

Federal Register

TUESDAY, MARCH 29, 1977



highlights

PRINCIPAL EXECUTIVE BRANCH OFFICIALS OF THE ADMINISTRATION OF JIMMY CARTER

The Office of the Federal Register will publish supplement 2 to the U.S. Government Manual on April 1. This supplement will be a separate part in the FEDERAL REGISTER. Executive agencies may obtain copies by submitting Standard Form 1 to the Planning Services Division of the Government Printing Office no later than March 30. Copies may also be purchased for 75 cents from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

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Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

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

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

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

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

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

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

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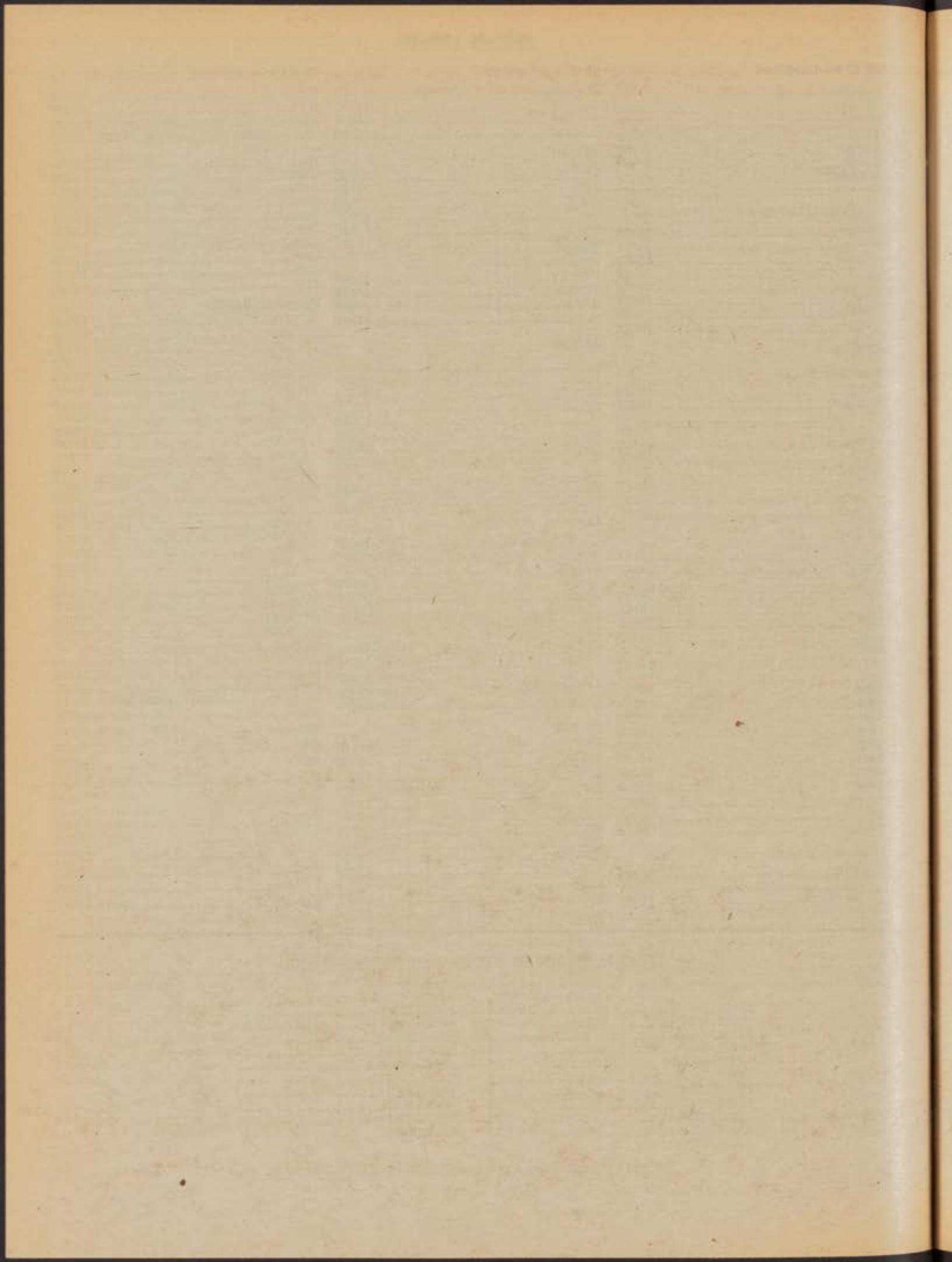
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rules and regulations

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

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

Title 5—Administrative Personnel CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Agriculture

AGENCY: Civil Service Commission.

ACTION: Correction of final rule.

SUMMARY: In the FEDERAL REGISTER of March 22, 1977 (FR Doc. 77-8423) appearing on page 15406, the position of Director of Agricultural Economic was excepted under Schedule C. Since this position was already excepted under Schedule C and listed in § 213.3313(n) (1), this action was not necessary.

EFFECTIVE DATE: March 22, 1977.

FOR FURTHER INFORMATION CONTACT:

John W. McKee, 202-632-4626.

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

[FR Doc. 77-9342 Filed 3-28-77; 8:45 am]

PART 213—EXCEPTED SERVICE

Department of State

AGENCY: Civil Service Commission.

ACTION: Final Rule.

SUMMARY: This addition excepts from the competitive service under Schedule C one position of Secretary (Stenography) to the Ambassador at Large and Special Representative of the President for the Law of the Sea Conference because it is confidential in nature.

EFFECTIVE DATE: March 29, 1977.

FOR FURTHER INFORMATION CONTACT:

Bill Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3304(a) (26) is added as set out below:

§ 213.3304 Department of State.

(a) Office of the Secretary. * * *

(26) One Secretary (Stenography) to the Ambassador at Large and Special Representative of the President for the Law of the Sea Conference.

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

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

[FR Doc. 77-9340 Filed 3-28-77; 8:45 am]

PART 213—EXCEPTED SERVICE

Department of State

AGENCY: Civil Service Commission.

ACTION: Final Rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C two positions of Secretary (Stenography) to the U.S. Representative to the United Nations because the positions are confidential in nature.

EFFECTIVE DATE: March 29, 1977.

FOR FURTHER INFORMATION CONTACT:

Bill Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3304(h) (4) is added as set out below:

§ 213.3304 Department of State.

(h) Bureau of International Organization Affairs. * * *

(4) Two Secretaries (Stenography) to the U.S. Representative to the United Nations.

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

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

[FR Doc. 77-9341 Filed 3-28-77; 8:45 am]

Title 7—Agriculture

CHAPTER III—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

PART 301—DOMESTIC QUARANTINE NOTICES

Golden Nematode, Regulated Areas

Purpose: To amend the list of areas regulated because of the golden nematode.

This document amends the supplemental regulations which list regulated areas for purposes of the Federal Golden Nematode Quarantine (7 CFR 301.85) by: (1) changing from suppressive to generally infested all of the previously regulated area in Steuben County, New York, and (2) by adding to the generally infested regulated area parts of the following previously nonregulated counties: Cayuga, Genesee, Seneca, Orleans, and Wayne in New York.

Pursuant to the provisions of sections 8 and 9 of the Plant Quarantine Act of August 20, 1912, as amended, and section 106 of the Federal Plant Pest Act (7 U.S.C. 161, 162, 150ee), and § 301.85-2 of the Golden Nematode Quarantine regulations, (7 CFR 301.85-2, as amended),

the supplemental regulation designating regulated areas, 7 CFR 301.85-2a, is hereby amended to read as follows:

§ 301.85-2a Regulated areas; suppressive and generally infested areas.

The civil divisions and parts of civil divisions described below are designated as golden nematode regulated areas within the meaning of the provisions of this subpart; and such regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

New York

(1) Generally infested area:

Cayuga County. The town of Montezuma.
Genesee County. The towns of Elba and Byron.

Nassau County. The entire county.
Orleans County. The towns of Barre and Clarendon.

Seneca County. The town of Tyre.
Steuben County. The towns of Prattsburg and Wheeler.

Suffolk County. The entire county.
Wayne County. The town of Savannah.

(2) Suppressive area:

Yates County. The town of Italy.

(Secs. 8, 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; 7 U.S.C. 161, 162, 150ee; 37 FR 28464, 28477; 38 FR 19141; 7 CFR 301.85-2.)

The Deputy Administrator of the Plant Protection and Quarantine Programs has determined that the golden nematode has been found or there is reason to believe it is present in the civil divisions and parts of civil divisions listed above as regulated areas, or that it is necessary to regulate such areas because of their proximity to golden nematode infestation or their inseparability for quarantine enforcement purposes from golden nematode infested localities. He has also determined that the areas designated as suppressive and generally infested areas are eligible for such designation under § 301.85-1, as amended.

The Deputy Administrator has also determined that each of the quarantined States, wherein only portions of the State have been designated as regulated areas, has adopted and is enforcing a quarantine or regulation which imposes restrictions on intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under the quarantine and regulations in this subpart, and that the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the interstate spread of the golden nematode. Therefore, such civil divisions and parts of civil divisions listed above are designated as golden nematode regulated areas.

This document imposes restrictions that are necessary in order to prevent

the dissemination of the golden nematode and should be made effective promptly to accomplish its purpose in the public interest. Accordingly, it is found upon good cause under the administrative procedure provisions of 5 U.S.C. 553, that further notice and other public procedure with respect to this revision are impracticable and unnecessary, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Effective date: This amendment will become effective March 29, 1977.

Done at Washington, D.C., this 23 day of March 1977.

JAMES O. LEE, Jr.,
Deputy Administrator, Plant
Protection and Quarantine
Programs, Animal and Plant
Health Inspection Service.

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

[FR Doc.77-9119 Filed 3-28-77;8:45 am]

**CHAPTER IX—AGRICULTURAL MARKET-
ING SERVICE (MARKETING AGREEMENTS
AND ORDERS; FRUITS, VEG-
ETABLES, NUTS), DEPARTMENT OF
AGRICULTURE**

[Lemon Regulation 84, Amendment 1]

**PART 910—LEMONS GROWN IN
CALIFORNIA AND ARIZONA**

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment increases the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period March 20-26, 1977. The amendment recognizes that demand for lemons has improved, since the regulation was issued. This action will increase the supply of lemons available to consumers.

DATES: Weekly regulation period, March 20-26, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250. (202-447-3545).

SUPPLEMENTARY INFORMATION: (a) Findings. (1) Pursuant to the amended marketing agreement and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of recommendations and information submitted by the Lemon Administrative Committee, established under the marketing agreement and order, and other

available information, it is found that the limitation of handling of lemons, as provided in this amendment will tend to effectuate the declared policy of the act.

(2) Demand in the lemon markets has improved since the regulation was issued. Amendment of the regulation is necessary to permit lemon handlers to ship a larger quantity of lemons to market to supply the increased demand. The amendment will increase the quantity permitted to be shipped by 10,000 cartons, in the interest of producers and consumers.

(3) It is further found that it is impracticable and is contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of lemons.

(b) Order, as amended. Paragraph (b) (1) of § 910.384 Lemon Regulation 84 (42 FR 15061) is amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period March 20, 1977, through March 26, 1977, is established at 240,000 cartons."

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

Dated: March 23, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Veg-
etable Division, Agricultural
Marketing Service.

[FR Doc.77-9210 Filed 3-28-77;8:45 am]

Title 9—Animals and Animal Products

**CHAPTER I—ANIMAL AND PLANT HEALTH
INSPECTION SERVICE, DEPARTMENT
OF AGRICULTURE**

**SUBCHAPTER C—INTERSTATE TRANSPORTA-
TION OF ANIMALS (INCLUDING POULTRY)
AND ANIMAL PRODUCTS**

**PART 82—EXOTIC NEWCASTLE DISEASE;
AND PSITTACOSIS OR ORNITHOSIS IN
POULTRY**

Areas Released From Quarantine

This amendment excludes portions of Charlotte County in Virginia from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded areas. No areas remain under quarantine in Virginia.

Accordingly, Part 82, Title 9, Code of Federal Regulations is hereby amended in the following respects:

§ 82.3 [Amended]

In § 82.3, the introductory portion of paragraph (a) is amended by deleting therefrom the name of the State of Virginia and paragraph (a) (1) relating to the State of Virginia is deleted.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.)

Effective date: The foregoing amendment shall become effective March 24, 1977.

The amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 24th day of March, 1977.

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

R. P. JONES,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc.77-9383 Filed 3-28-77;8:45 am]

Title 12—Banks and Banking

**CHAPTER II—FEDERAL RESERVE
SYSTEM**

**SUBCHAPTER A—BOARD OF GOVERNORS OF
THE FEDERAL RESERVE SYSTEM**

[Reg. Q; Docket No. R-0089]

PART 217—INTEREST ON DEPOSITS

Penalty for Early Withdrawals

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System has approved two amendments to § 217.4(d) of Regulation Q (12 CFR 217). The first amendment modifies the structure of the current paragraph of Regulation Q that states the Board's early withdrawal penalty rule and exceptions to that rule by providing a listing of those exceptions. This modification, which is intended to improve the clarity of the Board's penalty rule, is a structural change only and is not intended to alter the substance of the Board's penalty rule. The second amendment provides an additional exception to the Board's early withdrawal penalty rule. This amendment provides

that where a depositor who maintains time deposits in two or more merging banks loses Federal deposit insurance coverage on a portion of his or her time deposits as a result of the merger, the surviving member bank may pay before maturity without imposing the Regulation Q penalty for early withdrawal that portion of the depositor's time deposit that is no longer covered by Federal deposit insurance.

EFFECTIVE DATE: March 24, 1977.

FOR FURTHER INFORMATION CONTACT:

Allen L. Raiken, Assistant General Counsel, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. (202-452-3625).

SUPPLEMENTARY INFORMATION: Section 19(j) of the Federal Reserve Act (12 U.S.C. 371b) forbids member banks from paying time deposits prior to maturity except in accordance with such regulations as the Board prescribes. The Regulation Q penalty (12 CFR 217.4(d)), promulgated pursuant to section 19(j), provides that where a time deposit is paid before maturity, a member bank may pay interest on the amount withdrawn at a rate not to exceed that prescribed for a savings deposit; provided that the depositor shall forfeit three months of interest payable at such rate. If the amount withdrawn has remained on deposit for three months or less, the depositor forfeits all interest.

This penalty is designed to preserve the distinction between demand deposits and time deposits and to prevent depositors from using time accounts for transaction purposes like checking accounts. Under the Board's existing penalty rule, penalty-free withdrawals are permitted only upon the death of any person whose name appears on the time deposit passbook or certificate or in the event of withdrawals from Individual Retirement Accounts or Keogh plans where the depositor is age 59½ or is disabled.

Under current law, an individual depositor's accounts held in the same right and capacity in any one insured bank are insured by the Federal Deposit Insurance Corporation up to \$40,000 in the aggregate.

Where the depositor maintains separate time deposits in two or more Federally insured banks which merge, the merger will result in the loss of Federal deposit insurance coverage on that portion of the depositor's funds in excess of \$40,000. The Board does not believe that the early withdrawal interest penalty requirement should be applied in the situation in which a depositor, solely as the result of the merger of Federally insured banks, loses the benefit of deposit insurance. It is recognized that Federal deposit insurance may be a major factor influencing an investor's decision to establish a time deposit at a Federally insured bank and that where a depositor, solely as the result of a merger, loses

the benefit of Federal deposit insurance on some portion of the depositor's funds, equitable considerations require the availability of some form of relief. Accordingly, the Board has amended § 217.4(d) of Regulation Q to provide a third situation in which a member bank is permitted to pay a time deposit before maturity without imposing the Regulation Q penalty.

This amendment to § 217.4(d) of Regulation Q provides that where a depositor who maintains time deposits in two or more Federally insured banks which merge loses Federal deposit insurance coverage on a portion of his or her time deposits as a result of the merger, the surviving member bank may pay, for a period of up to one year from the date of the merger, that portion of the depositor's time deposit (or time deposits) that is no longer covered by Federal deposit insurance without imposing the Regulation Q penalty for early withdrawal. The Board believes that the one year time period will provide an adequate period to depositors to become aware of the merger and any resulting loss of insurance. The authority granted to member banks by this amendment should not be exercised to permit a penalty-free withdrawal where the member bank has knowledge that the depositor has obtained certificates of deposit of that member bank and another Federally insured bank, after the public announcement of the intended merger of those banks, principally for the purpose of circumventing the Regulation Q early withdrawal penalty provision.

Because the first amendment is technical in nature only and does not result in any substantive changes to the provisions of Regulation Q, and in view of the substantial public benefits that will immediately result from adoption of the second amendment, which permits member banks to immediately pay without imposition of an interest penalty that portion of a depositor's funds held in a time deposit (or time deposits) on which Federal deposit insurance has been lost as the result of the merger of Federally insured banks, the Board has determined that notice and public participation with respect to these amendments is unnecessary and contrary to the public interest. In view of the technical nature of the first amendment and in view of the fact that the second amendment relieves an existing regulatory restriction, the Board has also determined that good cause exists for promulgating these amendments without deferring the effective date thereof for the 30 day period referred to in 5 U.S.C. 553(d). Therefore, pursuant to section 19 of the Federal Reserve Act (12 U.S.C. 371b), § 217.4(d) of Regulation Q (12 CFR 217) is revised to read as follows:

§ 217.4 Payment of time deposits before maturity.

(d) *Penalty for early withdrawals.* Where a time deposit, or any portion thereof, is paid before maturity, a member bank may pay interest on the amount

withdrawn at a rate not to exceed that currently prescribed in § 217.7 for a savings deposit: *Provided*, That the depositor shall forfeit three months of interest payable at such rate. If, however, the amount withdrawn has remained on deposit for three months or less, all interest shall be forfeited. Where necessary to comply with the requirements of this paragraph, any interest already paid to or for the account of the depositor shall be deducted from the amount requested to be withdrawn.⁴⁴ Any amendment of a time deposit contract that results in an increase in the rate of interest paid or in a change on the maturity of the deposit constitutes a payment of the time deposit before maturity. *Provided further*, That Investment Certificates issued in negotiable form by a member bank pursuant to subpart 3 of § 217.7(b) may not be paid before maturity. This provision does not prevent a member bank from arranging the sale or purchase of such a certificate on behalf of the holder or prospective purchaser of a certificate issued under that subpart. A member bank may not, however, repurchase such certificates for its own account. *Provided further*, That a time deposit may be paid before maturity without a reduction or forfeiture of interest as prescribed by this paragraph in the following circumstances.

(1) Where a member bank pays all or a portion of a time deposit upon the death of any person whose name appears on the time deposit passbook or certificate;

(2) Where a member bank pays all or a portion of a time deposit representing funds contributed to an Individual Retirement Account or a Keogh (H.R. 10) plan established pursuant to 26 U.S.C. (I.R.C. 1954) sections 408, 401 when the individual for whose benefit the account is maintained attains age 59½ or is disabled (as defined in 26 U.S.C. (I.R.C. 1954) section 72(m)(7)) or thereafter; or

(3) Where a member bank pays that portion of a time deposit on which Federal deposit insurance has been lost as the result of the merger of two or more Federally insured banks in which the

⁴⁴ The provisions of this paragraph apply to all time deposit contracts entered into after July 5, 1973, and to all existing time deposit contracts that are extended or renewed (whether by automatic renewal or otherwise) after such date, and to all time deposit contracts that are amended after such date so as to increase the rate of interest paid. All contracts not subject to the provisions of this paragraph shall be subject to the restrictions of § 217.4(d) in effect prior to July 5, 1973, which permitted payment of a time deposit before maturity only in an emergency where necessary to prevent great hardship to the depositor, and which required the forfeiture of accrued and unpaid interest for a period of not less than 3 months on the amount withdrawn if an amount equal to the amount withdrawn had been on deposit for 3 months or longer, and the forfeiture of all accrued and unpaid interest on the amount withdrawn if an amount equal to the amount withdrawn had been on deposit less than 3 months.

depositor previously maintained separate time deposits, for a period of one year from the date of the merger.

Board of Governors of the Federal Reserve System, March 24, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 77-9334 Filed 3-28-77; 8:45 am]

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

Correction

In FR Doc. 77-7738, appearing at page 14675 in the issue for Wednesday, March 16, 1977, make the following corrections:

1. In § 311.5(b)(3), in the last line, "Section 367" should be changed to read "§ 311.7".

2. In § 311.6(a), in the 24th line, "U.S.C. 1623" should read "U.S.C. 1823".

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

[No. 77-192]

PART 523—MEMBERS OF BANKS

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

Investment in Savings Deposits

MARCH 23, 1977.

SUMMARY

I. Proposed Amendments. Would remove prohibition against investment by Federal associations in commercial banks and qualify such deposits in insured banks as liquid assets and short-term liquid assets to the extent time deposits are already so qualified.

II. Final Amendments. Same as proposed except for revision of language for greater clarity.

III. Reason for Amendments. To provide for more flexible investment and liquidity.

The Federal Home Loan Bank Board, by Resolution No. 77-11, dated January 5, 1977, proposed to amend § 523.10 of the Regulations for the Federal Home Loan Bank System (12 CFR 523.10) and § 545.9-2 of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.9-2) for the purpose of providing for more investment flexibility for Federal associations and other member institutions in satisfying the liquidity requirements of § 523.11 (12 CFR 523.11). The proposed amendments would remove the prohibition against investment by Federal associations in the savings deposits of commercial banks and qualify such deposits in insured

banks as liquid assets and short-term liquid assets to the extent time deposits are already so qualified. They would also substitute the more descriptive term "unsecured day(s) funds" for the term "Federal funds" throughout paragraph (h)(3) of § 523.10 in conformity with the language of paragraph (g)(4) thereof. Notice of such proposed rulemaking was published in the FEDERAL REGISTER on January 11, 1977 (42 FR 2328-2329), with an invitation to interested persons to submit written comments by February 11, 1977.

On the basis of its consideration of all relevant material presented by interested persons and otherwise available to it, the Board deems it advisable to adopt the amendment as proposed, except for modification of the language of § 545.9-2 for greater clarity.

Accordingly, the Board hereby amends §§ 523.10 and 545.9-2 to read as set forth below, effective April 28, 1977.

§ 523.10 Definitions.

For the purposes of this section, §§ 523.11, and 523.12:

(g) The term "liquid assets" means the total of cash, accrued interest on unpledged assets which qualify as liquid assets under this paragraph, or would so qualify except for their maturities, and the book value of the following unpledged assets (including such assets held subject to repurchase agreement), as long as principal and interest on such assets are not in default:

(4) Time and savings deposits in an insured bank, including time deposits held subject to a repurchase agreement and loans of unsecured day(s) funds (Federal funds or similar unsecured loans to insured banks) to an insured bank, if:

(i) The total of all savings and time deposits, including loans of unsecured day(s) funds of the same member, in the same bank does not exceed the greater of (a) one-fourth of 1 percent of the total deposits of such bank (calculated on the basis of total deposits of such bank as shown by its last published statement of condition preceding the date each deposit is made or acquired by a member), or (b) \$40,000;

(iii) Except for loans of unsecured day(s) funds, such time deposits are (a) negotiable and have remaining periods to maturity of not more than 1 year, (b) not negotiable and have remaining periods to maturity of not more than 90 days, or (c) not withdrawable without notice and the notice periods do not exceed 90 days;

(h) The term "short-term liquid assets" means the total of cash, accrued interest on unpledged assets which qualify as liquid assets under paragraph (g) of this section, or would so qualify except for their maturities, and the book

value of the following unpledged assets (including such assets held subject to a repurchase agreement):

(3) Savings deposits and time deposits, including loans of unsecured day(s) funds, which qualify as liquid assets pursuant to the provisions of paragraph (g)(4) of this section and, in the case of such time deposits, except for loans of unsecured day(s) funds, are (i) negotiable and have remaining periods to maturity of not more than 6 months, (ii) not negotiable and have remaining periods to maturity of not more than 90 days, or (iii) not withdrawable without notice and the notice periods do not exceed 90 days;

§ 545.9-2 Prohibition against invest- ments in other institutions.

No Federal association shall invest in a savings account (i.e., any withdrawable monetary investment) in any savings and loan, building and loan, homestead association, cooperative bank, or savings bank.

(Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464). Reorg. Plan No. 3 of 1947, 12 FR 4881, 3 CFR 1941-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc. 77-9346 Filed 3-28-77; 8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket No. RM 74-16]

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

Natural Gas Companies Annual Report of Proved Domestic Gas Reserves: FPC Form No. 40; Intervention

MARCH 21, 1977.

On March 4, 1977, the People of the State of California and the Public Utilities Commission of the State of California (California) filed an untimely notice of intervention in the rulemaking proceeding re-opened for the taking of additional evidence by order of February 14, 1977 (42 FR 9017, February 14, 1977). That order provided that interested persons who were not parties could petition to intervene within seven days of the date of issuance.

California asserts that the order of February 14, 1977, did not come to its attention until after the expiration of the intervention period. For good cause shown, we will accept California's late-filed notice of intervention.

The Commission orders. The People of the State of California and the Public Utilities Commission of the State of California are permitted to intervene in this proceeding subject to the Rules and Reg-

ulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in their notice of intervention; *And, provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that the parties might be aggrieved because of any order of the Commission entered in these proceedings, and that the intervenors agree to accept the record as it now stands.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 77-9102 Filed 3-28-77; 8:45 am]

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS

DEFINITION OF SIGNIFICANT COMBAT EQUIPMENT

On December 28, 1976, a notice was published in the *FEDERAL REGISTER* (41 FR 56333) proposing amendments to the International Traffic in Arms Regulations (ITAR), 22 CFR Chapter I, Subchapter M (Parts 121, 123, 124), to redefine the term "significant combat equipment". The chief purpose of the proposed amendments was to include additional electronic equipment within the definition of significant combat equipment.

In light of the comments received in writing and presented orally at a public meeting held in the Department of State on February 4, 1977, the following changes in the regulations are made:

1. Paragraph (b) of Munitions List Category XI (§ 121.01) is divided into two subparagraphs. Electronic equipment specifically designed or modified for use with communications satellites is included only in the second subparagraph.

2. The definition of significant combat equipment in § 121.03 excludes the communications satellite equipment described in paragraph (b) (2) of Munitions List Category XI.

Accordingly, amendments to 22 CFR Parts 121, 123 and 124 are adopted as set forth below.

Effective date: These amendments become effective March 29, 1977.

Adopted by the Department of State at its office in Washington, D.C. on the eleventh day of March 1977.

Dated: March 11, 1977.

CYRUS R. VANCE,
Secretary of State.

PART 121—ARMS, AMMUNITION, AND IMPLEMENTS OF WAR

1. By amending the table of contents for Part 121 to redesignate the present §§ 121.03-121.21 as §§ 121.04-121.22.

2. By revising § 121.01, Category XI, to read as follows:

§ 121.01 The U.S. munitions list.

CATEGORY XI—MILITARY AND SPACE ELECTRONICS

(a) Electronic equipment not included in Category XII of the Munitions List assigned a military designation or specifically designed, modified or configured for military application, including but not limited to the following items:

(1) Underwater sound equipment including long towed arrays, electronic beam formed sonar, target classification equipment, and spectrographic displays; search, acquisition, tracking, moving target indication and imaging radar systems; active and passive countermeasures, counter-countermeasures; electronic fuses; identification systems; command, control and communications systems, and regardless of designation, any experimental or developmental electronic equipment specifically designed or modified for military application, or for use with a military system, and

(2) Simple fathometers; underwater telephones; electro-mechanical beam former sonars and elementary sonobuoys; weather, navigation and air traffic control radar systems; navigation, guidance, object-locating methods and means; displays; and telemetering equipment.

(b) Space electronics: (1) Electronic equipment specifically designed or modified for spacecraft and spaceflight, other than equipment specifically designed or modified for use with communications satellites.

(2) Electronic equipment specifically designed or modified for use with communications satellites.

(c) Electronic systems or equipment designed, configured, used or intended for use in search, reconnaissance, collection, monitoring, direction-finding, display, analysis and production of information from the electromagnetic spectrum for intelligence or security purposes.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed for use or currently used with the equipment in paragraphs (a) through (c) of this category, except such items as are in normal commercial use.

3. By redesignating §§ 121.03-121.21 as §§ 121.04-121.22, as stated in Item 1, and adding a new § 121.03, to read as follows:

§ 121.03 Significant combat equipment.

Significant combat equipment includes the articles (not including technical data) enumerated in Categories I (a), (b), and (c) (in quantity); II (a) and (b); III(a) (excluding ammunitions for firearms in Category I); IV (a), (b), (d), and (e); V(b) (in quantity); VI(a) (limited to combatant vessels as defined in § 121.12(a)); (b) (inclusive only of turrets and gun mounts, missile systems, and special weapons systems) and (e); VII (a), (b), (c), and (f); VIII (a), (b), (c), GEMS as defined in (k), and inertial systems as defined in (l); XI (a) (1), (b) (1), and (c); XII(a); XIV (a), (b), (c), and (d); XVI; XVII; and XX (a) and (b).

PART 123—LICENSES FOR UNCLASSIFIED ARMS, AMMUNITIONS AND IMPLEMENTS OF WAR

§ 123.10 [Amended]

4. By deleting footnote 3 to § 123.10 (d).

PART 124—MANUFACTURING LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

§ 124.10 [Amended]

5. By deleting footnote 1 to § 124.10 (m) (2).

(Sec. 38, as amended, 90 Stat. 744, 22 U.S.C. 2778; E.O. 11958, 42 FR 4311.)

[FR Doc. 77-9381 Filed 3-25-77; 12:51 pm]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Doc. No. FI-2787]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128). Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at § 1912.5, 24 CFR Part 1912).

DATES: The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553 (b) are impracticable and unnecessary.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, Southwest, Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (P.L. 93-234) requires the purchase of flood insurance as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified for at least one year by the Secretary of Housing and Urban Development. The requirement ap-

plies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by Section 202(b) of the Act, as amended, unless the community has entered the program. Accordingly, for communities listed under this

Part no such restriction exists, although insurance, if required, must be purchased. Section 1914.6 of Part 1914 of Subchapter B of Chapter X or Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective

dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.6 List of Eligible Communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
Georgia	Dawson	Dawsonville, city of	Mar. 14, 1977, emergency	Jan. 17, 1975	190064
Do	Jefferson	Wadley, city of	do	Aug. 22, 1975	190116
Maryland	Wicomico	Pruffland, city of	do	Jan. 28, 1977	240130A
Missouri	Crawford	Leasburg, village of	Mar. 7, 1977, emergency	Jan. 31, 1975	290561
Montana	Beaverhead	Unincorporated areas	Mar. 14, 1977, emergency	do	300001
New York	Chautauque	Ripley, town of	Mar. 7, 1977, emergency	do	361373
Do	do	Sherman, town of	do	Jan. 17, 1975	361373
Ohio	Stark	Unincorporated areas	Mar. 2, 1977, emergency	do	390780
Do	Cuyahoga	University Heights, city of	Mar. 4, 1977, emergency	do	390133
Pennsylvania	Jefferson	Bell, township of	Mar. 7, 1977, emergency	Dec. 13, 1974	422244A
Do	do	do	do	July 23, 1976	do
Do	Butler	Bruin, borough of	do	July 30, 1976	420211
Do	do	Callery, borough of	do	Aug. 9, 1974	420213A
Do	do	Cherry, township of	do	Jan. 10, 1975	422342
Do	do	East Butler, borough of	do	July 26, 1974	420215A
Do	do	do	do	July 16, 1976	do
Do	Indiana	East Wheatfield, township of	do	Jan. 24, 1975	421716
Do	Berks	Heidelberg, township of	do	Dec. 6, 1974	421069A
Do	do	do	do	June 4, 1976	do
Do	Somerset	Lincoln, township of	do	Jan. 10, 1975	422516
Do	Lyeonling	Penn, township of	do	Nov. 1, 1974	421848
Do	Jefferson	Ringgold, township of	do	Jan. 3, 1975	422447
Do	Armstrong	Rural Valley, borough of	do	Jan. 24, 1975	422202
Do	Indiana	Saltsburg, borough of	do	Apr. 18, 1975	420503
Do	Berks	Womelsdorf, borough of	do	May 24, 1974	420157A
New York	Montgomery	Palatine, town of	Mar. 8, 1977, emergency	Nov. 29, 1974	361413
Pennsylvania	Adams	Biglerville, borough of	do	do	422649(N)
Do	Venango	Cherrytree, township of	do	Jan. 10, 1975	422530
Do	Monroe	Coolbaugh, township of	do	Nov. 26, 1976	421886
Do	Somerset	Elk Lick, township of	do	Dec. 27, 1974	422343
Do	Venango	Jackson, township of	do	Jan. 24, 1975	422535
Do	Elk	Millstone, township of	do	Mar. 21, 1975	421613
Do	Butler	Oakland, township of	do	Jan. 10, 1975	422354
Do	Montgomery	Palatine, town of	do	do	422630(N)
Do	Bedford	Pleasantville, borough of	do	Nov. 29, 1974	421327
Do	Armstrong	Redbank, township of	do	Dec. 6, 1974	421315
Do	Beaver	Shippingport, borough of	do	Feb. 1, 1974	42-117A
Do	do	do	do	May 14, 1976	do
Do	Elk	Spring Creek, township of	do	Dec. 6, 1974	421614
Do	Crawford	Union, township of	do	Aug. 30, 1974	421573A
Do	do	do	do	May 21, 1976	do
Georgia	Thomas	Boston, city of	Mar. 16, 1977, emergency	Apr. 18, 1975	130102
Indiana	Lake	Whiting, city of	Mar. 9, 1977, emergency	Jan. 10, 1975	180313A
Iowa	Crawford	Unincorporated areas	Mar. 16, 1977, emergency	do	190091
Kansas	McPherson	Galva, city of	do	Aug. 15, 1975	260497
Michigan	Cass	Edwardsburg, village of	do	July 11, 1975	290369
New York	Montgomery	St. Johnsville, town of	Mar. 9, 1977, emergency	Aug. 16, 1974	360456A
Do	do	do	do	June 4, 1976	do
Ohio	Lucas	Unincorporated areas	do	do	390350
Pennsylvania	Fulton	Ayr, township of	do	Feb. 7, 1975	422428
Do	Allegheny	Bradford Woods, borough of	do	Jan. 3, 1975	421262
Do	Somerset	Casselman, borough of	do	Nov. 8, 1974	420795
Do	Beaver	Glasgow, borough of	do	Aug. 16, 1974	420112A
Do	do	do	do	Apr. 30, 1976	do
Do	Armstrong	South Bethlehem, borough of	do	June 25, 1974	420100A
Do	Bradford	Standing Stone, township of	do	Sept. 29, 1974	421406A
Do	do	do	do	Aug. 20, 1976	do
Do	Crawford	Venango, borough of	do	Aug. 30, 1974	420355A
New York	Niagara	Lockport, town of	Dec. 17, 1973, emergency	Oct. 22, 1976	361013A
Texas	Grimes	Navasota, city of	Mar. 17, 1977, emergency	Oct. 8, 1976	480265
Colorado	Logan	Fleming, town of	Mar. 18, 1977, emergency	Nov. 8, 1974	080112
Ohio	Carroll	Dellroy, village of	Mar. 11, 1977, emergency	Aug. 9, 1974	390040A

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator (34 FR 2080, Feb. 27, 1969), as amended 39 FR 2787, Jan. 24, 1974.)

Issued: March 11, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc. 77-0063 Filed 3-28-77; 8:45 am]

[Docket No. FI-279]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Final Flood Elevation Determinations

On October 27, 1976, at 41 FR 47033, the Federal Insurance Administrator published a notification of modification of the base (100-year) flood elevations for Port Isabel, Texas. Since that date, ninety days have elapsed, and the Federal Insurance Administrator has evaluated requests for changes in the base flood elevations, and after consultation with the Chief Executive Officer of the community, has determined no changes are necessary. Therefore, the modified flood elevations are effective as of October 6, 1976 and amend the Flood Insurance Rate Map which was in effect prior to that date.

The modifications are pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448) 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 480109A and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the modified elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The numerous changes made in the base flood elevations on the Port Isabel Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the Port Isabel map.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: March 14, 1977.

J. ROBERT HUNTER,
*Acting Federal
Insurance Administrator.*

[FR Doc.77-9200 Filed 3-28-77;8:45 am]

[Docket No. FI-2134]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Final Flood Elevation Determinations

On November 12, 1976, at 41 FR 49973, the Federal Insurance Administrator published a notification of modification

of the base (100-year) flood elevations for Port Neches, Texas. Since that date, ninety days have elapsed, and the Federal Insurance Administrator has evaluated requests for changes in the base flood elevations, and after consultation with the Chief Executive Officer of the community, has determined no changes are necessary. Therefore, the modified flood elevations are effective as of November 12, 1976 and amend the Flood Insurance Rate Map which was in effect prior to that date.

The modifications are pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448) 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 485500C and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the modified elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The numerous changes made in the base flood elevations on the Port Neches Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the Port Neches map.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: March 14, 1977.

J. ROBERT HUNTER,
*Acting Federal Insurance
Administrator.*

[FR Doc.77-9201; Filed 3-28-77;8:45 am]

[Docket No. FI-2134]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Final Flood Elevation Determinations

On November 12, 1976, at 41 FR 49974, the Federal Insurance Administrator published a notification of modification of the base (100-year) flood elevations for Texas City, Texas. Since that date, ninety days have elapsed, and the Federal Insurance Administrator has evaluated requests for changes in the base flood elevations, and after consultation with the Chief Executive Officer of the community, has determined no changes

are necessary. Therefore, the modified flood elevations are effective as of November 5, 1976 and amend the Flood Insurance Rate Map which was in effect prior to that date.

The modifications are pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448) 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 485514B and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the modified elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The numerous changes made in the base flood elevations on the Texas City Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the Texas City map.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: March 14, 1977.

ROBERT J. HUNTER,
*Acting Federal
Insurance Administrator.*

[FR Doc.77-9202 Filed 3-28-77;8:45 am]

[Docket No. FI-2134]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Final Flood Elevation Determinations

On November 12, 1976, at 41 FR 49973, the Federal Insurance Administrator published a notification of modification of the base (100-year) flood elevations for Kingsville, Texas. Since that date, ninety days have elapsed, and the Federal Insurance Administrator has evaluated requests for changes in the base flood elevations, and after consultation with the Chief Executive Officer of the Community, has determined no changes are necessary. Therefore, the modified flood elevations are effective as of December 8, 1976 and amend the Flood Insurance Rate Map which was in effect prior to that date.

The modifications are pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are

in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448) 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 480424B and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the modified elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The numerous changes made in the base flood elevations on the Kingsville Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the Kingsville map.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 P.R. 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974.)

Issued: March 14, 1977.

J. ROBERT HUNTER,
*Acting Federal
Insurance Administrator.*

[FR Doc. 77-9203 Filed 3-28-77; 8:45 am]

[Docket No. FI-2134]

PART 1916—CONSULTATION WITH LOCAL OFFICIALS

Final Flood Elevation Determinations

On November 12, 1976, at 41 FR 49974, the Federal Insurance Administrator published a notification of modification of the base (100-year) flood elevations in South Kingstown, Rhode Island. Since that date, ninety days have elapsed, and the Federal Insurance Administrator has evaluated requests for changes in the base flood elevations, and after consultation with the Chief Executive Officer of the community, has determined no changes are necessary. Therefore, the modified flood elevations are effective as of November 12, 1976 and amend the Flood Insurance Rate Map which was in effect prior to that date.

The modifications are pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448) 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 455407A and must be used for all new policies and renewals.

Under the above-mentioned Acts of 1968 and 1973, the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the modified elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The numerous changes made in the base flood elevations on the South Kingstown Flood Insurance Rate Map make it administratively infeasible to publish in this notice all of the base flood elevation changes contained on the South Kingstown map.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974.)

Issued: March 14, 1977.

J. ROBERT HUNTER,
*Acting Federal
Insurance Administrator.*

[FR Doc. 77-9204 Filed 3-28-77; 8:45 am]

Title 31—Money and Finance: Treasury CHAPTER V—OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

The Foreign Assets Control Regulations (31 CFR Part 500) are being amended by the issuance of § 500.563, a new General License. This section authorizes persons who visit North Korea, North Viet-Nam, South Viet-Nam, or Cambodia to pay for their transportation and maintenance expenditures (meals, hotel bills, taxis, etc.) while in those countries. The section also authorizes a visitor to those countries to buy a maximum of \$100 worth of their goods (at foreign market value) for personal use and not for resale. This allowance may be used only once every six months. Goods purchased may only be brought back by the traveler in his baggage.

This new General License does not authorize any other transactions with nationals of those countries.

Journalists, researchers, news and documentary filmmakers, and others who visit those countries for like purposes, are authorized to acquire films, magazines, books, and similar publications. These must be directly related to their professional activities (for their own or their employer's use) and cannot be resold.

Because of the issuance of this new General License, § 500.562(b), concerning news material acquired in North Korea, North Viet-Nam, South Viet-

Nam, or Cambodia by journalists and news correspondents, is revoked as obsolete.

In view of the authorization for travel expenditures in North Korea, North Viet-Nam, South Viet-Nam, and Cambodia by American travelers, a parallel authorization is being issued permitting American-owned or American-controlled foreign firms to pay for travel expenditures in those countries of their foreign national employees. However, such firms are still prohibited from engaging in any unlicensed business dealings with those nations.

For further information, contact George F. Hazard, Chief of Licensing, Office of Foreign Assets Control, Department of the Treasury, telephone (202) 376-0428. The primary author of this amendment is Stanley L. Sommerfield.

Since these amendments relax existing restrictions and involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, the opportunity for public participation, and a delay in effective date are inapplicable.

31 CFR Part 500 is amended as follows:

§ 500.562 [Amended]

1. Section 500.562(b), dealing with news material acquired in North Korea, North Viet-Nam, South Viet-Nam, or Cambodia by journalists and news correspondents, is revoked.

2. Section 500.563 is added to the Foreign Assets Control Regulations as follows:

§ 500.563 Certain transactions incident to travel to and in North Korea, North or South Viet-Nam, or Cambodia.

