION FROM SPECIAL MESSAGES

The special messages containing information on each of the rescissions and deferrals covered by the cumulative report are contained in the FEDERAL REGISTERS of:

Tuesday, August 3, 1976 (Vol. 41, No. 150, Part VI)
Monday, September 27, 1976 (Vol. 41, No. 188, Part III)
Thursday, October 7, 1976 (Vol. 41, No. 196, Part IV)
Wednesday, November 10, 1976 (Vol. 41, No. 218, Part VII)
Wednesday, December 8, 1976 (Vol. 41, No. 237, Part II)
Thursday, January 13, 1977 (Vol. 42, No. 9, Part X)
Monday, January 24, 1977 (Vol. 42, No. 15, Part VIII)

BERT LANCE,
Director.

TABLE A

STATUS OF 1977 RESCISSION PROPOSALS

	Amount (In millions of dollars)
Proposed rescissions	1,135.4
Withdrawn (R77-4A, Special Message No. 4)	-35.0
Accepted by the Congress (Helium fund, R77-3)	-47.5
Rejected by the Congress	-51.6
Pending before the Congress:	
Special Message No. 7 (transmitted January 17, 1977)	1,001.3

* *

TABLE B

STATUS OF 1977 DEFERRALS

	Amount (In millions of dollars)	
Proposed deferrals	7,048.1	
Routine Executive releases (-2,010.4M) and adjustments (-503.5M) 1/ through March 1, 1977	-2,513.9	
Overturned by the Congress	---	
Currently before the Congress	4,534.2	2/

1/ An amount equal to $756.0 million included in the "Adjustments" column of Attachment B to this report represents superseded deferrals. This amount is not included in the "adjustments" entry above because superseded deferrals are netted out in calculating the amount shown on the line "Deferrals proposed by the President" to avoid double counting.

2/ Includes $59.5 million of outlays in two Treasury deferrals--D77-26 and D77-27A.

A-1

ATTACHMENT A

STATUS OF RESCISSIONS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

As of March 1, 1977

Agency Bureau Account	Rescission Number	Amount Proposed for Rescission	Date Special Message Transmitted to Congress	Amount Rescinded	Date Rescission Act Signed	Amount Made Available	Date Made Available
Funds Appropriated to the President							
International Security Assistance:							
Foreign military credit sales	R77-5	41,500 1/	01-17-77				
Department of Commerce							
U.S. Travel Service							
Salaries and expenses	R77-6	525	01-17-77				
National Oceanic and Atmospheric Administration:							
Operations, research, and facilities	R77-7	1,500	01-17-77				
Department of Defense-Military							
Retired pay, Defense	R77-8	143,600	01-17-77				
Shipbuilding and conversion, Navy	R77-9	721,000 2/	01-17-77				
Other procurement, Air Force	R77-10	14,350	01-17-77				
Department of Defense-Civil							
Corps of Engineers-Civil:							
Revolving fund	R77-2	[6,600] 3/	09-22-76			3/	3/
Department of the Interior							
Bureau of Mines:							
Helium fund	R77-3	[47,500] 4/	09-22-76	4/	4/		
Department of State							
Contributions for international peacekeeping activities	R77-11	12,000	01-17-77				

A-2

Agency Bureau Account	Rescission Number	Amount Proposed for Rescission	Date Special Message Transmitted to Congress	Amount Rescinded	Date Rescission Act Signed	Amount Made Available	Date Made Available
Department of Transportation							
Federal Highway Administration:							
Highway crossing, Federal projects	R77-4	[35,000]	09-22-76				
	R77-4A	0	11-05-76			35,000 5/	10-01-76
Coast Guard:							
Retired pay	R77-12	6,803	01-17-77				
Other Independent Agencies							
Legal Services Corporation:							
Payment to the Legal Services Corporation	R77-1	[45,000] 6/	07-29-76			45,000 6/	10-01-76
Small Business Administration							
Business loan and investment fund	R77-13	60,000 7/	01-17-77				
TOTAL		1,001,278				80,000	

1/ This amount was included in a deferral (D77-38) that was transmitted to the Congress on 12-03-76.

2/ Of this amount, $452,600,000 was assumed to be included in a deferral of $929,250,000 (D77-34) transmitted to the Congress on 11-05-76. Shipbuilding funds are available for obligation for five years. It was estimated that 15% of the 1977 appropriation would be obligated after 1977.

3/ The 45-day Congressional consideration period ended on March 1, 1977. The funds were released on March 2, 1977.

4/ A bill to rescind the $47.5 million, H.R. 3347, passed the Congress in late February.

5/ A supplementary report withdrawing the proposed rescission was transmitted to the Congress on November 5, 1976.

6/ These funds were not withheld during the 45-day Congressional consideration period.

7/ A supplementary report withdrawing the proposed rescission will be transmitted to the Congress.