(a) The following transactions are authorized:

(1) All transactions ordinarily incident to travel to and from North Korea, North or South Viet-Nam, or Cambodia.

(2) All transactions ordinarily incident to travel in North Korea, North or South Viet-Nam, or Cambodia, including payment of living expenses and the acquisition of goods for personal consumption there.

(3) The purchase in North Korea, North or South Viet-Nam, or Cambodia and importation as accompanied baggage of merchandise with a foreign market value not to exceed \$100 per person for personal use only. Such merchandise may not be resold. The authorization in this subparagraph may only be used once in every six consecutive months.

(b) Persons who travel to North Korea, North or South Viet-Nam, or Cambodia for the purpose of gathering news, making news or documentary films, engaging in professional research, or for similar activities, are authorized to acquire and import into the United States, as accompanied baggage or otherwise, such photographs, films, books, magazines, newspapers, and similar publications as are directly related to their professional activities, without limitation as to value. Such merchandise

may only be acquired and imported for their own professional use or that of their employers at the time of the travel, and may not be sold to other persons.

(c) Persons who travel in North Korea, North or South Viet-Nam, or Cambodia, after March 18, 1977, and who prior to that date were not designated nationals of any of those countries, are licensed as unblocked nationals. This subparagraph does not authorize any transactions prohibited by any other section of this part.

3. Section 500.564 is added to the Foreign Assets Control Regulations, to read as follows:

§ 500.564 Expenditures incidental to travel to and in North Korea, North or South Viet-Nam, or Cambodia by foreign national employees of American-owned or -controlled foreign firms.

Payment or reimbursement by American-owned or -controlled foreign firms of expenditures incidental to travel to and in North Korea, North or South Viet-Nam, or Cambodia by their foreign national employees is authorized.

(50 U.S.C. App. 5(b); Executive Order 9193, 3 CFR 1943 Cum. Supp.; Treasury Department Order No. 128, 32 FR 3472.)

Effective date: These amendments are effective March 21, 1977.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

JOHN H. HARPER,
Acting Assistant Secretary, Enforcement, Operations, and Tariff Affairs.

[FR Doc.77-9381 Filed 3-24-77;5:04 pm]

PART 515—CUBAN ASSETS CONTROL REGULATIONS

The Cuban Assets Control Regulations (31 CFR Part 515) are being amended by the issuance of § 515.560, a new General License. This section authorizes persons who visit Cuba to pay for their transportation and maintenance expenditures (meals, hotel bills, taxis, etc.) while in Cuba. The section also authorizes a visitor to Cuba to buy a maximum of \$100 worth of Cuban goods (at foreign market value) for personal use and not for resale. This allowance may be used only once every six months. Goods purchased may only be brought back by the traveler in his baggage.

This new General License does not authorize any other transactions with Cuban nationals.

Journalists, researchers, news and documentary filmmakers, and others who visit Cuba for like purposes, are authorized to acquire Cuban films, books, magazines, and similar publications. These must be directly related to their professional activities (for their own or their employer's use) and cannot be resold.

Because of the issuance of this new General License, § 515.546(b), concerning news material acquired in Cuba by journalists and news correspondents, is revoked.

In addition, § 515.559(a)(2), setting forth licensing policy regarding travel to Cuba by employees of America-owned or American-controlled foreign firms, is revoked. A new General License authorizing payment or reimbursement by American-owned or American-controlled foreign firms for expenditures incidental to travel to Cuba by foreign national employees is added to the Regulations as § 515.561.

For further information, contact George F. Hazard, Chief of Licensing, Office of Foreign Assets Control, Department of the Treasury, telephone (202) 376-0428. The primary author of this amendment is Stanley L. Sommerfield.

Since these amendments relax existing restrictions and involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date are inapplicable.

31 CFR Part 515 is amended as follows:

§ 515.546 [Amended]

1. Section 515.546(b), dealing with news material acquired in Cuba by journalists and news correspondents, is revoked.

2. Section 515.560 is added to the Cuban Assets Control Regulations, as follows:

§ 515.560 Certain transactions incident to travel to and in Cuba.

(a) The following transactions are authorized:

(1) All transactions ordinarily incident to travel to and from Cuba.

(2) All transactions ordinarily incident to travel in Cuba, including payment of living expenses and the acquisition in Cuba of goods for personal consumption there.

(3) The purchase in Cuba, and importation as accompanied baggage, of merchandise with a foreign market value not to exceed \$100 per person, for personal use only. Such merchandise may not be resold. The authorization in this subparagraph may only be used once in every six consecutive months.

(b) Persons who travel to Cuba for the purpose of gathering news, making news or documentary films, engaging in professional research or for similar activities are authorized to acquire and import into the United States, as accompanied baggage or otherwise, such photographs, films, books, magazines, newspapers, and similar publications as are directly related to their professional activities, without limitation as to value. Such merchandise may only be acquired and imported for their own professional use or that of their employers at the time of the travel, and may not be sold to other persons.

(c) Persons who travel in Cuba after March 18, 1977, and who prior to that date were not designated nationals of Cuba, are licensed as unblocked nationals. This subparagraph does not authorize any transactions prohibited by any other section of this part.

§ 515.559 [Amended]

3. Paragraph (a)(2) of § 515.559 is revoked.

4. Section 515.561 is added to the Cuban Assets Control Regulations, to read as follows:

§ 515.561 Expenditures incidental to travel to and in Cuba of foreign national employees of American-owned or -controlled foreign firms.

Payment or reimbursement by American-owned or -controlled foreign firms of expenditures incidental to travel to Cuba, and incidental to travel and maintenance in Cuba by their foreign national employees is authorized.

(50 U.S.C. App. 5(b); 22 U.S.C. 2370(a); E.O. 9193, 3 CFR 1943 Cum. Supp.; Treasury Department Order No. 128, 32 FR 3472.)

Effective date: These amendments are effective on March 21, 1977.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

JOHN H. HARPER,
Acting Assistant Secretary, Enforcement, Operations, and Tariff Affairs

[FR Doc.77-9382 Filed 3-24-77;5:04 pm]

Title 32—National Defense

CHAPTER VI—DEPARTMENT OF THE NAVY

PART 754—NAVY AFFIRMATIVE SALVAGE CLAIMS

Miscellaneous Amendments

On page 36666 of the FEDERAL REGISTER of August 31, 1976, notice of proposed rulemaking was published proposing to amend Part 754 of 32 CFR. Part 754 is based on an enclosure to a Naval Ships Systems Command Instruction (Enclosure (1) to NAVSHIPS Instruction 4740.4C), that was revised by Naval Sea Systems Command Instruction (NAVSEA Instruction 4740.4), adopted March 14, 1977, and these amendments to Part 754 represent the changes to the codified enclosure. The amendments to Part 754 are as follows:

Section 754.1 reflects the change in the name of the systems command from Naval Ships Systems Command to Naval Sea Systems Command, and the new address for the Assistant Supervisor of Salvage.

Section 754.2 includes the increased per diem rates for salvage services and reflects the Department of the Navy's salvage policy and some changes in nomenclature and wording.

Section 754.3 reflects the procedures for leasing Navy salvage and oil pollution abatement equipment that are referred to in the NAVSEA Instruction 4740.4 and are contained in Secretary of the Navy Instruction 4740.1 of August 15, 1975 (SECNAV Instruction 4740.1).

Interested persons were given 30 days in which to submit written views, comments, and arguments regarding the proposed amendments to Part 754. The 30 day time limit has long since expired and no written views, comments, or ar-

gments have been received. Accordingly, pursuant to the authority conferred under 5 U.S.C. 301; 10 U.S.C. 5031 and 7361-7367, the proposed amendments are adopted without change.

Therefore, Part 754 of 32 CFR is amended as follows:

1. In the table of contents, the fourth line is changed from "754.3 Per diem for salvage equipment rental" to "754.3 Leasing of Navy salvage and oil pollution abatement equipment."

2. The authority citations are amended to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 2667, 5031, and 7361-7367.

3. Section 754.1 is revised to read as follows:

§ 754.1 Settlement of Navy affirmative claims.

(a) *Authority.* Under 10 U.S.C. 7365, the Secretary of the Navy, or his designee, may consider, ascertain, adjust, determine, compromise, or settle and receive payment of any claim by the United States for salvage services rendered by the Department of the Navy.

(b) *Delegation of authority.* Each of the following has been designated by the Secretary of the Navy to exercise the authority contained in 10 U.S.C. 7365:

(1) The Commander, Naval Sea Systems Command, Department of the Navy.

(2) The Supervisor of Salvage, Naval Sea Systems Command, Department of the Navy.

(3) The Assistant Supervisor of Salvage, Naval Sea Systems Command, Department of the Navy, Room 1313, Federal Office Building, 90 Church Street, New York, N.Y. 10007.

4. Section 754.2 is amended by revising paragraphs (a) and (e) and adding a new paragraph (g) which provide as follows:

§ 754.2 Per diem rates for salvage services.

(a) Effective July 1, 1977, and subject to the rules set forth in paragraphs (b) through (g) of this section, the following vessel and deep dive system rates per day of 24 hours or part thereof have been established for salvage services rendered by the Department of the Navy:

(1) *Ships and tugs.*

Salvage Ships (ARS, ATS).....	\$7,000
Fleet Tugs (ATF).....	6,000
Large Tugs (YTB).....	4,000
Medium Tugs (YTM).....	3,000
Small Tugs (YTL).....	2,000

Rates for other types of ships used for search, communications, control, and the like will be established on a case by case basis, with consideration being given to their special features as required for the particular operation.

(2) *Harbor clearance craft.* Rates for harbor clearance craft, pulling barges, diving boats and barges, launches, and support equipment in general will be specified on a case by case basis.

(3) *Deep dive systems.* Deep Dive Systems (DDS) used in search and salvage

work will be charged at the following rates per day or any portion thereof:

MARK I DDS (2-man).....	\$5,000
MARK II DDS (4-man).....	7,000

Ship time in support of Deep Dive Systems will be charged as above. Bottom habitats, submersible vehicles, special surface navigation systems, and underwater search and navigation systems will be charged at rates to be determined on a case by case basis.

(4) *Supernumerary personnel.* The rates in paragraph (a) (1) of this section for ships and tugs include charges for their normal crews. Additional personnel such as Salvage Masters, Lift Masters, Harbor Clearance Team members, and extra diving crews will be charged for at rates established in the Navy Comptroller Manual and based on normal military pay scales. Per diem and travel expenses will be charged at cost.

(e) The extent of the salvage services rendered by naval activities in any given case will, of necessity, be governed by the magnitude of the salvage effort required and the problems encountered, and the availability of Navy salvage assets. Accordingly, the nature and amount of salvage equipment and other naval equipment, supplies, and materials will vary in each case. In addition, the number of naval personnel, both military and civilian (Civil Service), and their required specialized skills will also vary in each case. For these reasons it is not feasible to detail in this section the rates, costs, or charges for each item of naval equipment, material, supplies or personnel, that may be utilized in any given salvage operation. It is the policy of the Supervisor of Salvage to utilize the Navy Comptroller Manual (NAVSO P-1000) as the basis for determining the costs and charges for naval equipment for which there are no published rates established by this section or previously determined by the Supervisor of Salvage. The Navy Comptroller Manual also provides a basis for computing statistical charges where salvage services are rendered on in-house Navy salvage operations, and to Military Sealift Command, Maritime Administration, and other non-Navy public vessels and aircraft. However, in determining the costs and charges for equipment, supplies, materials, and personnel, the Supervisor of Salvage refers to the Navy Comptroller Manual for guidance only; he is not required to adhere to the rates set forth therein.

(g) The statutory authority of the Secretary of the Navy to provide salvage facilities for private vessels and to settle claims arising from such activity appears in 10 U.S.C. 7361-7367. This authority does not obligate the United States or the Department of the Navy to maintain salvage facilities in excess of its own needs nor to render salvage assistance on all occasions. The policy of the Department of the Navy, however, is to assist in the salvage of private commercial ships when such assistance is required and requested and where adequate privately

owned salvage facilities do not exist or are not readily available.

5. Section 754.3 is revised to provide as follows:

§ 754.3 Leasing of Navy salvage and oil pollution abatement equipment.

(a) *Purpose.* To delegate the authority for the leasing of Navy salvage equipment and oil pollution abatement equipment under control of the Department of the Navy to private salvage companies and to establish policy governing such leases.

(b) *Background.* (1) 10 U.S.C. 7362 authorizes the Secretary of the Navy to charter, lease, or otherwise transfer to private salvage companies salvage equipment to be used to support organized offshore salvage facilities for periods of time that the Secretary considers appropriate. The phrase "offshore salvage" concerns situations involving floating stranded or sunken ships in exposed locations along the coasts, or on reefs or islands. Leases under the authority of 10 U.S.C. 7362 may involve salvage equipment only.

(2) 10 U.S.C. 2667 authorizes the Secretary of a military department whenever he considers it advantageous to the United States to lease personal property upon such terms as he considers will promote the national defense or be in the public interest. For the purposes of this section, leases under the authority of 10 U.S.C. 2667 may involve both Navy salvage equipment and oil pollution abatement equipment.

(c) *Policies.* (1) Prior to negotiation of a lease pursuant to the authority of 10 U.S.C. 2667 or 7362 it must be determined that:

(i) The equipment is not needed for public use during the period of the lease;

(ii) The proposed lease should not render the property unsuitable for future military use;

(iii) The equipment is not "excess property" as defined by 4 U.S.C. 472;

(iv) The equipment or comparable equipment is not otherwise reasonably available from commercial sources.

(2) The term of any lease entered into pursuant to this section shall not exceed two years.

(3) Leases entered into pursuant to the authority of 10 U.S.C. 2667 require a determination that the lease will be advantageous to the United States and will promote the national defense or be in the public interest. The Secretary determines that such a finding has been made if one or more of the following situations is found to exist:

(i) The presence of a petroleum product or other hazardous substance in United States waters caused by any means which present an imminent danger to human life or property, public health, or the national environment;

(ii) The grounding, stranding, or sinking of any vessel in United States navigable waters or contiguous zones thereof which presents a danger to others, inhibits commerce, or poses an inconvenience to other vessels proceeding in the area;

(iii) The grounding, stranding, or sinking of any vessel which may present the danger of an oil spill of the character referred to in paragraph (c) (3) (i) of this section.

(iv) A situation in other than United States waters involving the grounding, stranding, or sinking of any vessel or the spillage of a petroleum product or other hazardous substance presenting an imminent danger to life, property, or the national environment where:

(A) A United States flag ship or other commercial vessel owned or operated by public or private United States interests is involved; (B) United States treaty obligations require or permit such aid; (C) The lease of Navy equipment would result in substantial good will being generated towards the United States; (D) The situation might result in an international incident involving potential adverse consequence to the United States.

(4) Leases executed pursuant to this section shall contain comprehensive indemnification and hold harmless provisions whereby users of Navy salvage equipment or oil pollution abatement equipment shall assume liability, including liability for loss of or damage to the equipment, and for third-party bodily injury and property damage.

(5) The proposed lessee must stipulate in writing that comparable equipment is not reasonably available from commercial sources.

(d) *Lease.* (1) Leases entered into pursuant to the authority of 10 U.S.C. 2667 or 7362 shall contain the following provisions:

(i) A description of the specific commercial salvage operation or pollution incident in which the equipment may be used.

(ii) A stipulation that the equipment may be utilized only in accordance with its designed operational purpose.

(iii) A provision requiring the lessee to maintain, protect, and preserve the equipment in accordance with the best commercial practices.

(iv) A provision permitting the Government to revoke the lease at any time, unless the Secretary shall have determined that the omission of such a provision will promote the national defense or be in the public interest.

(v) A right in the Government to revoke the lease during national emergency declared by the President.

(vi) A provision prohibiting the lessee from entering into a sublease without the prior written approval of the Supervisor of Salvage, Naval Sea Systems Command.

(2) In addition to the foregoing terms and conditions:

(i) A lease covering the use of salvage equipment under the authority of 10 U.S.C. 7362 shall provide that the equipment will be used to support offshore salvage facilities for the term of the lease or for such lesser period as the Supervisor of Salvage, Naval Sea Systems Command, considers appropriate.

(ii) A lease of salvage equipment or oil pollution abatement equipment under the authority of 10 U.S.C. 2667 shall provide that, if and to the extent that the leased property is later made taxable by state or local governments under an act of Congress, the lease shall be renegotiated.

(e) *Rates.* (1) Fair market value of the equipment to be leased shall be charged in accordance with Department of Defense Instruction 7230.7.

(2) With respect to salvage equipment leased pursuant to 10 U.S.C. 7362:

(i) Rental rates set forth in § 754.2 shall be used when applicable.

(ii) Money rental received shall be credited to appropriations for maintaining salvage facilities by the Department of the Navy. However, if the amount received in any year exceeds the cost incurred by the Navy during that year in giving and maintaining salvage services, the excess shall be covered into the Treasury.

(3) With respect to salvage equipment or oil pollution abatement equipment leased pursuant to 10 U.S.C. 2667:

(i) The lease may provide for the maintenance, protection, repair, or restoration by the lessee of the equipment leased as part or all of the consideration for the lease.

(ii) Money rentals received directly from the lease shall be covered into the Treasury as miscellaneous receipts.

(iii) Payment for utilities or services furnished to the lessee under the lease by the Government may be covered into the Treasury from the credit of the appropriation from which the cost of furnishing them was paid.

(f) *Delegation.* (1) The Supervisor of Salvage, Naval Sea Systems Command, is authorized to take all necessary action in accordance with this section to grant, execute, amend, administer, and terminate leases of Navy salvage equipment and oil pollution abatement equipment to private salvage companies. The authority delegated herein will be exercised under the direction of the Chief of Naval Operations, the Chief of Naval Material, and the Commander, Naval Sea Systems Command.

(2) Proposed leases of salvage equipment or oil pollution abatement equipment under paragraph (c) (3) (iv) (C) and (D) of this section or in situations that are of obvious sensitivity or that may be of Secretarial interest should be reported to the Assistant Secretary of the Navy (Installations and Logistics).

(g) *Maintenance of records.* The Supervisor of Salvage, Naval Sea Systems Command, will maintain a record system from which management information regarding leases executed pursuant to this section may be compiled and furnished, when required.

Dated: March 21, 1977.

K. D. LAWRENCE,
Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 77-9197 Filed 3-28-77; 8:45 am]

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER G—BOARDS

PART 865—PERSONNEL REVIEW BOARDS

Subpart A—Air Force Board for Correction of Military Records

AGENCY: Department of the Air Force.

ACTION: Final Rule.

SUMMARY: These amendments provide that requests for further consideration will not be considered if applicant fails to present new relevant evidence; all Board determinations will be placed in written form; record of proceedings shall indicate the vote of each Board member and contain copies of advisory opinions and minority reports, if any; new further consideration instructions; should the Secretary's determination differ from the Board's recommendation, a written statement of his ground(s) will be rendered and furnished applicant and counsel; applicant and counsel will be furnished a complete copy of the record of proceedings minus privileged or classified material; a copy of all records of proceedings will be sanitized, indexed, and released for public inspection and copying at a designated reading room.

EFFECTIVE DATE: April 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Frank S. Dispenza, Deputy Executive Secretary, Air Force Board for the Correction of Military Records, Office of the Assistant Secretary of the Air Force, Washington, D.C. 20330. (202-697-2391).

SUPPLEMENTARY INFORMATION:

These amendments are issued under the authority of Sections 1552, 8012, 70A Stat. 116, 488; 10 USC 1552, 8012.

The Stipulation of Dismissal in Urban Law Institute of Antioch College, Inc., v. Secretary of Defense (Civil Action No. 76-530) requires, among other things, a change to Subpart A of Part 865, 32 CFR. Inasmuch as the court order requires the change be published in the FEDERAL REGISTER on or before 60 days from date of the court approval of the stipulation (January 31, 1977), it is deemed impracticable and unnecessary to allow 30 days for public comment. The amendments are as follows:

§ 865.3 [Amended]

1. Section 865.3(a) is amended by substituting "HQ AFMPC/DPMD" for "USAFMPC/DPMDRA5".

§ 865.5 [Deleted]

2. Section 865.5 is deleted.

§ 865.6 [Redesignated]

3. Section 865.6 is redesignated § 865.5, and a new § 865.6 is added as follows:

§ 865.6 Consideration of application.

No application will be considered until the applicant has exhausted all effective administrative remedies afforded him by existing law or regulations, and such

legal remedies as the Board shall determine are practical and appropriately available to the applicant.

4. In § 865.7, the existing paragraph (c) is deleted, and a new paragraph (c) and (d) are added as follows:

§ 865.7 Review of application.

(c) *Further consideration.* All requests for further consideration will be initially screened by the staff of the Board to determine whether any evidence or other matter (including, but not limited to, any factual allegations or any arguments why the relief should be granted) has been submitted by the applicant that was not in the record at the time of any prior Board consideration. If such evidence or other matter has been submitted, the request shall be forwarded to the Board for a determination in accordance with paragraph (a) of this section. If no such evidence or other matter has been submitted, the applicant will be informed that his request was not considered by the Board because it did not contain any evidence or other matter that was not in the record at the time of any previous Board consideration. Relevancy and weight of any evidence submitted is to be determined by the Board.

(d) *Written proceedings.* When the Board determines that the record should be corrected or that the application be denied, the determination of the Board will be made in writing. The writings (proceedings) will include, but not be limited to, all facts of record, and statement of ground(s) upon which the Board's determination is based. Where the Board concludes complete relief should not be granted, written proceedings will address applicant's claim(s) of constitutional, statutory, and/or regulatory violation rejected by the Board and/or reviewing authority. In those cases involving the characterization of an individual's discharge or dismissal from the military service, the factors required by Air Force regulations to be considered for determination of the character of and reason for the discharge or dismissal in question shall be included.

5. Section 865.8(a) is revised and (e) (3) is amended by adding a parenthetical phrase at the end to read as follows:

§ 865.8 Entitlement to hearing, notice, counsel, witnesses, and access to records.

(a) *General.* In each case in which the Board determines that a hearing is warranted, the applicant will be entitled to appear before the Board either in person or by counsel of his own selection or in person with counsel.

(e) * * *

(3) * * * (for example, Part 806).

§ 865.10 [Amended]

6. In the last sentence of § 865.10(a), "bonds" is changed to read "bounds".

7. In § 865.12, (a) (5) (i) (5) is revised and (a) (5) (i) (6) through (9) are

added and paragraph (c) is revised to read as follows:

§ 865.12 Action by the Board.

(a) * * *

(5) * * *

(i) * * *

(5) Authorizing participation, declination, or modification of an election under the Retired Serviceman's Family Protection Plan and/or the Survivor Benefit Plan where failure to elect to participate, decline to participate or to make an appropriate election was due to inadvertence, misunderstanding or through no fault of the service member.

(6) Placement in a temporary or permanent disability retired status, including appropriate percentage of disability, of applicants who were clearly physically unfit and were inadvertently or improperly separated.

(7) Award of variable re-enlistment bonus, proficiency pay, enlistment and/or re-enlistment bonus to applicants clearly entitled thereto.

(8) Change of home of record where, upon entry on duty, applicants erroneously reported other than actual home.

(9) Award of reserve participation credit in computation of years of satisfactory service where such service was improperly or erroneously credited.

(c) *Record of proceedings.* When the Board has completed its deliberation, a record of proceedings shall be prepared. Such record shall indicate whether or not a quorum was present, the name and vote of each member present. The record shall include the application for relief, a transcript of testimony, if any, briefs and written arguments, advisory opinions, if any, minority reports, if any, the findings, conclusions and recommendations of the Board, where appropriate, and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings. The record so prepared will be certified by the chairman or his designee as being true and complete.

8. Section 865.13 is revised to read as follows:

§ 865.13 Action by the Secretary of the Air Force.

All records of proceedings, except those finalized by the Board under the authority contained in § 865.12(a) (5) or denied by the Board without a hearing, will be forwarded to the Secretary of the Air Force who will direct such action in each case as he determines to be appropriate, which may include the return of the record to the Board for further consideration when deemed necessary, and who will, if his determination differs from that recommended by the Board, make a written statement of his ground(s) for such action which shall be furnished to the applicant and counsel.

9. Section 865.14(e) is amended by changing "subject of the application" to "applicant" and paragraph (f) is re-

vised and a new paragraph (g) is added to read as follows:

§ 865.14 Staff action.

(f) *Release of record of proceedings to the applicant and counsel.* After action on the record by the Secretary of the Air Force, his designee, or by the Board acting under the authority contained in § 865.12(a) (5), the Board will furnish applicant and counsel a copy of the record of proceedings. Privileged or classified material may be deleted only if a written statement of the bases for deletion is provided. The statement will not reveal the nature of the withheld material.

(g) *Release of record of proceedings to the public.* After action on the record by the Secretary of the Air Force, his designee, or by the Board acting under the authority contained in § 865.12(a) (5), the Board will release for public inspection and copying, at a designated reading room within the Washington, D.C. metropolitan area, a sanitized and indexed copy of the record of proceedings. To the extent required and to prevent a clearly unwarranted invasion of personal privacy, identifying details of applicant and other persons will be deleted from all documents. Privileged or classified material may be deleted only if a written statement of the bases for deletion is provided. The statement will not reveal the nature of the withheld material. An index of record of proceedings shall be published quarterly and available for public inspection and sale at the reading room.

§ 865.15 [Deleted]

10. Section 865.15 is deleted.

§ 865.16 [Redesignated]

11. Section 865.16 is redesignated § 865.15.

§ 865.17 [Redesignated]

12. Section 865.17 is redesignated § 865.16.

§ 865.18 [Redesignated]

13. Section 865.18 is redesignated § 865.17.

§ 865.19 [Redesignated]

14. Section 865.19 is redesignated § 865.18.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison,
Directorate of Administration.

[FR Doc. 77-9299 Filed 3-28-77; 8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 14—DEPARTMENT OF THE INTERIOR

PART 14-3—PROCUREMENT BY NEGOTIATION

Correction

In FR Doc. 77-5046 appearing at page 9665 in the FEDERAL REGISTER of February 17, 1977, the amendment to Subpart

14-3.3 appearing in the second column on page 9666 is corrected by changing the section to be deleted and reserved from "§ 14-3.305-51(f)" to "§ 14-3.305-51(g)."

Dated: March 23, 1977.

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

[FR Doc.77-9378 Filed 3-28-77;8:45 am]

Title 45—Public Welfare

CHAPTER X—COMMUNITY SERVICES ADMINISTRATION

PART 1005—FREEDOM OF INFORMATION ACT REGULATIONS

PART 1006—PRIVACY ACT REGULATIONS

Change of Regional Office Address

The address of the San Francisco (Region IX) Regional Office of the Community Services Administration has changed; consequently the relevant sections of these parts are changed to include the new address.

(5 U.S.C. 552, 5 U.S.C. 552a.)

Effective date: March 29, 1977.

ROBERT C. CHASE,
Acting Director.

The 45 Code of Federal Regulations, Parts 1005 and 1006 are amended as set forth below:

Part 1005, Section 4(b)(2) is amended by deleting from the address for Region IX "100 McAllister Street" and substituting "450 Golden Gate Avenue, Box 3608".

Part 1006, Appendix A is amended by deleting from the address for Region IX "100 McAllister Street" and substituting "450 Golden Gate Avenue, Box 3608".

[FR Doc.77-9194 Filed 3-28-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21023; RM-2778]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Plymouth, Ohio

Adopted: March 22, 1977.

Released: March 24, 1977.

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: Assignment of Channel 261A to Plymouth, Ohio, as its first FM assignment.

DATES: Effective Date: May 5, 1977.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Legal Branch, Policy and Rules Division, Federal Communications Commission, Washington, D.C. 20554. (202-632-7792).

1. The Commission herein considers the Notice of Proposed Rule Making, 427

FR 1279, in the above-captioned proceeding instituted in response to a petition filed by WOEL Radio, Inc. ("petitioner"), licensee of Station WOEL, Oberlin, Ohio. The petition proposed the assignment of Channel 261A as a first FM channel to Plymouth, Ohio, some 48 kilometers (30 miles) southwest of Oberlin. Petitioner filed supporting comments in which it reaffirmed its intention to apply for the channel, if assigned.

2. Plymouth (pop. 1,993)¹ is located on the border between Richland and Huron Counties (pop. 129,997 and 49,587, respectively) some 80 kilometers (50 miles) south of the U.S.-Canadian border and 97 kilometers (60 miles) west of Akron, Ohio. It has no local aural broadcast service. Channel 261A could be assigned to Plymouth in conformity with the minimum distance separation requirements.

3. In support of its proposal, petitioner submitted information with respect to Plymouth and its need for a first FM channel assignment to bring the community its first local aural service.

4. We have given careful consideration to the proposal and believe that Channel 261A should be assigned to Plymouth, Ohio. An interest has been shown for its use, and it would be in the public interest as it would provide the community with a first local aural broadcast service.

5. The Canadian Government has given its concurrence to the proposed assignment of Channel 261A to Plymouth, Ohio.

6. Authority for the adoption of the amendment contained herein appears in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

§ 73.202 [Amended]

7. In view of the foregoing, it is ordered, That, effective May 5, 1977, Section 73.202(b) of the Commission's Rules, the FM Table of Assignments, as regards Plymouth, Ohio, is amended to read as follows:

City	Channel No.
Plymouth, Ohio	261A

8. It is further ordered, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1086, 1082, 1083; 47 U.S.C. 154, 303, 307.)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.77-9331 Filed 3-28-77;8:45 am]

[Docket No. 20904; RM-2708]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Castle Rock and Greeley, Colorado; Changes Made in Table of Assignments

Adopted: March 18, 1977.

Released: March 24, 1977.

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

¹ All population figures are taken from the 1970 U.S. Census.

SUMMARY: Assignment of Channel 221A to Castle Rock, Colorado, and the substitution of Channel 223 for Channel 222 (presently occupied by Station KGRE(FM)) at Greeley, Colorado.

DATE: Effective date May 2, 1977.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Legal Branch, Policy and Rules Division, Broadcast Bureau, Federal Communications Commission, Washington, D.C. 20554. (202-632-7792).

1. The Commission has under consideration its Notice of Proposed Rule Making and Order to Show Cause, adopted September 1, 1976, 41 FR 38520. The subject proposal involves the assignment of FM Channel 221A to Castle Rock, Colorado, and the substitution of Channel 223 for Channel 222 [presently occupied by Station KGRE(FM)] at Greeley, Colorado. Maurice J. DaVolt ("petitioner") is the only commenting party.

2. Castle Rock (pop. 1,531)¹ is located in Douglas County (pop. 8,407), approximately 32 kilometers (20 miles) south of Denver, Colorado, and 56 kilometers (35 miles) north of Colorado Springs, Colorado. There is no local radio transmission service in Castle Rock or Douglas County. The assignment of Channel 221A to Castle Rock and the substitution of Channel 223 for Channel 222 at Greeley would be in conformity with the minimum distance separation rule.

3. The Notice sets forth the information pertaining to the need for a first FM assignment to Castle Rock and therefore will not be repeated here. In supporting comments, petitioner asserts that the assignment of the proposed channel is clearly warranted, noting that the assignment would not only provide a first local FM assignment to Castle Rock but would also provide for a station which could render the first aural service originating in Douglas County. Petitioner states that he is willing to reimburse Station KGRE(FM) for those expenses reasonably and prudently expended for the requested changeover from its present channel.² He reaffirms his intention to apply for Channel 221A, if assigned, and to build a station if authorized.

4. After careful review of the facts before us, we find that adoption of the proposed assignment would be in the public interest. In reaching our decision, consideration was given to the fact that this proposal represents a first FM assignment to Castle Rock and a first aural service located in Douglas County. No problem is posed by the need to substitute channels at Greeley, Colorado. Meroco Broadcasting Company, licensee of Station KGRE(FM) ("Meroco"), has

¹ All population figures are taken from the 1970 U.S. Census.

² Petitioner alleges that a written understanding exists between Station KGRE(FM) and himself concerning reimbursement of necessary and reasonable expenses to be incurred in the channel change.

failed to request a hearing on or to object to the proposed modification of its license to specify Channel 223. When, as here, the channel of an operating station must be changed in order to make possible another assignment in the table, it is our policy to require the party benefiting from the assignment to reimburse the operating station for reasonable expenses in connection with the change. This reimbursement for the reasonable costs of accomplishing the channel change comes from the party that ultimately becomes the permittee of the station. Assisted by the guidelines furnished in other cases, such as Circleville, Ohio, 8 F.C.C. 2d 159 (1967), the appropriate costs making up the "reasonable" reimbursement figures are generally left to the good faith judgment of the parties eventually involved, subject to Commission approval in the event of disagreement. Since no permittee for the Castle Rock assignment is known as yet, we offer no opinion as to the reasonableness of the written understanding said to exist between petitioner and Meroco.

5. Regarding the effective date of the changeover, we note that KGRE(FM)'s license expires April 1, 1977, and that it has an application for renewal of its license pending. In cases where an existing licensee has not consented to a proposed modification of the license we have, in accordance with *Transcontinent Television Corp. v. F.C.C.*, 308 F. 2d 339 (D.C. Cir. 1962), amended the Table of Assignments but delayed the effective date so that it did not occur until the license expiration date. Ordinarily, the rule making process is completed early enough so that the effective date of the change in the rules coincides with the license expiration date. Although it is not possible to make the dates coincide in this case, this fact does not affect KGRE(FM)'s situation. Under *Transcontinent* we are able to make changes which will take effect at a later point during the subsequent license period. Thus, as in the usual case, the license renewal will specify the new frequency. In accordance with the policy in *Forest Lake, Minn.*, Docket No. 20316, Memorandum Opinion and Order, adopted January 12, 1977, FCC 77-48, a station which is ordered to change to a new frequency may continue operation on its existing frequency even beyond the license expiration date, pending issuance of a construction permit for the new channel which necessitated the change. Since Meroco will be reimbursed for accomplishing the channel change, we agree that it need not be required to begin operation on the new frequency until a permit is issued for the Castle Rock assignment. In the meantime, action on the Meroco license renewal application will be deferred until the actual changeover in the station's operating frequency takes place.

§ 73.202 [Amended]

6. Accordingly, pursuant to authority contained in Sections 4(i), 303 (g) and (r) and 307(b) of the Communications

Act of 1934, as amended, it is ordered, That effective May 2, 1977, the FM Table of Assignments (Section 73.202(b) of the Commission's Rules) is amended with respect to the following communities as follows:

City	Channel No.
Castle Rock, Colo.	223, 241
Greeley, Colo.	221A

7. It is further ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license for Station KGRE(FM), Greeley, Colorado, Meroco Broadcasting Company is modified to specify operation on Channel 223 in lieu of Channel 222. In addition, the following should be submitted:

(a) At least 30 days before commencing operation on Channel 223, the licensee shall submit to the Commission the technical information normally requested of an applicant;

(b) At least 10 days prior to commencing operation on Channel 223, the licensee shall submit the measurement data required of an applicant for a broadcast station licensee; and

(c) The licensee shall not commence operation on Channel 223 without prior Commission authorization.

8. It is further ordered, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1099, 1082, 1083; 47 U.S.C. 154, 303, 307.)

FEDERAL COMMUNICATIONS
COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 77-9333 Filed 3-28-77; 8:45 am]

[Docket No. 20978; RM-2718]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Gordon, Nebraska; Changes Made in Table of Assignments

Adopted: March 18, 1977.

Released: March 23, 1977.

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: Assignment of a Class C channel as a first FM assignment to Gordon, Nebraska.

DATE: Effective date May 2, 1977.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Legal Branch, Policy and Rules Division, Broadcast Bureau, Federal Communications Commission, Washington, D.C. 20554 (202-632-7792).

1. The Commission has under consideration its Notice of Proposed Rule Making, adopted October 29, 1976, 41 FR 49182, inviting comments on a proposal to assign Channel 238 to Gordon, Nebraska. This proceeding was instituted on the basis of a petition filed by Ranch-

land Broadcasting Co., Inc. ("petitioner"). Supporting comments were filed by petitioner. No oppositions were filed.

2. Gordon, a community of 2,106¹ population, in Sheridan County (pop. 7,285), is located approximately 531 kilometers (330 miles) northwest of Omaha, Nebraska. Gordon has no local aural broadcast service. Petitioner asserts that Gordon is one of the largest communities in Sheridan County and that the population of the county has increased from 7,285 to 7,616 between 1970-75. It states that Gordon's economy is based on farming, ranching, cattle feeding, retail and wholesale sales, food processing, manufacturing and the tourist industry. Petitioner adds that it fully intends to apply for the channel, if assigned, and to build a station, if authorized.

3. Petitioner claims that an FM station operating as proposed would provide a first FM service to a population of 4,685 in an area of 5,000 square kilometers (1,923 square miles) and a second FM service to a population of 6,009 in an area of 1,400 square kilometers (540 square miles). Petitioner further states that there is no nighttime AM service available within the proposed FM service areas.

4. Preclusion studies show that seven communities with populations between 1,000 and 7,000 are located in the areas of preclusion created by the proposed assignment. Preclusion would occur on Channel 238 and adjacent Channels 237, 239 and 240A. Of these seven communities three² have at least one FM assignment and one AM station. The remaining four³ have no FM channel assignments and are without any local broadcast service. However, a number of other FM channels are available for assignment to the communities without local service.

5. Ordinarily a Class A channel would be assigned to a community the size of Gordon. However, in addition to providing Gordon with its first local broadcast service a Class C assignment would also enable a substantial rural area surrounding it to receive its first FM service. This fact is particularly important since the area receives no AM nighttime service. For these reasons and since other channels are available for assignment to the communities without local aural broadcast service located in the precluded areas, the public interest

¹ All population figures are taken from the 1970 U.S. Census.

² Alliance, Nebraska (pop. 6,862) is assigned Channel 221A for which there is a pending application (BPH-9983), and it has a full-time AM station: Valentine, Nebraska, is assigned Channel 241, for which an application has been granted (BPH-9993) for a station to be operated in Crookston, Nebraska, and it has a daytime-only AM station: Chadron, Nebraska, is assigned Channels 228A and 234 which are unoccupied and unapplied for, and it has a daytime-only AM station.

³ Nebraska: Rushville (pop. 1,137); Crawford (1,391); South Dakota: Martin (1,248); Pine Ridge (2,768).

would be served by assigning Channel 238 to Gordon, Nebraska.

6. Authority for the action taken herein is contained in Sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

§ 73.202 [Amended]

7. Accordingly, it is ordered, That effective May 2, 1977, the Table of Assignments (§ 73.202(b) of the Rules) is amended with respect to the city listed below:

City	Channel No.
Gordon, Nebr.....	238

8. It is further ordered, That this proceeding is terminated.

FEDERAL COMMUNICATIONS
COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.77-9332 Filed 3-28-77;8:45 am]

[Docket No. 20892; RM-2654]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations in Green Bay, and Sturgeon Bay, Wisconsin, Changes Made in Table of Assignments

Adopted: March 15, 1977.

Released: March 22, 1977.

By the Chief, Broadcast Bureau:

1. The Commission herein considers the Notice of Proposed Rule Making, 41 FR 35534 (1976), in the above-captioned proceeding instituted in response to a petition filed by Communications Properties, Inc. ("Communications"). The Notice proposed the assignment of Channel 240A to Green Bay, Wisconsin, and the substitution of Channel 261A for unoccupied Channel 240A at Sturgeon Bay, Wisconsin. Communications filed supporting comments in which it reaffirmed its intention to apply for the channel if assigned.

2. Green Bay, Wisconsin (pop. 87,809)¹ is the seat of Brown County (pop. 158,244) and is located approximately 161 kilometers (100 miles) north of Milwaukee at the tip of Green Bay, which is an arm of Lake Michigan. Green Bay is presently served locally by three AM broadcast stations and two commercial FM stations—WNFL, a fulltime Class III AM station licensed to petitioner; WBAY, a fulltime Class III AM station; WDUZ, a fulltime Class IV AM station; WBAY-FM, a Class C station (Channel 266); and WDUZ-FM, a Class C station (Channel 253). Two noncommercial, educational FM stations also serve Green Bay—WGBW (Channel 218A) and WPNE-FM, a Class C station (Channel 207).

3. In response to the Notice,² Ralph E.

Evans Associates opposed the proposal alleging that the assignment was contrary to the public interest because of the resulting intermixture of Class A and Class C channels and because of an alleged inability of a Class A station to place a city-grade signal over all of Green Bay from the reference point used by petitioners. Evans also questioned whether there was any land available to use as a transmitter site from which a city grade signal could cover the entire city.

4. In its reply, Communications contended that there were sites available where the transmitter could be located and provide a city grade signal. The Notice requested additional information on site availability and the petitioner responded by furnishing a letter from a Green Bay realty firm confirming the availability of transmitter sites from which it could comply with Commission city grade signal and minimum mileage separation rules. No additional comments were filed by Evans or any other party.

5. After carefully considering the comments filed in response to the Notice, the Commission is persuaded that the public interest would be served by making the amendments proposed. Based on petitioner's reply comments, we have been convinced that transmitter site location should not pose any problem. The petitioner has furnished information indicating that negotiations are nearly complete on the tract of land to be used as the transmitter site, and it appears that this parcel, as well as others still available, would satisfy Commission requirements regarding city grade signal and mileage separation rules. Substitution of Channel 261A for 240A in Sturgeon Bay, Wisconsin, also remains feasible. Although intermixture will again³ result in Green Bay, since no Class C channel is available for assignment and petitioner has indicated that he is willing to compete with the currently assigned Class C channels, we find that intermixture of classes would not result in an undesirable situation in this instance.⁴ Additionally, since the population of Green Bay would appear to fall within the Commission's guidelines of allowing 2-4 commercial FM channels for cities with populations of 50,000 to 100,000,⁵ we believe that the public would benefit from the diversity of programming which would result from

¹ The Commission, effective January 15, 1976, had amended its FM Table of Assignments to substitute Class C Channel 253 for Channel 252A eliminating the intermixture of a Class A and a Class C channel in Green Bay which had existed since 1964. (Report and Order, Docket No. 20467, 35 R.R. 2d 1059 (1976).)