B-1

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Funds Appropriated to the President

Attachment B

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
Emergency Refugee and Migration Assistance Fund	D77-1		8,640	10-01-76					
				10-28-76	-1,000				
				11-12-76	-1,200				
				12-29-76	-2,000				
				01-10-77	-1,000				
				01-31-77	-2,100				1,340
International Security Assistance									
Military assistance, 1977	D77-37		73,000	12-03-76					73,000
Foreign military credit sales	D77-38		740,000	12-03-76					
				01-10-77	-23,627			-41,500 1/	
				01-25-77	-585,533				89,340
TOTAL			821,640		-616,460			-41,500	163,680

1/ This amount is included in a rescission proposal (R77-5) transmitted to the Congress on 01-17-77.

STATUS OF DEFERRALS

B-2

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Agriculture

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
Foreign Agricultural Service									
Salaries and expenses (Special foreign currency program)	D77-2	[1,610]		10-01-76					
				01-17-77				-1,610 1/	
	D77-2A		1,743	01-17-77					1,743
Agricultural Stabilization and Conservation Service									
Commodity credit corporation administrative expenses	D77-3		2,919	10-01-76					
				12-30-76	-2,629				290
Forest Service									
Expenses, brush disposal	D77-4		22,321	10-01-76					22,321
Licensee programs	D77-5	[146]		10-01-76					
				01-17-77				-146 1/	
	D77-5A		239	01-17-77					239
TOTAL		1,756	27,222		-2,629			-1,756	24,593

1/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

B-3

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Commerce

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
General Administration									
Special foreign currency program	D77-45		654	01-17-77					654
National Oceanic and Atmospheric Administration									
Operations, research, and facilities	D77-46		7,500	01-17-77					7,500
Promote and develop fishery products and research pertaining to American fisheries	D77-6	[1,771]		10-01-76					
				01-07-77				-1,771 1/	
	D77-6A		1,772	01-07-77					1,772
Fisheries loan fund	D77-7		5,799	10-01-76					5,799
Offshore shrimp fisheries fund	D77-8		59	10-01-76					59
Fishermen's guaranty fund	D77-9	[356]		10-01-76					
				10-01-76				-356 1/	
	D77-9A		544	01-07-77					544
Maritime Administration									
Ship construction	D77-47		200,900	01-17-77					200,900
TOTAL		2,127	217,228					-2,127	217,228

1/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Defense, Military

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
Shipbuilding and conversion, Navy	D77-34		929,250	11-05-76					
				01-17-77				-452,600 1/	476,650
Military contruction, all services	D77-10	[76,483]		10-01-76					
				12-03-76				-76,483 1/	
	D77-10A	[335,883]		12-03-76					
				01-17-77				-335,883 1/	
	D77-10B		387,652	01-17-77					387,652
TOTAL		412,366	1,316,902					-864,966	864,302

1/ This amount is included in a rescission proposal (R77-9) transmitted to the Congress on 01-17-77.
2/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

B-5

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Defense, Civil

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
Panama Canal									
Canal Zone Government: Capital outlay	D77-11		146	10-01-76					146
Miscellaneous Accounts									
Wildlife conservation, etc., military reservations	D77-12		363	10-01-76					363
TOTAL			509						509

STATUS OF DEFERRALS

B-6

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Health, Education, and Welfare

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
Office of the Assistant Secretary for Health									
Scientific activities overseas (Special foreign current program)	D77-13	[1,113]		10-01-76 01-07-77				-1,113 1/	
	D77-13A		2,113	01-07-77					2,113
Office of Education									
Higher education	D77-14	[31,702]		10-01-76 11-05-76				-31,702 1/	
	D77-14A		303,862	11-05-76 02-28-77	-23,082				280,780
Social Security Administration									
Limitation on construction	D77-15	[17,272]		10-01-76 11-05-76				-17,272 1/	
	D-77-15A		18,673	11-05-76					18,673
Special Institutions									
Howard University	D77-35		500	11-05-76					500
TOTAL		50,087	325,148		-23,082			-50,087	302,066

1/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

B-7

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of the Interior

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
Bureau of Land Management									
Oregon and California grant lands	D77-16		5,426	10-01-76					5,426
Bureau of Outdoor Reclamation									
Land and water conservation fund	D77-17		30,000	10-01-76					30,000
National Park Service									
Road construction	D77-18		3,245	10-01-76 10-01-76	-3,245				0
Geological Survey									
Payment from proceeds, sale of water	D77-19		30	10-01-76					30
Bureau of Mines									
Drainage of anthracite mines	D77-20		3,525	10-01-76					3,525
TOTAL			42,226		-3,245				38,981

STATUS OF DEFERRALS

B-8

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Justice

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
Federal Prison System:									
Buildings and facilities	D77-21		1,900	10-01-76				-1,900 1/	0
TOTAL			1,900					-1,900	0

1/ This deferral resulted from anticipated savings attributable to a plan for leasing a New York State correctional facility. The lease proposal on which the deferral was based was not accepted by New York and the funds are needed to construct the facility as originally planned. Funds related to this deferral were not withheld.

B-9

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Labor

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
Employment and Training Administration									
Advances to the unemployment trust fund and other funds	D77-39		2,919,000	12-03-76 12-28-76	-1,119,000				1,800,000
TOTAL			2,919,000		-1,119,000				1,800,000

STATUS OF DEFERRALS

B-10

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of State

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
Administration of Foreign Affairs									
Acquisition, operation, and maintenance of buildings abroad	D77-22		14,225	10-01-76					14,225
TOTAL			14,225						14,225

STATUS OF DEFERRALS

B-11

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Transportation

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
Coast Guard									
Acquisition, construction and improvements	D77-23		22,581	10-01-76					22,581
Federal Aviation Administration									
Civil supersonic aircraft development termination	D77-24	[464]		10-01-76 01-17-77				-464 1/	
	D77-24A		8,080	01-17-77					8,080
Facilities and equipment (Airport and airway trust fund)	D77-25	[276,101]		10-01-76 01-17-77				-276,101 1/	
	D77-25A		287,095	01-17-77					287,095
Federal Highway Administration									
Trust fund share of other highway programs	D77-48		31,250	01-17-77					31,250
TOTAL		276,565	349,006					-276,565	349,006

1/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

B-11

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of the Treasury

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
Office of the Secretary									
State and local government fiscal assistance trust fund	D77-26		113,732 1/	10-01-76					
				11-01-76	-28,433 1/				
				01-31-77	-28,433 1/				56,866 1/
State and local government fiscal assistance trust fund	D77-27	[10,000] 1/		10-01-76					
				12-03-76				-10,000 1/2/	
	D77-27A		21,075 1/	12-03-76					
				12-31-76	-16,893 1/				
				01-31-77	- 1,590 1/				2,592 1/
State and local government fiscal assistance trust fund	D77-28		81,500	10-01-76					
				11-01-76	-226				
				12-01-76	-186				
				12-31-76	-7,888				
				03-01-77	-317				72,883
Loans to the District of Columbia for capital outlay	D77-36		51,002	11-05-76					51,002
TOTAL			132,502BA		-8,617BA				123,885BA
		10,0000	134,8070		-75,3490			-10,0000	59,4580

1/ Outlays only.
2/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

B-11

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Energy Research and Development Administration

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
Operating expenses (Energy extension service)	D77-49		7,500	01-17-77					
				02-22-77				-7,500 1/	0
Operating expenses (Magnetic fusion energy)	D77-50		12,000	01-17-77					12,000
Operating expenses (Program support-community operations)	D77-51		5,400	01-17-77					5,400
Operating expenses (Biomedical and environmental research)	D77-52		8,200	01-17-77					8,200
TOTAL			33,100					-7,500	25,600

1/ This adjustment reflects the impact of P.L. 95-3 which makes the source of ERDA's funding their regular 1977 appropriations, rather than the continuing resolution (P.L. 94-473), without need for enactment of authorizing legislation.

STATUS OF DEFERRALS

B-14

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: General Services Administration

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
Rare Silver Dollar Program	D77-29	[1,709]		10-01-76 01-07-77				-1,709 1/	
	D77-29A		1,797	01-07-77					1,797
TOTAL		1,709	1,797					-1,709	1,797

1/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

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FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Other Independent Agencies

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
Action Operating expenses, international and domestic programs	D77-40		550	12-01-76 12-31-76	-15				535
Foreign Claims Settlement Commission Payment of Vietnam prisoner of war claims	D77-30		10,833	10-01-76					10,833
American Revolution Bicentennial Administration Commemorative activities fund	D77-31	[1,346]		10-01-76 01-07-77				-1,346 1/	
	D77-31A		198	01-07-77					198
Interstate Commerce Commission Payment for directed rail service	D77-32		13,700	10-01-76					13,700
National Commission on the Observance of International Women's Year Salaries and expenses	D77-33		680	10-01-76					680
U.S. Information Agency Salaries and expenses (special foreign currency program)	D77-41		2,437	01-07-77					
Special international exhibitions	D77-42		1,716	01-07-77					,71
Special international exhibitions (special foreign currency program)	D77-43		112	01-07-77					11

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Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 03-01-77
U.S. Railway Association Payments for the purchase of Conrail securities	D77-44		680,700	01-07-77 01-27-77	-162,000				518,700
TOTAL		1,346	710,926		-162,015			-1,346	348,911
TOTAL, ALL DEFERRALS		345,956BA 10,000O	6,913,331BA 134,807O		-1,935,048BA -75,349O			-1,249,456BA -10,000O	4,474,783BA 59,458O

1/ Subsequently incorporated in a supplementary report.

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