² See Anamosa and Iowa City, Iowa, 46 F.C.C. 2d 520 (1974) and Fifth Report and Order, Docket No. 19161, 41 FR 29137 (1976). See also Yakima, Washington, 42 F.C.C. 3d 548, 550 (1973) and Report and Order, Pueblo, Colorado, Docket No. 20786, 41 Fed. Reg. 37580 (1976).

³ See Further Notice of Proposed Rule Making in Docket 14185 (FCC 62-867) incorporated by reference in the Third Report, Memorandum Opinion and Order, 40 F.C.C. 747, 758 (1963).

the operation of three stations rather than the two currently assigned.

6. Accordingly, it is ordered, That effective April 28, 1977, the FM Table of Assignments (§ 73.202(b)) is amended with respect to the cities listed below as follows:

City:	Channel No.
Green Bay, Wis.....	253, 266, 240A
Sturgeon Bay, Wis.....	230, 261A

7. Authority for the action taken herein is contained in Sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules and Regulations.

8. 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,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.77-9158 Filed 3-28-77;8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Corrected Service Order No. 1261]

PART 1033—CAR SERVICE

Illinois Central Gulf Railroad Co. Authorized To Operate Certain Unit-Grain Trains Comprising Total of One Hundred Forty Cars

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 23rd day of March, 1977.

It appearing, that because of tariff requirements the Illinois Central Gulf Railroad Company (ICG) is operating unit-grain trains each transporting shipments of 9800-tons of 2000 lbs. in not more than 100 covered hopper cars; that compliance with such tariff provisions requires that each car be loaded with approximately 98-tons of grain; that a shipper served by the ICG at Cropsey, Illinois, has made four such consecutive 100-car shipments and is required by the applicable tariff to make one additional 100-car shipment of 9800-tons; that because of deterioration of its track, the ICG has been required to reduce the weight limits on its line passing through Cropsey to permit a maximum loading of 70-tons per car; that such reduced weight limitation prevents compliance by the shipper with the minimum weight and car limit requirements of the tariff; that the ICG can furnish one hundred forty (140) cars of 70-ton capacity in lieu of 100 cars of 100-ton capacity to such shipper; that use of these 140 smaller cars will enable the shipper to comply with the tariff requirements for five consecutive trips of 9800-tons each; that the shipper has consented to accept and load 140 smaller cars in lieu of 100 high capacity cars; that the shipper is willing and able to fulfill his commitment to complete five consecutive shipments

¹ Unless otherwise indicated, all population data is taken from the 1970 U.S. Census.

² Evans' opposition was filed as a response to the petition for rule making. However, because of the filing dates, the Notice considered Evans' opposition as a comment to the Notice and Communications' response as a reply to that comment.

of 9800-tons of grain loaded into not more than 100-cars but is prevented from doing so because of the present inability of the ICG to comply fully with its tariff provision; that appropriate tariff revisions are being made by the ICG to prevent future tariff obligations with respect to weight and care requirements applicable to massive multiple-car grain shipments which the ICG is unable to fulfill; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exist for making this order effective upon less than thirty day's notice.

It is ordered, That:

§ 1033.1261 Illinois Central Gulf Railroad Company authorized to operate certain unit-grain trains comprising total of one hundred forty cars.

(a) The Illinois Central Gulf Railroad Company (ICG), be, and it is hereby authorized to operate one unit-grain train of one hundred forty (140) covered hopper cars of 70-tons capacity, transporting a minimum weight of 9800-tons of grain, in lieu of a unit-grain train of one hundred (100 cars of 100-tons capacity from a shipper at Cropsey, Illinois, to a station on the Gulf of Mexico, for export, to enable such shipper to complete his obligation to ship five consecutive shipments of 9800-tons of grain as required by item 350 of ICG Grain Tariff 19611-B, ICC 11. The consent of the shipper must be obtained before the shipment is made and reference to the order endorsed on the bill-of-lading and waybills covering the shipment.

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

(c) *Effective date:* This order shall become effective at 12:01 a.m., March 23, 1977.

(d) *Expiration date:* The provisions of this order shall expire at 11:59 p.m., April 15, 1977.

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

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

By the Commission, Railroad Service Board, members Joel E. Burns, Lewis R. Teeple, and John R. Michael. Member Lewis R. Teeple not participating.¹

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-9370 Filed 3-28-77;8:45 am]

¹ Correction.

[Ex Parte No. MC 37 (Sub-No. 26)]

PART 1041—INTERPRETATION-CERTIFICATES AND PERMITS

PART 1048—COMMERCIAL ZONES

PART 1049—TERMINAL AREAS

Commercial Zones and Terminal Areas; Stay of Effective Date

MARCH 24, 1977.

Notice to all parties: On March 22, 1977, the United States Court of Appeals for the Ninth Circuit granted a temporary ten-day stay of the March 29, 1977, effective date of the Commission's order in the above-entitled proceeding (41 FR 56652, December 29, 1976), in order to allow the Court sufficient time to determine whether a stay pending judicial review should be granted. The Court's order stays the effective date of the Commission rules at issue, which enlarge the geographic scope of commercial zones and terminal areas under sections 203 (b) (8) and 202(c) of the Act, respectively, up to and including April 8, 1977.

H. GORDON HOMME, Jr.,
Acting Secretary.

[FR Doc.77-9371 Filed 3-28-77;8:45 am]

PART 1104—PROCEDURES TO BE FOLLOWED IN MOTOR CARRIER REVENUE PROCEEDINGS

CFR Correction

In title 49, Parts 1000-1199, revised as of October 1, 1976, Part 1104, appearing on pages 260-265, was stayed by Ex Parte MC-82, 40 FR 54572, November 25, 1975. The correct text for Part 1104 as promulgated at 40 FR 26033, June 20, 1975 continues in force and effect and should have appeared in the volume. For the convenience of the user the provisions of Part 1104 are set forth below:

PART 1104—PROCEDURES TO BE FOLLOWED IN MOTOR CARRIER REVENUE PROCEEDINGS

Sec.	
1104.1	Application.
1104.2	Traffic study.
1104.3	Cost study.
1104.4	Revenue need.
1104.5	Affiliate data.
1104.6	Summary of the increase proposal.
1104.7	News release.
1104.8	Official notice.
1104.9	Service.
1104.10	Availability of underlying data.

Appendix II

AUTHORITY: (49 U.S.C. 305(h), 316g, 316i; 5 U.S.C. 553v).

SOURCE: 40 FR 26033, June 20, 1975, unless otherwise noted.

§ 1104.1 Application.

(a) Upon the filing by the tariff publishing agencies named hereinafter on behalf of their motor common carrier members, or by such other agencies as the Commission may by order otherwise designate, of agency tariff schedules which contain: (1) Proposed general increases in rates or charges on general freight where such proposal would result in an increase of \$1 million or more in

the annual operating revenues on the traffic affected by the proposal; or (2) a proposed general adjustment with the objective of restructuring the rates on a wide range of traffic, involving both increases and reductions in rates and charges, where such proposal would result in a net increase of \$1 million or more in annual operating revenues, the motor common carriers of general freight on whose behalf such schedules are filed shall, concurrently with the filing of those tariff schedules, file and serve, as provided hereinafter, a verified statement presenting and comprising the entire evidential case which is relied upon to support the proposed general increase or rate restructuring. Carriers thus required to submit their evidence when they file their schedules are hereby notified that special permission to file those schedules shall be conditioned upon the publishing of an effective date at least 45 days later than the date of filing, to enable proper evaluation of the evidence presented. Data to be submitted in accordance with §§ 1104.2-1104.5 represent the minimum data required to be filed and served, and in no way shall be considered as limiting the type of evidence that may be presented at the time of filing of the schedules. If a formal proceeding is instituted, the carriers are not precluded from updating the evidence submitted at the time of filing of the schedules to reflect the contemporary situation.

(b) The motor common carriers of general freight which are subject to the provisions of this section are those which are members of the following tariff publishing agencies:

Central and Southern Motor Freight Tariff Association, Inc.
Central States Motor Freight Bureau, Inc.
The Eastern Central Motor Carriers Association, Inc.
Middle Atlantic Conference.
Middlewest Motor Freight Bureau.
The New England Motor Rate Bureau, Inc.
Pacific Inland Tariff Bureau, Inc.
Rocky Mountain Motor Tariff Bureau, Inc.
Southern Motor Carriers Rate Conference.
Southwestern Motor Freight Bureau, Inc.

(c) Upon the filing of tariff schedules other than those described hereinabove, the carriers or their tariff publishing agencies shall be required to comply with such procedures as the Commission may direct in the event an investigation is instituted. In any proceeding involving a proposed rate restructuring which would produce additional net revenue of less than \$1 million the carriers will be required to submit only the data sought in §§ 1104.2 and 1104.3. Nothing stated in this part shall relieve the carriers of their burden of proof imposed under the Interstate Commerce Act.

§ 1104.2 Traffic study.

(a) The respondents shall submit a traffic study for the most current 12-month calendar year available, which shall be referred to as the "base calendar year—actual." This year shall be the calendar year that has ended at least 7 months prior to the published effective date of the tariff schedules. If the effective date is less than 7 months following

the end of the preceding calendar year, then the second preceding calendar year shall be considered as the "base calendar year—actual." The study shall include a probability sampling of the actual traffic handled during identical time periods for each study carrier.

(b) The study carriers shall consist of those carriers subject to the requirements for allocation of expenses between line-haul and pickup and delivery services, as provided in Part 1207 of this chapter. Instructions 27 and 9002, which participate in one of the motor carrier industry's Continuous Traffic Studies, and which derive either \$1 million or more in annual operating revenues from this issue traffic or 1 percent or more of the total annual operating revenues of all carriers from the issue traffic. A list of such carriers and the appropriate revenue data shall be submitted to corroborate the selection of the study carriers. "Issue traffic" consists of those shipments on which the freight rates or charges would be affected by the rate proposal.

(c) Respondents shall take a sample of the traffic handled by the study carriers according to acceptable standards of probability sampling principles and practices, and shall explain and evaluate the probability sample from the standpoint of: Purpose, sample design (including explanation of estimation procedure and disclosure of sampling errors for derived characteristics), quality control aspects involved in processing and tabulating data and any statistical analysis performed on the sampled data.¹

(d) For cost and revenue purposes, the "carried" traffic basis shall be used. "Carried" traffic means the issue traffic handled solely by the study carriers, either single-line or interline. Estimates of current revenues applicable to the issue traffic should reflect all rates and charges in effect no later than 45 days prior to the date of the tariff filing.

§ 1104.3 Cost study.

(a) The respondents shall submit a cost study. Highway Form B may be used for this purpose. Service unit-costs shall be developed for each individual study carrier, adjusted by size of shipment and length of haul, and shall be applied to respective individual carrier's traffic service units as developed from its traffic study. Operating ratios shall be determined for the issue traffic handled by the study carriers on the "carried" basis by individual weight brackets included within the rate proposal, for: (1) The traffic study year, that is, the "base calendar year—actual," as hereinbefore defined; (2) a "present proforma year" reflecting conditions prevailing on a date no later than 45 days prior to the date of the tariff filing; and (3) a "restated proforma year" based on conditions anticipated on the effective date of the proposed rates, with a separation indicating

¹ Although not adopted by the Commission, attention is called to a staff report, "Guidelines for the Presentation of the Results of Sample Studies," Feb. 1, 1971, available from the Superintendent of Documents.

projected operating ratios on two bases, namely, "based on current revenues," and "based on proposed revenues." Operating ratios shall also be shown for all other traffic not affected by the rate proposal for the same weight brackets as shown for the issue traffic, but only for the period indicated in paragraph (a) (1) of this section.

(b) In addition to the operating ratios, the cost study shall also be used to develop and provide the revenue-to-cost comparisons required in Appendix A for the same time periods indicated for the operating ratios plus a "restated proforma year" based on constructed revenue need.

(c) For both the operating ratios and the revenue-to-cost comparisons in appendix A the "each-to-each" costing method, i.e., the application of each individual study carrier's unit-cost to its traffic service units, applies only to the "base calendar year—actual." The application of possible labor and nonlabor cost increases for the purpose of updating the "base calendar year—actual" cost data may be accomplished by the use of either individual carrier data for each of the study carriers, or the composite carrier data for those study carriers whose revenues from the issue traffic amount to 50 percent or more of their total system revenues for the "base calendar year—actual." The sample values for expenses and revenues shall be expanded to full year values without adjustments to known annual report figures of any carrier.

(d) Where cost studies are developed through the use of computer processing techniques, there shall be submitted a manual application of the costing procedures used for one traffic and cost study carrier (study carrier) in order to demonstrate the procedures by which the computer program distributes the annual report statistics, and applies service unit-costs to each shipment. An illustration of the application of service unit-costs to the applicable traffic service units generated by one single-line sample shipment and by one interline sample shipment shall also be submitted. These sample shipments shall be on the "carried" basis.

§ 1104.4 Revenue need.

Traffic and cost study carriers, i.e., the study carriers, shall submit evidence of the sum of money, in addition to operating expenses, including that needed to attract debt and equity capital, which they require to insure financial stability and the capacity to render service. This evidence shall include data required by Appendix A, parts I and II, and Appendix B.

§ 1104.5 Affiliate data.

Each individual traffic and cost study carrier having transactions with affiliates, subject to the reporting requirements of schedules 9009-A and 9009-B in the annual report for Class I motor carriers, shall submit appropriate data and analyses reflecting the effect on the parent carrier's profits of transactions

with affiliates. Such data and analyses shall be adequately supported, and there shall be submitted such underlying data as will permit a reconciliation of these data to the data supplied in the appropriate schedules of each carrier's annual report.

§ 1104.6 Summary of the increase proposal.

The respondents shall submit a summary of the increase proposal, drafted in language directed at a reader who is not an expert in transportation matters and prepared in sufficient detail to apprise such a reader of the nature of the increase proposal. Pursuant to this purpose the summary will essentially contain the following:

(a) A general description of the increase proposal including its proponent(s), effective date, geographic scope, the amount of the increase, and a general description of holddowns, flagouts, and exceptions.

(b) A summary of the supporting rationale for the increase including why it is needed, what it will accomplish, an explanation in general terms for the presence of the holddowns, flagouts, and exceptions found therein; and as applicable, conclusions reached (1) in the traffic study, (2) in the cost study, (3) concerning the effect of transactions with affiliates on the parent's revenue need, and (4) with regard to the sum of money which the carrier asserts it requires to insure its financial stability.

(c) A statement indicating that copies of the proposal, the entire evidentiary case in support thereof, and this summary have been furnished to regional and district offices of the Commission and to the State regulatory agency responsible for such matters in all States served by the carrier and affected by the proposal.

(d) A statement as follows: "The proposed tariff" contains the only legal terms of the increase binding on the parties." ("(A)nd/or petition" if applicable.)

§ 1104.7 News release.

The respondents shall submit a notice of the increase proposal, suitable for forwarding as a news release, and prepared so that the public in general may be apprised of the increase proposal; and which pursuant to this purpose as a minimum will contain essentially the following:

(a) A statement directed to the editor of a newspaper stating that the news release has been prepared in accordance with regulations of the Interstate Commerce Commission so that the public in general may be apprised of the increase proposal, and requesting that the information being forwarded be given prominent placement in the newspaper so that as large a segment as possible of the public in general may be apprised thereof.

(b) A description, in language sufficient to apprise a reader who is not an expert in transportation matters, of the nature of the proposal—including the

amount of the increase, the proponent(s), its geographic scope, and, in general terms, hold-downs, flagouts, and exceptions.

(c) A statement summarizing the supporting rationale for the increase, including why it is needed, what it will accomplish, and, in general terms, accounting for the presence of the hold-downs, flagouts, and exceptions.

(d) A statement indicating that copies of the proposal, the evidentiary case in support thereof, and a summary statement have been forwarded to regional and district offices of the Commission and to the State regulatory agency responsible for such matters in all States served by the carrier and affected by the proposal; and indicating that the public may also obtain copies of those documents by writing to "(Here the name and address of the carrier or publishing agent will be inserted)."

§ 1104.3 Official notice.

The Commission will take official notice of all of the proponent carriers' annual and quarterly reports on file with the Commission.

§ 1104.9 Service.

(a) The detailed information called for herein shall be in writing and shall be verified by a person or persons having knowledge thereof. The original and 16 copies of each verified statement (including the summary and the news release) for use by the Commission shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

(b) One copy of each statement excluding the news release, shall be sent by first-class mail (1) to each of the regional and district offices of the Commission in the area affected by the proposed increase, where it will be open to public inspection; (2) to the State regulatory agency responsible for such matters in States served by the carrier and affected by the proposal; and (3) to each party of record in the last formal proceeding concerning a general rate increase in the affected area or territory.

(c) A copy of the news release will be transmitted to the major news wire services and the principal newspaper of general circulation in the capital and four largest cities of each State served by the carrier and affected by the proposal. For the purpose of this requirement, the principal newspaper of general circulation is that newspaper of general circulation published in a city having the largest average daily circulation. Where such service is made by mail, the news release shall be mailed in time to be received on the date the original is filed with the Commission.

(d) Otherwise, the service requirements of Rule 22 of the Commission's General Rules of Practice shall be observed. Information with respect to carrier affiliates may be served on the parties in summary form, if so desired. A

copy of each statement shall be furnished to any interested person on request.

§ 1104.10 Availability of underlying data.

All underlying data used in preparation of the material outlined above shall be made available in the office of the party serving such verified matter during usual office hours for inspection by any party of record desiring to do so, and shall be made available to the Commission upon request therefor. The underlying data shall be made available also at the hearing, but only if and to the extent specifically requested in writing and required by any party for the purpose of cross-examination. Since Appendix A data are to be submitted on a combined carrier basis, any underlying individual carrier data used to complete appendix A should be furnished to the Commission for its use as well as for the use of parties opposing the sought increases.

APPENDIX II.—Revised Appendix A: Verified statement of fuel expenses and related data in support of requested fuel rate increase

Filed by: _____
Address: _____

Line No.	Item	Rate-making carrier	Owner-operator (if applicable)
	(a)	(b)	(c)
1	(a) Requested fuel rate increase, current period over base period (Not to exceed percent on line 15 col. (b)) (Percent)..... Effective date: (Mo.) (Day) (Yr.)	%	XXX
	(b) Last fuel rate increase granted under this proceeding. (Percent)..... Effective date: (Mo.) (Day) (Yr.)	%	XXX
I. BASE PERIOD DATA: JUNE, 1975			
2	Fuel expenses, including taxes.....	\$	\$
3	Number of gallons purchased.....		
4	Average purchase price per gallon of fuel, including taxes (L.2+L.3) (Cents to 2 dec.).....	e	e
II. CURRENT PERIOD DATA			
5	Indicate month/year for which current period data (Lines 6 through 12) are applicable: (Mo.) (Yr.)	"	"
6	Fuel expenses, including taxes.....	\$	\$
7	Number of gallons purchased.....		
8	Average purchase price per gallon of fuel, including taxes (L.6+L.7) (Cents to 2 dec.).....	e	e
9	Total operating revenues.....	\$	XXX
10	Payments to owner-operators.....	XXX	\$
11	Revenues retained by ratemaking carrier when transportation is performed by owner-operator.....	\$	XXX
12	Balance of operating revenues (L.9, col. (b)) Minus (L.10, col. (c)+L.11, col. (b)).....	\$	XXX
III. PERCENT THAT INCREASED FUEL COSTS IS OF TOTAL OPERATING REVENUES			
13	Increase in purchase price per gallon of fuel, including taxes (L.8-L.4) (Cents 2 dec.).....	e	e
14	Increase in fuel expenses, including taxes, current period over base period: (L.7×L.13).....	\$	\$
15	Percent that increased fuel costs, including taxes, is to total operating revenues (L.14 cols. (b) and (c))÷(L.9) (2 decimals).....	%	XXX

IV. OTHER MATTERS.

VERIFICATION

(State) _____

ss: _____

(County) _____

_____, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.

(Signature) _____

Subscribed to and sworn before me, a Notary Public, this _____ day of _____

(Month) (Year)

(Notary Public)

My Commission expires _____

(40 FR 26033, June 20, 1975, as amended at 40 FR 39868, Aug. 29, 1975)

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 28—PUBLIC ACCESS, USE AND RECREATION

Tennessee National Wildlife Refuge, Tenn.

The following special regulation is issued and is effective on April 29, 1977.

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

TENNESSEE

TENNESSEE NATIONAL WILDLIFE REFUGE

With the exception of areas designated by signs as closed to public access, the area is open to transportation of unstrung bows and arrows when used for fishing in conformance with Tennessee State fishing regulations. This regula-

tion is effective for the two day period April 29 and 30, 1977 only.

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

MARCH 17, 1977.

[FR Doc.77-9198 Filed 3-28-77;8:45 am]

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 611—FOREIGN FISHING

Miscellaneous Amendments; Correction

In FR Doc. 77-3796 appearing in the FEDERAL REGISTER issue of February 11, 1977, and beginning at page 8813, make the following corrections:

1. Page 8817, § 611.9(a) sixth line, the word "sections" should read "Subparts".
2. Page 8833, § 611.54(d) fourteenth line, the words "as provided for under paragraph (2) of this section" should be deleted.

3. Pages 8841, § 611.90(h) and § 611.91(h); 8842, § 611.92(h); 8844, § 611.93(h); 8845, § 611.94(h), sixth line following the word "measured" should read, "extending 9 nautical miles therefrom."

4. Page 8841, § 611.90(h) (1), (2), (3), (4), the date "December 1" should read "December 31."

5. Pages 8841, § 611.90(h) (2); 8842, § 611.91(h) (2); 8843, § 611.92(h) (2); 8844, § 611.93(h) (2) second line, the number "58°48'" should read "59°48'."

6. Pages 8841, § 611.90(h) (10); 8842, § 611.91(h) (10); 8844, § 611.92(h) (10); 8845, § 611.93(h) (10) and § 611.94(h) (10), the phrase "from March 1, 1977 to December 31, 1977, inclusive" should be added.

7. Page 8842, § 611.91(d) (i) (iv) second line, the number "152°W." should read "152°52'W."

8. Page 8842, § 611.91(d) (i) (vi) first line should read "58°00'N. lat.-152°0'W. long.; 58°00'N. lat.-"

9. Page 8842, § 611.91(d) (3) second line, the word "fishing" should be "trawling".

10. Page 8842, § 611.91(h) (2) second line, the number "58°48'" should read "59°48'."

11. Page 8843, § 611.92(c) (2) (vi) third line, the date "October 21" should read "October 31."

12. Page 8844, § 611.93(b) (1) third line, the number "170" should read "164."

13. Page 8842, § 611.91(c) (2) and page 8843, § 611.92(c) (2), the words "beyond

3 miles" should be deleted and the words "from 3 to 12 nautical miles" should be inserted.

Dated: March 24, 1977.

JACK GEHRINGER,
Deputy Director, National
Marine Fisheries Service.

[FR Doc.77-9323 Filed 3-28-77;8:45 am]

PART 611—FOREIGN FISHING

Foreign Fishery Allocations; Correction

In FR Doc. 77-6266 appearing in the FEDERAL REGISTER issue of Thursday, March 3, 1977 on page 12176, make the following corrections:

1. Page 12176, § 611.20(c) (1) Table 2, Japan, Other Groundfish, Bering Sea, reads "44,400" should read "40,400".

2. Page 12176, § 611.20(g) third line, the word "paragraph" should be deleted and the number "§ 611.12" inserted, and in the sixth line the letter "(e)" should read "(f)".

Dated: March 24, 1977.

JACK W. GEHRINGER,
Deputy Director, National
Marine Fisheries Service.

[FR Doc.77-9322 Filed 3-28-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 724]

CIGAR-BINDER TOBACCO

Termination of Marketing Quotas on Cigar-Binder (Types 51 and 52) Tobacco for 1977-78 Marketing Year

Pursuant to and in accordance with section 371 (a) of the Agricultural Adjustment Act of 1938, as amended (referred to hereinafter as the "Act"), an investigation is being made to determine whether the operation of farm marketing quotas in effect on cigar-binder (types 51 and 52) tobacco for the 1977-78 marketing year will cause the amount of such kind of tobacco which will be free of marketing restrictions to be less than the normal supply for such kind of tobacco for such marketing year.

If upon the basis of such investigation the Secretary finds the existence of such fact, he will proclaim the same and specify such increase in, or termination of, existing quotas as he finds, on the basis of such investigation, is necessary to make the amount of such kind of tobacco which will be free of marketing restrictions for the 1977-78 marketing year equal to the normal supply.

Marketing quotas were proclaimed for cigar-binder (types 51 and 52) tobacco for the 1975-76, 1976-77 and 1977-78 marketing years (40 FR 5135, 7619). Farmers approved marketing quotas for such 3 marketing years (40 FR 14737), and marketing quotas for the 1976-77 marketing year were later terminated (41 FR 20886).

Under present legislation the termination of marketing quotas for any marketing year would be limited in application and effect to that year only.

Under sections 101 and 106 of the Agricultural Act of 1949 as amended, price support will be made available on the 1977 crop of cigar-binder (types 51 and 52) tobacco even if marketing quotas are terminated because producers did not disapprove marketing quotas for such tobacco.

Data shows that total disappearance (domestic use plus exports) of cigar-binder (types 51 and 52) tobacco has decreased from 26 million pounds during the 1955-56 marketing year, prior to the advent of reconstituted binder sheet, to 4.4 million pounds during the 1975-76 marketing year. Disappearance is expected to decline to 3.3 million pounds during the 1976-77 marketing year. This has necessitated drastic adjustments in production. Producers used the Soil Bank and the Cropland Adjustment Programs extensively in making these adjustments. In addition, the allotted acreage has

been reduced from 16,643 acres in the 1955-56 marketing year to about 4,833 acres in 1977.

Total disappearance (domestic use plus exports) has exceeded production in 18 of the 21 years from 1955 to 1975. This has caused stocks of this kind of tobacco to decline from 62.2 million pounds on October 1, 1955 to 4.2 million pounds at the beginning of the current marketing year (October 1, 1976).

With production during the 1976-77 year estimated at 2.7 million pounds, the total supply of cigar-binder tobacco is 6.9 million pounds. Normal supply as determined under the provisions of section 301 of the Act for the 1977-78 marketing year for cigar-binder tobacco is 11.1 million pounds. Thus, the total supply of cigar-binder is below normal.

Quotas for cigar-binder tobacco have been annually terminated since the 1970 marketing year began.

Section 371 (a) of the Act provides that in the course of the investigation conducted by the Secretary, due notice and opportunity for hearing shall be given to interested persons. Accordingly, consideration will be given to data, views, and recommendations pertaining to the de-

terminations and actions described in this notice which are submitted in writing to the Director, Tobacco and Peanut Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Also, requests for a hearing will be granted if submitted to the Director by April 28, 1977. All submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 5752, South Building, 14th and Independence Avenue, SW., Washington, D.C. All submissions must, in order to be sure of consideration, be postmarked not later than April 28, 1977.

Signed at Washington, D.C., on March 23, 1977.

VICTOR A. SENECHAL,
Acting Administrator, Agricultural Stabilization and Conservation Service.

NOTE.—Agricultural Stabilization and Conservation Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement Under Executive Order 11821 and OMB Circular A-107.

CIGAR BINDER TOBACCO: ACREAGE, YIELD PRODUCTION, CARRYOVER, SUPPLY AND DISAPPEARANCE, 1966-1976

Year	: Acreage : : Harvested:	: Yield : Per Acre	: Production : : Million Pounds	: Carryover : : October 1 :	: Total : : Supply :	: Disappearance, year		
						: beginning	: October 1	: Domestic
	: 1,000	: Pounds	: Million	: Pounds	: Farm	: Sales	: Weight	
	: Acres							
CIGAR BINDER, TYPES 51 and 52								
1966	1.8	2,111	3.8	19.3	23.1	6.7	1.6	5.1
1967	1.5	1,819	2.7	16.4	19.1	7.9	2.2	5.7
1968	1.6	1,808	2.8	11.2	14.0	5.1	.4	4.7
1969	1.6	1,434	2.3	8.9	11.2	4.2	.3	3.9
1970	1.7	1,756	2.9	7.0	9.9	2.7	.3	2.4
1971	1.6	1,743	2.8	7.2	10.0	2.6	.1	2.5
1972	1.6	1,600	2.5	7.4	9.9	2.4	.1	2.3
1973	1.6	1,721	2.7	7.5	10.2	3.2	.1	3.1
.974	1.5	1,737	2.5	7.0	9.5	3.4	.2	3.1
1975	1.5	1,562	2.4	6.2	8.6	4.4	.2	4.2
1976	1.5*	1,766*	2.7*	4.2	6.9*			

* Estimated

U.S. Department of Agriculture
Tobacco and Peanut Division, ASCS
January 21, 1977

[FR Doc.77-9175 Filed 3-28-77;8:45 am]

[7 CFR Part 725]

FLUE-CURED TOBACCO ACREAGE ALLOTMENT AND MARKETING QUOTA REGULATIONS

Notice of Proposed Rulemaking

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Proposed Rule.

SUMMARY: The proposal would change the conditions upon which flue-cured tobacco could be transferred by lease when the transfer agreements are filed after June 14. The signature of the seller would be required for tobacco sold at nonauction. Included are proposed changes necessitated by the possibility that compliance with the flue-cured tobacco farm acreage allotment may be included as a condition of eligibility for price support in 7 CFR Part 1464. The proposed changes related to leasing were requested by producers to prevent speculation in flue-cured tobacco leasing.

DATES: Comments must be received on or before April 19, 1977.

ADDRESSES: Mail comments to Director, Program Operations Division, USDA-ASCS, Post Office Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Jack S. Forlines, Program Specialist, Program Operations Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Washington, D.C. 20250. ((202) 447-7935)

SUPPLEMENTAL INFORMATION: The Agricultural Stabilization and Conservation Service is considering amendments to the flue-cured tobacco regulations (7 CFR Part 725), which would make significant changes as follows:

1. Section 725.72 is amended to provide that transfer (lease) agreements filed after June 14 shall not be approved if the pounds to be transferred:

a. From the lessor farm exceed the expected production from such farm less the pounds of tobacco available for marketing from such farm in the current year.

b. To the lessee farm exceed the amount by which the tobacco available for marketing from such farm in the current year exceeds the effective farm marketing quota for such farm.

2. Section 725.100 is amended to provide that the signature of the seller and the method of determining the weight of tobacco sold shall be recorded on Form MQ-72-2 at the time of a nonauction sale of tobacco.

3. Several changes are made to implement the proposal (7 CFR Part 1464) that compliance with the flue-cured tobacco acreage allotment be a condition of eligibility for price support.

4. Other minor changes and editorial changes are made as appropriate.

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments to the Director, Program Operations Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Post Office Box 2415, Washington, D.C. 20013. Comments must be received by April 19, 1977 to be sure of consideration before final action is taken on this proposal. The comment period is being limited to 21 days because farmers are now making plans which could be affected by the proposal and they, therefore, need to know the action that will be taken at the earliest possible date. All written comments received will be available for public inspection between the hours of 8:15 a.m. and 4:45 p.m. at the Office of the Director, Program Operations Division, ASCS, Room 3630 Agriculture South Building, Washington, D.C. 20250.

It is proposed to amend 7 CFR Part 725 as follows:

1. The table of contents is amended by revoking and reserving § 725.61, as follows:

Sec.	
725.61	[Reserved]

2. Section 725.53 is amended to read as follows:

§ 725.53 Extent of determinations, computations, and rule for rounding fractions.

(a) *General.* All prescribed rounding shall be according to the provisions of Part 793 of this chapter.

(b) *Allotments.* Farm acreage allotments shall be determined in hundredths of an acre.

(c) *Yields.* Yields shall be determined in whole pounds.

(d) *Percentage reduction for violation.* A percentage reduction in an allotment for violation of this part shall be determined in tenths of a percent.

§ 725.61 [Reserved]

3. Section 725.61 is revoked and reserved.

§ 725.66 [Amended]

4. In Section 725.66, paragraph (b) is amended by deleting the words "as determined under Part 718 of this chapter" from the first sentence and paragraph (c) is revoked and reserved.

§ 725.68 [Amended]

5. In Section 725.68, paragraph (d) is amended by substituting the words "established and publicized by the State committee" in lieu of the words "specified in Part 731 of this chapter" at both places these words are used in the paragraph.

6. Section 725.72 is amended by adding subparagraphs (c) (3) (iv) and (v) and the following sentence at the end of paragraph (1) as follows:

§ 725.72 Lease and transfer of tobacco marketing quotas.

(c) * * *

(3) * * *

(iv) Not be made if the pounds of quota to be transferred from the lessor farm exceed the results obtained when the reported (or determined) acreage of tobacco in the lessor farm is multiplied by the farm yield (§ 725.51(o)) for the farm and the product is reduced by the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in process of being produced) from the farm in the current year.

(v) Not be made if the pounds of quota to be transferred to the lessee farm exceed the difference obtained by subtracting the effective farm marketing quota (the quota prior to the filing of the transfer agreement) for the lessee farm from the total pounds of tobacco marketed and/or available for marketing (based on estimated pounds of tobacco on hand and/or in process of being produced) from the farm in the current year.

(1) * * * Notwithstanding this paragraph (1), a transfer approved after the farm operator has reported the planted acreage of tobacco shall not be considered in determining eligibility for price support; neither shall transferred quota be included when determining the amount of reduction in a subsequent year allotment for a violation which occurred prior to the time the transfer(s) was approved.

7. In § 725.87, paragraph (d) is amended and paragraph (g) is added to read as follows:

§ 725.87 Issuance of marketing cards.

(d) *Farms not eligible for price support.* The marketing card issued for a farm shall have the notation "No Price Support" when the farm does not qualify for price support eligibility under the provisions of Part 1464 of this chapter.

(g) *Marketing cards for producers of registered or certified flue-cured tobacco seed.* Producers of registered or certified flue-cured tobacco seed may devote flue-cured tobacco acreage to seed production without such tobacco affecting the farm's eligibility for price support if an agreement is signed by the farm operator, and the producer if different from the operator, which provides:

(1) For the destruction prior to harvest of all tobacco produced on the acreage designated for seed production.

(2) That the producers shall pay the cost of compliance visits to a farm by representatives of the county committee for the purposes of (i) designating and determining the acreage for seed production and (ii) determining that no tobacco has been harvested from the acreage designated for seed production and to witness destruction of the tobacco leaves.

(3) That the producer(s) signing the agreement shall agree to timely notify

the county office when the tobacco seed have been harvested.

(4) That the planting of the tobacco acreage for seed production will not create history acreage for the purpose of establishing future farm allotments.

(5) That if the county committee determines that any of the terms and conditions of the agreement have been violated or any material misrepresentation has been made, any marketing card issued for the farm in recognition of the agreement shall be recalled and canceled, and a marketing card shall be issued to reflect that the tobacco produced on the farm is not eligible for price support.

§ 725.95 [Amended]

8. Section 725.95 is amended by deleting the period at the end of the first sentence in paragraph (b) and adding the following: "plus the amount determined by multiplying the farm yield times the number of acres harvested in excess of the effective farm acreage allotment."

§ 725.98 [Amended]

9. In § 725.98, paragraph (a) is amended by deleting the words "in a certification county (as defined in Part 718 of this chapter)" in the second sentence.

10. Section 725.99 is amended by revo-ving and reserving subparagraph (a) (4)(v), by deleting the first two sentences following subparagraph (a) (4) (xvii) and by revising subparagraph (a) (8) and paragraph (k) to read as follows:

§ 725.99 Warehouseman's records and reports.

(a) * * *

(8) *Nonquota tobacco or quota tobacco of a different kind.* Should tobacco be presented for sale that is represented to be nonquota tobacco or should there be a question as to what kind of quota tobacco is being offered, an inspection shall be obtained from the Agricultural Marketing Service of this Department (AMS) after the tobacco is weighed and in line for sale. The basket ticket for the tobacco shall be cross-referenced to the sale bill by sale bill number and date. The sale bill shall show the producer's name and address and the State and county code and farm number of the farm on which the tobacco was produced. If an AMS inspection shows that a basket or lot of tobacco is of a different kind than that identified by the basket ticket after it is weighed in and a sale bill prepared, such tobacco shall be deleted from the original sale bill and a revised sale bill prepared. Copies of the basket ticket and sale bill shall be furnished to the State office at the end of the sale day.

(k) *Basket, or sheet identification and cross-referencing between tobacco sale*

bill, basket ticket, and bill to buyer. Each warehouseman shall record the weight of each basket or sheet of tobacco on the tobacco sale bill and the basket ticket at the time the tobacco is weighed for marketing. The sale bill number shall be recorded on the basket ticket which is prepared for the tobacco. When the tobacco has been sold at auction, the bill-out invoice to the buyer shall include the warehouse registration number (warehouse code) and the sale bill number and line number of the entry on the sale bill.

11. In § 725.100, paragraphs (b) (1) (ii), (c) (3), and (f) (1) are amended to read as follows:

§ 725.100 Dealer's records and reports.

(b) * * *

(1) * * *

(ii) In addition a Form MQ-72-2, Report of Tobacco Nonauction purchase, shall be prepared and shall show: (A) Date of purchase, (B) identification number of buyer, (C) identification or producer selling the tobacco as shown on the marketing card, including his name and address and complete farm number, (D) type code 10, (E) pounds purchased, (F) amount of penalty collected, (G) the signature of the seller, and (H) whether the pounds marketed were determined by weighing or by estimating. Each nonauction purchase of tobacco made by the dealer shall be recorded on MQ-79.

(c) * * *

(3) The date to be entered on MQ-72-2, Report of Tobacco Nonauction Purchase, for nonauction purchases from a producer shall be that enumerated under paragraph (b) (1) (ii) of this section. For nonauction purchases from a dealer, the data to be entered on MQ-72-2 shall be the following: (i) Date of purchase; (ii) identification number of buyer; (iii) identification number of dealer making the sale; (iv) type code 10, (v) pounds purchased; (vi) signature of seller; and (vii) whether the pounds marketed were determined by weighing or by estimating.

(f) * * *

(1) Execute a basket ticket on which shall be imprinted the type of designation for the kind of quota tobacco normally marketed in the area which shows: (i) the weight of the tobacco in the basket or sheet, (ii) the sale bill number and line number of the sale bill on which the basket or sheet of tobacco is recorded;

(Sec. 301, 313, 314, 316, 317, 363, 372-375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 79 Stat. 66, 52 Stat. 63, as amended, 65-66, as amended, 72 Stat. 995; section 401, 63 Stat. 1054, as amended, sections 106, 122, 125, 70 Stat. 191, 195, 198, as amended, section 16(e), 76 Stat. 606; (7 U.S.C. 1301, 1313, 1314, 1314b,

1314c, 1363, 1372-1375, 1377, 1378, 1421, 1813, 1824, 1836). (16 U.S.C. 590p(e).)

Signed at Washington, D.C. on March 24, 1977.

VICTOR A. SENECHAL,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 77-9429 Filed 3-25-77; 11:06 am]

[7 CFR Part 1446]

1976 PEANUT PRICE SUPPORT PROGRAM

Determination of Price Support Levels by Types of Peanuts

Pursuant to the Statement of Policy executed by the Secretary of Agriculture July 20, 1971 (36 FR 13804), with respect to rulemaking, notice is hereby given that the Department is proposing to establish final 1976 crop price support levels by types of peanuts.

On March 19, 1976, new price differentials for various types of peanuts of the 1976 crop were announced by press release; these levels were subsequently revised on July 6 when the Secretary of Agriculture announced that the price differentials in effect for the previous four crop years would also be in effect for 1976. Litigation was instituted against the Secretary of Agriculture, in the United States District Court for Middle District of Georgia, in which Judge Robert Elliott enjoined use of the July 6 differentials because the Department did not follow proper rulemaking procedures in revising the price differentials. The District Court also directed that the price differentials announced March 19, 1976, be used for the 1976 crop peanut price support program.

The United States Court of Appeals for the Fifth Circuit granted a stay of Judge Elliott's order and provided that an interim support program be implemented while the litigation was pending on appeal. An interim price support program was promulgated on September 10, 1976.

The interim price support levels, published in the FEDERAL REGISTER (41 FR 40471), utilized the lowest of the price differentials announced on either March 19 or July 6, i.e., the March 19 differentials for Runners and the July 6 differentials for Virginia type and all others. The damage discount schedule announced July 6 was applied in connection with the interim program.

On November 22, 1976, the United States Court of Appeals for the Fifth Circuit issued its opinion and remanded the litigation to the District Court. The Court of Appeals concluded that the March 19 price differentials had been lawfully promulgated and that the change in differentials announced July 6 was procedurally defective. However, it also concluded that the District

Court should not have displaced the Secretary's final and conclusive authority to determine the 1976 crop price support levels and differentials by mandating use of the differentials announced March 19. The Court of Appeals, therefore, directed the District Court to remand the case to the Secretary with directions to fix the proper price differentials for the various types of peanuts of the 1976 crop.

In accordance with the opinion of the Court of Appeals, the Secretary now proposes to determine the price differen-

tials to be applied to the various types of peanuts of the 1976 crop. The Secretary also plans to consider and determine the schedule of damage discounts to be applied to peanuts tendered for price support. In connection with his review the Secretary invites comments and suggestions for such differentials and discounts from all interested persons. Without limiting consideration of other possibilities, the Secretary plans to review the following three alternatives:

Levels of support using various differentials, in dollar per ton

	Virginia	Runners	SE. Spanish	SW. Spanish	Valencia
Mar. 19 differentials.....	424.91	413.03	406.58	403.57	424.91
July 6 differentials.....	409.60	418.23	402.09	400.11	409.60
Adjusted interim differentials.....	413.10	416.56	405.52	403.53	413.10

Proposed schedule of discounts

Percent of peanuts containing damaged kernels:	Discount per ton
1.....	None
2.....	\$3.40
3.....	7.00
4.....	11.00
5.....	25.00
6.....	40.00
7.....	60.00
8-9.....	80.00
10 and over.....	100.00

Runner peanuts into the price support program.

THE ADJUSTED INTERIM DIFFERENTIAL

The interim differentials announced September 10, adjusted upward in amounts ranging from \$3.42 to \$3.53 per ton, would raise the interim level of price support to the minimum required by law. This level of support is \$414 per ton or 75 percent of the parity price for peanuts as of the beginning of the marketing year, August 1, 1976. Since most of the 1976 peanut crop has been marketed under the interim price support program, the economic effect of either of the other alternatives, i.e., July 6 or March 19, on sales of 1976 crop peanuts would be minimal at this time. As of December 30, 1976, peanut marketings reported to the Department showed the following:

- Runner, 1,215,056 tons.
- Spanish, 219,705 tons.
- Virginia, 386,525 tons.
- Valencia, 10,400 tons.

Adoption of this alternative would essentially preserve the market relationships established by the interim program.

THE DISCOUNT SCHEDULE

It is proposed that the discount schedule for damaged peanuts set forth above be applied in conjunction with whatever price differentials are ultimately adopted. The discount schedule for damaged peanuts has little or no effect on commercial marketings of peanuts. Damaged peanuts generally fall into the price support category known as Segregation Two. These peanuts are usually absorbed by the price support program. At the present time, 35,130 tons of Segregation Two Runners, 56,645 tons of Segregation Two Virginias, 79,332 tons of Segregation Two Spanish and 946 tons of Segregation Two Valencias have been placed under loan in the price support program.

OTHER RELEVANT FACTORS

In calculating the proposed alternative loan levels, the Department has given due consideration to relative kernel yields, production weights and quality factors. The production weights used in the calculations are based on esti-

THE MARCH 19 DIFFERENTIALS

The March 19 differentials place a higher price support level on Virginia type peanuts than Runner, by \$11.90 per ton. If applied in a timely manner, the March 19 differentials might be expected to reduce the existing surplus of Runner peanuts acquired by CCC and encourage the production of Virginia type peanuts in the Southeast. It has been argued, however, that the March 19 differentials would not have such an anticipated effect, but rather would only produce an undesirable adverse economic impact on commercial markets for other types of peanuts without achieving any substantial shift in production away from Runners. In this connection, Virginia type peanuts have a significantly lower kernel yield per ton than Runners. In view of this fact it is argued that in order to spur production of lower yield Virginia type peanuts in the Southeast through price support price differentials, the differentials for Virginia type peanuts would need to be set much higher than the proposed March 19 differentials in order to offset the greater net return to farmers resulting from the larger yields obtainable from Runner plantings.

THE JULY 6 DIFFERENTIALS

The differentials announced July 6, 1976, are the same differentials that were in effect for the previous four crop years. They would generally preserve historic commercial markets for the various types of peanuts. However, since Virginia, Spanish and Valencia peanuts have historically been largely absorbed in commercial channels, these differentials tend to perpetuate the movement of surplus

mated 1976 production by type; the quality factors examined are the amounts of sound mature kernels, loose shelled kernels, and other kernels based on averages for the past five years. Attached are schedules showing the incidence of such factors for the various types. A premium is placed on Virginia type peanuts to cover extra large kernels used for roasting and cleaned inshell peanuts used for roasting in the shell.

Before setting final differentials, consideration will be given to any relevant data, views, recommendations or alternative proposals which are submitted in writing to the Director, Tobacco and Peanut Division, ASCS-USDA; Room

5750 S. Bldg., P.O. Box 2415, Washington, D.C. 20013.

In order to be certain of receiving consideration, all submissions must be received by the Director not later than April 27, 1977. All written submissions will be made available for public inspection at the Office of the Director during regular business hours (8:15 a.m. to 4:45 p.m.).

Signed at Washington, D.C., on March 22, 1977.

VICTOR A. SENECHAL,
Acting Executive Vice President,
Commodity Credit Corporation.

Peanut program for 1976: Anticipated quality factors based on estimated 1976 production weights, 5-year (1971-75) average quality factors

Item	Virginia	Runner	Southeast Spanish	Southwest Spanish	Valencia ¹	All types
	Percent					
GRADE FACTORS IN AVERAGE QUALITY TON						
1. Estimated production weights.....	19.50	68	2.50	9.50	0.50	100
2. Foreign material and excess moisture....	5.25	5.50	5.75	6.75	10	5.60
3. Loose shelled kernels.....	5.25	6	5.25	3.50	5.50	5.60
4. Sound mature kernels.....	69.75	74.25	70.75	69.50	67	72.80
5. Damaged kernels.....	.75	.75	.75	.75	1	.75
6. Other kernels.....	2.75	4.50	5	5	6	4.23
7. Total kernels excluding KSL.....	73.25	79.50	76.50	75.25	74	77.78
8. Hulls.....	26.75	20.50	23.50	24.75	26	22.22
9. Extra large kernels (Virginia type).....	31.50	0	0	0	0	6.14
10. Total kernels including LSK.....	74.75	80.80	77.75	76.15	75.60	79.10
COMPOSITION OF AVERAGE QUALITY TON						
Pounds						
11. Gross weight.....	2,111	2,116	2,122	2,145	2,222	2,119
12. Foreign material and excess moisture....	111	116	122	145	222	119
13. Net weight.....	2,000	2,000	2,000	2,000	2,000	2,000
14. Loose-shelled kernels.....	111	127	111	75	122	119
15. Clean weight (net weight less LSK).....	1,889	1,873	1,889	1,925	1,878	1,881
16. Sound mature kernels (include SS and ELK).....	1,318	1,391	1,330	1,338	1,258 ²	1,369
17. Damaged kernels.....	14	14	14	14	19	14
18. Other kernels.....	52	84	94	96	113	80
19. Total kernels excluding LSK.....	1,384	1,489	1,444	1,448	1,390	1,463
20. Hulls.....	505	384	445	477	488	418
21. Extra large kernels.....	365	0	0	0	0	115
22. Total kernels.....	1,495	1,616	1,555	1,523	1,512	1,582

¹ Suitable for cleaning and roasting and grown in the Southwest.

[FR Doc.77-9040 Filed 3-28-77; 8:45 am]

Commodity Credit Corporation

[7 CFR Part 1464]

FLUE-CURED TOBACCO

Proposed Modification of Price Support Eligibility Provisions

Notice is hereby given that Commodity Credit Corporation is considering an amendment to the Tobacco Loan Program regulations (7 CFR Part 1464) to modify the eligibility provisions for price support with respect to flue-cured tobacco producers.

Under present regulations, flue-cured tobacco producers are excluded from the provisions which apply to other kinds of tobacco relating to certification of the acreage on which tobacco is produced and to such acreage not exceeding the acreage allotment established for the

farm. Representatives of farmer organizations and others have expressed the belief that in the absence of determinations and limitations of the acreage produced on a farm, program procedures are not effectively assuring that marketings of tobacco are properly identified as to the farm on which it is produced and, therefore, that price support is provided only for eligible tobacco. Also, views have been expressed that the acreage limitation should be in excess of the acreage allotment to accommodate mechanization of harvesting and to encourage techniques which result in the harvested tobacco being free of sand and other foreign material.

Under the proposed amendment, flue-cured tobacco is not excluded from the certification of acreage planted and price support would not be provided if

the planted acreage exceeds the acreage allotment by more than 7 percent. The proposed amendment also contains editorial changes to more clearly state the conditions for determining producers to be eligible for price support.

Consideration will be given to data, views and recommendations pertaining to the proposal set out in this notice which are submitted in writing to the Director, Tobacco and Peanut Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. To assure consideration, all submissions must be received by the Director not later than April 19, 1977. The comment period is being limited to 21 days because the period during which flue-cured tobacco is planted is approaching and producers need to know as soon as possible whether any change is to be made with respect to planting limitations as a condition of price support eligibility. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Director during regular business hours (8:15 a.m. to 4:45 p.m.).

It is proposed that 7 CFR 1464.7 be amended to read as follows:

§ 1464.7 Eligible producers.

(a) All producers of Puerto Rican tobacco are eligible producers, since Puerto Rican tobacco is not under U.S. marketing quotas. All producers of any kind of tobacco for which marketing quotas have been terminated are eligible producers during the periods for which the terminations are effective. Any producer of another kind of tobacco is an eligible producer if (1) all the tobacco produced on his farm is produced on acreage which does not exceed the acreage allotment, or if flue-cured tobacco, does not exceed 107 percent of the acreage allotment established for the farm under the applicable regulations issued by the Secretary of Agriculture with respect to marketing quota and acreage allotments (Parts 724, 725 and 726 of this title) for the applicable marketing year; (2) if acreage allotments and marketing quotas are in effect for a kind of tobacco, the producer has reported the acreage planted to tobacco on his farm to a county ASCS office in accordance with regulations issued by the Secretary of Agriculture with respect to determination of acreage and compliance (Part 718 of this title) for the applicable year; and (3) pesticides containing DDT, TDE, toxaphene and endrin have not been used on the tobacco in the field or after being harvested, and the absence of such use of the pesticides has been reported to a county ASCS office in accordance with applicable regulations issued under Parts 724, 725 and 726 of this title.

(b) In accordance with Parts 724, 725 and 726 of this title and pursuant to the Agricultural Adjustment Act of 1938, as amended, there are issued for the use of eligible producers, marketing cards which do not bear the words, "No price support" and which if for other than flue-cured and burley tobacco are desig-

nated "Within Quota" marketing cards for identification of their tobacco upon marketing. Marketing quota cards issued pursuant to the Agricultural Adjustment Act of 1938, as amended, when utilized for the purpose of obtaining price support under this subpart, are submitted, and the data in support thereof is reported, under the Agricultural Act of 1949, as amended, and may be utilized as CCC deems necessary or desirable for the conduct of the price support program.

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

Signed at Washington, D.C. on: March 24, 1977.

VICTOR A. SENECHAL,
Acting Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 77-9430 Filed 3-25-77; 11:07 am]

Rural Electrification Administration
[7 CFR Part 1701]

RURAL TELEPHONE PROGRAM

Specification for Equipment for Automatic
Number Identification—CAMA

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of proposed rule.

SUMMARY: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to revise REA Bulletin 384-3, to announce the revision of REA Form 537, Specification for Equipment for Automatic Number Identification—CAMA. On issuance of REA Bulletin 384-3, Appendix A to Part 1701 will be modified accordingly.

DATE: Public comments must be received by REA no later than April 28, 1977.

ADDRESS: Persons interested in the revision of REA Form 537 may submit written data, views or comments to the Director, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Telephone Operations and Standards Division during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Maynard S. Knapp, Chief, Central Office Equipment Branch, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1334, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202-447-5773.

SUPPLEMENTARY INFORMATION:

A copy of the proposed revised REA Form 537 may be secured in person or by written request from the Director, Telephone Operations and Standards Division. The text of the revised REA Bulletin 384-3 announcing the issuance of revised REA Form 537 is as follows:

REA BULLETIN 384-3

CENTRAL OFFICE EQUIPMENT CONTRACTS
AND SPECIFICATIONS

I. Purpose. To announce the revision of REA Form 537, Specification for Equipment for Automatic Number Identification—CAMA, and list current editions of central office equipment contracts and specifications.

II. General. The standard forms and specifications are to be used by borrowers for all purchases of central office equipment for the initial system. For further detail, see REA Bulletin 344-1, Methods of Purchasing Materials and Equipment Used in Telephone Borrower's Facilities, and REA Bulletin 384-1, Procedure in Connection with Central Office Equipment Contracts.

III. Contracts and Amendment.—A. REA Form 525 (9-66). Central Office Equipment Contract (Including Installation), for use when the equipment is installed by the supplier.

B. REA Form 545 (9-66). Central Office Equipment Contract (Excluding Installation), for use when the equipment is installed by the borrower's own forces or by others under a separate contract.

C. REA Form 400 (10-65). Telephone Equipment Contract (Installation Only), for use when the equipment is to be installed by others than the supplier under a separate contract.

D. REA Form 238 (4-72). Construction or Equipment Contract Amendment, for use in amending the contracts to provide for any necessary changes in the equipment and materials or specifications and for any additional equipment and materials required in connection with the central offices included in the contract.

IV. Specifications. A. REA Form 524 (1-76). General Specification for Common Control Central Office Equipment.

B. REA Form 528 (2-72). Specification for Private Automatic Branch Exchange.

C. REA Form 537 (4-77). Specification for Equipment for Automatic Number Identification—CAMA.

D. REA Form 538 (10-73). Specification for Equipment for Direct Distance Dialing.

E. REA Form 542 (4-63). Specification for Toll Office Equipment.

F. REA Form 558 (9-66). Specification for Dial Central Office Equipment.

V. Revision of REA Form 537, Specification for Equipment for Automatic Number Identification—CAMA. This revision becomes effective July 1, 1977. All applicable equipment furnished REA projects through bids or negotiations or on orders placed by REA borrowers after that date shall comply with the revised specification. This does not preclude the adoption of the revised specification by manufacturers prior to the effective date. The principal reasons for the reissue are:

A. To specify ANI equipment for all common control offices, new or existing.

B. To recognize various changes in the latest issue of REA Form 524, General Specification for Common Control Central Office Equipment.

C. To eliminate references to "terminal per line" offices.

D. To reword various requirements throughout the specification for purposes of clarification.

VI. Source of Central Office Equipment Contracts, Specifications, Amendment, and Contractor's Bonds. A. REA Form 525, Central Office Equipment Contract (A copy of REA Form 558, Specification for Dial Central Office Equipment is attached to each copy of the Form 525 Contract) is to be purchased from the Superintendent of Documents, Public Documents Distribution Center, Pueblo Industrial Park, Pueblo, Colorado 81008. Orders for the purchase of Form 525 should be prepared on REA Form 33. Copies of Form 33 are available from REA upon request.

B. All other forms referred to in this bulletin are available from REA upon request. Each contract Form 400 and 525 contains one copy of the Contractor's Bond, REA Forms 400a and 525a, respectively. Additional copies of these bond forms are available from REA upon request.

C. Questions concerning the revised specifications may be referred to the Chief, Central Office Equipment Branch, Telephone Operations and Standards Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202-447-5773.

Dated: March 23, 1977.

C. R. BALLARD,
Assistant Administrator—Telephone.

[FR Doc. 77-9382 Filed 3-28-77; 8:45 am]

SECURITIES AND EXCHANGE
COMMISSION

[17 CFR Part 240]

[Release No. 34-13395; File No. S7-670]

SECURITIES UNDERLYING CERTAIN
OPTIONS

Proposed Exemption

AGENCY: Securities and Exchange Commission.

ACTION: Extension of the Comment Period on a Proposed Rule Amendment.

SUMMARY: On February 7, 1977, the Commission issued a notice (Release No. 34-13247) (42 FR 9030) in which it proposed the amendment of § 240.12a-6, "Exemption of securities underlying certain options from section 12(a)" (17 CFR 240.12a-6), by deleting paragraph (b) (3). This action would facilitate exchange listing and trading of options on securities which are traded solely in the over-the-counter ("OTC") market. Absent rescission of paragraph (b) (3), an exchange must register each unlisted underlying security prior to the commencement of options trading on such security in order to comply with Section 12(a) of the Securities Exchange Act of 1934 (the "Act"), (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)). Further, without any action on the part of the issuer of an OTC security, the required registration may be accomplished only through an extension of unlisted trading privileges pursuant to Section 12(f) (1) (C) of the Act. Adoption of the proposed amendment to § 240.12a-6 would obviate the unlisted trading procedure.

DATES: Comments must be received on or before: April 1, 1977.

ADDRESS: All communications on this matter should be directed in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-670 and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT:

Michael J. Kulczak, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. (202-755-7485).

SUPPLEMENTARY INFORMATION: In the February 7 notice, the Commission requested comments on the proposed amendment and designated March 18, 1977 as the deadline for their submission. Interested parties, however, have requested additional time to comment on this matter. Therefore, the Commission has determined to extend until April 1, 1977 the deadline for the receipt of comments on the proposed deletion of paragraph (b) (3) from § 240.12a-6.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 18, 1977.

[FR Doc.77-9177 Filed 3-28-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 431, 514]

[Docket No. 77P-0002]

CERTIFICATION OF ANTIBIOTIC DRUGS

Revision of Sampling Procedure

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to revise the interval at which samples of capsules, tablets, suppositories, or other such antibiotic unit dosage forms are collected during manufacturing or packaging, or both, for submission to FDA for testing and certification.

DATES: Comments by May 31, 1977.

ADDRESSES: Written comments to Hearing Clerk, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Phillip L. Paquin, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, (301-443-5220).

SUPPLEMENTARY INFORMATION: Sections 431.1(c) (8) (ii) (21 CFR 431.1(c) (8) (ii)) and 514.50(c) (8) (ii) (21 CFR 514.50(c) (8) (ii)) provide for maximum sampling intervals of one unit dosage form (capsule, tablet, or suppository)

per 5,000 units manufactured. These samples are collected at equal intervals throughout the entire time of manufacturing of packaging. If the person packaging the units into dispensing-size containers is not the manufacturer, the samples are collected throughout the entire time of packaging the batch into dispensing-size containers. This sampling procedure was developed to assure that the units collected would be representative of the entire batch.

Recent advances in manufacturing technology have resulted in drug production equipment that has substantially increased the production rate of certain dosage forms of antibiotics. The increased speed of this new production equipment makes it extremely difficult for manufacturers to collect samples at the prescribed intervals. Furthermore, applying the present requirements to the greatly increased production runs often yields sample sizes that are far in excess of what is needed by FDA for certification and testing.

On December 29, 1973, the Pharmaceutical Manufacturers Association (PMA) proposed a new sampling procedure developed by the Sampling Committee of the Quality Control Section of PMA. The PMA recommended that § 431.1(c) (8) (ii) (formerly § 146.2(c) (8) (ii)), prior to recodification published in the FEDERAL REGISTER of May 30, 1974 (39 FR 18322)) be revised to read as follows:

(ii) In the case of drugs such as tablets, capsules, and suppositories a representative sample shall be collected throughout the entire production of the batch or from the completed batch. When the sample is taken during production of the batch, 100 units shall be collected at approximately equal intervals and submitted for certification. In the case of sampling from the completed bulk batch a minimum sample of 50 units and a maximum sample of 100 units for certification shall be collected in equal amounts from each bulk container. However, if the number of bulk containers exceeds 100, one unit shall be collected from each container. If the person who packages the tablets into dispensing-size containers is not the manufacturer, a sample of 100 units shall be collected at approximately equally spaced intervals throughout the entire time of packaging the batch into such containers.

The PMA indicated that this sampling procedure was in accordance with the industry's current production capabilities. A copy of the proposal is on file in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

The Commissioner concludes that PMA's proposal has merit. He is of the opinion, however, that to assure that the sample is representative of the batch it must be collected throughout the final production of the batch. The PMA proposal would give the manufacturer the choice of collecting the sample either throughout the final production of the batch or from the completed bulk batch. The Commissioner's proposal below does not provide for this choice, but rather would require the manufacturer to collect the sample throughout the final pro-

duction of the batch. In other respects the Commissioner's proposal is essential the same as PMA's.

The proposed revisions of the sampling procedures represent, in the Commissioner's view, only a temporary solution to the problems of collecting representative samples from high-speed production machinery and the problems resulting from the collection of sample sizes that are far in excess of what is needed for certification and testing. To improve the validity of the samples and the allocation of test resources, the Commissioner plans to reevaluate the statistical basis for samples submitted with requests for certification and the performance of tests and assays in such samples.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 512(n), 59 Stat. 463 as amended, 82 Stat. 347 (21 U.S.C. 357, 360(b)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Parts 431 and 514 amended as follows:

1. In Part 431, by revising § 431.1(c) (8) (ii) to read as follows:

§ 431.1 Request for certification, check tests and assays, and working standards; information and samples required.

(c) * * *

(8) * * *

(ii) In the case of drugs in unit dosage form, such as tablets, capsules, or suppositories, samples shall be collected as follows:

(a) A representative sample consisting of 100 units shall be collected by taking single units at equal intervals throughout the final production of the batch so that the quantity produced during the interval between each sample is equal to 1 percent of the number of units in the batch.

(b) If the person packaging the units into dispensing-size containers is not the manufacturer, a representative sample consisting of 100 units shall be collected by taking single units at equal intervals during packaging so that the quantity packaged during the interval between each sample is equal to 1 percent of the total number of units packaged.

2. In Part 514, by revising § 514.50(c) (8) (ii) to read as follows:

§ 514.50 Requests for certification, check tests and assays, and working standards for animal drugs subject to section 512(n) of the act; information and samples required.

(c) * * *

(8) * * *

(ii) In the case of drugs in unit dosage form, such as tablets, capsules, or suppositories, samples shall be collected as follows:

(a) A representative sample consisting of 100 units shall be collected by taking single units at equal intervals throughout the final production of the batch so that the quantity produced during the interval between each sample

is equal to 1 percent of the number of units in the batch.

(b) If the person packaging the units into dispensing-size containers is not the manufacturer, a representative sample consisting of 100 units shall be collected by taking single units at equal intervals during packaging so that the quantity packaged during the interval between each sample is equal to 1 percent of the total number of units packaged.

Interested persons may, on or before May 31, 1977, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments (preferably in quintuplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107. A copy of the inflation impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: March 22, 1977.

JOSEPH P. HILE,
Associate Commissioner for
Compliance.

[FR Doc.77-9036 Filed 3-28-77;8:45 am]

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 2]

SALE OR DISTRIBUTION OF PRINTED MATTER

Permit Requirements

AGENCY: National Park Service.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would establish a permit requirement for persons seeking to engage in the sale or distribution of printed matter within units of the National Park System. It would also provide standards for the issuance of such permits and for the conduct of activities pursuant to permits. The need for such a regulation has recently become apparent with increasing use of park areas for these activities and the occurrence of certain conflicts arising from this use. The intended effect of this regulation is to impose on these activities, which involve First Amendment considerations, only those narrow restrictions which are calculated to protect park resources and to ensure the management of park areas for public enjoyment.

DATES: Written comments, suggestions, or objections regarding this proposal will be accepted until April 28, 1977.

ADDRESSES: Comments should be directed to: Director, National Park Serv-

ice, U.S. Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Carl Christensen, Division of Ranger Activities and Protection, telephone: 202-343-5607.

The following persons participated in the writing of this regulation: Carl Christensen, David Watts, John Griggs, Brian Koula.

AUTHORITY: Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3) and 245 DM-1 (34 FR 13879).

IMPACT ANALYSIS: The National Park Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107; and, further, that it is not a major Federal action significantly affecting the quality of the human environment, which would, therefore, require preparation of an Environmental Impact Statement.

SUPPLEMENTARY INFORMATION: During the 1976 summer season, the National Park Service experienced a substantial increase in the use of areas under its jurisdiction for the purpose of distributing and selling printed matter. Although the National Park Service has always recognized activities involving First Amendment considerations, it also realizes its responsibility to reasonably regulate the conduct associated with these activities and all other activities taking place within the parks. The narrow restrictions contained in this regulation and in other park regulations are calculated only to ensure that park resources will be protected and that a high quality of experience for all park visitors will be maintained. This regulation is intended to focus principally on the control of locations where the sale or distribution of printed matter may take place, rather than to establish a prohibition of this activity, except in those instances where no appropriate site is available.

Recent decisions of various Federal courts have recognized certain First Amendment protection of the communication of views and the conduct of proselytizing activities, including the distribution and sale of literature, in areas of the National Park System. However, the courts have also recognized the authority of the Federal government to reasonably regulate the conduct associated with these activities to protect legitimate governmental interests.

Currently, regulations of the National Park Service applicable outside of the District of Columbia and its environs do not directly address the sale or distribution of printed matter. It is, therefore, the purpose of this proposed regulation to control such activities only to the extent necessary to properly protect the legitimate interests of the National Park Service and to do so in a manner which will ensure even-handed administration of these controls throughout the National Park System.

The National Park System contains over 280 different units or areas, including natural areas, historic sites, recreational areas, and urban parks. The governmental interests justifying limitations on printed matter sale and distribution activities may vary from park to park and within different areas of any particular park, according to the purposes for which the areas are administered and the manner in which the activity is conducted.

Park resources can be harmed by the unregulated sale and distribution of printed matter. Such activities may, for example, generate pedestrian traffic in areas susceptible to resource damage. Unregulated sale and distribution of printed matter may also unreasonably interfere with the interpretive and other programs taking place in park areas. In historic areas, for example, period costumes and living history exhibits are often used to convey an atmosphere of historicity. In natural areas, outstanding geological or biological features are displayed and explained to the visitor at selected sites and scenic overlooks. Also, educational tours are often conducted in historic and natural areas. While unregulated sale and distribution of printed matter would not in every case preclude such functions, it can impede or significantly detract from the ability of visitors to understand and enjoy these programs.

In many areas of the National Park System, the National Park Service strives to maintain an atmosphere of peace, calm and tranquility. Wilderness areas are an example, in which access and use by the general public are regulated to preserve their primeval character and to provide opportunities for solitude and communion with nature. Certain natural and recreational areas, while subject to more intensive use than wilderness areas, are also managed to provide opportunities to escape the hustle and bustle of everyday life. Other examples include certain historic areas, monuments, and memorials, in which an atmosphere of calm, tranquility, and often reverence is maintained to commemorate important events and persons in the nation's history. Activities associated with the sale or distribution of printed matter would impair the tranquil atmosphere which the National Park Service seeks to maintain in these areas.

In addition to the effects on park resources and programs, recent experiences with the sale and distribution of printed matter in various units of the National Park System indicate that such activities, when unregulated, may interfere with the maintenance of public order in the parks. Large numbers of complaints from park visitors indicate that persons engaged in such activities have also sold candy and flowers and have misrepresented the purposes of the sales and distributions and the affiliations of those engaged in these activities. Moreover, there are some indications that the sale and distribution of printed matter has been used to disguise an intent merely to obtain money from park visitors, rather

than to disseminate views or information. There is a legitimate governmental interest in protecting park visitors from such abuses.

The proposed regulation establishes a permit system for the use of park areas for the sale and distribution of printed matter. A permit system was selected as the best regulatory method because it permits the Superintendent to regulate the numbers of persons engaged in sale and distribution activities in order to protect park resources and because it permits regulation of time and location to avoid conflicts in the use of specific locations. Regulation of numbers is important to protect the governmental interests identified above. The conflicts foreseen without a permit system are those that arise when competing groups seek to use the same location at the same time, or other events or programs are scheduled for the particular location sought by the applicant. The permit system also allows the Superintendent an opportunity to inform applicants of the applicable regulations and the policies and programs for the particular park area. No fees will be charged to obtain a permit under this section.

The proposed regulation confers discretion on the Superintendent, subject to the standards set forth in paragraph (d) of the regulation, to decide in advance which locations within the particular park area he administers are appropriate for the sale or distribution of printed matter. The standards for exercising this discretion are tightly drafted and relate directly to the statutory and policy management guidelines that apply to the particular park area. In exercising this discretion, Superintendents will be guided by the principles outlined above. Locations that have the characteristics of a public forum will be designated as available. Locations which have been designated as available are to be indicated on a map in the Superintendent's office to permit their easy identification by the general public.

It is anticipated that, through application of the criteria contained in paragraph (d) of the proposed regulation, at least one location frequented by the public will be designated as available in nearly all units of the National Park System. However, in a few instances, historic or cultural park resources may occupy the entirety of a very small park area and as a result there may be no location which can be designated as available without seriously impairing operation of the park for its basic purposes. An example of this type of situation would be an historic building, located in an urban area, where Federally-owned land is confined to the space occupied by the building itself, with no parking areas, sidewalks, or other land under the control of the National Park Service located in the vicinity of or adjacent to the building.

Generally speaking, the interior portions of buildings within park areas will probably not be designated as available

for these activities. These buildings are usually either administrative in nature or serve as centers for interpretive or informational activities; in addition, many are memorials or of historical significance. It is probable that, under these circumstances, the sale or distribution of literature is likely to unreasonably interfere with the program activities normally conducted within these buildings or will disturb the atmosphere of tranquility and historicity which the National Park Service seeks to maintain in commemorative or historic structures. No overall prohibition on the designation of buildings is being made, however, so that each situation can be examined on its own merits and in accordance with the criteria contained in the regulation.

Certain types of sales or distributions may not be authorized by a permit under the proposed regulations. If the sale or distribution would violate applicable state or Federal laws or regulations, or if it would constitute a clear and present danger to the public health or safety, it would not be permitted. Likewise, persons operating under a permit may not engage in activities that infringe upon the rights of other visitors to the park area.

A permit under this section, moreover, would not authorize commercial advertisements in violation of 36 CFR 5.1 or sale of items other than literature in violation of 36 CFR 5.3. Commercial soliciting or begging, unaccompanied by the distribution of literature, is in violation of 36 CFR 2.4(c) and 36 CFR 2.4(a) and would also not be permitted by a § 2.39 permit.

Assembly, demonstrations, and similar types of First Amendment activities are governed by a related regulation, 36 CFR 2.21. The sale or distribution of printed matter may sometimes be authorized under the terms of a permit for a demonstration or public assembly which is granted under § 2.21. In such instances, no additional permit for the sale or distribution of printed matter would be required under the proposed § 2.39.

This regulation will not apply to park areas in the District of Columbia and its environs, which are governed by 36 CFR Part 50. The regulation regarding sale or distribution of printed matter in these parks is found in § 50.24(c) (2) of this chapter.

In consideration of the foregoing, it is proposed that § 2.39 of Title 36, Code of Federal Regulations, be adopted to read as follows:

§ 2.39 Sale and distribution of printed matter.

(a) The sale or distribution of printed matter is permitted within park areas, provided a permit to do so has been issued by the Superintendent, and provided further that the printed matter is not solely commercial advertising.

(b) Any application for such a permit shall set forth the name of the applicant; the name of the organization, if any; the date, time, duration, and loca-

tion of the proposed sale or distribution; and the number of participants.

(c) The Superintendent shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and location has been made which has been or will be granted and the activities authorized by that permit do not reasonably permit multiple occupancy of the particular area; or

(2) The sale or distribution will present a clear and present danger to the public health or safety; or

(3) The number of persons engaged in the sale or distribution exceeds the number that can reasonably be accommodated in the particular location applied for; or

(4) The location applied for has not been designated as available for the sale or distribution of printed matter; or

(5) The activity would constitute a violation of an applicable law or regulation.

(d) The Superintendent shall designate on a map, which shall be available for inspection in the Office of the Superintendent, the locations within the park area that are available for the sale or distribution of printed matter. Locations may be designated as not available only if the sale or distribution of printed matter would:

(1) Cause injury or damage to park resources; or

(2) Unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or commemorative areas; or

(3) Unreasonably interfere with interpretive, living history, visitor services, or other program activities or with the administrative functions of the National Park Service; or

(4) Substantially impair the operation of public use facilities or services of National Park Service concessioners or contractors.

(e) The permit may contain such conditions as are reasonably consistent with protection and use of the park area.

(f) No permit shall be issued for a period in excess of 14 consecutive days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(g) Persons engaged in the sale or distribution of printed matter under this section shall not obstruct or impede pedestrians or vehicles, harass park visitors with physical contact or persistent demands, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the printed matter is available without cost or donation.

(h) The sale or distribution of printed matter without a permit, or in violation of the terms or conditions of a permit, is prohibited.

(i) Any permit may be revoked under any of those conditions, as listed in paragraph (c) of this section, which consti-

tute grounds for denial of a permit, or for violation of the terms and conditions of the permit.

Dated: March 3, 1977.

GARY EVERHARDT,
Director,
National Park Service.

[FR Doc.77-9302 Filed 3-28-77;8:45 am]

Office of the Secretary

[43 CFR Part 7]

EMPLOYEES: INTEREST IN LANDS AND RESOURCES

Exceptions; Acquisition

Department of the Interior proposes to allow Interior employees to acquire wild horses and burros.

This proposed rulemaking provides that employees of the Department of the Interior or their family members may enter into a cooperative agreement to maintain and protect a wild free-roaming horse or burro under section 3(b) of the Wild Free-Roaming Horse and Burro Act of 1971 as amended (16 U.S.C. 1331 et seq.). The objective of section 3(b) of the Act is to humanely remove excess animals from range areas to control overpopulation. Persons who are willing to assume the responsibility of humane maintenance and care of excess horses and burros are invited to enter into cooperative agreements to do so. There may be employees of the Department or family members of such employees who desire to enter into cooperative agreements to maintain a horse or burro under terms and conditions set out by the Act. Since there will be ample excess animals to satisfy the demands of the total public under the cooperative agreement program and the possibility of any significant conflict of interest arising from the proposed rulemaking is negligible, Department employees should be allowed to enjoy the same privileges as other citizens under section 3(b) of the Act.

In accordance with section 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740) interested persons are invited to submit comments, suggestions, or objections to the Director (210), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240 by May 13, 1977. Comments received will be available for public inspection in Room 5555 of the Main Interior Building in Washington, D.C. at 1800 C Street NW., on regular working days from 7:45 a.m. to 4:15 p.m. For further information contact Billy R. Templeton at that address or phone 202-343-8735.

The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement

under Executive Order 11821 and OMB Circular A-107.

It is hereby determined that publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is required.

Under the authority of the Wild Free-roaming Horse and Burro Act of 1971 (16 U.S.C. 1331 et seq.) it is proposed to amend § 7.4, Part 7, Group 7, Subtitle A, Title 43 of the Code of Federal Regulations as set forth below.

Section 7.4 is amended by adding a paragraph (a) (4) to read as follows:

§ 7.4 Exceptions.

(a) * * *

(4) An employee of the Department of the Interior or any member of an employee's family may acquire a wild free-roaming horse or burro for maintenance and protection through a cooperative agreement entered into in accordance with 43 CFR 4740.2 and 4750.2.

CHRIS FARRAND,
Acting Assistant Secretary.

MARCH 23, 1977.

[FR Doc.77-9379 Filed 3-28-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Doc. No. 20885; RM-2849]

FM BROADCAST STATION IN PARK CITY, UTAH

Report and Order Denying Petition for Rule Making

Adopted: March 18, 1977.

Released: March 24, 1977.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, termination of proceeding.

SUMMARY: Mr. Richard H. Albert, petitioner, requested assignment of Class C FM Channel 300 to Park City, Utah. The petitioner was requested in the Notice to make a Roanoke Rapids and Anamosa and Iowa City showing setting forth the areas and populations which would be provided with a first and second aural service. This information was not furnished by the petitioner. Although the current petition is denied, this action does not preclude consideration of any new petition which would supply the requested information.

DATE: Adopted March 18, 1977.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Victor D. Ines, Legal Branch, Policy and Rules Division, Broadcast Bureau, Federal Communications Commission, Washington, D.C. 20554 (202) 632-7792.

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Park City, Utah).

1. On July 29, 1976, at the request of Mr. Richard H. Albert ("petitioner"), the Commission adopted a Notice of Proposed Rule Making, (41 FR 34079), to assign Class C FM Channel 300 to Park City, Utah, as that community's first aural service.

2. Since the petitioner requested a Class C channel for a community, which, because of its small population would usually only be assigned a Class A channel, the Notice indicated that additional information would be required from the petitioner in his comments in order to determine whether the requested assignment would be in the public interest. Specifically, the petitioner was asked to submit a Roanoke Rapids-Goldsboro, N.C., 9 F.C.C. 672 (1967), showing as modified by Anamosa-Iowa City, Iowa, 40 F.C.C. 2d 250 (1974), setting forth the areas and populations (if any) which would be provided with a first and second aural service a Park City Channel 300 facility.

3. Although comments were submitted by the petitioner confirming his interest in the channel, the Roanoke Rapids and Anamosa and Iowa City analysis specifically requested in the Notice was not furnished. Nor was its absence explained. Since the above information was necessary in order to make an assignment decision, the Commission has no other choice in these circumstances but to deny petitioners request. This action does not preclude consideration of a new petition should petitioner or other interested parties come forward in the future with a complete petition.

4. Authority for the action taken here-ir is contained in Sections 4(i), 5(d)(1), 303(g) and (r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules and Regulations.

5. In view of the foregoing, the petition of Mr. Richard H. Albert is denied and this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.77-9330 Filed 3-26-77;8:45 am]

¹ Further Notice of Proposed Rule Making in Docket No. 14185, 27 FR 7797 (1962), incorporated by reference in the Third Report, Memorandum Opinion and Order in Docket No. 14185, para. 25, 40 F.C.C. 747, 758 (1963).

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

PROCEDURES GOVERNING PETITIONS AND APPEALS AND FOOD MANAGEMENT

Standby Defense Food Orders; Withdrawal

A notice concerning Standby Defense Food Orders was published in the FEDERAL REGISTER on May 29, 1968, (33 FR 7862). These Standby Defense Food Orders have served their purpose and are hereby withdrawn. Similar orders are now in the Code of Emergency Federal Regulations.

Dated: March 23, 1977.

BOB BERGLAND,
Secretary of Agriculture.

[FR Doc.77-9120 Filed 3-28-77;8:45 am]

Forest Service

RED RIVER SKI AREA

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the Red River Ski Area, New Mexico, USDA-FS-R3 DES (Adm) 77-04.

The draft environmental statement concerns an expansion proposal for the Red River Ski Area.

The draft environmental statement was transmitted to CEQ on March 21, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, So. Agriculture Bldg., Rm. 3230, 14th and Independence Ave., SW, Washington, D.C. 20250.

USDA, Forest Service, Southwestern Region, 517 Gold Avenue, SW, Albuquerque, New Mexico 87102.

Carson National Forest, Cruz Alta Road (P.O. Box 558), Taos, New Mexico 87571.

A limited number of single copies are available upon request to Forest Supervisor, Carson National Forest, P.O. Box 558, Taos, New Mexico, 87571.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public, State, and local agencies which are authorized to develop and enforce environmental standards and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which

comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to the Forest Supervisor, Carson National Forest, Cruz Alta Road (P.O. Box 558), Taos, New Mexico 87571. Comments must be received within 60 days from the date the statement was transmitted to CEQ in order to be considered in the preparation of the final environmental statement.

GARY E. CARGILL,
Acting Regional Forester, Region 3.

MARCH 21, 1977.

[FR Doc.77-9374 Filed 3-28-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 30226; Order 77-3-136]

KODIAK-WESTERN ALASKA AIRLINES, INC.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 23d day of March 1977.

On December 16, 1976, Kodiak-Western Alaska Airlines, Inc. (Kodiak-Western) filed a petition requesting temporary and permanent increase of its subsidy mail rate to \$290,000 annually. Thereafter, on February 25, 1977, Kodiak-Western filed an amendment to its original petition, setting forth forecasts for the year ending December 31, 1977, and showing a subsidy need before return and taxes of approximately \$489,000 for the forecast year. The carrier made a further filing on March 2, 1977, stating that Kodiak-Western is on the verge of bankruptcy because it cannot possibly meet its cash-flow demands in March, and requesting immediate action on its subsidy petition.

The carrier's original petition was deficient in that it did not meet the requirements of Rule 303(a) of the Board's Rules of Practice in Economic Proceedings.¹ A letter from the Director of the Bureau of Economics reiterated the minimum requirements of Rule 303(a), and Kodiak-Western's February 25 amendment to its petition substantially remedied the deficiencies found in the original petition.

Kodiak-Western indicates that it has

¹ Rule 303(a) states: "The petition shall set forth the rate or rates sought to be established, a statement that they are believed to be fair and reasonable, the reasons supporting the request for a change in rate, and a detailed economic justification sufficient to establish the reasonableness of the rate or rates proposed."

nearly exhausted its working capital reserve and that there is an insufficient cash flow to cover the expected expenses that will come due during March. According to the carrier, expenses for March will total approximately \$109,000, whereas Kodiak-Western has only about \$30,000 with which to meet the month's expenses. Kodiak-Western maintains that since the period from November through April is typically the low point in the carrier's business cycle, a cash infusion, in the form of an increased subsidy rate, is necessary to bring the carrier through to its peak season. In addition, the carrier is attempting to bolster its financial resources on its own by arranging for a \$200,000 line of credit with an Alaskan financial institution.

As set forth in 14 CFR 399.30, it is the policy of the Board to fix temporary subsidy rates only when emergency action is required—at levels designed to provide such revenues as are deemed necessary for continuation of operations—prior to the establishment of a final subsidy rate. Furthermore, temporary subsidy is granted only to an extent that minimizes the likelihood of overpayment. We have reviewed Kodiak-Western's petition as amended and find that, on the basis of the data therein, it is in the public interest, and in accordance with established Board mail-rate policy, to provide the carrier with temporary subsidy relief in the form of an increased subsidy rate. We tentatively find that the appropriate temporary rate is that proposed herein.

As also indicated in 14 CFR 399.30, in most cases, it is the Board's policy to provide temporary subsidy rates equivalent to the carrier's break-even need for subsidy-eligible operations, plus its interest expense on long-term debt. Accordingly, we have calculated this amount and it is set forth in the attached Appendix A. This calculation reflects the removal of Kodiak-Western's charter operations from the subsidy need computation. Moreover, the calculation also takes into account deduction of the recently granted \$65,000 increase in Kodiak-Western's service mail rate, which is paid by the U.S. Postal Service.

We have tentatively determined that Kodiak-Western should receive its subsidy on a seasonal basis, with the carrier receiving 60 percent of its annual subsidy in the period from October through March and 40 percent in the period from April through September. The rate per mile on a monthly basis is set forth in the attached Appendix B.

The Board realizes that the problems currently confronting Kodiak-Western are serious and require prompt action.

Furthermore, we recognize that the services performed by the carrier are important to the area of Alaska that it serves. For these reasons, the Board will closely monitor Kodiak-Western's progress. The carrier anticipates a substantial improvement in its financial situation by early summer. Should the expected improvement not materialize, the Board will institute a full investigation of Kodiak-Western's certificated operations.

We, therefore, find it reasonable and in the public interest to provide Kodiak-Western with a temporary subsidy rate of \$188,277 for annual periods commencing on the date that Kodiak-Western's original petition for an increased subsidy rate was filed, December 16, 1976. This is an increase of \$58,768 over Kodiak-Western's current subsidy rate of \$129,509.¹

On the basis of the foregoing, we tentatively find and conclude that the fair and reasonable temporary rate of compensation to be paid to Kodiak-Western Alaska Airlines, Inc., for the transportation of mail by aircraft, the facilities used and useful therefor, and the subsidy-eligible services connected therewith between the points between which the carrier has been, is presently, or hereafter may be authorized to transport mail by its certificate of public convenience and necessity, is the sum of (a) the service mail rates as heretofore and hereafter established for the carrier by order of the Board, and (b) subsidy as follows: For each calendar month on and after December 16, 1976, in which miles designated by the Postmaster General for the transportation of mail are flown, an amount determined by multiplying the appropriate rates stated in Appendix B by the scheduled subsidy-eligible aircraft-miles flown during the month, or by the appropriate monthly base aircraft-miles, whichever is lower.

The scheduled revenue aircraft-miles flown shall be computed on the basis of the direct airport-to-airport mileage² between the points actually served on each revenue trip operated over Kodiak-Western's authorized subsidy-eligible routes pursuant to its flight schedules filed with the Board, including all revenue trips operated as extra sections thereto.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 102, 204, and 405 thereof, and the regulations promulgated in 14 CFR 302,

It is ordered, That:

1. Kodiak-Western Alaska Airlines, Inc., is directed to show cause why the Board should not fix, determine, and publish the aforesaid rate as the fair and reasonable temporary rate of compensation to be paid Kodiak-Western

¹ This increase in Kodiak-Western's subsidy rate, combined with the \$65,000 increase in the carrier's service mail rate, will produce an increase of approximately \$124,000 in Kodiak-Western's annual revenues.

² 14 CFR 247.1.

for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, over the carrier's subsidy-eligible system pending the fixing of a final rate in the instant proceeding;

2. Further procedures with respect to the temporary rate proposed herein shall be in accordance with the Board's Rules of Practice, particularly Rule 302, et seq., and, if there is any objection to the rate specified herein, notice thereof must be filed within eight days, and, if notice is filed, written answer and supporting documents must be filed within 15 days, after the date of service of this order;

3. If notice of objection is not filed within eight days, or if notice is filed and answer is not filed within 15 days, after service of this order, or, if an answer timely filed raises no material issue of fact, all parties shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order fixing the temporary subsidy rate specified herein;

4. If notice of objection and answer are filed presenting issues for hearing, issues regarding 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, § 302.307;

5. This proceeding shall remain open pending entry herein of an order fixing final rates retroactive to such date as the Board may determine, which final rates may be lower or higher than the temporary rates fixed herein; and

6. This order shall be served upon all parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

APPENDIX A.—*Computation of Kodiak-Western Alaska Airlines' operating break-even need, interest expense and net increase in subsidy, based on year ended Sept. 30, 1976, date*

Total revenues (scheduled service).....	\$1,092,135
Total expenses ¹	1,281,996
Unadjusted operating break-even need.....	189,831
Service mail rate adjustment ²	65,000
Adjusted operating break-even need.....	124,831
Interest expense.....	\$90,637
Percent allocable to scheduled service.....	x70%
Interest expense allocated to scheduled service.....	\$63,446
Scheduled operating break-even need plus scheduled interest expense.....	188,277
Less: Current subsidy rate.....	129,509
Net increase in subsidy required.....	58,768

¹ Total operating expenses less charter revenue; assumes at least a break-even result from charter operations.

² Approximate increase in service mail pay to reflect adoption of a service mail rate of \$5.23 per mail ton-mile by order 77-3-56.

APPENDIX B.—*Computation of Kodiak-Western Alaska Airlines' rate per subsidy-eligible mile flown, computed by month*

Month	Monthly subsidy rate	Subsidy-eligible aircraft miles	Subsidy rate per aircraft mile
	Dollars		Dollars
January.....	18,828	24,800	0.76619
February.....	18,828	23,200	.81155
March.....	18,828	24,800	.75919
April.....	12,552	24,000	.52300
May.....	12,551	31,000	.40487
June.....	12,552	30,000	.41840
July.....	12,551	31,000	.40487
August.....	12,552	31,000	.40490
September.....	12,551	31,000	.40487
October.....	18,828	31,000	.60735
November.....	18,828	24,000	.78450
December.....	18,828	24,800	.75919

[FR Doc.77-9307 Filed 3-28-77; 8:45 am]

[Dockets 27301, et al]

WESTERN AIR LINES, INC., ET AL.

Reassignment of Proceedings

In the matter of Western Air Lines, Inc.—Docket 27301; Hawaiian Airlines, Inc.—Docket 27302; Delta Air Lines, Inc.—Docket 27303; Continental Air Lines, Inc.—Docket 27304; Ozark Air Lines, Inc.—Docket 27305; Wien Air Alaska, Inc.—Docket 27306; Reeve Aleutian Airways, Inc.—Docket 27307; Hughes Air Corp. d/b/a Hughes Airwest—Docket 27308; Piedmont Aviation, Inc.—Docket 27309; United Air Lines, Inc.—Docket 27310; North Central Airlines, Inc.—Docket 27311; Braniff Airways, Inc.—Docket 27312; American Airlines, Inc.—Docket 27313; Northwest Airlines, Inc.—Docket 27314; National Airlines, Inc.—Docket 27315; Eastern Air Lines, Inc.—Docket 27316; Frontier Airlines, Inc.—Docket 27317; Pan American World Airways, Inc.—Docket 27318; Trans World Airlines, Inc.—Docket 27319; enforcement proceedings.

These proceedings have been reassigned from Administrative Law Judge William H. Draper to Administrative Law Judge Frank M. Whiting. Future communications should be addressed to Judge Whiting.

Dated at Washington, D.C., March 23, 1977.

HENRY H. SWITKAY,
Acting Chief

Administrative Law Judge.

[FR Doc.77-9305 Filed 3-28-77; 8:45 am]

COMMISSION ON CIVIL RIGHTS

DELAWARE ADVISORY COMMITTEE

Meeting; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Delaware Advisory Committee (SAC) of the Commission a notice previously published in the FEDERAL REGISTER Thursday, March 17, 1977 (FR Doc. 77-7876), on page 14896 is hereby amended. The meeting will be held on April 7, 1977 instead of April 8,

1977. The time and place of the meeting will remain the same.

Dated at Washington, D.C., March 24, 1977.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc.77-9324 Filed 3-28-77;8:45 am]

FLORIDA ADVISORY COMMITTEE Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Florida Advisory Committee (SAC) will convene at 10:30 a.m. and will end at 3:30 p.m. on April 22, 1977, in the Jet Room, Airport Roof Restaurant, International Airport Hotel, P.O. Box 592094, Miami, Florida 33159.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, Citizens Trust Bank Building, Room 362, 75 Piedmont Avenue NE., Atlanta, Georgia 30303.

The purpose of this meeting is for orientation for new members of rechartered SAC; discussion of Florida participation of Undocumented Allen study; discussion of followup of SAC report, Policed by the White Male Minority—a Study of Police/Community Relations in Miami and Dade County, Florida.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 24, 1977.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc.77-9325 Filed 3-28-77;8:45 am]

KENTUCKY ADVISORY COMMITTEE Meeting; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Kentucky Advisory Committee (SAC) of the Commission a notice previously published in the FEDERAL REGISTER Friday, March 11, 1977 (FR Doc. 77-7177), on page 13573 is hereby amended. The meeting will be held on March 28, 1977 instead of March 29, 1977. The time and place of the meeting will remain the same.

Dated at Washington, D.C., March 24, 1977.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc.77-9326 Filed 3-28-77;8:45 am]

SOUTH CAROLINA ADVISORY COMMITTEE Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights,

that a planning meeting of the South Carolina Advisory Committee (SAC) will convene at 1:00 p.m. and end at 5:00 p.m. on April 28, 1977, at the Burgandy Room, Town House Motel, 1615 Gervais Street, Columbia, South Carolina 29202.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, Citizens Trust Bank Building, Room 362, 75 Piedmont Avenue NE., Atlanta, Georgia 30303.

The purpose of this meeting is to discuss status of project on Municipal Services, data already gathered, as well as areas which remain for completion of project.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 24, 1977.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc.77-9327 Filed 3-28-77;8:45 am]

VERMONT ADVISORY COMMITTEE Meeting; Amendment

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Vermont Advisory Committee (SAC) of the Commission a notice previously published in the FEDERAL REGISTER, Friday, March 11, 1977 (FR Doc. 77-7182), on page 13574 is hereby amended. The meeting will be held on April 11, 1977 instead of April 18, 1977. The time and place of the meeting will remain the same.

Dated at Washington, D.C., March 24, 1977.

JOHN I. BINKLEY,
Advisory Committee
Management Officer.

[FR Doc.77-9328 Filed 3-28-77;8:45 am]

CIVIL SERVICE COMMISSION HEALTH BENEFITS CONTRACTS Solicitation of Comments

AGENCY: Civil Service Commission.

ACTION: Request for comments.

SUMMARY: This notice asks for comments from interested parties on the contracts between the Civil Service Commission and health benefit carriers that participate in the Federal Employees Health Benefits Program. The Commission contracts with carriers of various health benefit plans. Each year, the Commission and the carriers renegotiate benefits, premiums, and other contract provisions. Negotiations will soon begin for the 1978 contracts. The letter sent to all carriers inviting proposals for 1978 is printed below.

The Commission wants to give interested parties an opportunity to make their views known on these matters. Because of the volume of suggestions expected,

the Commission will not be able to respond to suggestions submitted.

DATES: To be of help during 1978 negotiations, suggestions should be submitted no later than April 28, 1977.

ADDRESS: Suggestions should be submitted to Mr. Thomas A. Tinsley, Director, Bureau of Retirement, Insurance, and Occupational Health, U.S. Civil Service Commission, Washington, D.C. 20415.

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

MARCH 11, 1977.

This is our reminder about benefit and rate proposals for your health benefit plan for the contract term beginning January 1, 1978.

We want to emphasize our continued concern for holding premiums at the lowest possible levels. We would like to see them continue at the 1977 rate or lower if possible. We recognize that premiums reflect the cost of the health benefits provided and the use of health care by enrollees and their families. Therefore, we must continue our efforts to do everything possible to hold down health care costs.

We want to accomplish our objectives, while maintaining a broad package of benefits, quality health care, and employee satisfaction. We ask that your submission take the form of three separate documents and that they be submitted to us as soon as possible, but no later than the following dates:

1. Cost Control Report—April 30, 1977.
2. Benefit Proposals—April 30, 1977.
3. Premium Rate Proposals—July 31, 1977.

No extension beyond these dates can be granted, and we cannot consider until 1978 (when we negotiate 1979 benefits and rates) any proposals received after the deadline dates. Please try to submit your proposals before the deadline dates, so we will have more time to consider, discuss, and negotiate, as well as more "lead" time to print and distribute brochures and pamphlets on benefits and rates, before the open season.

1. *Cost Controls.* We expect you to continue vigorous cost and utilization control efforts. These cost control efforts and activities should encompass not only claims and contract administration, but also activities with the providers of health care and educating and informing the enrollees who are the users who ultimately bear a substantial part of the cost.

Your report to us should include actions you have taken to control costs and utilization since your last report to us on such controls, the results of these and other actions, your plans for the future, and expected results.

2. *Benefit changes.* We must keep premiums as low as possible. For 1978, we will, as usual, consider proposals for perfecting changes that are intended to remedy inequitable situations and that result in no, or only minimal, additional cost. We will also consider proposals for new or improved benefits that result in additional premium cost. Cost will be a major factor in our acceptance or rejection of any benefit proposal, so we urge you to be prudent and practical in proposing new or improved benefits.

Each benefit proposal must be accompanied by your best estimate of its impact on premium (increase or decrease). If, during our analysis of your proposals, we find we need more detailed information, we will ask you for it.

You should also re-evaluate the present benefits of your plan and consider the feasibility of "trade-offs"—reduction in, or elimination of, current benefits in exchange for new or improved benefits for which there has been a demonstrated need. You must justify the benefit reduction or elimination and show that there is a greater need for the new or improved benefit than for the reduced or eliminated benefit.

As a part of this re-evaluation, consider covering alternate, less costly, modes of treatment. For example, consider covering care in facilities that do meet your present definitions of "hospital," such as specialized institutions, self-care or extended-care facilities or parts of hospitals, when such facilities or institutions are used in lieu of more costly acute hospital accommodations, and when utilization controls can be built into the benefit. Proposals for benefit changes should be specifically and precisely described and supported by (a) estimated increase or decrease in cost, and (b) full explanation or justification for the change.

Please submit proposed brochure language with your benefit proposals. The brochure is the contractual statement of benefits, exclusions, and limitations, so any language changes, statements of revised or additional benefits (including changes in a service area, for group or individual-practice prepayment plans), or corrections of existing errors should be made by the deadline date of April 30 for benefit changes. As in the 1977 brochure, a page entitled "How the Plan Benefits Change in January 1978" will be in the brochure, so you should also submit proposed wording for the changes or clarifications page.

3. *Premium rates.* Further instructions about rate submissions will be provided later.

4. *Open season.* We are considering changes in the open season that might result in improved administration and lower program cost, and be of benefit to employees and the Program in general. These include, but are not limited to, extending the open season from two to four weeks; holding general open seasons at two- or three-year intervals after 1977, rather than every year, possibly with limited-type open seasons under certain conditions during intervening years; eliminating general distribution every year of completely revised brochures, and giving general distribution to separate documents detailing changes and amendments made in brochures; and revising the size, format, and style of brochures.

We would like to have your views on these and your suggestions concerning any other changes you believe should be considered relative to the conduct of open seasons which you believe would improve administration and benefit the Program.

5. *Contract changes about the Privacy Act.* Under the Privacy Act, Pub. L. 93-579 (5 U.S.C. 552a), enacted December 31, 1974, and effective September 27, 1975, the Commission is required to publish annually notices of records systems for which it is responsible and routine uses which may be made of information in those systems. The Commission's last notice of its systems of records appeared in the FEDERAL REGISTER on September 24, 1976, Volume 41, No. 187. Two of these records systems provide for routine disclosure of information necessary to support a claim for benefits to health insurance carriers participating in the FEHB program: (1) CSC 2, Civil Service Retirement and Insurance Records; and (2) CSC GOVT-3, General Personnel Records. Except for cer-

tain disclosures specifically authorized by the law which are not generally applicable to the information the Commission provides carriers, disclosures may be made to carriers from these records systems only in accord with routine uses described in the notices.

To make it clear to employees, carriers and the general public that the Commission is providing personal information about employees to health benefits carriers in accord with the requirements of the Privacy Act, we propose adding the following language to the contracts with all carriers:

"The carrier agrees to use the personal data on employees and annuitants which is provided it by agencies and the Commission from personnel, insurance, and retirement records prescribed by the Commission, including the employee's or annuitant's Social Security Number, for only those routine uses stipulated for such data and published in the Commission's Notice of Systems of Records published annually in the Federal Register as required under the Privacy Act, Section 552a, of title 5, United States Code."

The routine use for disclosure of information to health benefits carriers should describe as briefly as possible the purposes for which information on enrollees may be furnished to carriers, consistent with the Commission's contracts with carriers. The "routine use" definition is being reviewed and may be changed. To make clear the purposes for which personnel, insurance, and retirement information may be disclosed to health benefits carriers from the Commission's General Personnel Records System and Retirement & Insurance Records System, the routine use statement in the notice for these systems may be amended to permit disclosure of information:

"* * * to health insurance carriers contracting with the Commission to provide a health benefits plan under the Federal Employees Health Benefits program to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination of benefits provisions of such contracts."

Please indicate in your benefit proposal for 1978 whether you will have any problems in accepting this amendment to the health benefits contract.

6. *Disclosure policy under the Freedom of Information Act.* Any information included in your cost control report and benefit and rate proposal letters is subject to public disclosure after negotiations with all carriers are completed and new benefits and rates are announced. You should, therefore, identify each item in your cost control report and benefit and rate proposal letters that you believe is exempt from disclosure under the Freedom of Information Act. You should also specify which exemption you believe applies to that item and give full detailed justification for your belief that the exemption applies.

We will decide on disclosure only at such time as request for information is made. In making our decision, we will consider the justification from non-disclosure submitted with your proposal letters.

If we decide that any specific item of information contained in your cost control report or benefit or rate proposals that you state you believe is exempt is not exempt from disclosure, we will so inform you before we disclose.

Sincerely yours,

THOMAS A. TINSLEY,
Director.

[FR Doc. 77-9343 Filed 3-28-77; 8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business
Administration

BROOKHAVEN NATIONAL LABORATORY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 77-00026. Applicant: Brookhaven National Laboratory, Associated Universities, Inc., Upton, New York 11973. Article: Cryogenic Helium Turboexpander/Compressor Unit, Model TD-1/2 Cell. Manufacturer: L'Air Liquide, France. Intended use of article: The article is intended to be installed in a cryogenic testing facility for research on superconducting magnets in which it will produce temperatures below 4.2 degrees Kelvin.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides for the efficient production of temperatures below the boiling point of helium at one atmosphere pressure. The National Bureau of Standards (NBS) advises in its memorandum dated February 22, 1977 that the capability described above is pertinent to the applicant's intended use. NBS also advises that it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended purpose.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import
Programs Division.

[FR Doc. 77-9308 Filed 3-28-77; 8:45 am]

COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to the provisions of the Fed- given that a meeting of the Computer App. I (Supp. V, 1975), notice is hereby given that a meeting of the Computer Systems Technical Advisory Committee will be held on Thursday, April 14, 1977, at 9:30 a.m. in Room 6802, Main Com-

merce Building, 14th and Constitution Avenue NW., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974 and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to 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 computer systems, 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) Reports on the work programs of the Subcommittees:
 - (a) Technology Transfer;
 - (b) Foreign Availability;
 - (c) Licensing Procedures; and
 - (d) Hardware.

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 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 that are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of 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 Executive Order 11652. All Committee members have appropriate security clearances.

Copies of the minutes of the open portion of the meeting will be avail-

able 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 Systems Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on February 2, 1977 (42 FR 6374).

Dated: March 24, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc. 77-9312 Filed 3-28-77; 8:45 am]

EMORY UNIVERSITY SCHOOL OF MEDICINE

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 77-00038. Applicant: Emory University School of Medicine, 1380 S. Oxford Rd., N.E. Atlanta, Georgia 30322. Article: Electron Microscope, Model EM 400 HTG. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used in the following research that will tend to link basic and clinical sciences:

(1) Interests in demyelinating diseases and neuromuscular diseases using a range of ultrastructural approaches, e.g., human multiple sclerosis (MS), studies of experimental allergic encephalomyelitis (EAE), and study of the possible relation of measles virus to multiple sclerosis; and

(2) Research into cardiovascular diseases and diseases of the central nervous system, e.g., cardiomyopathy; cardiac fibrillation and certain other dysrhythmias; herpes virus infection of cardiac cells, and generation of abnormal movements such as tremors, by certain regions of the brain.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time Customs received this application (November 10, 1976). Reasons: The article provides a eucentric goniometer stage with ± 60 degree tilt and a guaranteed resolution of 7 Angstroms point to point, as well as, a magnification range 50 to 310,000 \times in 35 steps. The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated February 25, 1977 that (1) the features described above are pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument which provided the pertinent features at the time Customs received this application.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time Customs received this application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc. 77-9315 Filed 3-28-77; 8:45 am]

HARDWARE SUBCOMMITTEE OF COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

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 Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held on Wednesday, April 13, 1977, at 9 a.m. in Room 6802, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974 and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee pursuant to 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 Hardware Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975, with the approval of the Director, Office of Export Administration, pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level

of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls. The Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (a) maintenance of the processor performance tables and further investigation of total systems performance; and (b) investigation of array processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The Subcommittee will meet in Executive Session only to discuss matters properly classified under Executive Order 11652, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Written statements may be submitted at any time before or after the meeting.

With respect to the Executive Session, 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 that are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy. All materials to be reviewed and discussed by the Subcommittee during the meeting have been properly classified under Executive Order 11652. All Subcommittee members have appropriate security clearances.

If there are unclassified minutes of the meeting, they 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 Computer Systems Technical Advisory Committee and of any subcommittee thereof, was published in the Federal Register on February 2, 1977 (42 FR 6374).

Dated: March 24, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc. 77-9310 Filed 3-28-77; 8:45 am]

NATIONAL BUREAU OF STANDARDS

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 77-00029. Applicant: Department of Commerce, National Bureau of Standards, Washington, D.C. 20234. Article: Model A7 Automatic Inductive Bridge for Resistance Measurements, with Model A7-L Interface Option. Manufacturer: Automatic Systems Laboratories Ltd., United Kingdom. Intended use of article: The article is intended to be used to automatically measure on an accurate basis the resistance of a number of platinum resistance thermometers for monitoring the temperature of different experiments.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a resolution of one part in 10^7 and an accuracy of ± 4 parts in 10^7 . The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated February 25, 1977 that the specifications of the article described above are pertinent to the applicant's intended use. HEW also advises that it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended purposes.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc. 77-9314 Filed 3-28-77; 8:45 am]

NATIONAL CANCER INSTITUTE

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). In-

terested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, on or before April 18, 1977.

Amended regulations issued under cited Act, (15 CFR Part 301) prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket number: 77-00154. Applicant: National Cancer Institute, Building 10, Room 8B14, Bethesda, Maryland 20014. Article: Electron Microscope, Model EM 400 HMG, Water chiller and accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used to examine human tissues, animal tissues, tissue culture cells, and molecules and replicas derived therefrom. Investigations will be conducted to compare malignant cells and their normal counterparts, in order to understand basic phenomena such as membrane structure and its relationship to known unique functional properties of various human tumors, such as antibody and lectin molecule binding. Further, the lineage, clinical evolution and molecular identity of related tumors, such as the lymphomas and childhood sarcomas may be determined by characterizing and studying isolated membrane molecules by immunoelectron microscopy. Application received by Commissioner of Customs: March 14, 1977.

Docket number: 77-00155. Applicant: The University of Michigan, Department of Microbiology, 6643 Medical Science Bldg., II, Ann Arbor, Michigan 48109. Article: Electron Microscope, Model EM 10A and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for studies of (1) DNA structure of bacterial and mammalian viruses, (2) plasmid DNA structure, (3) bacterial cell morphology, (4) virus particle morphology, and (5) nucleic acid-protein complexes. Representative research projects will include:

1. Investigation of the structure and function of Simian Virus 40 DNA and evolutionary variants of it and the mechanisms by which cell transformation is induced by this virus.

2. Fine structure studies of the temperate phage, ϕ 80, which grows on the photosynthetic bacterium *R. sphaeroides* and the temperate phage which grows in *E. coli*.

3. Biological consequences of specific modifications in DNA molecules of the tumor virus, simian virus 40 and bacterial plasmid DNA.

4. Investigation of transformation in *N. gonorrhoea* which concerns studies of the physiology and genetics of gram-negative cocci including *Acinetobacter*, *Moraxella*, *Achromobacter*, and *Neisseria*.

In addition, the article will be used by graduate students and occasional graduate students in connection with the courses Biological Chemistry 600, 990, and 995, Human Genetics 990 and 995, and Microbiology 399, 599, 990 and 995. All of these courses are either special techniques courses or directed research for academic credit courses. Application received by Commissioner of Customs: March 14, 1977.

Docket number: 77-00156. Applicant: Brigham Young University, Provo, Utah 84602. Article: Laser Kit, CO₂, Model K-103 and accessories. Manufacturer: Lumonics Research Ltd., Canada. Intended use of article: The article will be used for teaching students how to build a laser; how various operating parameters affect laser performance and to do research on laser driven chemistry, especially isotopically selective reactions such as occur in SF₆ and in formaldehyde. The article will also be used in the following courses taught at the university: Chemistry 464, Chemistry 697R and 797R and Physics 513, to prepare students for careers in chemistry and physics. Application received by Commissioner of Customs: March 14, 1977.

Docket number: 77-00157. Applicant: The University Hospital and Clinics, 800 North East 13th Street, Post Office Box 25606, Oklahoma City, Oklahoma 73125. Article: Linear Accelerator, Model 40 MEV and accessories. Manufacturer: Atomic Energy of Canada, Ltd., Canada. Intended use of article: The article is intended to be used to treat patients with cancer; as part of clinical protocol studies to allow an efficient and economical means for conducting cooperative multidisciplinary clinical trials with the rapid integration of new biological concepts into clinical care with ultimately improved cancer therapy. The article will also be used for educational purposes in the courses RADI 6950, Research Methods in Radiological Sciences, and RADI 6980 Research for Doctor's Dissertation. Application received by Commissioner of Customs: March 14, 1977.

RICHARD M. SEPPA,
*Director, Special Import
Programs Division.*

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc.77-9320 Filed 3-28-77;8:45 am]

NATIONAL CANCER INSTITUTE

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office

of Import Programs, Department of Commerce, Washington, DC. 20230.

Docket number: 76-00184-33-46040. Applicant: National Cancer Institute, Building 10, Room 8B14, Bethesda, Maryland 20014. Article: Electron Microscope, Model EM 301 and accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for the examination of plastic sections of tissue, replicas of cell and tissue surfaces prepared on a freeze-etch device, and stained monolayers of biological molecules. Membrane receptor molecules will be investigated both as they exist on tumor cell surfaces and in isolated form as discrete molecules.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (June 24, 1975). Reasons: The foreign article has a specified resolving power of 3 Angstroms (Å) point to point and a magnification range of 110 to 1,000,000X. The most closely comparable domestic instrument available at the time the foreign article was ordered the Model EMU-4C electron microscope manufactured by the Adam David Company. The National Bureau of Standards (NBS) in its memorandum dated February 24, 1977 that the specifications of the foreign article described above are pertinent to the applicant's research studies. NBS further advises that the EMU-4C did not have a scientific equivalent magnification range nor resolution. We, therefore, find that the EMU-4C was not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
*Director, Special Import
Programs Division.*

[FR Doc.77-9316 Filed 3-28-77;8:45 am]

TECHNOLOGY TRANSFER SUBCOMMITTEE OF THE COMPUTER SYSTEMS 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 Technology Transfer Subcommittee of the Computer Systems Technical Advisory Committee

will be held on Wednesday, April 13, 1977, at 1:30 p.m. in Room 6802, Main Commerce Building, 14th and Constitution Avenue NW., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974 and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to 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 Technology Transfer Subcommittee of the Computer Systems Technical Advisory Committee was initially established on April 10, 1974. On July 8, 1975, the Director, Office of Export Administration approved the reestablishment of this Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls. The Technology Transfer Subcommittee was formed to examine the impact of transferring Automatic Data Processing technology to Communist destinations.

The Subcommittee meeting agenda has five parts:

GENERAL SESSION

- (1) Opening remarks by the Chairman.
- (2) Presentation of papers or comments by the public.
- (3) Report by Department of Defense and Energy Research and Development Administration on the status of their paper addressing:
 - a. What software is being transferred to East Europe;
 - b. Mechanisms used to transfer this software;
 - c. Key software areas which should be considered for control; and
 - d. Software areas which should not be controlled.
- (4) Discussion of assignments and review of the draft report dated February 7, 1977 on the transfer of computer software technology.

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 Subcommittee. 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, formerly 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 that are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy. All materials to be reviewed and discussed by the Subcommittee during the Executive Session of the meeting have been properly classified under Executive Order 11652. All Subcommittee 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 Systems Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on February 2, 1977 (42 FR 6374).

Date: March 24, 1977.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.77-9311 Filed 3-28-77; 8:45 am]

UNIVERSITY OF GEORGIA

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 76-00513. Applicant: University of Georgia—Institute for Natural Products Research, Athens, Georgia 30602. Article: Fourier Transformation

NMR Spectrometer System, Model JNM/FX60. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for the following research projects for which ^1H and ^{13}C nuclear magnetic resonance spectra are of vital significance:

- Structure determinations of naturally occurring diterpenoid alkaloids.
- Stereochemical assignments in alkaloids.
- Structural determinations of di-, sesqui-, and triterpenes.
- Structural studies on resin acid degradation products.
- Structural studies on pharmacologically active constituents of marsh and beach plants of Georgia and the Southeast.
- Synthetic studies on complex alkaloids and terpenes.
- Identification and synthesis of theoretically significant naturally occurring substances.
- Studies on bis-diterpenoid alkaloids.
- Studies on the biogenesis of diterpene alkaloids.

The experiments to be performed with the article all involve pulse (Fourier transform) NMR spectroscopy on proton and carbon nuclei. In addition to recording spectra for determination of structures of natural products and synthetic intermediates, chemical shifts, and homo- and heteronuclear coupling constants, experiments will include the determination of positions and amounts of isotopic labeling (carbon 13), conformational free energies, and occasionally the quantitative analysis of mixtures for determination of optical purities. The educational purposes of the article involve the training of graduate students and postdoctoral associates in the use and applications of ^1H and ^{13}C NMR spectroscopy to chemical problems under study.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a dual frequency (for ^{13}C carbon and proton), variable temperature, 10 millimeter sample probe. The Department of Health, Education, and Welfare (HEW) and the National Bureau of Standards (NBS) advise in their memoranda dated January 20, 1977 and March 7, 1977 respectively that the specification of the article described above is pertinent to the applicant's intended purposes. HEW and NBS also advise that they know of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-9317 Filed 3-28-77; 8:45 am]

UNIVERSITY OF ILLINOIS—URBANA

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 77-00022. Applicant: University of Illinois—Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, Urbana, Ill. 61801. Article: Windowless Helium Resonance Lamp with Gas Manifold. Manufacturer: University of Linköping, Sweden. Intended use of article: The article is intended to be used for angularly resolved photo-emission experiments on layer crystals such as TiS_2 , TiSe_2 . Studies will be carried out on band structure and charge density wave phenomena. Work is being done by Ph.D. candidate as part of thesis research and physics course, Physics 497.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides ultrahigh vacuum operation (10^{-10} torr). The National Bureau of Standards advises in its memorandum dated February 17, 1977 that the specification described above is pertinent to the applicant's intended use. NBS also advises that it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended purpose.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-9318 Filed 3-28-77; 8:45 am]

UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER, HOUSTON

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent

scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, on or before April 18, 1977.

Amended regulations issued under cited Act, (15 CFR Part 301) prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket number: 77-00135. Applicant: Univ. of Texas Health Science Center at Houston, P.O. Box 20036, Houston, Texas 77025. Article: Electron Microscope, Model JEM 100B and accessories. Manufacturer: JEOL Inc., Japan. Intended use of article: The article is intended to be used for standard, high resolution transmission electron microscopy of sensory and organ cells, e.g.: retinal photo receptors, cochlear hair cells, synaptic connections, details of specialized synapses involving photo receptors and secondary neurons, synaptic vesicles, bilayer membranes. Investigations will include histochemical studies involving sensory stimulation, incubation of tissue in vital reagents to tag and trace responding receptor cells and secondary neurons, and then histological examination at the ultrastructure level. In addition, the article will be used by graduate students working on master's and doctorate degrees in biomedical sciences in part of their thesis and dissertation research. The article will also be used in laboratory course on Techniques of Electron Microscopy in Visual and Auditory Research. Application received by Commissioner of Customs; February 25, 1977.

Docket Number: 77-00136. Applicant: The Massachusetts General Hospital, Fruit Street, Boston, Ma. 02114. Article: Electron Microscope, Model EM 201 and accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article will be used in studies concerned with the ultrastructural evaluation of the cells and extracellular materials in both developing tissues and in pathological specimens. Materials will be obtained from both experimental animals as well as biopsies of human tissues. Evaluation of the organization of the extracellular matrix, especially the fibrillar components consisting of collagen, proteoglycans and elastins will be studied. Doctoral candidates taking elective courses will be instructed in the use of the article in pursuit of research problems. Application received by Commissioner of Customs; February 25, 1977.

Docket number: 77-00147. Applicant: University of Colorado, Department of Buying and Contracting, Willard Administrative Center 180, Boulder, Colorado 80309. Article: Ultrahigh Resolution Scanning System EM-100C ASID-

4D and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is an accessory to be used in conjunction with an existing electron microscope in a wide variety of research and teaching projects. Investigations to be carried out involve the study of the structure of biological cells and tissues including nerve tissues, phenomena associated with neurological diseases; tumors and comparable normal tissues; and various types of plant cells especially valuable in displaying fundamental features of cell division and morphogenesis. The article will be used primarily in the course "MCDB 490/590: Workshop in Electron Microscopy," which introduces students to standard preparative techniques for both scanning and transmission electron microscopy. Application received by Commissioner of Customs; March 3, 1977.

Docket number: 77-00148. Applicant: National Cancer Institute, National Institutes of Health, Claims Review Section, Bldg. 31, Room B1B-10, National Institutes of Health, Bethesda, Maryland 20014. Article: Free Flow Electrophoresis, Model FF5. Manufacturer: Garching Instruments, West Germany. Intended use of article: The article is intended to be used in studies of human leukemic cells to determine the RNA tumor virus information present in these cells and to develop biological markers for effective diagnosis and prognosis of the disease. Application received by Commissioner of Customs; March 7, 1977.

Docket number: 77-00149. Applicant: Michigan Cancer Foundation, 110 E. Warren Avenue, Detroit, Michigan 48201. Article: JNM-FX-100 High Resolution Fourier Transformation Multinuclear Magnetic Resonance Spectrometer System and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for nuclear magnetic resonance spectroscopy in the following research projects:

- (1) Magnetic resonance Studies of the Role of the Divalent Cation in Steroid Alcohol and Estrogen Sulfotransferase.
- (2) Conformational Dynamics of 3-Phosphoadenosine 5'Phosphosulfate and Its Analogs.
- (3) Synthesis of Aminocyclonucleotides as Tools for Study of Protein Biosynthesis.
- (4) Affinity-Labeling of Macromolecules, and
- (5) Transition State Models of Protein Synthesis.

Application received by Commissioner of Customs; March 7, 1977.

Docket number: 77-00150. Applicant: Milwaukee Children's Hospital, 1700 West Wisconsin Avenue, Milwaukee, Wisconsin 53233. Article: Electron Microscope, Model JEM-100S and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for studies of the ultrastructural characteristics of tissues, viruses and cellular inclusions associated with childhood diseases. Experiments will be conducted involving obtaining material from a variety of childhood diseases and correlating the ultrastructural

appearance of the tissue with aspects of the disease and with that seen under experimental conditions such as tissue culture and animal models. The article will also be used to instruct residents staff and medical students in the ultrastructure of childhood diseases. Application received by Commissioner of Customs; March 7, 1977.

Docket number: 77-00151. Applicant: National Institutes of Health, 900 Rockville Pike, Bethesda, Md. 20014. Article: Electron Microscope, Model EM 400 with high magnification stage and accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for investigations of the structure and function of eukaryotic chromatin. Currently available biochemical techniques combined with the techniques of electron microscopy provide a powerful tool for the examination of the problems of gene organization and expression. Application received by Commissioner of Customs; March 7, 1977.

Docket number: 77-00152. Applicant: Columbia University, School of Mines, 520 W. 120th St., New York, New York 10027. Article: Electron Microscope, Model JEM-100C/SEG and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article will be used by faculty and students for material research purposes in the following projects:

- (1) Capillarity Induced Coarsening in Model Supported Catalysts—studies to determine the mechanisms of the coarsening reaction of metal particles.
- (2) Creep of Structural Ceramics—determination of the high temperature creep properties of this material.
- (3) Mechanisms of Creep in Yttriated Ni-Cr—investigation of the roles of dispersoids and precipitates in determining the creep behavior of an experimental ODS nickel-based superalloy.
- (4) Copper Segregation—examination of complete, unsectioned particles of copper-coated carbon aimed at a better knowledge of the structure of the copper deposit, and its relation with the properties of the carbon and the efficiency of the process.
- (5) Kinetics of Reduction of Sphalerite—investigation of the kinetics of reaction of zinc sulfide with calcium oxide and carbon yielding a gaseous mixture of zinc vapor and carbon monoxide and a carbon sulfide residue.
- (6) Effect of Impurities on Zinc Electrodeposition—correlation of the structure of the metallic deposit with the current efficiency.
- (7) Relative Influence of Dissolved as Opposed to Precipitated Niobium on the Recrystallization of Microalloyed Austenite—comparison of the behavior of samples of an HSLA steel with that of decarburized samples.
- (8) The Static Recovery of FCC Metals After Hot Working—examination by transmission electron microscopy of samples prepared at various stages of recovery to determine the mechanisms of recovery in materials deformed at elevated temperatures and
- (9) Simulation of Deuterium Plasma Damage on Proposed Fusion Reactor Materials—examination of specimens prior to and after exposure to plasma in an effort to standardize the environmental conditions and to compare the performance of the materials.

In addition, the article will be used in the course Electron Microscopy, Met. M.S. E4154y; Techniques and theory of electron microscopy including operation of electron microscopes and the preparation of specimens for electron microscopy by replication and transmission. Application received by Commissioner of Customs: March 7, 1977.

Docket number: 77-00153. Applicant: Emory University School of Medicine, Dept. of Pathology and Laboratory Medicine, 80 Butler Street, S.E., Atlanta, Georgia 30303. Article: Electron Microscope, Model EM 9S-2, TI-Coolwell recirculating cooling system and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article will be used for basic and clinical research in the fields of nephropathology, GI pathology, infectious diseases, neuropathology and in general, surgical pathology. More specifically, projects that will be conducted will involve:

a. G.I. studies—Absorption studies, X-ray studies and when clinically indicated, liver biopsies will be done and correlated with per oral small intestinal biopsies which will be examined by both light and especially with electron microscopy. Attempts will be made to evaluate and confirm the presence of ultrastructural changes in the small intestinal mucosa, their significance in regard to functional abnormalities, whether they are also present in patients with no functional abnormalities, and whether there is a correlation between morphologic and functional findings in small intestine and liver.

b. Genital Infections and Neoplasia—Studies directed at searching for viruses especially herpes simplex which are implicated in the pathogenesis of cervical cancer.

c. Renal Ischemic Injury—studies on experimental ischemic renal injury in rats to determine detriments and benefits of renal encapsulation.

In addition, the article will be used to teach sophomore medical students and pathology residents in the use of EM and interpretation of electron micrographs and to take large numbers of photographs for montages, exhibits, and presentation by students and residents. Application received by Commissioner of Customs: March 7, 1977.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import
Programs Division.

[FR Doc.77-9319 Filed 3-28-77;8:45 am]

National Oceanic and Atmospheric
Administration

WESTERN PACIFIC FISHERY
MANAGEMENT COUNCIL

Public Meeting

Notice is hereby given of a meeting of the Western Pacific Regional Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The Western Pacific Council has authority over fisheries within the Fishery

Conservation Zone adjacent to the State of Hawaii, American Samoa and Guam. The Council is responsible, among other things, for preparing and submitting to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, preparing comments on applications from foreign governments for permission to fish within the fishery conservation zone, and conducting public hearings.

The Fourth Meeting of the Council will be held on April 19, 20, 21 and 22, 1977, in the Senate Chamber of the Legislature of American Samoa, in Pago Pago, American Samoa. The daily sessions will commence at approximately 9:00 a.m. and adjourn at 5:00 p.m.

PROPOSED AGENDA

1. Administrative report.
2. Status of Finances.
3. Report of first meeting of the Scientific and Statistical Committee.
4. Organization of advisory panels.
5. Status of preparations for control of foreign fishing.
6. Discussion of the roles of the Council, States, Federal Departments and the Coast Guard in the management system.
7. Problems of fishery management and development in the Samoa area.

This meeting is open to the public, and there will be seating for approximately 50 members of the public on a first come, first served basis. Members of the public who have an interest in specific items for discussion are also advised that agenda changes are sometimes made prior to the meeting. To receive information on changes if any, interested members of the public should contact: Mr. Wilvan G. Van Campen, Executive Director, Western Pacific Regional Fishery Management Council, Room 1506, 1164 Bishop Street, Honolulu, Hawaii 96813 (telephone: (808) 523-1368) on or about 10 days before the meeting.

At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business. Interested members of the public who wish to submit written comments should do so by submitting them to Mr. Van Campen at the above address. To receive due consideration and facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of the Council meeting.

Dated: March 24, 1977.

JACK W. GEHRINGER,
Deputy Director, National
Marine Fisheries Service.

[FR Doc.77-9321 Filed 3-28-77;8:45 am]

Office of the Secretary

[Dept. Organization Order 30-2B, Amdt. 1]

NATIONAL BUREAU OF STANDARDS
Department Organization Order Series

This order effective February 25, 1977 amends the material appearing at 41 FR 36058, August 26, 1976.

Department Organization Order 30-2B, dated July 21, 1976 is hereby amended

as shown below. The purpose of this amendment is to: (1) change the names of the Accounting Division to the Financial Management Division, and the Laboratory Astrophysics Division to the Quantum Physics Division; (2) abolish the Budget Division and transfer its functions to the Office of the Associate Director for Programs and the Financial Management Division; (3) transfer the travel function from Supply Division to the Financial Management Division, and the telephone services function from the Supply Division to the Administrative Services Division; and (4) transfer the Visual Arts function from the Office of Information Activities to the Administrative Services Division.

1. Section 5. Office of the Associate Director for Programs. The paragraph entitled Office of the Associate Director for Programs is revised to read as follows:

The Office of the Associate Director for Programs shall plan, develop, and evaluate Bureau-level programs and policy; serve as the Director's staff for Bureau-level programmatic and budget formulation matters; serve as the focal point of intelligence and feedback for Bureau-level programmatic matters; critique programmatic documents developed by line units; recommend program and budget priorities; coordinate the formulation of the NBS Budget, monitor planned and actual use of resources for programmatic implications and brief management on significant changes; participate in external liaison with industry, universities, state and local governments; and other agencies of government and provide program information to NBS management; carry out strategic planning and policy development; analyze and describe NBS relationships with its constituencies; develop goals, objectives, and strategies; coordinate NBS approaches; develop forecasts; provide program evaluation methods; conduct major issue and impact studies; formulate policy proposals; and advise the Director on policies regarding the Post Doctoral and Research Associate Programs.

2. Section 7. Office of the Associate Director for Administration. a. Paragraph .02, the Accounting Division is deleted. A new paragraph .02 is inserted to read as follows:

.02 The Financial Management Division shall administer the NBS systems of accounting, financial management, travel, payments, and financial reports; analyze and develop improved financial policies and practices, and provide staff assistance and advice on accounting, travel, and the management of Bureau overhead.

b. Paragraph .03, the Administrative Services Division is revised to read as follows:

.03 The Administrative Services Division shall be responsible for security, safety, emergency planning, and civil defense activities; provide mail, messenger, communications, duplicating, telephone communication, and related office services; provide graphic arts and scientific illustration services to the staff of NBS; provide services for scientific photography; manage use of auditorium and conference rooms; conduct records and forms management programs; operate an NBS records holding area; manage the NBS motor vehicle fleet; and provide janitorial service.

c. Paragraph .04, the Budget Division is deleted. Paragraph .05 is renumbered .04 and the subsequent paragraphs are renumbered accordingly.

d. Paragraph .06, The Supply Division is revised by deleting the following phrase:

* * * and administer telephone communications services and travel services.

3. Section 9. Institute for Basic Standards. Subparagraph .04a. change the name of the Laboratory Astrophysics Division to the "Quantum Physics Division."

4. The organization chart attached to this amendment supersedes the organization chart dated July 21, 1976. A copy of the organization chart is on file with the original of this document with the Office of the Federal Register.

GUY W. CHAMBERLIN, JR.,
Acting Assistant Secretary
for Administration.

[FR Doc.77-9169 Filed 3-28-77;8:45 am]

COMMISSION OF FINE ARTS MEETING

The Commission of Fine Arts will meet in open session on Tuesday, April 26, 1977, at 10 a.m. in the Commission offices at 708 Jackson Place, N.W., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington, D.C. This notice confirms the notice of January 11, 1977, 42 FR 2337.

Inquiries regarding the agenda and requests to submit written or verbal statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Signed in Washington, D.C., March 22, 1977.

CHARLES H. ATHERTON,
Secretary.

[FR Doc.77-9193 Filed 3-28-77;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS COTTON TEXTILES AND COTTON TEXTILE PRODUCTS EXPORTED TO THE UNITED STATES

Additional Official Authorized by the Government of the Federative Republic of Brazil To Issue Export Visas

MARCH 23, 1977.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: New Brazilian official authorized to issue export visas for cotton textiles and cotton textile products.

SUMMARY: The name of Mr. Henrique Jose Vieira is being added to the previously published list of officials of the Government of the Federative Republic of Brazil who are authorized to issue export visas for cotton textiles and cotton textile products exported to the United States. (See 42 FR 10707). A complete

list of Brazilian officials currently so authorized is published as an enclosure to the letter to the Commissioner of Customs which follows this notice.

EFFECTIVE DATE: March 24, 1977.

FOR FURTHER INFORMATION CONTACT:

Judith L. McConahy, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-5423).

SUPPLEMENTARY INFORMATION: On July 8, 1972 a letter to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements was published in the FEDERAL REGISTER (37 F.R. 13498), which established an export visa requirement for cotton textiles and cotton textile products, produced or manufactured in Brazil, and exported to the United States. One of requirements is that the visas accompanying such shipments must be signed by an official authorized by the Brazilian Government to issue visas. The Government of the Federative Republic of Brazil has asked the Government of the United States to add the name of Mr. Henrique Jose Vieira to the list of officials authorized to issue export visas.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to permit entry for consumption or withdrawal from warehouse for consumption of shipments of cotton textiles and cotton textile products, produced or manufactured in Brazil, which have been visaed by Mr. Henrique Jose Vieira.

RONALD I. LEVIN,
Acting Chairman, Committee
for the Implementation of
Textile Agreements, U.S. Department of Commerce.

COMMITTEE FOR THE IMPLEMENTATION OF
TEXTILE AGREEMENTS

MARCH 23, 1977.

COMMISSIONER OF CUSTOMS, Department of the Treasury, Washington, D.C. 20229.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive of June 29, 1972 from the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit, under certain specified conditions, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1 through 64, produced or manufactured in the Federal Republic of Brazil, for which that Government had not issued an appropriate export visa. One of the requirements is that each visa include the signature of a Brazilian official authorized to issue visas.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to the provisions of the Bilateral Cotton Textile Agreement of April 22, 1976, between the Governments of the United States and the Federative Republic of Brazil, and in accordance with the provisions of Executive

Order 11651 of March 3, 1972, the directive of June 29, 1972 is further amended, effective on March 24, 1977, to authorize Mr. Henrique Jose Vieira to issue export visas in addition to those previously designated. A complete list of Brazilian officials currently authorized to issue visas is enclosed.

The actions taken with respect to the Government of the Federative Republic of Brazil and with respect to imports of cotton textiles and cotton textile products from Brazil have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

RONALD I. LEVIN,
Acting Chairman, Committee for the
Implementation of Textile Agreements,
U.S. Department of Commerce.

OFFICIALS OF THE FEDERATIVE REPUBLIC OF
BRAZIL AUTHORIZED TO ISSUE VISAS FOR COTTON
TEXTILES AND COTTON TEXTILE PRODUCTS
EXPORTED TO THE UNITED STATES

Honorio Onofre de Abreu
Alvaro de Sa Andrade
Francisco Sampaio de Araujo
Jose Carlos de Araujo
Alvaro Volpe Bacelar
Eduardo Jose Ferreira Barnes
Antonio Carlos Bastos Junior
Henrique Reis Bergan
Jose Magno de Leao Brasil
Jose Coracy de Souza Coelho
Octavio de Almeida Ribeiro Dantas
Jose Maria Duprat
Fued Farhat
Jayme Lobo Ferreira
Antonio Bezerra de Figueiredo
Darcy Mattos Fonseca
Mario Jofre Pinto de Freitas
Publio Jackson Furlatti
Eudes Izar
Mario Emilio Kreiblich
Osvaldo Ladewig
Gilfredo Vieira Lessa
Antonio Lins
Jarbas Cezar Loureiro
Francisco Magalhaes
Nelson Duran Mascia
Clidenor Jacob Medeiros
Rolando Missfeldt
Arnaldo Nogueira Junior
Renato de Arruda Penteado Junior
Joffre Pereira
Elmo Pignatano
Rufino Cancio Pires
Fauzi Rahme
Luiz Ramina
Flavio Eduardo Patricio Ribeiro
Lair Passos Saraiva
Flavio Scottini
Ary de Oliveira Seabra
Isaac Carneiro da Silva
Nestor de Almeida e Silva
Onofre Marques da Silva Junior
Geraldo de Souza
Nilo Augusto Borges Teixeira
Ernio Antonio Thimmig
Dario Raphael Tobar
Danilo Octavio de Toledo
Roberto Varela
Jaíre Perez de Vasconcellos
Henrique Jose Vieira
Armando Vulcano
Celso Mario Zipf

[FR Doc.77-9168 Filed 3-28-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Army

DUGWAY PROVING GROUND, UTAH

Filing of Supplement A to Environmental Impact Statement

In compliance with the National Environmental Policy Act of 1969, the Army on 1 April 1977 provided the Council on Environmental Quality with Supplement A to Environmental Impact Statement concerning Disposal of Toxic Residue at West Granite Disposal Area, Dugway Proving Ground, Utah.

Copies of the supplement have been forwarded to concerned Federal, State, and local agencies. Interested organizations or individuals may obtain copies from the Office of the Project Manager for Chemical Demilitarization and Installation Restoration, Building E, 4585, Attn: DRCPM-DRD (Cpt David Tye) Aberdeen Proving Ground, MD 21010 (phone (301) 671-2270).

In the Washington area, inspection copies may be seen in the Environment Office, Office of the Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, D.C. 20310 (phone (202) 694-1163).

Dated: March 23, 1977.

BRUCE A. HILDEBRAND,
Deputy for Environmental Affairs,
Office of the Assistant
Secretary of the Army (Civil Works).

[FR Doc.77-9304 Filed 3-28-77; 8:45 am]

Department of the Navy

BOARD OF VISITORS TO THE UNITED STATES NAVAL ACADEMY

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet on May 3, 1977, at the Capitol Building, Washington, D.C. between 8:30 a.m. and 11:30 a.m. and will resume with a visit to various facilities and activities of the United States Naval Academy during the afternoon and evening of May 3, 1977. Sessions of the meeting will commence at 8:30 a.m. on May 4, 1977, in Room 301, Rickover Hall at the United States Naval Academy, Annapolis, Maryland.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the United States Naval Academy.

The contact officer will be Rear Admiral Robert W. McNitt, USN (Ret.), Secretary to the Board of Visitors, Dean of Admissions, United States Naval Academy, Annapolis, MD 21402. Telephone number (301) 267-2188.

Dated: March 21, 1977.

JOHN S. JENKINS,
Assistant Judge Advocate
General (Civil Law).

[FR Doc.77-9196 Filed 3-28-77; 8:45 am]

SECRETARY OF THE NAVY OCEANOGRAPHIC ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Secretary of the Navy Oceanographic Advisory Committee will meet on April 27-28, 1977, at the United States Naval Academy, Annapolis, Maryland. Sessions of the meeting will commence at 9:00 a.m. and 1:00 p.m. on April 27 and at 9:00 a.m. on April 28. The April 27 afternoon session and the April 28 morning session will be closed to the public.

The purpose of the meeting is to elicit the advice of the committee concerning various ocean-science, ocean-operations, and ocean-engineering programs being conducted by the Navy in connection with the national defense effort. The April 27 afternoon session and the April 28 morning session agenda will consist of matters which are required by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order.

The Secretary of the Navy has therefore determined in writing that the public interest requires the April 27 afternoon session and the April 28 morning session of the meeting to be closed to the public because they will be concerned with matters listed in section 552b(c) (1) of title 5, United States Code.

For further information concerning this matter contact Donald B. Milligan, Executive Secretary, 200 Stovall Street, Alexandria, VA 22332, phone (202) 325-9275.

Dated: March 21, 1977.

K. D. LAWRENCE,
Deputy Assistant Judge Advocate
General (Administrative Law).

[FR Doc.77-9195 Filed 3-28-77; 8:45 am]

Office of the Secretary

ADVISORY GROUP ON ELECTRON DEVICES

Meeting

Working Group B (Mainly Low Power Devices) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session at Nellis AFB, Nevada 89191 on 13 April 1977.

The purpose of the Advisory Group is to provide the Director of Defense Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with tactical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include de-

tails of classified program details throughout.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Advisory Group meeting concerns matters listed in Section 552b(c) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and
Directives, OASD (Comptroller).

MARCH 24, 1977.

[FR Doc.77-9306 Filed 3-28-77; 8:45 am]

ADVISORY GROUP ON ELECTRON DEVICES

Meeting

Working Group C (Mainly Imaging and Display) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session at the Naval Ocean Systems Center, 271 Catalina Boulevard, San Diego, California 92152 on April 14-15, 1977.

The purpose of the Advisory Group is to provide the Director of Defense Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This special device area includes such programs as Infrared and Night Vision Sensors. The review will include classified program details throughout.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Advisory Group meeting concerns matters listed in section 552b(c) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

Dated: March 24, 1977.

MAURICE W. ROCHE,
Director, Correspondence and
Directives OASD (Comptroller).

[FR Doc.77-9364 Filed 3-28-77; 8:45 am]

ADVISORY GROUP ON ELECTRON DEVICES

Meeting

Working Group A (Mainly Microwave Devices) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session at the Naval Postgraduate School, Monterey, California on April 25, 1977.

The purpose of the Advisory Group is to provide the Director of Defense Research and Engineering, the Director, Defense Advanced Research Projects

Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The microwave area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout. In accordance with section 10(d) of Appendix I, Title 5, United States Code, it is hereby determined that this meeting of the Advisory Group on Electron Devices concerns matters listed in section 552b(c) of Title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

Dated: March 24, 1977.

MAURICE W. ROCHE,
Director, Correspondence and
Directives OASD (Comptroller).

[FR Doc.77-9365 Filed 3-28-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 705-7: OPP-30129]

ELANCO PRODUCTS CO.

Receipt of Application To Register Pesticide Product Containing New Active Ingredient

Elanco Products Co., A Division of Eli Lilly and Co., PO Box 1750, Indianapolis, IN 42606, has submitted to the Environmental Protection Agency (EPA) an application to register the pesticide product Oxidicidin Technical (EPA File Symbol 1471-RNI), containing 99.0% of the active ingredient 3,7-dichlorophenodioxin-5-ium-bisulfate which has not been included in any previously registered pesticide products. The application received from Elanco proposes that the product be classified for general use in manufacturing use only. PM33.

Notice of receipt of this application does not indicate a decision by the Agency. Any interested person may submit written comments on this application to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M St. SW, Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and others interested in inspecting them. The comments must be received on or before April 28, 1977, and should bear a notation indicating the EPA File Symbol "1471-RNI". Comments received within the specified time period will be considered before a final decision is made with respect to the pending application. Comments received after the specified time period will be considered only to

the extent possible without delaying processing of the application. Specific questions concerning this application should be directed to Product Manager (PM) 33, Registration Division, (WH-567), Office of Pesticide Programs, at the above address or by telephone at 202/755-9041.

Notice of approval or denial of this application to register Oxidicidin Technical will be announced in the FEDERAL REGISTER. The label furnished by Elanco, as well as all written comments filed pursuant to this notice, will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: March 17, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-9154 Filed 3-28-77;8:45 am]

[FRL 705-6, OPP-3000/496]

RECEIPT OF APPLICATION FOR PESTICIDE REGISTRATION

Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (39 FR 31862) its interim policy with respect to the administration of Section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended ["Interim Policy Statement"]. On January 22, 1976, EPA published in the FEDERAL REGISTER a document entitled "Registration of a Pesticide Product—Consideration of Data by the Administrator in support of an Application" [41 FR 3339]. This document described the changes in the Agency's procedures for implementing Section 3(c)(1)(D) of FIFRA, as set out in the Interim Policy Statement which were effected by the enactment of the recent amendments to FIFRA on November 28, 1975 [Pub. L. 94-140], and the new regulations governing the registration and re-registration of pesticides which became effective on August 4, 1975 [40 CFR Part 162].

Pursuant to the procedures set forth in these FEDERAL REGISTER documents, EPA hereby gives notice of the applications for pesticide registration listed below. In some cases these applications have recently been received; in other cases, applications have been amended by the submission of additional supporting data, the election of a new method of support, or the submission of new "offer to pay" statements.

In the case of all applications, the labeling furnished by the applicant for the product will be available for inspection at the Environmental Protection Agency, Room 209, East Tower, 401 M Street, S.W., Washington D.C. 20460. In the case of applications subject to the new Section 3 regulations, and applications not subject to the new Section 3

regulations which utilize either the 2(a) or 2(b) method of support specified in the Interim Policy Statement, all data citations submitted or referenced by the applicant in support of the application will be made available for inspection at the above address. This information (proposed labeling and, where applicable, data citations) will also be supplied by mail, upon request. However, such a request should be made only when circumstances make it inconvenient for the inspection to be made at the Agency offices.

Any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after January 1, 1970, is being used to support an application described in this notice, (c) desires to assert a claim under Section 3(c)(1)(D) for such use of his data, and (b) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data or the status of such data under Section 10 must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Product Control Branch, Registration Division (WH-567), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington D.C. 20460. Every such claimant must include, at a minimum, the information listed in the Interim Policy Statement of November 19, 1973.

Specific questions concerning applications made to the Agency should be addressed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone as follows:

PM 11, 12, and 13—202/755-9315
PM 21 and 22—202/426-2454
PM 24—202/755-2196
PM 21, and 22—202/426-2454
PM 31—202/426-2635
PM 33—202/755-9041
PM 15, 16, and 17—202/426-9425
PM 23—202/755-1397
PM 25—202/755-2632
PM 32—202/426-9486
PM 34—202/426-9490

The Interim Policy Statement requires that claims for compensation be filed on or before May 31, 1977. With the exception of 2(c) applications not subject to the new Section 3 regulations, and for which a sixty-day hold period for claims is provided, EPA will not delay any registration pending the assertion of claims for compensation or the determination of reasonable compensation. Inquiries and assertions that data relied upon are subject to protection under Section 10 of FIFRA, as amended, should be made on or before April 28, 1977.

Dated: March 17, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

APPLICATIONS RECEIVED (OPP-33000/496)

- EPA Reg. No. 100-501. Ciba-Geigy Corp., Agricultural Div., Greensboro NC 27409. Supracide 2E. Active Ingredients: methidathion; O,O-dimethyl phosphorodithioate, S-ester with 4-(mercaptomethyl)-2-methoxy- Δ^2 -1,3,4-thiadiazolin-5-one 24.4%; Aromatic petroleum derivative solvent 65.1%. Method of Support: Application proceeds under 2(b) of interim policy. PM12
- EPA Reg. No. 100-583. Agricultural Div., Ciba-Geigy Corp., PO Box 11422, Greensboro NC 27409. Dual 6E. Active Ingredients: Metolachlor; 2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methyl-ethyl) acetamide 68.5%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Additional uses. PM24
- EPA Reg. No. 239-2186. Chevron Chemical Co., 940 Hensley St., Richmond CA 94804. Ortho Paraquat Cl. Active Ingredients: Paraquat dichloride (1,1'-dimethyl-4-4-bipyridinium dichloride) 29.1%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: New use. PM25
- EPA Reg. No. 352-372. E. I. duPont de Nemours and Co., Legal Dept. D7045, Attn. M. B. Lore, Wilmington DE 19888. Du Pont Vydate L Oxamyl Insecticide/Nematicide. Active Ingredients: Methyl N,N'-dimethyl-N-[(methylcarbamoyl)oxy]-1-thioxamimidate 24%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Additional use. PM12
- EPA File Symbol 421-UEG. James Varley & Sons, Inc., 1200 Switzer Ave., St. Louis MO 63147. Varco Mint-All Mint Odor Disinfectant. Active Ingredients: Isopropyl alcohol 9.50%; Vegetable oil soap 5.55%; Methyl salicylate 1.00%; Ortho-benzyl-para-chlorophenol 1.50%. Method of Support: Application proceeds under 2(b) of interim policy. PM32
- EPA File Symbol 421-UET. James Varley & Sons, Inc. Varley Tri-Mint Disinfectant. Active Ingredients: Isopropyl alcohol 2.00%; n-alkyl (60% C₁₂, 30% C₁₄, 5% C₁₆, 5% C₁₈) dimethyl benzyl ammonium chlorides 1.00%; n-alkyl (50% C₁₂, 30% C₁₄, 17% C₁₆, 3% C₁₈) dimethyl ethylbenzyl ammonium chlorides 1.00%; Methyl salicylate 0.50%. Method of Support: Application proceeds under 2(b) of interim policy. PM 32
- EPA File Symbol 421-UEL. James Varley & Sons, Inc. Varley Tri-Pine Disinfectant. Active Ingredients: Isopropyl alcohol 10.00%; Pine oil 4.00%; n-alkyl (60% C₁₂, 30% C₁₄, 5% C₁₆, 5% C₁₈) dimethyl benzyl ammonium chlorides 1.00%; n-alkyl (50% C₁₂, 30% C₁₄, 17% C₁₆, 3% C₁₈) dimethyl ethylbenzyl ammonium chlorides 1.00%. Method of Support: Application proceeds under 2(b) of interim policy. PM32
- EPA Reg. No. 432-530. S. B. Penick & Co., A Unit of CPC International, Inc., Commercial Development Dept., 215 Watchung Ave., Orange NJ 07050. SBP-1382 0.25T Aqueous Insecticide Spray. Active Ingredients: (5-Benzyl-3-furyl) methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate 0.250%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added data. PM17
- EPA Reg. No. 475-173. Boyle Midway, Inc., South Ave., and Hale St., Cranford NJ 07016. Antrol Ant Trap with Baygon. Active Ingredients: 2-(1-Methylethoxy)phenol methylcarbamate 2.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM12
- EPA File Symbol 984-TN. Whitmoyer Laboratories, Inc., 1 Gibraltar Plaza, Horsham PA 19044. Ratatac Ratkiller. Active Ingredients: N-3-pyridylmethyl N'-p-nitrophenyl urea 0.25%. Method of Support: Application proceeds under 2(b) of interim policy. PM11
- EPA File Symbol 1812-ERO. Parramore & Griffin, PO Box 1847, Valdosta GA 31601. Pee Gee Plant Bed Fumigant. Active Ingredients: Methyl Bromide 98%; Chloropicrin 2%. Method of Support: Application proceeds under 2(b) of interim policy. PM11
- EPA File Symbol 2342-TO. Kerr-McGee Chemical Corp., Kerr-McGee Center, Oklahoma City OK 73125. Hydrated Lime. Active Ingredients: Calcium Hydroxide 90%. Method of Support: Application proceeds under 2(b) of interim policy. PM22
- EPA File Symbol 2829-RRL. Ventron Corp., Congress Street, Beverly MA 01915. Venylene SB-1. Active Ingredients: 10,10'-oxybisphenoxarsine (Total arsenic as elemental As—1.50%); (Water soluble arsenic as elemental As—Less than 0.01%). Method of Support: Application proceeds under 2(a) of interim policy. PM22
- EPA Reg. No. 3282-25. The d-Con Co., Inc., Distr. Subsidiary of Sterling Drug, Inc., 90 Park Ave., New York NY 10016. D-Con Stay/Away Outdoor Fogger. Active Ingredients: d-trans Allethrin (allyl homolog of Cinerin 1) 0.10%; Piperonyl butoxide, technical 0.50%; Methoxychlor, technical 2.00%; 2-Hydroxyethyl-n-octyl sulfide 1.42%; related compounds, 0.08%; Petroleum distillate 6.00%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Amended registration. PM13
- EPA Reg. No. 3432-38. N. Jonas & Co., Inc., 1301 Adams Rd., Corwells Hts. PA 19020. Cooling Tower Fluid N. Active Ingredients: Poly(oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride) 10.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34
- EPA Reg. No. 3432-39. N. Jonas & Co., Inc. Cooling Tower Fluid 15. Active Ingredients: Poly(oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride) 15.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM34
- EPA Reg. No. 4581-292. Pennwalt Corp., Agchem Div., PO Box C, King of Prussia PA 19406. Penncap-M—Microencapsulated Methyl Parathion Insecticide. Active Ingredients: 0,0-Dimethyl 0-p-nitrophenyl phosphorothioate 20.9%; Related Isomers 1.1%; Xylene Base Aromatic Solvent 4.9%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Additional use. PM12
- EPA File Symbol 4581-GEL. Pennwalt Corp., Inorganic Chem. Div., Three Pkwy., Philadelphia PA 19102. Sodium Chlorate Solution. Active Ingredients: Sodium Chlorate 45%. Method of Support: Application proceeds under 2(b) of interim policy. PM25
- EPA File Symbol 4581-GGG. Pennwalt Corp., Agchem Div., PO Box C, King of Prussia PA 19406. Penncap-E Insecticide. Active Ingredients: 0,0-Diethyl 0-p-nitrophenyl phosphorothioate 22.2%. Method of Support: Application proceeds under 2(b) of interim policy. PM12
- EPA File Symbol 35930-E. Jude Chemical Specialties, PO Box 5212, Lenexa KS 66215. JCS-45 Cleaner, Disinfectant, Deodorizer, Fungicide. Active Ingredients: n-Alkyl (60% C₁₂, 30% C₁₄, 5% C₁₆, 5% C₁₈) dimethyl benzyl ammonium chlorides 2.25%; n-Alkyl (68% C₁₂, 32% C₁₄) dimethyl ethylbenzyl ammonium chlorides 2.15%; Sodium Carbonate 3.00%; Tetrasodium ethylenediamine tetracetate 1.00%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Revised offer to pay statement submitted. PM31

CORRECTION NOTICE

EPA File Symbol 7182-I. 3M Co. 3M Center Bldg., 2234 SE, St. Paul MN 55101. Embark 4-S Plant Growth Regulator. Active Ingredients: Diethanolamine salt of mefuidide [N-[2,4-dimethyl-5]-(trifluoromethyl) sulfonyl]amino]phenyl]-acetamide] 52%. Originally published as Diethanolamine salt of mefuidide [N-2,4-dimethyl 15] trifluoromethyl) sulfonyl]amino]phenyl] acetamide] 52%. PM25 (42 FR 5752; 1-31-77)

[FR Doc.77-9153 Filed 3-28-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

FM AND TV TRANSLATOR APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Correction

UHF TV TRANSLATOR APPLICATION

MARCH 24, 1977.

The following entry appeared on the Public Notice (Mimeo No. 79361) released March 17, 1977 (42 FR 15951, Mar. 24, 1977), listing translator applications which would be considered as ready and available for processing on May 3, 1977.

BPTT-3156A (new), Denver, Colorado, Spanish International Communications Corporation. Req: Channel 31, 572-578 MHz, 1000 watts. Primary: KWGN-TV, Denver, Colorado.

The entry is corrected to read as follows:

BPTT-3156A (new), Denver, Colorado, Spanish International Communications Corporation. Req: Channel 31, 572-578 MHz, 1000 watts. Primary: KMEX-TV, Los Angeles.

VHF TV TRANSLATOR APPLICATIONS

VHF translator application entry deleted from Public Notice released March 17, 1977 (Mimeo #79361).

The following entry is deleted:

BPTTV-5709 (new), Lame Deer, Busby, Ashland and Crow Agency, Montana, Northern Cheyenne Communications Commission. Req: Channel 11, 198-204 MHz, 4 watts. Primary: KYUS-TV, Miles City, Montana.

An identical entry appeared on the Public Notice released December 3, 1976 (Mimeo No. 75233).

FEDERAL COMMUNICATIONS COMMISSION,

VINCENT J. MULLINS,
Secretary.

[FR Doc.77-9329 Filed 3-28-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

ADVISORY COMMITTEES

Annual Comprehensive Review

The Federal Energy Administration has fourteen advisory committees currently chartered under the Federal Advisory Committee Act, Pub. Law 92-463. As required by Section 7(b) of the Public Law, this Agency is conducting its annual review of the activities and responsibilities of each committee to determine whether, in each case, (1) there is a compelling need for the committee

and it should therefore be continued; (2) there are more effective ways of achieving the committee's objectives and it should therefore be terminated.

Transmittal Memorandum No. 5 to the Office of Management and Budget Circular No. A-63 requires that Federal agencies provide a means by which members 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 FEA advisory committees.

FEA advisory committees are as follows:

COAL INDUSTRY ADVISORY COMMITTEE: Chartered to provide the Administrator, FEA, with assistance in encouraging the expansion of a readily-usable energy source—coal—and maintaining fair and reasonable consumer prices for such supplies. The Committee will also advise on technical and economic factors affecting the coal industry.

CONSTRUCTION ADVISORY COMMITTEE: Chartered to provide the Administrator, FEA, with advice concerning design and implementation of FEA policies and programs affecting the construction industry and its impact on national energy objectives.

CONSUMER AFFAIRS AND SPECIAL IMPACT ADVISORY COMMITTEE: Chartered to provide the Federal Energy Administration with advice concerning the impact of FEA policies and programs on consumers and special impact groups.

ELECTRIC UTILITIES ADVISORY COMMITTEE: Chartered to provide the Administrator, FEA, with advice with respect to the general electric utilities' aspects of interests and problems related to the policy and implementation of programs to meet the continuing national energy problem.

ENERGY FINANCE ADVISORY COMMITTEE: Chartered to provide independent advice to FEA concerning the following areas: the projected capital needs of the domestic energy industries; the characteristics, conditions, and projected changes in the money and capital markets; the financial disincentive programs to enhance domestic energy supply. The Committee will help promote a mutual understanding of the role of the Federal Government and the private financial community in developing domestic energy resources.

ENVIRONMENTAL ADVISORY COMMITTEE: Chartered to provide the Administrator, FEA, with advice and information concerning environmental aspects of FEA policies and programs.

FOOD INDUSTRY ADVISORY COMMITTEE: Chartered to provide the Administrator, FEA, with information and advice concerning food industry interests and problems as these relate to national energy policy and conservation programs.

FUEL OIL MARKETING ADVISORY COMMITTEE: Chartered to provide the Administrator, FEA, with expert and technical advice concerning the trade of selling fuel oil.

GASOLINE MARKETING ADVISORY COMMITTEE: Chartered to provide the

Administrator, FEA, with expert and technical advice concerning the wholesale and retail selling of gasoline.

LP-GAS INDUSTRY ADVISORY COMMITTEE: Chartered to provide the Administrator, FEA, with advice with respect to the implementation of programs that affect the LP-Gas industry.

NATURAL GAS ADVISORY COMMITTEE: Chartered to provide the Administrator, FEA, with advice with respect to the implementation of programs that affect gas transmission and distribution activities.

PETROLEUM AND NATURAL GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ADVISORY COMMITTEE: Chartered to provide independent advice to FEA with respect to the implementation of programs that affect petroleum and natural gas exploration, development, and production.

STATE REGULATORY ADVISORY COMMITTEE: Chartered to provide the Administrator, FEA, with advice and information concerning its plans and programs which are related to the responsibilities of State regulatory commissions.

TRANSPORTATION ADVISORY COMMITTEE: Chartered to provide the Administrator, FEA, with advice with respect to general transportation aspects of interests and problems related to the policy and implementation of programs to meet continuing energy problems.

Individuals wishing to comment on any of the above FEA advisory committees should submit written statements to Lois G. Weeks, Director, Advisory Committee Management, Room 3405, Federal Energy Administration, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461. Comments should be specific in nature and address particular committees. To permit 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 7, 1977.

Questions concerning the review may be directed to Lois G. Weeks at the above address or by telephoning (202) 566-7022.

Issued at Washington, D.C. on March 24, 1977.

ERIC J. FYG,
 Acting General Counsel.

[FR Doc. 77-9424 Filed 3-25-77; 10:26 am]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

Week of February 14 Through February 18, 1977

Notice is hereby given that during the week of February 14 through February 18, 1977, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of

submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal.

APPEALS

David Crow; Shreveport, La.; FRA-1092; Crude Oil

David Crow (Crow) filed an Appeal of a Remedial Order which the Deputy Regional Administrator of FEA Region VI issued to him on December 6, 1976. In the Remedial Order, the FEA found that during the period October 1974 through February 1975 Crow improperly sold certain volumes of crude oil which were produced from the T. E. Boyce Lease at uncontrolled market prices. The Remedial Order further found that during the period September through November 1974 Crow improperly sold certain crude oil produced from the Grayson-Limestone lease as "new" and "released" crude oil at uncontrolled market prices. On the basis of these findings, the Remedial Order directed Crow to refund \$23,283.00 plus interest to the Standard Oil Company (Sohio), the purchaser of the crude oil. In his Appeal, Crow did not challenge the factual or legal findings of the Remedial Order, nor did he contend that the Remedial Order was in any way arbitrary or capricious. Instead, Crow contended that the application to him of the provisions of 10 CFR, Part 212, Subpart D, in the Remedial Order is grossly inequitable. In considering the Crow Appeal, the FEA noted that the arguments which Crow presented did not form the proper basis for an Appeal of a Remedial Order, since the issues raised can properly be considered only in the context of an Application for Exception. Furthermore, the FEA determined that Crow failed to make the type of showing which the FEA held in previous cases was necessary in order for the FEA to consider in the context of an appeal of a Remedial Order issues which should properly be raised in an exception proceeding. See, e.g., Mobil Oil Corp., 4 FEA Par. 80.451 (September 24, 1976). In this connection, the FEA determined that Crow had failed to make a prima facie showing that retroactive exception relief was warranted in the present case. The Crow Appeal was therefore denied. However, the FEA concluded that the specific amount of refunds which the Remedial Order required Crow to remit to Sohio may be excessive. The FEA held that, in computing the overcharges which Crow must remit to Sohio, it might be appropriate to consider the transactions in which Crow had erroneously sold crude oil to Sohio at price levels which were less than the prices which Crow could lawfully have charged. Accordingly, the Remedial Order was remanded to FEA Region VI for further consideration of the overcharges which Crow should be required to remit to Sohio.

Earl F. Wakefield, Inc.; Wichita, Kans.; FEA-1093; Crude oil

Earl F. Wakefield, Inc. (Wakefield) filed an Appeal from a Remedial Order which the Director of the Office of Compliance of FEA Region VII issued to the firm on January 4, 1977. In the Remedial Order, the FEA found that Wakefield had overcharged two customers for certain crude oil which it produced and sold during December 1973 and January through December 1974. The Remedial Order directed Wakefield to refund the full amount of these overcharges plus interest. In considering Wakefield's Appeal, the FEA found that many of the issues which the firm raised in its Appeal had already been reviewed and rejected by the FEA in its consideration of a prior exception request which the firm had submitted. Earl F. Wakefield, Inc.,

5 FEA Par. (January 27, 1977). The FEA also determined that Wakefield's reliance on the provisions of Section 7(k) of the Federal Energy Administration Act of 1974, as amended, was misplaced since the provisions of Section 7(k) do not apply to producers of crude oil. Finally, the FEA determined that the assessment of interest was a valid exercise of the agency's authority. The Wakefield Appeal was therefore denied.

Powell, Goldstein, Fraser & Murphy, Atlanta, Ga.; FFA-1157; Freedom of Information

The law firm of Powell, Goldstein, Frazer & Murphy (Powell) appealed from a partial denial by the FEA Information Access Officer of a Request for Information which it submitted under the Freedom of Information Act (the Act). In its initial request, Powell had requested the disclosure of documents relating to an FEA investigation of a pricing dispute between two firms. The FEA Information Access Officer released certain of the requested materials to Powell, but withheld part or all of 60 other documents pursuant to various exemptions of the Act. On Appeal, the FEA determined that portions of a Form FEO-17 which were withheld, containing only the name, address and signatures of corporate officers of one of the firms, did not constitute confidential commercial or financial information and were therefore not exempt from mandatory public disclosure under 5 U.S.C. 552(b)(4). The FEA directed that this material be released to Powell. The FEA also determined that portions of a Case Control Card which were withheld from Powell which contain the name of the FEA official who was assigned to investigate the pricing dispute and case routing instructions did not constitute substantive recommendations, opinions or discussions which are normally exempt from mandatory public disclosure under 5 U.S.C. 552(b)(5). Accordingly, the FEA directed that this material be released to Powell unless it was otherwise exempt from mandatory disclosure under another provision of the Act. The FEA further determined that portions of an investigative report and handwritten notes with respect to the pricing controversy did not demonstrate any unique or advanced investigative techniques and thus were not exempt from mandatory disclosure under 5 U.S.C. 552(b)(7)(E). The FEA directed that these materials also be released to Powell except for those portions of the investigative report which are exempt from mandatory disclosure under other sections of the Act. However the FEA held that the Information Access Officer properly withheld the remaining documents from public disclosure under the Act. The Powell Appeal was therefore denied in part and granted in part.

T. D. Skelton d/b/a Skelton Oil Co.; Hobbs, N. Mex.; FEA-1039; Crude Oil

T. D. Skelton d/b/a Skelton Oil Company (Skelton) appealed from a Remedial Order that had been issued to the firm by FEA Region VI. In the Remedial Order, FEA Region VI found that during the period July 1974 through September 1975 Skelton had improperly certified its production and sales of crude oil from the Slack RA "A" No. 4 property (the Slack Well) as "new crude oil" and thereby realized \$236,414 in revenues from sales of crude oil at prices in excess of the ceiling price levels permitted by 10 CFR, Part 212, Subpart D. On the basis of those findings Skelton was directed to refund to specified purchasers \$236,414, plus penalties and interest, over a 12 month period. In its Appeal, Skelton requested that it be permitted to discharge its refund obligation over 36 months rather than 12 months. In con-

sidering Skelton's Appeal, the FEA found that Skelton had provided documentation persuasively establishing that its operations might be seriously impaired if it were required to refund the overcharges over a 12 month period as directed in the Remedial Order. The FEA further found that, if Skelton were required to curtail its crude oil re-development and production activities, substantial amounts of crude oil which would otherwise be recoverable might be lost, thus frustrating the important national objective of maximizing domestic crude oil production. Finally, the FEA noted that since Skelton did not dispute the propriety of the refunds required by the Remedial Order, the approval of Skelton's Appeal would not adversely affect any party involved in this proceeding. The FEA therefore granted Skelton's Appeal and permitted the firm to refund the overcharges during a 36 month period.

Standard Oil Co. (Ind.); Chicago, Ill.; FEA-1156; Freedom of Information

The Standard Oil Company of Indiana (Standard) appealed from a partial denial by the FEA Information Access Officer of a Request for Information which the firm submitted under the Freedom of Information Act (the Act). In its initial request, Standard had requested copies of all documents in the possession of FEA Region IV relating to five Applications for Assignment which had been filed by the Southland Corporation (Southland). The FEA Information Access Officer released 24 documents to the firm but withheld copies of eight Forms FEO-17 (Applications for Assignment) which Southland had submitted. The Information Access Officer concluded that these documents contained confidential commercial and financial information which was exempt from mandatory disclosure under Section 552(b)(4) of the Act. In its appeal, Standard contended that it needed the Forms FEO-17 in order to properly prepare Appeals from certain Assignment Orders which were issued by FEA Region IV. In considering Standard's Appeal, the FEA affirmed the Information Access Officer's determination that the material contained on the Forms FEO-17 was exempt from mandatory public disclosure under Section 552(b)(4) of the Act. However, since the Assignment Orders were based at least in part upon the information provided by Southland on the Forms FEO-17, the FEA found that it would be useful, if not essential, for Standard to review the information contained on the Forms FEO-17 in order to prepare meaningful Appeals from the Assignment Orders. Despite this finding, the FEA found that the provisions of 18 U.S.C. 1905, which makes it a criminal offense for a federal officer to release confidential commercial information, prohibited the agency from releasing the Forms FEO-17 to Standard even for the limited purpose of preparing Appeals from the Assignment Orders. Furthermore, the FEA held that releasing the material only to Standard would constitute preferential treatment for a private litigant before the agency and that such treatment was not permitted under the Freedom of Information Act. The FEA therefore declined to release the information contained on the Forms FEO-17, indicating that Standard might consider applying to a court for a protective order pursuant to which it might obtain the documents involved in the proceeding.

The Refinery Corp.; Denver, Colo.; FEA-1014, FEE-3276; Crude Oil

The Refinery Corporation (TRC) appealed from the "Revised Notice of Special Correction Amounts Under Entitlements Program" [41 Fed. Reg. 42700 (September 28, 1976)] which the FEA issued pursuant to the pro-

visions of 10 CFR 211.67(j)(2). The Appeal, if granted, would rescind TRC's purchase obligations under the Old Oil Entitlements Program as specified in the Revised Notice. Concurrent with its Appeal, TRC filed an Application for Exception from the provisions of 10 CFR 211.67(j)(2) and the Revised Notice which, if granted, would relieve TRC of any obligation to purchase entitlements pursuant to the Revised Notice. Since the two submissions involved similar factual matters and sought an identical result, the FEA consolidated the submissions into a single proceeding. In denying TRC's Appeal, the FEA determined that, contrary to the firm's assertions, the FEA had provided TRC with adequate information to fully explain the FEA's determination to correct the firm's entitlement obligations. In considering the firm's Application for Exception, the FEA determined that despite ample notification of the FEA's intent to recompute the entitlement obligations of all firms for the first ten months of the Entitlements Program, TRC had sold its refinery without planning for its contingent liability under the Entitlements Program. In this regard, TRC had not sought exception relief from the FEA during the pendency of the exception proceeding concerning the sale of its refinery, nor had it insisted that the purchaser of the refinery assume the entitlement liabilities which TRC might incur after its sale of the refinery. The FEA also determined that the mere fact that TRC no longer owned or operated the refinery was not a sufficient basis for approving the requested exception relief. In fact, the FEA found that the firm had not presented any material to show that it would experience any financial difficulties in complying with its entitlements purchase obligations. The FEA therefore concluded that the firm's Application for Exception should be denied.

USA Petroleum Corp.; Washington, D.C.; FIA-1064; Crude Oil; Motor Gasoline

USA Petroleum Corporation (USA) appealed from an Interpretation that had been issued to it by the General Counsel of the FEA. In its Request for Interpretation, USA stated that Trans World Oil Corporation (Trans World), a wholly-owned subsidiary of USA, had previously executed an exchange agreement involving crude oil and motor gasoline with Macmillan Ring-Free Oil Company, Inc. (Macmillan). According to USA, Macmillan had unilaterally terminated that agreement, and USA sought a determination that Macmillan was nevertheless required under the provisions of Section 211.63 of the FEA Mandatory Petroleum Allocation Regulations to continue to honor the terms and conditions of the exchange agreement. In the Interpretation, the General Counsel concluded that Section 211.63 did not supersede the contract between the parties in a manner which prevented Macmillan from unilaterally terminating the exchange agreement. The General Counsel found that any continuing obligation which Macmillan might have with respect to making motor gasoline available to Trans World is governed solely by the provisions of Part 211, Subpart F, of the FEA Allocation Regulations. In addition, the General Counsel held that the FEA Regulations did not prevent Macmillan from terminating a discount on sales of motor gasoline to Trans World which Macmillan had in effect pursuant to the exchange agreement. In considering the USA Appeal, the FEA determined that the only effect of Section 211.63 upon Macmillan and Trans World was to require them to maintain the supplier/purchaser relationship for crude oil which existed between them on December 1, 1973. Accordingly, the General Counsel properly determined that FEA regulations did not

prevent termination of the exchange agreement between the firms, and after termination of the exchange agreement Macmillan could properly reclassify Trans World as a member of a different class of purchaser. Consequently, the USA Appeal was denied.

Washington News Services, Inc., Kensington, Md.; FFA-1179; Freedom of Information.

Washington News Services, Inc. (Washington) filed an Appeal from an Order issued to it by the Information Access Officer denying a Request for Information which the firm had filed under the Freedom of Information Act, 5 U.S.C. 552. In its request, Washington sought the release of a mailing list containing the names and addresses of all recipients of an FEA publication entitled Monthly Petroleum Product Price Report. The FEA Information Access Officer denied Washington's request on the grounds that no mailing list for that publication existed. In considering Washington's Appeal of that determination, the FEA found that a mailing list of the type sought by Washington does not in fact exist. The Washington Appeal was therefore denied.

REQUESTS FOR EXCEPTION

Boston Gas Co.; Washington, D.C.; FFE-3646; Propane.

The Boston Gas Company submitted an Application in which it requested an extension of exception relief which had been granted to the firm by FEA Region I on March 8, 1974, and which was scheduled to terminate on February 22, 1977. The firm asserted that the extension was necessary in order to ensure that Boston Gas would be able to retain and utilize its current allocation of propane for use as an SNG feedstock for the remainder of the current heating season. In considering the Boston Gas request, the FEA noted that, on February 7, 1977, the FEA Office of Specialty Fuels had requested additional detailed information from Boston Gas with regard to its Application for Assignment of SNG feedstock. The FEA also found that a final determination on that Application was not expected to be issued by the FEA Office of Regulatory Programs until shortly after March 15, 1977. Consequently, in order to ensure that Boston Gas would have access to an adequate supply of SNG feedstock pending a determination on its Application for Assignment, the FEA extended the exception relief granted on March 8, 1974 until March 31, 1977.

Chanslor-Western Oil and Development Co.; Santa Fe Springs, Calif.; FEE-3286; Crude Oil

The Chanslor-Western Oil and Development Company (Chanslor) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would have permitted the firm to sell the crude oil produced from the Torrance Main Zone Unit (the Unit) at exempt price levels. According to the Chanslor submission, in the absence of exception relief the firm would not have sufficient economic incentive to undertake the capital investment projects which were necessary to continue its crude oil operations at the Unit. In considering Chanslor's Application, the FEA determined that a substantial amount of crude oil could be recovered from the Unit over a ten year period if the investments necessary to continue crude oil extraction operations from the Unit were made. The FEA also determined that, since Chanslor could charge a price no higher than the lower tier ceiling prices for the crude oil recovered from the Unit, the revenues gen-

erated as a result of these investments would provide a negative rate of return on the capital required to undertake the projects. In view of the alternative investment opportunities available to Chanslor, the FEA determined that Chanslor had no economic incentive to make the investments in the Unit. On the basis of previous precedents, the FEA concluded that exception relief should be granted to provide Chanslor with a sufficient economic incentive to make the necessary investments while at the same time avoiding the possibility that windfall profits would be obtained as a result of the exception relief. The FEA concluded that in this particular case these objectives would be achieved if Chanslor were permitted to sell during each of the next ten years a specified amount of the crude oil produced from the Unit for the benefit of the working interest owners at upper tier ceiling prices. Exception relief was therefore granted to Chanslor for the years 1977 through 1986 which permitted the firm to sell a certain amount of the crude oil produced from the Unit at upper tier ceiling prices.

In its application, Chanslor also requested retroactive exception relief which would have permitted the working interest owners of the Unit to recover an additional amount equal to the total negative cash flow which resulted from the operation of the Unit since the initiation of a waterflood project in 1969. The FEA found that Chanslor had failed to demonstrate that it would experience a severe and irreparable injury in the absence of the retroactive exception relief which it requested or to present any compelling reason why such relief was warranted. Therefore, the FEA determined that retroactive exception relief should not be permitted. Finally, Chanslor requested that any exception relief granted by the FEA to the working interest owners be extended to the royalty interest owners of the Unit. According to Chanslor, the FEA lacks the authority to exclude the royalty interest owners and that the operating contract between the working and royalty interest owners prohibits such an exclusion. The FEA found that the provisions of the Federal Energy Administration Act of 1974 and the Emergency Petroleum Allocation Act of 1973 provide the FEA with the authority necessary to limit exception relief to the working interest owners, and that portion of Chanslor's request was denied. The FEA also found that Chanslor failed to provide any material in support of its claim that the provisions of the operating contract between the working and royalty interest owners prevent the FEA from excluding the royalty interest owners from sharing in the exception relief granted to the working interest owners. Accordingly, the FEA concluded that this aspect of the Chanslor application should be denied.

Fuller Oil Co., Inc., Fayetteville, N.C.; FEE-3583; Motor Gasoline

Fuller Oil Company, Inc. (Fuller) filed an Application for Exception from the provisions of 10 CFR 211.9, which, if granted, would have permitted the firm to supply motor gasoline to specified federal installations under the Section 8(a) Program of the Small Business Administration (SBA). In considering Fuller's application, the FEA determined that: (1) under Section 8(a) of the Small Business Act of 1958, the SBA contracts to supply petroleum products to various federal installations and then assigns those contracts to minority-owned small businesses; (2) the SBA indicated that it would have awarded specified supply contracts to Fuller but for the provisions of the FEA Mandatory Petroleum Allocation Regulations, which generally require adherence to base period supplier/purchaser relationships;

and (3) Fuller will be unable to maintain its market position if it does not receive the supply contracts which the SBA wished to award to the firm. The FEA therefore concluded that exception relief was warranted under the standard set forth in Tri-Par Combustion Corp., 1 FEA Par. 20,660 (September 12, 1974).

Hanover Management Co.; Dallas, Tex.; FEE-3568; Crude Oil

Hanover Management Company (Hanover) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would have permitted the firm to sell the crude oil produced from the Fruin "A" No. 1 well (the Fruin well) at upper tier ceiling prices. In considering the exception request, the FEA determined that the costs of producing crude oil from the Fruin well have increased significantly since 1973, and, as a result of these increased costs, Hanover's production costs now exceed the prices which the firm is permitted to charge for the crude oil which it sells. Consequently, the FEA concluded that Hanover does not have an economic incentive to continue to operate the Fruin well. The FEA also found that there would be little possibility that the recoverable crude oil from the lease's reservoir would be produced by any firm in the absence of exception relief. On the basis of previous precedents involving similar factual situations, the FEA concluded that the application of the lower tier ceiling price rule resulted in a gross inequity to Hanover. Accordingly, on the basis of the operating data which the firm submitted for its most recently completed fiscal period, Hanover was granted exception relief which permits the firm to sell at upper tier ceiling prices 100 percent of the crude oil produced and sold for the benefit of the working interest owners from the Fruin well.

Kewanee Oil Co.; Tulsa, Okla.; FEE-3385; Crude Oil

Kewanee Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would have permitted the working interest owners of the North Stanley Field (the Field) to sell crude oil produced from the Field at upper tier ceiling prices. In considering the firm's application, the FEA noted that Kewanee and the Energy Research and Development Administration had executed a contract under which Kewanee is engaged in the production of crude oil from the Field by using an enhanced recovery technique known as polymer injection. The FEA found that Kewanee is incurring additional cost associated with conducting the polymer injection project. Nevertheless, the FEA also determined that the investment required to undertake the polymer injection project will yield an internal rate of return in excess of 20 percent over the life of the project. Based on these findings, the FEA concluded that Kewanee has an economic incentive to continue crude oil operations at the Field and that the firm is not experiencing a gross inequity as a result of the FEA Price Regulations. Therefore the Kewanee exception request was denied.

Phillips Petroleum Co.; Bartlesville, Okla.; FEE-3398; Motor Gasoline

The Phillips Petroleum Company (Phillips) filed an Application for Exception which, if granted, would have permitted the firm to transfer its allocation of motor gasoline among its company owned and operated service stations without regard to the limitations of 10 CFR 211.106(b)(3)(ii). That section provides that an entity which operates two or more retail outlets which

are supplied by a common supplier may reassign up to 30 percent of the allocation of one retail outlet to another of its retail outlets, provided that the allocation which any single retail outlet is entitled to receive is not increased by more than 30 percent as a result. In considering Phillips' exception request, the FEA determined that Phillips failed to show that the application of Section 211.106(b)(3)(ii) to the firm significantly and uniquely impeded its operations. The FEA also found that Phillips failed to provide any data which would indicate that the application of that regulatory provision to it resulted in a serious competitive disadvantage to the firm in relation to other similarly situated firms. Finally, the FEA determined that Phillips had failed to demonstrate how significant transfers of petroleum products among company owned and operated service stations would further the national petroleum allocation objectives specified in Section 4(b)(1) of the Emergency Petroleum Allocation Act of 1973, as amended (EPAA), or to show that transfers of this type would not result in an inequitable distribution of gasoline among the market areas which Phillips serves. On the basis of these considerations, the FEA concluded that Phillips' application for Exception should be denied.

Standard Oil Co.; Cleveland, Ohio; FEE-3215; Motor Gasoline

The Standard Oil Company (Sohio) filed an Application for Exception from the provisions of 10 CFR 212.83(h)(1) (the "equal application rule"). The exception request, if granted, would have permitted Sohio to calculate its unrecovered increased costs for purposes of the refiner's pricing formulae by disregarding the effect of the "equal application rule" on its sales of motor gasoline at its service stations on the Ohio Turnpike. Sohio sells motor gasoline at those locations at a lower price than it charges at similarly situated stations at other locations. In its Application, Sohio noted that the provisions of 10 CFR 212.83(h)(3)(f) provide that firms which entered into long term contracts prior to September 1, 1974, which restrict their ability to increase the price of the petroleum products which they sell would not be subject to the equal application rule with respect to sales pursuant to those contracts. Sohio contended that the FEA arbitrarily selected the September 1, 1974 reference date and that its June 10, 1975 contract with the Ohio Turnpike Commission should be treated in the same manner as contracts which were executed prior to September 1, 1974. In considering Sohio's exception request, the FEA found that the September 1, 1974 date was not arbitrarily selected, but rather was chosen because it followed immediately the issuance of a regulation which placed firms on notice that all future contracts which they executed would be subject to the equal application rule. See 39 Fed. Reg. 32306 (September 5, 1974). Therefore, when Sohio entered into its contract with the Ohio Turnpike Commission on June 10, 1975, the firm did so with the full knowledge that its pricing practices under that contract would be subject to the equal application rule. The FEA further determined that the approval of Sohio's exception request would permit the firm to apply its increased costs unequally among classes of purchaser in the very manner which the equal application rule was designed to discourage. The Sohio exception application was therefore denied.

UCO Oil Co.; Whittier, Calif.; FFE-3542; Motor Gasoline

On June 1, 1976 and October 15, 1976, the FEA issued Decision and Orders to the UCO

Oil Company granting the firm an exception from the provisions of 10 CFR 211.9, UCO Oil Co., 4 FEA Par. 83,155 (October 15, 1976); and UCO Oil Co., 3 FEA Par. 83,219 (June 11, 1975). In each of those Decisions, the FEA determined that UCO was experiencing a serious financial hardship as a result of the prices which its principal base period suppliers, the TOSCO Corporation and MacMillan Ring-Free Oil Company, Inc., were charging for motor gasoline. In order to alleviate the hardship which UCO was experiencing, the June 11 and October 15 Orders directed the Regional Administrator of FEA Region IX to assign to UCO for the period June through August 1976 and the period November 1976 through January 1977, respectively, a supplier or suppliers whose wholesale price for motor gasoline was within the range of prices charged by the major suppliers in UCO's marketing area. In its present Application, UCO requested an extension of the exception relief previously granted. In considering the UCO application, the FEA determined that the firm was continuing to experience substantial financial difficulties as a direct result of the price which its base period suppliers charged for motor gasoline. The FEA therefore concluded that an extension of exception relief was appropriate. In considering the amount of exception relief which UCO should receive, the FEA determined that, in order to permit the firm to continue to alleviate the operating losses which it was experiencing as a result of its reseller operations and its costs of motor gasoline, the Regional Administrator should assign to UCO a new supplier for 39.31 percent of its base period use of motor gasoline during the period March through May 1977.

REQUESTS FOR STAY

Buck Drilling and Exploration; Oklahoma City, Okla.; FFS-1185; Crude Oil

Buck Drilling and Exploration (Buck) filed an Application for Stay of a Remedial Order which FEA Region VI issued to it on January 25, 1977. In the Remedial Order, FEA Region VI determined that during the period January 1, 1975 through September 30, 1975, Buck had sold crude oil from two properties at prices which exceeded the ceiling price levels specified in 10 CFR 212.73. The Remedial Order directed Buck to refund those overcharges by reducing its prices for crude oil produced from the two leases to \$4.00 per barrel until the amount of the required refunds is remitted to the purchaser of the crude oil. The Remedial Order further required Buck to calculate its overcharges, if any, from the two properties for the period October 1, 1975 to the date of issuance of the Remedial Order and refund any such overcharges to the affected purchaser. In considering the request for stay, the FEA determined that Buck had raised substantial issues concerning the propriety of the Remedial Order. In addition, the FEA determined that Buck had made a strong showing that if it is required to make the refunds, the purchaser of its crude oil would in turn pass on to its own customers the refunds which Buck makes and Buck would experience substantial difficulty in recovering the funds in the event that it prevails on the merits of its Appeal. The FEA therefore held that Buck had satisfied the criteria set forth in *General Crude Oil Co.*, 3 FEA Par. 85,040 (June 25, 1976), which pertains to the approval of a stay from the refund requirements specified in a Remedial Order. However, the FEA determined that Buck had provided no basis on which to stay the provisions of the Remedial Order which require the firm to calculate its possible overcharges from the two properties subsequent to September 30, 1975. Consequently, the FEA de-

termined that this requirement should not be stayed. Under the precedent established in *General Crude Oil Co.*, supra, the FEA required that, Buck establish an escrow account into which the disputed funds must be deposited.

Red Triangle Oil Co.; Fresno, Calif.; FES-1188; Allocation of Motor Gasoline

The Red Triangle Oil Company (Red Triangle) filed a Request for Stay incident to its Appeal of a Decision and Order which the FEA Office of Regulatory Programs issued to the Gulf Oil Corporation (Gulf) on November 5, 1976. The November 5 Order terminated Gulf's regulatory obligation to supply motor gasoline to those firms in the northwestern United States which purchased motor gasoline from Gulf during the base period. That Order also directed the Administrators of the FEA Regional Offices in San Francisco (Region IX) and Seattle (Region X) to assign by January 1, 1977 other firms to replace Gulf as the base period supplier for those Gulf customers in the affected area who were unable to locate willing substitute suppliers by December 1, 1976. Red Triangle was one of those customers which was assigned to a new supplier. In its Application for Stay, Red Triangle requested that Gulf be required to continue supplying the firm with its base period use of motor gasoline during the pendency of its Appeal from the November 5 Order. In considering Red Triangle's stay request, the FEA determined that the firm had made a prima facie showing of error in the November 5 Order which was virtually identical to the showing which had been made by seven other firms which had previously obtained a stay of that Order. See *Mobil Oil Corporation, and the Caldo, Ramco, Rinehart, Major, Miles, and Olympian Oil Companies*, 5 FEA Par. 85,012 (January 6, 1977). In view of this showing, the FEA granted Red Triangle a stay of the November 5 Order pending a determination on the merits of its Appeal from that Order.

Eddie L. Smith formerly d/b/a Ringwood Propane; Ridgewood, Okla.; FRS-1187; Propane

Eddie L. Smith formerly d/b/a Ringwood Propane (Smith) filed an Application for Stay of a Remedial Order which was issued to it by FEA Region VI on January 31, 1977. In the Remedial Order, the FEA determined that during the period November 1, 1973 through May 31, 1975 Smith sold propane at price levels which were in excess of the maximum levels specified in 10 CFR 212.93. The Remedial Order therefore directed Smith to make refunds for those overcharges and to notify the FEA within 120 days that he had complied with the terms of that Order. In considering the request for stay, the FEA concluded that the financial data submitted by Smith showed that the immediate implementation of the refund requirements of the Remedial Order could produce an unusually severe impact on Smith's personal financial position. The FEA further determined that Smith had raised substantial issues concerning the propriety of the Remedial Order. The FEA therefore held that Smith satisfied the criteria set forth in *General Crude Oil Co.*, 3 FEA Par. 85,040 (June 25, 1976), for granting a stay of the refund requirements specified in a Remedial Order. In addition, the FEA determined that since the establishment of an escrow account for the disputed funds would cause a severe adverse impact on Smith's personal financial position, it would be appropriate to require that such an account be established in this case. The FEA therefore stayed the refund obligation specified in the Remedial Order without imposing the requirement of an escrow fund.

PETITION FOR SPECIAL REDRESS

Consumers Union of United States, Inc.; Washington, D.C.; FSG-0037; Refined Petroleum Products

Consumers Union of United States, Inc. (Consumers Union) filed a Petition for Special Redress in which it requested that the Federal Energy Administration appoint a Special Public Counsel to represent the interests of consumers in certain proceedings before the FEA Office of Exceptions and Appeals. Those proceedings involve Applications for Exception from the provisions of the Mandatory Petroleum Price Regulations which required refiners during 1975 and January of 1976 to regard increased product costs as having been recovered prior to the recovery of any increased non-product costs. In considering the Petition for Special Redress, the FEA observed that the Applications for Exception to which Consumers referred arose in an unusual manner and that the approval of exception relief in those matters could involve very large sums of money. In view of these factors, the FEA concluded that it would be desirable in this case to provide financial assistance to ensure that intervenors who represent consumer interests are able to fully participate in the exception proceedings. The FEA also determined that, under the circumstances presented and in view of the agency's statutory responsibilities with respect to consumer interests as set forth in Section 4(b)(1)(F) of the Emergency Petroleum Allocation Act of 1973 and Section 5(b)(5) of the Federal Energy Administration Act of 1974, a strong argument had been made that the use of public funds would be warranted to ensure the effective representation of consumer interests in the exception proceedings. In granting the Petition for Special Redress, the FEA indicated that, in order to secure consumer representation in a manner consistent with a prior determination of the Comptroller General of the United States, it would permit any non-profit organization to file within ten days of the publication of the Decision and Order in the Federal Register a special application to intervene in the eight exception proceedings which have been initiated and to also submit documentation which establishes that it would be unable to finance its participation unless it receives financial assistance. After receiving any such applications, the FEA will arrive at a final determination as to whether intervention on behalf of consumer interests is necessary to adequately represent opposing points of view in the exception proceedings. If the conclusion is reached that intervention is necessary, a further determination will be made as to whether the extension of financial assistance is necessary to secure the appropriate intervention on behalf of consumer interests. If the determinations are made that consumer representation is necessary to adequately represent opposing points of view, that a satisfactory application has been submitted to intervene on behalf of consumers by a non-profit organization whose principal function involves the protection of consumer interests and that it will be necessary to provide financial assistance in order to enable the organization to participate in the matter, then reasonable and appropriate financial assistance will be made available to the organization involved.

REQUESTS FOR MODIFICATION OR RESCISSION
Standard Oil Co. (Indiana); Chicago, Ill.; FMR-0073 (Luby); FMR-0074 (Old Ocean); FMR-0075 (Burnell); FMR-0076 (Midland); FMR-0077 (Peoria); Natural Gas Liquid Products

The Standard Oil Company of Indiana (Amoco) filed five Applications for Modifica-

tion of two Decisions and Orders which the FEA issued to the firm on November 12, 1976 and October 1, 1976. Standard Oil Co. (Indiana), 4 FEA Par. 83,190 (November 17, 1976); and Standard Oil Co. (Indiana), 4 FEA Par. 83,134 (October 1, 1976). In those Decisions, the FEA granted Amoco exception relief which permitted the firm to increase the prices which it charges for natural gas liquid products at certain of its natural gas processing plants to reflect increased costs incurred at those plants in excess of the non-product cost passthrough permitted under the provisions of 10 CFR 212.165. The amount of exception relief which the FEA approved was predicated upon the amount of non-product costs which Amoco had incurred at each plant during the second calendar quarter of 1976 and the projection that the non-product costs being incurred at those plants were likely to continue at those levels. In its Applications for Modification, Amoco contended that the non-product costs incurred at five of its natural gas processing plants had increased significantly during the third quarter of 1976. The firm therefore requested that the FEA adjust the amount of relief which it approved for those five plants to reflect these increases. Since the five requests for modification submitted by Amoco involved similar issues, they were consolidated for consideration in a single proceeding. In considering Amoco's Requests for Modification, the FEA noted that in approving exception relief for a period of two calendar quarters rather than one calendar quarter, the FEA sought to mitigate to the maximum extent possible the administrative burden to the applicant and to the FEA that would result if new applications for exception relief were submitted and evaluated on the basis of costs incurred during relatively short periods of time. The FEA also noted that, in approving such relief for an extended period of time, it did not intend that the amount of relief granted would be re-evaluated in the interim period solely because of later fluctuations in any single plant's level of non-product costs. Rather, the FEA determined that, in order for a firm in such a situation to demonstrate that a modification of the relief approved is warranted based on later operating cost data, a firm must demonstrate that the overall increase in non-product costs which it experienced at all of the plants which were granted excep-

tion relief is grossly disparate from the level of nonproduct costs which it originally projected. The FEA found that Amoco had not made such a showing. The FEA therefore denied Amoco's Requests for Modification. However, the FEA noted that Amoco may, at the appropriate time, request an extension of the exception relief approved in the November 12 and October 1 Orders and that the actual increases in non-product costs which it has incurred in the third quarter of 1976 may be utilized as the basis for that request.

SUPPLEMENTAL ORDER

Linden's Propane, Inc.; Lagrange, Ohio; FEX-0089; Propane

On January 13, 1977, the FEA issued a Decision and Order which granted in part an Appeal that Linden's Propane, Inc. (Linden) had filed from a Remedial Order issued by the Regional Administrator of FEA Region V on July 7, 1976. Linden's Propane, Inc., 5 FEA Par. — (January 13, 1977). In Paragraph (4) of the January 13, 1977 Order, the FEA set forth the manner in which the Regional Administrator should direct the distribution of the funds in an escrow account established by Linden pursuant to an August 31, 1976 Order staying the refund provisions of the Remedial Order. See Linden's Propane, Inc., 4 FEA Par. 85,018 (August 31, 1976). Following the issuance of the January 13, 1977 Order, the FEA found that Linden had failed to submit certain records as required by that Order which related to the identity of the customers on whose behalf funds were placed in the escrow account. The FEA therefore modified Paragraph (4) so as to permit the Regional Administrator to direct the distribution of the escrow funds in a manner which he determines to be consistent with the objectives of the Remedial Order and with the findings contained in the January 13, 1977 Order.

REQUESTS FOR EXCEPTION FROM NATURAL GAS PROCESSORS

The Office of Exceptions and Appeals of the Federal Energy Administration has issued Decisions and Orders granting exception relief from the provisions of 10 CFR 212.165 to the following natural gas processors by permitting them to increase prices for the production of the gas plant listed below by the amount indicated:

Company	Case No.	Plant	Amount (dollars per gallon)
Allied Chemical Corp.	FEE-3550	Benedum	0.0284
Do.	FEE-3553	Silgo	.0184
Do.	FEE-3554	Walnut Bend	.0155
Arkansas Louisiana Gas Co.	FEE-3557	Bistineau	.0131
Do.	FEE-3559	Silgo	.1340
Do.	FEE-3560	Waskom	.0060
Indian Wells Oil Co.	FEE-3566	Indian Wells	.0552
Phillips Petroleum Co.	FEE-3479	Andrews	.0141
Do.	FEE-3480	Benedum	.0340
Do.	FEE-3481	Bradley	.0290
Do.	FEE-3482	Canadian	.0290
Do.	FEE-3483	Cimarron	.0463
Do.	FEE-3484	Crane	.0229
Do.	FEE-3485	Douglas	.0077
Do.	FEE-3486	Dumas	.0067
Do.	FEE-3487	Edmoind	.0262
Do.	FEE-3488	Gray	.0154
Do.	FEE-3489	Hansford	.0067
Do.	FEE-3490	Henderson	.0185
Do.	FEE-3491	Hobbs	.0081
Do.	FEE-3492	Lee	.0057
Do.	FEE-3493	Lovington	.0145
Do.	FEE-3494	McKemie	.1053
Do.	FEE-3495	North	.0148
Do.	FEE-3496	Oklahoma	.0121
Do.	FEE-3497	Pantex	.0076
Do.	FEE-3498	Puckett	.1038
Do.	FEE-3499	Sooner No. 1	.0450
Do.	FEE-3500	Spraberry	.0052
Do.	FEE-3501	Tunstill	.0201
Do.	FEE-3502	Vermillion	.0154
Do.	FEE-3503	Winkler	.0048

The Office of Exceptions and Appeals of the Federal Energy Administration has issued a Decision and Order denying exception relief from the provisions of 10 CFR 212.165 to the following natural gas processor:

Company	Case No.	Plant
Arkansas Louisiana Gas Co.,	FEE-3558	Hamilton.

DISMISSALS

The following submission was dismissed following a statement by the applicant indicating that the relief requested was no longer needed: Dorchester Gas Producing Co., Amarillo, Tex., FEE-3515

The following submissions were dismissed for failure to correct deficiencies in the firms filing as required by the FEA Procedural Regulations: Mockabee's Oil Co., Upper Marlboro, Md., FRA-1145; Readygas Propane Service, Inc., Eldon, Mo., FXA-1151

The following submission was dismissed on the grounds that alternative regulatory procedures existed under which relief might be obtained: Shell Oil Co., Houston, Tex. FES-0061

The following submission was dismissed for failure to provide any basis for review of the FEA's prior determination: A. Johnson & Co., Inc., New York, N.Y. FSG-0034

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except Federal holidays. They are also available in Energy Management; Federal Energy Guidelines, a commercially published loose leaf reporter system.

Eric J. Fygi,
Acting General Counsel.

MARCH 22, 1977.

[FR Doc.77-9081 Filed 3-23-77; 1:42 pm]

CANADIAN ALLOCATION PROGRAM

Supplemental Notice for January 1
Through June 30, 1977

Correction

In FR Doc. 77-7794 appearing at page 14900 in the issue for Thursday, March 17, 1977, make the following changes:

1. On page 14901, in the first column, the figure in the fifth line of the second paragraph should be changed to read "259,523".

2. In the 13th line of the same paragraph, the figure should read "0.116153".

3. In the 15th line of the same paragraph, the figure should read "54,479".

INDIANA GAS CO.; PROPOSED SYNTHETIC NATURAL GAS PLANT

Draft Environmental Impact Statement;
Extension of Comment Period

To provide all interested parties an opportunity to view and comment on additional source material now on file pertaining to the draft environmental impact statement (DEIS) as to the proposed construction and operation of a synthetic natural gas plant by Indiana

Gas Company (41 FR 56842, Dec. 30, 1976) the Federal Energy Administration ("FEA") is reopening and extending the public comment period until April 8, 1977, by which date all comments should be submitted. This extension of the comment period is for the sole purpose of receiving comments related to the additional DEIS source material.

This additional DEIS source material has been placed on file in the FEA Freedom of Information Library, Room 2107, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C., where it is available for public viewing between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Any comments, information, or data considered by the person furnishing it to be confidential must be so identified, one copy only, in accordance with the requirements of 10 CFR 205.9(f). FEA reserves the right to determine the confidential status of the comment, information, or data and to treat it according to its determination.

Submissions should be addressed to the Office of Product Allocations, Specialty Fuels Branch, Room 6318, 2000 M Street NW., Washington, D.C. 20461, Attention: Mr. Finn Neilsen. Persons submitting comments during this additional period must send five copies, with any confidential material deleted, to FEA and one copy to Indiana Gas Company and to all persons or organizations on the Indiana Gas Service list. This list is available for public viewing at the FEA Freedom of Information Library.

Issued in Washington, D.C., March 23, 1977.

Eric J. Fygi,
Acting General Counsel.

[FR Doc.77-9165 Filed 3-24-77; 9:29 am]

VOLUNTARY AGREEMENT AND PLAN OF ACTION TO IMPLEMENT THE INTERNATIONAL ENERGY PROGRAM

Meeting

In accordance with section 252(c) (1) (A) (i) of the Energy Policy and Conservation Act (Pub. L. 94-163), notice is hereby provided of a meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) to be held on April 5 and 6, 1977, at the headquarters of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 10 a.m. on April 5. The purpose of the IAB meeting and this notice is to permit attendance by representatives of the IAB at certain portions of a meeting of the IEA Standing Group on Emergency Questions (SEQ). The parts of the SEQ meeting open to the IAB representatives constitute all or part of items 3-11 of the SEQ agenda, the open portions to be determined by the SEQ. The agenda of the SEQ meeting is as follows:

1. Approval of the draft agenda.
2. Summary Record of the Fifteenth Meeting (see para. 27 of IEA/SEQ/M(75)(23)).
3. Oil Pricing in an Emergency (Secretariat Note concerning Delegations' drafting suggestions for Manual text).

4. SEQ Forecast (Note by the Secretariat).
5. Emergency Management Manual:
 - (a) Draft revision of the text on "Supplies Available to the Group."
 - (b) Proposed procedure for the initial date of Demand Restrain in the Allocation Calculation.
6. Demand Restraint (Oral report by the Chairman of the Working Group).
7. National Emergency Sharing Organizations (Note by the Secretariat).
8. Special Section of the Information System:
 - (a) Draft Questionnaire Reporting Instructions
 - (b) Telex Transmission of Data
 - (c) Secretariat Report on Quarterly Oil Statistics
9. EEC Competition Rules
10. Extraordinary Costs (Note by the Secretariat).
11. Base Period Final Consumption:
 - (a) Current Calculation
 - (b) Possible Adjustment Procedure
12. Any other business.

As provided in section 252(c) (1) (A) (ii) of the Energy Policy and Conservation Act, these meetings will not be open to the public.

Issued in Washington, D.C., March 23, 1977.

Eric J. Fygi,
Acting General Counsel
Federal Energy Administration.

[FR Doc.77-9163 Filed 3-24-77; 8:56 am]

FEDERAL MARITIME COMMISSION
MASSACHUSETTS PORT AUTHORITY AND
UNITED STATES LINES, INC.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and 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 18, 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:

John W. Arata, Maritime Attorney, Massachusetts Port Authority, 99 High Street, Boston, Massachusetts 02110.

Agreement No. T-3439, between the Massachusetts Port Authority (Port) and United States Lines, Inc., (USL), is a terminal services agreement whereby Port shall provide terminal and stevedoring services for USL at the Ports' Moran Container Terminal in Charleston, Massachusetts. As compensation for services rendered, USL shall pay Port according to a schedule of rates listed in the agreement. USL agrees (1) to engage the Port as its sole and exclusive stevedore in the Port of Boston area for the performance of any and all of the services listed in the agreement; and (2) to use the Port's terminal for the loading and discharging of all of its container vessels and for the stuffing and unstuffing of all containers carried or to be carried on a pier-to-pier basis, throughout the term of this agreement.

By Order of the Federal Maritime Commission.

Dated: March 24, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-9345 Filed 3-28-77;8:45 am]

PACIFIC WESTBOUND CONFERENCE

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, NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before April 18, 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:

Edward D. Ramson, Esq., Lillick McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No. 57-106, entered into by the member lines of the Pacific Westbound Conference, modifies the conference agreement by adding new language to Article 28 thereof which will authorize the Chairman to sign and file for approval with the Federal Maritime Commission any amendment to Agreement No. 57 and to the Appendix thereto which has been duly adopted by the Conference. The new language being added to Article 28 reads as follows:

"Each of the parties hereto hereby expressly authorizes the Chairman to sign on its behalf and to file for approval with the agency charged with administering the Shipping Act, 1916, as amended, any amendments to this agreement and to the appendix to this agreement (Rules and Regulations) which have been duly adopted by the Conference by the vote and the procedures prescribed by this agreement or by the appendix to this agreement, respectively. Subsequent to the date of this agreement, any person, by the act of becoming a party to this agreement, shall thereby authorize the Chairman to sign and file amendments on its behalf as provided hereinabove."

By Order of the Federal Maritime Commission.

Dated: March 24, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-9344 Filed 3-28-77;8:45 am]

FEDERAL POWER COMMISSION

[Doc. No. ER77-220]

CENTRAL ILLINOIS PUBLIC SERVICE CO.

Filing of Wholesale Electric Service Agreement

MARCH 24, 1977.

Take notice that on March 11, 1977, Central Illinois Public Service Company tendered for filing a proposed new Wholesale Electric Service Agreement with the City of Carmi. The agreement is proposed to become effective on or about June 1, 1977.

Rate Schedule W-3, under which Central Illinois indicates that the City of Carmi will be billed, was previously filed with the Commission and approved in Docket No. ER77-89 to become effective January 2, 1977, subject to refund.

A copy of the filing was sent to the City of Carmi.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before April 1, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMS,
Secretary.

[FR Doc.77-9476 Filed 3-28-77;8:45 am]

[Doc. No. CP77-299]

COLUMBIA GAS TRANSMISSION CORP.

Application

MARCH 24, 1977.

Take notice that on March 16, 1977, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP77-299, an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79), for a certificate of public convenience and necessity authorizing the transportation of natural gas for Stearns-Roger Incorporated (SRI), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization herein to transport natural gas for SRI from an existing point of delivery from Panhandle Eastern Pipe Line Company (PEPL) and for delivery to Columbia Gas of Pennsylvania, Inc. (Columbia Pa.), a wholesale customer of Applicant, at an existing point of delivery located near Homer City, Indiana County, Pennsylvania. It is stated that the gas to be transported hereunder is to be used in the operation of a Pilot Plant to conduct research on the experimental Bi-Gas process for producing pipeline quality gas from coal. It is further stated that due to its experimental nature it is impossible to predict actual gas requirements for the Pilot Plant. In January 1974, SRI gave Columbia Pa., an estimate of its natural gas needs on a daily basis, and in April of 1975, Columbia Pa., allocated volumes averaging 405 Mcf per day to SRI, it is said. Applicant states that construction of the Pilot Plant was delayed and was not completed until May 1976 at which time SRI determined that it needed substantially higher volumes than those previously allocated. It is asserted that at the present time SRI is being curtailed from 142 Mcf per day to 405 Mcf per day and that at least 667 Mcf per day on a non-curtailed basis is needed to operate properly the Pilot Plant.

Applicant states that SRI has contracted to purchase gas from ONG Exploration, Inc. (ONG) for \$1.70 per Mcf through February 28, 1977, for \$1.73 per Mcf from March 1, 1977, to February 28, 1978, and for \$1.76 per Mcf from March 1, 1978, to the expiration of a two year term. SRI would purchase not less than 7,000 Mcf nor more than 25,000 Mcf per month, and the gas would be made available to SRI at the outlet of the

Cimarron Plant located in Woodward County, Oklahoma, it is said.

Applicant proposes to transport up to 1,000 Mcf on an average day for SRI for a period of two years and Applicant would receive the volumes of gas to be transported for the account of SRI into its Line D-590 at Maumee, Lucas County, Ohio, at an existing point of delivery from PEPL. Applicant states that it would redeliver such volumes for the account of SRI to Columbia, Pa., at an existing point of delivery near Homer City, Indiana County, Pennsylvania, and Columbia, Pa., would make the gas to be transported available to SRI through existing distribution facilities.

It is asserted that the Pilot Plant is a research project designed for the experimentation of Bi-Gas process for producing pipeline quality gas from coal, and that approximately 150 persons are employed at the Pilot Plant, many of whom are specially trained. It is stated that unless gas supplies are forthcoming, the employment would have to be terminated and the Pilot Plant shut down.

Applicant states that it has available pipeline capacity to perform the proposed transportation. Applicant further states that its transportation charge for this service would be its average system-wide unit storage and transmission costs exclusive of company-use and unaccounted for gas, which is 22.21 cents per Mcf effective November 1, 1976, and Applicant would retain for company-use and unaccounted-for gas a percentage of the total volume received for the account of SRI, which percentage is currently 3.1 percent.

It is indicated that the subject gas would be used for Priority 2 purpose or those Priority 3 uses that would have been in Priority 2 had the gas been purchased on a firm basis.

Any person desiring to be heard or to make any protest with reference to said application 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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public

convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 77-9475 Filed 3-28-77; 8:45 am]

[Doc. No. E77-71]

COLUMBIA GAS TRANSMISSION CORP.
Emergency Natural Gas Act of 1977;
Emergency Order

On March 22, 1977, Columbia Gas Transmission Corporation (Columbia) 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 up to 16,000 Mcfd of natural gas from Wainoco Oil Corporation (Wainoco) and others on whose behalf Wainoco is selling (Wainoco Group) and from Exchange Oil & Gas Corporation (Exchange) attributable to their interests in certain wells in the Ocean View Field, Southern Louisiana.

Columbia will purchase the subject volumes at a price of \$2.25 per MMBtu. This price is fair and equitable in accordance with Order No. 2.

This gas will be delivered to Columbia at the outlet of the least separator. Columbia will be required to install approximately 6,500 feet of 6-inch pipeline to connect the lease separator to the existing facilities of Columbia Gulf Transmission Company (Columbia Gulf), an affiliate of Columbia. Columbia states that construction of the lease separator will not be completed until around May 15, 1977, but that these facilities may be completed by May 1, 1977.

Columbia states that the unit cost attributable to the 6,500 feet of 6-inch pipeline would be approximately 14.1 cents per Mcf. This cost is based on construction costs of \$165,000, an average daily production rate of 15,000 Mcfd, and a sales period of 78 days subsequent to May 15, 1977.¹

Columbia's filing does not state whether Columbia is presently qualified to purchase this gas as required by Order No. 6; however, Columbia states that it will be in compliance with Order No. 6 since deliveries will not commence until after April 1, 1977,² and requests that Columbia be found to be in compliance with Order No. 6 as in Docket Nos. E77-36 and E77-47. Based on the foregoing, I find that Columbia may not be in compliance with Order No. 6.

$$\frac{165,000}{(15,000)(78)} = 14.1 \text{¢/Mcf}$$

¹ Evidently Columbia assumes that Order No. 6 will be allowed to expire by its own terms on April 30, 1977, and not extended. No decision has been reached regarding that matter.

Order No. 6 requires that "no (interstate) pipeline * * * may contract to purchase emergency supplies * * * if contemporaneously with the execution of the contract the pipeline * * * is delivering directly or indirectly any natural gas for uses defined in 18 CFR 2.78 (a) (1) (iv)-(ix)." (Emphasis added.) Thus, it is the pipeline's situation at the time contemporaneous with the execution of the contract not the time contemporaneous with the commencement of deliveries which determines whether a purchaser qualifies under Order No. 6.

Therefore, I will deny without prejudice Columbia's request to make this purchase. Columbia may resubmit its application to make this purchase at such time as (i) Columbia can demonstrate that it was not serving directly or indirectly any uses defined in 18 CFR 2.78 (a) (1) (iv)-(ix) contemporaneously with the execution of the contract for such purchase under Order No. 6 or any successor order, or (ii) Order No. 6 or any successor order is rescinded.

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 Columbia, Columbia Gulf, and Wainoco and Exchange. 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 24, 1977.

[FR Doc. 77-9479 Filed 3-28-77; 8:45 am]

[Doc. No. E77-70]

DELHI GAS PIPE LINE CORP.
Emergency Natural Gas Act of 1977;
Supplemental Emergency Order

By order issued March 23, 1977, Delhi Gas Pipe Line Corporation (Delhi) was authorized, pursuant to Section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 (1977)), to sell up to 30,000 Mcfd to United Gas Pipe Line Company (United) on an "if, as and when available" basis subject to available pipeline capacity through July 31, 1977.

By letter filed March 23, 1977, Delhi requested that the following sentence be deleted from the March 23, 1977 order:

Pursuant to Section 6(c)(1) of the Act, I hereby authorize and order Delhi to transport and deliver this gas to United as set forth in Delhi's filing.

Upon further review of this matter, it appears that Delhi will not perform a transportation service for United and that the above sentence should be deleted. To the extent not inconsistent with this order, the provisions of the March 23, 1977 order remain in full force and effect.

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 Delhi and United. 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 24, 1977.

[FR Doc.77-9468 Filed 3-28-77;8:45 am]

[Doc. No. E77-74]

PANHANDLE EASTERN PIPE LINE CO.
Emergency Natural Gas Act of 1977;
Emergency Order

On March 23, 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 approximately 1,000 Mcfd of natural gas from Seneca Oil Company (Seneca) at the McClain No. 1 and Mendenhall No. 1 wells, Texas County, Oklahoma. Panhandle is purchasing the subject volumes as agent for its customer, Ohio Gas Company (Ohio), through July 31, 1977.

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.

Panhandle will receive these gas supplies from Seneca and deliver them to Ohio at existing delivery points. Panhandle and Ohio have agreed upon transportation charges of 20 cents per Mcf plus eight (8) percent of the volumes transported for compressor fuel.

Panhandle advises that Ohio has advised that it is 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 a sworn statement by Ohio that the subject purchase complies with Order No. 6.

Pursuant to Section 6(a) of the Act, I authorize Seneca to sell gas to Panhandle as agent for Ohio. Pursuant to Section 6(c) (1) of the Act, I authorize Panhandle to transport this gas for Ohio. Since the parties have agreed upon the transportation charges, I find no basis on which to fix other charges.

Ohio 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, Seneca, and Ohio. 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 24, 1977.

[FR Doc.77-9469 Filed 3-28-77;8:45 am]

[Doc. No. E77-75]

PANHANDLE EASTERN PIPE LINE CO.
Emergency Natural Gas Act of 1977;
Emergency Order

On March 24, 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 natural gas from Martin Oil Services, Inc. (Martin). Panhandle will purchase all volumes which Martin has available from the Lorenz No. 1 and Succo No. 3 wells, Weld County, Colorado, as agent for its customer, Citizens Gas and Coke Utility (Citizens), through July 31, 1977.

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.

Panhandle will receive these gas supplies from Martin and deliver them to Citizens at existing delivery points. Panhandle and Citizens have agreed upon transportation charges of 20 cents per Mcf plus eight (8) percent of the volumes transported for compressor fuel.

Panhandle advises that Citizens has advised that it is 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 a sworn statement by Citizens that the subject purchase complies with Order No. 6.

Pursuant to Section 6(a) of the Act, I authorize Martin to sell gas to Panhandle as agent for Citizens. Pursuant to Section 6(c) (1) of the Act, I authorize Panhandle to transport this gas for Citizens. Since the parties have agreed upon the transportation charges, I find no basis on which to fix other charges.

Citizens 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, Martin, and Citizens. 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 25, 1977.

[FR Doc.77-9473 Filed 3-28-77;8:45 am]

[Doc. No. E77-62]

PENNSYLVANIA GAS AND WATER CO.
Emergency Natural Gas Act of 1977;
Emergency Order; Correction

Please delete the words "as agent for Citizens." and insert "." after "PG&W" on the second line of the first paragraph on page 2 of the order issued March 21, 1977 in the above docket to Pennsylvania

Gas and Water Company. (Published in the FEDERAL REGISTER on March 23, 1977, 42 FR 15754.)

RICHARD L. DUNHAM,
Administrator.

MARCH 24, 1977.

[FR Doc.77-9478 Filed 3-28-77;8:45 am]

[Doc. No. E77-5]

SOUTHERN NATURAL GAS CO.
Emergency Natural Gas Act of 1977,
Supplemental Emergency Order; Correction

Please change the date "February 20" to "February 22" on Lines 8, 14 and 16, of the first paragraph of the supplemental order issued on March 8, 1977, in Docket No. E77-5, Southern Natural Gas Company. (Published in the FEDERAL REGISTER on March 11, 1977, 42 FR 13600.)

RICHARD L. DUNHAM,
Administrator.

MARCH 24, 1977.

[FR Doc.77-9477 Filed 3-28-77;8:45 am]

[Doc. No. E77-63]

TRANSCONTINENTAL GAS PIPE LINE CORP.
Emergency Natural Gas Act of 1977;
Emergency Order

On March 18, 1977, Transcontinental Gas Pipe Line Corporation (Transco), as agent for certain of its customers, 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 (1) up to 1,500 Mcfd through April 9, 1977, and up to 6,000 Mcfd subsequent to April 9, 1977, from Sun Gas Company, a division of Sun Oil Company (Sun), and (2) up to 4,100 Mcfd from M. H. Marr (Marr).¹ The natural gas to be purchased under these agreements will be produced from the A. S. Petitjean No. 1 and the L. S. Boudreaux No. 1 and No. 2 wells in the Rayne Field, Acadia Parish, Louisiana. The contracts will remain in effect through July 31, 1977. For the reasons set forth below I find the terms and conditions of the subject contracts between Transco and Sun and Marr to be fair and equitable and (i) authorize and approve the same, (ii) authorize and order the transportation and delivery of the subject gas to Transco and certain of its customers, and (iii) authorize and approve the construction and operation of any facilities necessary to transport and deliver these gas supplies to Transco.

On March 22 and 23, 1977 Marr and Sun submitted information and affidavits stating that the subject gas was not dedicated to any purchaser other than Transco.

Transco will purchase the gas at a price of \$2.25 per MMBtu, inclusive of all state and local taxes and other adjustments, on a best efforts basis. I find such price to be fair and equitable in accordance with Order No. 2.

¹The above volumes are estimates and additional volumes may be available from time to time.

Sun and Marr will deliver these volumes to Louisiana Intrastate Gas Corporation (Louisiana Intrastate), an intrastate pipeline, at an existing gas measurement station in Acadia Parish, Louisiana. Louisiana Intrastate will transport such gas to a point in Terrebonne Parish, Louisiana, where an interconnection will be established with Transco's existing pipeline facilities at an estimated cost of \$4,000. Because Louisiana Intrastate cannot warrant utilization of the Terrebonne Parish delivery point subsequent to May 1, 1977, Transco and Louisiana Intrastate have agreed that deliveries may be made to Transco at (i) a mutually agreeable point in Evangeline Parish, Louisiana, where an interconnection will be established between the facilities of Transco or Louisiana Intrastate, or (ii) any other mutually acceptable points.

Louisiana Intrastate will charge 9.25 cents per MMBtu for each MMBtu delivered to Transco. Initially, Transco will not impose any transportation charges for the delivery of this gas other than the retention of four (4) percent of the volumes for compressor fuel. However, Transco's agreements with the customers for which it is acting as agent provide that Transco shall be entitled to recover, for this transportation service, a rate equal to (1) any costs which may be allocated by the Federal Power Commission (FPC) to such transportation service in a rate proceeding covering the period such service is rendered, or (2) any charge imputed against such transportation volumes by the FPC in setting Transco's rates for any period covered by such transportation service. Pursuant to Section 6(c)(1) of the Act, because the parties have agreed on the transportation charges to be paid and the other terms of the transportation arrangements, I find no reason to fix other charges or to change any terms of such transportation arrangements.

Transco advises and I find that contractual provisions between Louisiana Intrastate and its producers, transporters and other suppliers of gas prohibit the sale of natural gas in interstate commerce and the commingling of Louisiana Interstate's intrastate pipeline system gas supplies with gas moving in interstate commerce. The sale, transportation and delivery of gas for which Transco seeks approval may result in some commingling of interstate natural gas with Louisiana Intrastate'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) and (c) of Pub. L. 95-2 (91 Stat. 4, 9), the suppliers of such gas, which is so commingled, may not terminate existing contracts with Louisiana Intrastate 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 Sun,

Marr and Louisiana Intrastate are selling, delivering and transporting gas to and for Transco, as agent for certain of its customers, pursuant to Section 6(a) of that Act. Sun, Marr, Louisiana Intrastate and any third person whose gas is commingled with Transco'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 FPC, Louisiana Intrastate is not classified as a natural gas company within the meaning of the Natural Gas Act. Sun, Marr and Transco are natural gas companies within the meaning of the Natural Gas Act. Section 6(b)(1) of the Act provides:

The provisions of the Natural Gas Act shall not apply—

(A) To any sale of natural gas to an interstate pipeline or local distribution company under the authority of subsection (a) or to any transportation by an intrastate pipeline in connection with any such sale; or

(B) To any natural gas company (within the meaning of the Natural Gas Act) solely by reason of any such sale or transportation.

91 Stat. at 8. In addition, Section 6(c)(2) of the Act 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 Sun, Marr, Louisiana Intrastate, Transco or any party supplying gas to Sun, Marr or Louisiana Intrastate to the provisions of the Natural Gas Act or to regulation as a common carrier under State Law.

Pursuant to Section 6(a) of the Act, I hereby authorize Sun and Marr to sell the subject gas to Transco, as agent for certain of its customers, on the terms and conditions set forth in Transco's filing in this proceeding, and the contracts between Sun, Marr and Transco. Pursuant to Section 6(c)(1) of the Act, I hereby authorize and order (i) Louisiana Intrastate to transport and deliver such gas to Transco on the terms and conditions set forth in Transco's filing in this proceeding and the transportation agreement between Louisiana Intrastate and Transco, (ii) Transco to pay the agreed-upon transportation charge, and (iii) Transco to construct and pay for any facilities necessary to receive gas from Louisiana Intrastate during the term of this transaction. Moreover, because the volumes delivered by Sun and Marr may fluctuate above the estimated volumes from time to time, I authorize and approve the sale, delivery and transportation of all gas delivered by Sun and Marr during the term of this transaction.

In its application, Transco certified that the customers for which it is purchasing these gas supplies have certified that they are not serving directly or indirectly any natural gas for uses specified in Priorities 4 through 9 (18 C.F.R. § 2.78 (a)(1) (iv)-(ix)), and (ii) will not purchase and receive any of the subject

gas if at any time during the term of the agreement they are serving uses specified in Priorities 4 through 9. I find that Transco has complied with Order No. 6.

Transco 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 Transco, Louisiana Intrastate, Sun and Marr. 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 24, 1977.

[FR Doc. 77-9471 Filed 3-28-77; 8:45 am]

[Docket No. E77-72]

**TRANSCONTINENTAL GAS PIPE LINE
CORP.**

**Emergency Natural Gas Act of 1977;
Emergency Order**

On March 23, 1977, Transcontinental Gas Pipe Line Corporation (Transco), acting either for itself or as agent for certain of its customers, 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 up to 150,000 Mcfd from LoVaca Gathering Company (LoVaca). For the reasons set forth below, I find the terms and conditions of the subject agreement between LoVaca and Transco to be fair and equitable and (i) authorize and approve the same and (ii) authorize, approve, and order the transportation and delivery of the subject gas to Transco.

Transco will purchase these supplies at a price of \$2.20 per MMBtu plus a transportation-delivery charge of 11.0 cents per Mcf. In addition, the price of \$2.20 per MMBtu shall be adjusted each month after the first month of sales by the amount, if any, that LoVaca's purchased gas cost for its highest priced purchase(s) of 150,000 Mcfd exceeds the January 1977 cost for such purchase(s) of \$2.243 per Mcf. I find this price to be fair and equitable in accordance with Order No. 2 (February 3, 1977) and Order No. 2-A (February 25, 1977). See *United Gas Pipe Line Company*, Docket No. E77-28 (February 26, 1977).

LoVaca will deliver this gas to Transco at a mutually agreeable point in either Bee or Webb County, Texas. Transco will deliver the gas to the customers for which it is purchasing at existing delivery points. Prior to April 1, 1977, Transco will not impose any transportation charges for the delivery of this gas other than the retention of a percentage of the volumes for compressor fuel. Subsequent to April 1, 1977, Transco proposes to charge for such deliveries a transportation rate to be filed with the Federal Power Commission. If deliveries are made in Webb County, the facil-

ities of South Texas Natural Gas Gathering Company (South Texas) will be used to transport gas between LoVaca and Transco systems for a fee of 1.2 cents per Mcf. Since the parties have agreed upon this transportation charge, I find no basis on which to prescribe other rates and charges.

Transco advises and I find that the gas made available by LoVaca will result in commingling of interstate natural gas with LoVaca's normal intrastate system gas supply and with volumes of gas owned by other parties. The contractual provisions between LoVaca 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 Transco seeks approval may result in some commingling of interstate natural gas with LoVaca'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 Sec. 9(b), (c) of P. L. 95-2 (91 Stat. 4, 9), the suppliers of such gas, which is so commingled, may not terminate existing contracts with LoVaca 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 Public Law 95-2 since LoVaca is selling, delivering and transporting gas for Transco pursuant to Section 6(a) of that Act. LoVaca and any third person whose gas is commingled with Transco'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, LoVaca is not classified as a natural gas company within the meaning of the Natural Gas Act. Section 6(b) (1) (A) 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, Sec. 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 of this gas will not subject LoVaca or any person supplying gas to LoVaca to the provisions of the Natural Gas Act or to regulation as a common carrier under state law.

In its application, Transco stated that its customers for which it is purchasing these gas supplies have certified that they are not serving directly or indirectly any natural gas for uses specified in

Priorities 4 through 9 (18 CFR 2.78 (a) (1) (iv)-(ix)), and (ii) will not purchase and receive any of the subject gas if at any time during the term of the agreement they are serving uses specified in Priorities 4 through 9. I find that Transco has complied with Order No. 6 with respect to the purchases for its customers. If Transco purchases any of these volumes for itself, Transco shall certify that it is not serving directly or indirectly any natural gas for uses specified in Priorities 4 through 9 (18 CFR 2.78 (a) (1) (iv)-(ix)).

Transco shall submit weekly reports as required by Order No. 4.

Pursuant to Section 6(a) of the Act, I hereby authorize Transco to purchase from LoVaca up to 150,000 Mcfd of natural gas on the terms and conditions set forth in Transco's filing in this proceeding. If for any month the price to be charged by LoVaca exceeds \$2.25 per MMBtu, exclusive of the transportation and delivery charge of 11.0 cents per Mcf, LoVaca shall, within seventy-two (72) hours of computing that the price exceeds \$2.25 per MMBtu, notify the Administrator and set forth the price so computed and all relevant information regarding the computation.

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 LoVaca, South Texas and Transco. 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 24, 1977.

[FR Doc. 77-9472 Filed 3-28-77; 8:45 am]

[Doc. No. E77-76]

TEXAS GAS TRANSMISSION CORP.
Emergency Natural Gas Act of 1977;
Emergency Order

On March 24, 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 North American Royalties, Inc. and Energy Development Corporation (North American) for the purchase of approximately 750 Msfd from the Spring Ridge Field, Caddo Parish, Louisiana. The total price to be paid by Texas Gas, as agent, is \$2.25 per MMBtu. Thus, the proposed price is

¹ These customers are local distribution companies and interstate pipelines as defined in Sections 2(1), (5) of the Act (91 Stat. 4).

fair and equitable in accordance with Order No. 2.

Texas Gas will receive these volumes in Caddo Parish, Louisiana, and transport these supplies through its existing pipeline facilities to the customers for which it is purchasing the gas. 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 for prescribing other charges since the parties have agreed upon the transportation charges.

Texas Gas is presently purchasing gas from North American in the Spring Ridge Field under \$157.29 of the Regulations of the Federal Power Commission (18 CFR 157.29). To make such purchase, Texas Gas installed a temporary meter station and related facilities. Texas Gas requests permission to retain these facilities in place until August 1, 1977, in order to make this purchase. Such permission will be granted.

Based upon the foregoing, Texas Gas is authorized to purchase gas, as agent, from North American and to transport such gas for certain of its customers. Pursuant to Section 6(c) (1) of the Act, Texas Gas shall retain in place temporary facilities installed in the Spring Ridge Field and shall operate such facilities to receive gas purchased from North American under Section 6(a) of the Act. 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 North American. This order shall also be published in the FEDERAL REGISTER.

This order and authorization granted herein are subject to the continuing authority of the Administration under Pub. L. 95-2 and the rules and regulations which may be issued thereunder.

RICHARD L. DUNHAM,
Administrator.

MARCH 25, 1977.

[FR Doc. 77-9474 Filed 3-28-77; 8:45 am]

[Doc. No. E77-33]

UNITED GAS PIPELINE CO.
Emergency Natural Gas Act of 1977;
Supplemental Emergency Order

By order issued March 15, 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 United Gas Pipeline Company (United) to make an emergency purchase from Basin Operating Company, Ltd. (Basin), because United's March 14, 1977 supplemental

filing lacked specific "information necessary to determine which of the proposed purchases satisfy the criteria of" *Colorado Interstate Gas Company*, Docket E77-31 (February 28, 1977).

By supplemental filing received March 23, 1977, United submitted information from Basin which purports to demonstrate that these sellers had incurred expenses prior to February 22, 1977, to make emergency sales to United. The information submitted by United demonstrates that the proposed purchase from Basin satisfies the criteria of *Colorado Interstate, supra*.

Based on the foregoing, United has satisfied the *Colorado Interstate* criteria with respect to the proposed purchase from Basin and United may make such purchase notwithstanding Order No. 6.

United 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 United and Basin. 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 24, 1977.

[FR Doc. 77-9470 Filed 3-28-77; 8:45 am]

[Doc. No. RM77-13]

NATIONAL RATES FOR JURISDICTIONAL SALES OF NATURAL GAS

Wells Commenced on or After January 1, 1977; for the Period January 1, 1977, to December 31, 1978

MARCH 21, 1977.

On March 1, 1977, the Commission issued an order instituting a new national rate proceeding for the period January 1, 1977, to December 31, 1978 (42 FR 13048, March 8, 1977). Certain questions have arisen with respect to that order that we shall address herein.

In that order all independent producers, affiliated producers, pipeline producers, and pipeline respondents were made parties to the proceeding. Included within the definition of an independent producer are persons defined by the Commission as small producers under § 157.40 of the Commission's rules and regulations, although the excessive numbers of persons with small producer certificates prevented listing each one in the Appendix attached to the March 1, 1977 order.

In the Notice of Proposed Rulemaking initiating the last biennial review which culminated in the issuance of Opinion Nos. 770 and 770-A, the Commission specifically excluded from consideration the question of the just and reasonable rate for Alaskan gas. A similar exclusion applies to the 1977-1978 biennial review.

In addition to the persons previously listed as parties to this proceeding, all

persons that were parties to the 1975-1976 biennial review in Docket No. RM75-14 are deemed to be parties to the instant proceeding. A list of such persons is attached as Appendix A below. This does not effect Ordering Paragraph (D) of the March 1, 1977 order requiring interested persons to file a notice of intention to participate, since persons who are parties to the proceeding may nonetheless not desire to take an active part in the proceeding.

The Commission orders. The order issued in this proceeding on March 1, 1977, is amended and clarified as set forth above without thereby modifying the provisions of that order, especially as to the requirement set forth in Ordering Paragraph (D) that interested persons file a notice of intention to participate by April 1, 1977.

By the Commission.

KENNETH F. PLUMB,
Secretary.

APPENDIX A—NATURAL GAS PRODUCERS

Senators James Abourezk, John Durkin, and William Proxmire, and Representatives Les Aspin, Berkley Bedell, William Brodhead, Christopher Dodd, Michael Harrington, Herbert Harris, William Hughes, Andrew Maguire, Tobey Moffett, John Moss, James Oberstar, Richard Ottinger, John Seiberling and Gerry Studds

Alabama Gas Corporation
Alabama-Tennessee Natural Gas Company
Algonquin Gas Transmission Company
Amerada Hess Corporation
American Petrofina Co. of Texas
American Public Gas Association
Amoco Production Company
Anadarko Production Company
Arkansas Louisiana Gas Company
Arkansas-Missouri Power Company
Arkansas Oklahoma Gas Corporation
Ashland Oil, Inc.
Associated Gas Distributors
The Atlantic Richfield Company
Austral Oil Co., Inc.
Aztec Oil and Gas Company
Bass Enterprises Production Company
Perry R. Bass
Belco Petroleum Corporation
Beta Development Company
Black Marlin Pipeline Company
Blue Dolphin Pipe Line Company
Bluebonnet Gas Corporation
Bluefield Gas Company
Burmah Oil and Gas Company
Cabot Corporation
California Company, a Division of Chevron Oil Company
Caprock Pipeline Company
Carnegie Natural Gas Company
Cascade Natural Gas Company
C. B. Gas Gathering Inc.
Champion Petroleum Company
Chandeleur Pipe Line Company
Chevron Oil Co., Western Division
CIG Exploration, Inc.
Cimarron Transmission Company
Cities Service Gas Company
Cities Service Oil Company
Clinton Oil Company
CNG Producing Company
Coastal States Gas Producing Company
Estate of E. Cockrell, Jr., Deceased
Colorado Interstate Gas Co., A Division of Colorado Interstate Corporation
Colorado Interstate Gas Corporation
Colorado Oil and Gas Company
Coltex Corporation
Columbia Fuel Corporation
Columbia Gas Transmission Corporation

Columbia Gas Development Company
Columbia Gulf Transmission Company
Commercial Pipeline Company, Inc.
Consolidated Gas Supply Corporation
Consolidated System LNG Co.
Continental Oil Company
Cox, Edwin L.
Delta Gas, Inc.
Diamond Shamrock Corporation
Dorchester Gas Production Company
East Tennessee Group, et al.
East Tennessee Natural Gas Company
Eastern Shore Natural Gas Company
Eccc, Inc.
E. I. du Pont de Nemours & Company
El Paso Natural Gas Company
El Paso Products Company
Equitable Gas Company
County of Erie, New York and City of Buffalo, New York
Exchange Oil and Gas Company
Exxon Corporation
Farmland Industries Inc.
Federal Energy Administration
Felmont Oil Corporation
Florida Gas Transmission Company
Forest Oil Corporation
Four Corners Gas Producers Association
Freeport Oil Company
Gas Transport, Inc.
General American Oil Co. of Texas
Getty Oil Company
The GHK Company and Gasandarko, Ltd.
Grand Gas Corporation
Grand Valley Transmission Company
Granite State Gas Transmission, Inc.
Great Lake Gas Transmission Company
Gulf Energy and Development Company
Gulf Oil Corporation
Hampshire Gas Company
Helmerich & Payne, Inc.
Horner and Smith
J. M. Huber Corporation
Hassle Hunt Trust
Senator Hubert H. Humphrey, Charles F. Wheatley, Jr. Esquire, William T. Miller, Esquire, Stanley W. Ballis, Esquire, Wheatley & Miller
Hunt Oil Company
Imperial American Management Company
Independent Oil & Gas Association of West Virginia
Independent Petroleum Association of America
Inexco Oil Company
Indicated Producer Respondent Group
Industrial Gas Corporation
Inland Gas Company, Inc.
Inter-City Minnesota Pipeline Ltd., Inc.
Iroquois Gas Company
Interstate Natural Gas Association of America
Jones & Laughlin Steel Corporation
The Jupiter Corporation
Kansas-Nebraska Natural Gas Company
Kentucky-West Virginia Gas Company
Kerr-McGee Corporation
King Resources Company
La Gloria Oil and Gas Company
Lake Shore Pipeline Co.
Lawrenceburg Gas Transmission Corporation
Lone Star Gas Co.
Lone Star Gathering Company
Lone Star Producing Company
Louisiana-Nevada Transit Company
McCulloch Gas Processing Corporation
McCulloch Interstate Gas Corporation
McCulloch Oil Corporation
McCulloch Oil Corporation of California
McCulloch Oil Corporation of Texas
MAPCO Inc.
Marathon Oil Company
Marengo Corporation
Mesa Petroleum Company
Michigan Gas Storage Company
Michigan Public Service Commission
Michigan Wisconsin Pipe Line Company
Mid Louisiana Gas Company

Midwestern Gas Transmission Company
 Mississippi River Transmission Corporation
 George Mitchell and Associates
 Mitchell Energy Corporation
 Mobil Oil Corporation
 Monsanto Company
 Montana-Dakota Utilities Company
 Mountain Fuel Supply Company
 Mountain Gas Co.
 Murphy Oil Corporation
 NAPECO Inc.
 National Fuel Gas Supply Corporation
 Natural Gas & Oil Company
 Natural Gas Pipeline Company of America
 State of New Mexico
 New York Public Service Commission
 NorthEast Blanco Development Corp.
 North Penn Gas Company
 Northern Natural Gas Company
 Northern Natural Gas Producing Company
 Northern States Power Company (Wisconsin)
 Northern Utilities, Inc.
 Northern Utilities, Inc. (Wyoming)
 Northwest Pipeline Corporation
 Northwest Production Corporation
 Ocean Drilling & Exploration Company
 Odessa Natural Gasoline Company
 Ohio River Pipeline Corporation
 Oklahoma Natural Gas Gathering Corporation
 Orange and Rockland Utilities, Inc.
 Pacific Gas and Electric Company
 Pacific Gas Transmission Company
 Pan Eastern Exploration Company
 Panhandle Eastern Pipe Line Company
 Panhandle Producers and Royalty Owners Association
 Commonwealth of Pennsylvania
 Penn-Jersey Pipe Line Company
 Pennsylvania Gas Company
 Pennsylvania Public Utility Commission
 Pennzoll Company
 Pennzoll Producing Company
 Pennzoll Offshore Gas Operators
 Pennzoll Louisiana and Texas Offshore
 The Peoples Natural Gas Company
 Petroleum Inc.
 Phillips Petroleum Company
 Pinto, Inc.
 Pioneer Production Corporation
 Placid Oil Company
 Plaquemines Oil and Gas Company
 The Preston Oil Company
 Pubco Petroleum Corp.
 Public Service Company of Colorado
 Public Service Company of North Carolina, Inc.
 Public Service Commission of Wisconsin
 Public Utilities Commission of State of South Dakota
 Raton Natural Gas Company
 Regis Gas System Inc.
 River Corporation
 The Rodman Corporation
 Sabine Pipe Line Company
 San Diego Gas and Electric Company
 John R. Saller, a Professional Corporation
 Samedan Oil Corporation
 Sea Robin Pipeline Company
 Shell Oil Company

Shell Oil and Gas Company
 Signal Oil and Gas Company
 Skelly Oil Company
 Sohio Petroleum Company
 The South Coast Corporation
 South County Gas Company
 South Georgia Natural Gas Company
 South Texas Natural Gas Gathering Company
 Southern California Gas Company
 Southern Energy Co.
 Southern Indiana Gas & Electric Company
 Southern Natural Gas Company
 Southern Natural Gas Corporation
 Southern Natural Gas Company Joint Venture
 Southern Union Gas Company
 Southern Union Gathering Company
 Southern Union Production Company
 Southwest Gas Corporation
 Standard Oil Company of California
 Standard Pacific Gas Lines, Inc.
 Stephens Production Company
 Stingray Pipeline Company
 Sun Oil Company
 Suburban Propane Gas Company
 Superior Oil Company
 Sylvania Corporation
 Tenneco Inc.
 Tenneco Oil Company
 Tennessee Gas Company
 Tennessee Gas Pipeline Company, A Division of Tenneco, Inc.
 Tennessee Gas Pipe Line Company
 Tennessee Natural Gas Lines, Inc.
 Terra Resources, Inc.
 Texaco Inc.
 Texas Eastern Transmission Corp.
 Texas Gas Exploration Corporation
 Texas Gas Pipe Line Corporation
 Texas Gas Transmission Corporation
 Texasgulf, Inc.
 Texas Oil and Gas Corporation
 Texas Pacific Oil Company, Inc.
 Texas Production Company
 Texoma Production Company
 Tidal Transmission Company
 Transcontinental Gas Pipe Line Corporation
 Transocean Oil, Inc.
 Transwestern Pipeline Company
 Trunkline Gas Company
 Union Light, Heat and Power Company
 Union Oil Company of California
 Union Texas Petroleum, Division of Allied Chemical
 United Cities Gas Company
 United Distribution Companies
 United Gas Pipe Line Company
 United Natural Gas Company
 Urbana Pipe Line Company
 Valley Gas Transmission, Inc.
 Warren Petroleum Company, A Division of Gulf Oil Corporation
 Washington Natural Gas Company
 West Texas Gathering Company
 Western Gas Interstate Company
 Western Transmission Corporation
 Zenith Natural Gas Company

[FR Doc.77-9103 Filed 3-28-77;8:45 am]

[Doc. No. G-12972, et al.]

SUN OIL CO., ET AL.

Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates¹

MARCH 22, 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 18, 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 110). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

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 T. PLUMS,
 Secretary.

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
G-12972- B 2-28-77	Sun Oil Co., 2 Northpark East, P.O. Box 20, Dallas, Tex. 75221.	Michigan Wisconsin Pipeline Co., Laverne Field, Harper County, Okla.	(1)	-----
CI69-232- D 3-9-77	Mobil Oil Corp., Three Greenway Plaza East, suite 800, Houston, Tex. 77046.	Panhandle Eastern Pipeline Co., Guymon-Hugoton (deep) Field, Texas County, Okla.	(1)	-----
CI64-156- C 2-16-77	Marathon Oil Co. (operator), 639 South Main St., Findlay, Ohio 45840.	Colorado Interstate Gas Co., Wamsutter Unit area, Sweetwater County, Wyo.	\$1.44	14.73
CI64-545- C 12-12-76	Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221.	Natural Gas Pipeline Co. of America, Putnam-Oswego Unit, Dewey and Custer Counties, Okla., Hugoton-Anadarko area.	\$19.36	14.66
CI72-147- (C166-470) F 10-21-76	Atlantic Richfield Co. (successor to Sun Oil Co.) P.O. Box 2819, Dallas, Tex. 75221.	Arkansas Louisiana Gas Co., Arkoma area, Edith Richards No. 2 Well, Pittsburg County, Okla.	\$153.07 ¹	14.66
CI75-82- C 3-9-77	Philadelphia Oil Co., 430 Boul- vard of the Allies, Pittsburgh, Pa. 15219.	Kentucky-West Virginia Gas Co., Dickenson County, Va.	\$1.4868 197.40 ² \$5.35 ³	14.73
CI74-528- E 2-28-77	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	El Paso Natural Gas Co., Addition- al wells in Sand Hills Field, Crane County, Tex.	\$63.60 ⁴	14.66
CI75-232- C 2-8-77	Sun Oil Co., 2 Northpark East, P.O. Box 20, Dallas, Tex. 75224.	El Paso Natural Gas Co., Various wells in Sand Hills Field, Crane County, Tex.	\$1.44 1.53	-----
CI77-299- (C170-844) B 2-23-77	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	Natural Gas Pipeline Co. of America, East Grand Valley Field, Beaver County, Okla.	(1)	-----
CI77-300- A 2-24-77	Stephens Production Co., P.O. Box 248, Fort Smith, Ark. 72502.	Arkansas Louisiana Gas Co., Mathers Ranch Field, Hemphill County, Tex.	\$50.0 ⁵	14.73
CI77-301- A 2-24-77	Stephens Production Co., P.O. Box 248, Fort Smith, Ark. 72502.	Arkansas Louisiana Gas Co., Mathers Ranch Field, Hemphill County, Tex.	\$50.2162 ⁵	14.73
CI77-302- A 2-25-77	American Natural Gas Production Co., One Woodward Ave., Detroit, Mich. 48226.	Michigan Wisconsin Pipeline Co., Beekman County, Okla.	\$1.44	14.65
CI77-303- A 2-25-77	Transco Exploration Co., P.O. Box 136, Houston, Tex. 77001.	Transcontinental Gas Pipeline Corp., Loisel Field, sec. 25, T-13- S, R-SE, Iberia Parish, La.	\$1.468830	-----
CI77-304- (C871-672) B 2-28-77	Jack W. Grigsby, et al., 1108 Com- mercial National Bank Bldg., Shreveport, La. 71101.	United Gas Pipeline Co., South- west Bourg Field, Terrebonne Parish, La.	(1)	-----
CI77-305- (G-3117) F 2-28-77	The Superior Oil Co., (successor to Exxon Corp.) P.O. Box 1521, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., South Crowley Field, Acadia Parish, La.	\$63.57 ⁶	15.025
CI77-307- A 2-28-77	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	Cities Service Gas Co., Alpar Tonk- saw Field, Hemphill County, Tex.	\$201.3352 ⁷	14.65
CI77-308- A 2-28-77	Transco Exploration Co., P.O. Box 136, Houston, Tex. 77001.	Transcontinental Gas Pipeline Corp., Myette Point Field, St. Mary Parish, La.	\$1.543930	15.025
CI77-309- A 2-28-77	Monsanto Co., 1300 Post Oak Tower, 5051 Westheimer, Hous- ton, Tex. 77056.	Transwestern Pipeline Co., Uni- versity "21-2" No. 1 Well (Fussel- man formation), Winkler County, Tex.	\$1.54830	14.65
CI77-310- (C166-1056) F 2-29-77	Vernon E. Faulkner (successor to American Petroleum Co. of Texas) Dallas, Tex. 75221.	Texas Eastern Transmission Corp., Bethany-Lougstree Field, De Soto Parish, La.	\$66.7403 ⁸	15.025
CI77-312- A 2-28-77	Helmreich & Payne, Inc., 1579 East 21st St., Tulsa, Okla. 74114.	Michigan Wisconsin Pipeline Co., West Cheyenne Field, Roger Mills County, Okla.	\$1.5250	14.73
CI77-313- B 3-7-77	Exxon Corp., P.O. Box 2180, Hous- ton, Tex. 77001.	Skelly Oil Co., Cooper Jal Field, Lea County, N. Mex.	(1)	-----
CI77-314- A 3-2-77	Southern Union Production Co., suite 1700, Campbell Centre, 8350 North Central Expressway, Dallas, Tex. 75206.	El Paso Natural Gas Co., Basin Dakota Field, Rio Arriba County, N. Mex.	\$94.0 ⁹	14.73
CI77-315- A 3-2-77	Hunt Oil Co., 2900 First National Bank Bldg., Dallas, Tex. 75202.	Michigan Wisconsin Pipeline Co., Eugene Island area, block 296, offshore Louisiana.	\$144.0 ¹⁰ at 14.73	15.025
CI77-316- (C176-51) E 3-2-77	The Superior Oil Co. (successor to McCormick Oil & Gas Corp.).	Tennessee Gas Pipeline Co., South Crowley Field, Acadia Parish, La.	\$63.57 ⁶	15.025
CI77-318- A 3-4-77	Mesa Petroleum Co., P.O. Box 2000, Amarillo, Tex. 79105.	El Paso Natural Gas Co., Blanco Field, San Juan, N. Mex.	\$1.44	14.73
CI77-319- A 3-7-77	Pioneer Production Corp., P.O. Box 2542, Amarillo, Tex. 79105.	El Paso Natural Gas Co., Eddy County, N. Mex.	\$1.7888	14.73
CI77-320- B 3-8-77	Cabot Corp., P.O. Box 1101, Pampa, Tex. 79065.	Skelly Oil Co., Ware lease, Carson County, Tex., West Panhandle Field.	(2) (2)	-----
CI77-321- 3-8-77	Cabot Corp., P.O. Box 1101, Pampa, Tex. 79065.	Northern Natural Gas Co., R. C. Ware, et al., lease, in Carson County, Tex.	(2) (2)	-----
CI77-322- A 3-10-77	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	El Paso Natural Gas Co., Red Lake Field, Eddy County, N. Mex.	\$153.98 ¹¹	14.73

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

¹ Lease was surrendered.

² Partial assignment of oil and gas lease (S-6062-B1) to Cities Service Oil Co., effective Dec. 1, 1976.

³ Subject to adjustments pursuant to opinion No. 779, as amended.

⁴ Subject to downward Btu adjustment, plus tax reimbursement.

⁵ Subject to upward and downward Btu adjustment, plus tax reimbursement.

⁶ Plus 1.0¢ escalation per quarter beginning Oct. 1, 1976—wells commenced after Jan. 1, 1975.

⁷ Plus 1.0¢ escalation per year—wells commenced after Jan. 1, 1973, and prior to Jan. 1, 1975.

⁸ Plus 1.0¢ escalation per year—wells commenced prior to Jan. 1, 1973.

⁹ Subject to upward and downward Btu adjustment.

¹⁰ Includes 51.3¢ Btu adjustment and 1.4¢ gathering.

¹¹ Wells commenced on or after Jan. 1, 1975.

- ¹² Completion operation into a different formerly nonproductive reservoir commenced on or after Jan. 1, 1973, in a well spudded prior to Jan. 1, 1974.
- ¹³ Well plugged and abandoned.
- ¹⁴ Plus 4.054¢ tax reimbursement and subject to upward and downward Btu adjustment pursuant to opinion No. 800-H.
- ¹⁵ Applicant proposes to collect the national rate in accordance with opinion No. 770, as amended.
- ¹⁶ Applicant is willing to accept a permanent certificate in accordance with opinion No. 770, as amended.
- ¹⁷ Includes 145.0¢ base rate, 11.756¢ State taxes, 43.578¢ Btu adjustment and 1.0000¢ gathering.
- ¹⁸ Subject to upward and downward Btu adjustment and 7.0¢ tax reimbursement.
- ¹⁹ Well has been reclassified.
- ²⁰ Plus 7.5¢ tax reimbursement and 15.23¢ Btu adjustment.
- ²¹ Includes 12.0¢ tax reimbursement and 1.5¢ gathering.
- ²² Applicant seeks to abandon a percentage-type sales contract to Skelly. Applicant's undivided one-half share of casinghead gas sold under this contract is processed in Skelly Oil Co.'s Crawford plant with the residue gas being sold for resale from Skelly to Northern Natural Gas Co.
- ²³ Applicant is filing to authorize the sale and delivery of certain residue gas to Northern Natural Gas Co. at the outlet of Kerr-McGee Pampa Gasoline plant situated in Gray County, Tex.

[FR Doc.77-9148 Filed 3-28-77;8:45 am]

[Doc. No. E77-69]

CONSOLIDATED EDISON CO. OF NEW YORK, INC.

Emergency Natural Gas Act of 1977; Emergency Order

On March 21, 1977, Consolidated Edison Company of New York, Inc. (Con Ed), 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 101,458 MMBtu of natural gas from Odessa Natural Gas Corporation (Odessa). This gas will be used to repay Pacific Gas and Electric Company (PG&E) for some 89,598 Mcf (96,626 MMBtu) of natural gas taken by Con Ed for itself and others on January 30, 1977, and February 4 through 7, 1977. See *Consolidated Edison Company of New York, Inc.*, Docket No. E77-44 (March 3, 1977).

By letter submitted March 25, 1977, Con Ed advised that it had agreed to purchase this supply of gas prior to the issuance of the order advising of the availability of gas in California which could be used to satisfy repayment obligations to California Utilities. See *Sumpf-Williams, et al.*, Docket No. E77-56 (March 17, 1977). Thus, Con Ed is not in a position to use the available California supplies because of its commitment to purchase these volumes. Also, Con Ed's repayment obligation is very small and Con Ed would be unable to purchase any of the California supplies for an extended period of time without incurring costs greater than it will incur under this transaction.

Con Ed proposes to purchase the subject volumes at a price of \$2.25 per MMBtu inclusive of all adjustments. Thus, the price is fair and equitable in accordance with Order No. 2.

Odessa will deliver these volumes to the outlet of the LoVaca Gathering Company (LoVaca) Joint Venture Meter Station. At this point, the gas will be delivered to El Paso Natural Gas Company (El Paso) for delivery to PG&E. El Paso will charge a transportation rate of 1.0 cents per MMBtu plus 5 percent of the volumes transported for compressor fuel. Since the parties have agreed upon transportation rates, I find no basis for prescribing other rates and charges.

Con Ed advises and I find that the gas made available by Odessa will result in a commingling of interstate natural gas with Odessa's normal intrastate system

gas supply and with volumes of gas owned by other parties. The contractual provisions between Odessa 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 Con Ed seeks approval may result in some commingling of interstate natural gas with Odessa'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. 4, 9), the suppliers of such gas, which is so commingled, may not terminate existing contracts with Odessa 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 Public Law 95-2 since Odessa is selling, delivering and transporting gas for Con Ed pursuant to Section 6(a) of that Act. Odessa and any third person whose gas is commingled with Con Ed'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, Odessa is not classified as a natural gas company within the meaning of the Natural Gas Act. Section 6(b) (1) (A) 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 of this gas will not subject Odessa or any person supplying gas to Odessa to the provisions of the Natural Gas Act or to regulation as a common carrier under state law.

Con Ed shall submit weekly reports as required by Order No. 4.

Pursuant to Section 6(a) of the Act, I hereby authorize Odessa to sell to Con Ed 101,458 MMBtu of natural gas on the terms and conditions set forth in Con Ed's filing in this proceeding. Pursuant to Section 6(c) (1) of the Act, I hereby authorize Odessa, LoVaca and El Paso to transport and deliver such volumes for Con Ed.

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 Con Ed, PG&E, Odessa, LoVaca and El Paso. 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 25, 1977.

[FR Doc.77-9565 Filed 3-28-77;11:59 am]

FEDERAL OPEN MARKET COMMITTEE

DOMESTIC OPEN MARKET OPERATION

Authorization

In accordance with the Committee's rules regarding availability of information, notice is given that at its meeting March 15, 1977, paragraph 1(b) of the Committee's authorization for domestic open market operations was amended to read as follows:

1(b) When appropriate, to buy or sell in the open market, from or to acceptance dealers and foreign accounts maintained at the Federal Reserve Bank of New York, on a cash, regular, or deferred delivery basis, for the account of the Federal Reserve Bank of New York at market discount rates, prime bankers' acceptances with maturities of up to nine months at the time of acceptance that (1) arise out of the current shipment of goods between countries or within the United States, or (2) arise out of the storage within the United States of goods under contract of sale or expected to move into the channels of trade within a reasonable time and that are secured throughout their life by a warehouse receipt or similar document conveying title to the underlying goods; provided that the aggregate amount of bankers' acceptances held at any one time shall not exceed \$100 million.

By order of the Federal Open Market Committee, March 21, 1977.

ARTHUR L. BROIDA,
Secretary.

[FR Doc.77-9368 Filed 3-28-77;8:45 am]

FEDERAL RESERVE SYSTEM

[H. 2, 1977 No. 10]

ACTIONS OF THE BOARD

Applications and Reports Received During the Week Ending March 5, 1977

ACTIONS OF THE BOARD

Statement by Chairman Arthur F. Burns, statement before the House Committee on the Budget.

Statement by Philip E. Coldwell, statement before the Commerce, Consumer, and Monetary Affairs Subcommittee of the House Committee on Government Operations on H.R. 2176, a bill that would direct the General Accounting Office to conduct audits of the Federal Reserve Board and all of the Federal Reserve Banks.

Regulations D and Q "Loan-to-Lender" program—notice of continuation of waiver of reserve requirements and interest rate limitations (Docket No. R-0085).

Freedom of Information Act, submission of the Board's annual report to Congress covering the implementation of its administrative responsibilities under the Act during calendar year 1976.

Ramapo Financial Corporation, Wayne Township, New Jersey, order amending time requirement for raising equity capital to augment the capital of its subsidiary, The Ramapo Bank, Wayne Township, New Jersey; issuance of order.

Bank of Cookeville, Cookeville, Tennessee, proposed merger with Bank of Putnam County, Monterey, Tennessee; report to the Federal Deposit Insurance Corporation on competitive factors.

Subordinated, issuance of subordinated capital notes by Tracy-Collins Bank and Trust Company, Salt Lake City, Utah.

Central Bancorp, Inc., Owensboro, Kentucky, extension of time to April 1, 1977, within which to file its registration statement.¹

Ameribanc, Inc., St. Joseph, Missouri, extension of time to June 21, 1977, within which it may consummate the merger with Consolidated Bancshares of Missouri, Inc., St. Joseph, Missouri.¹

First Missouri Banks, Inc., Creve Coeur, Missouri, extension of time until May 31, 1977, to open its de novo bank, First Missouri Bank of West County, St. Louis, Missouri.¹

Morgan Guaranty International Finance Corporation, New York, New York, extension of time within which to acquire, directly or indirectly, additional shares of Bank Almahrek S.A.L., Beirut, Lebanon.¹

Peoples Bank & Trust Company, Russellville, Arkansas, to make an additional investment in bank premises.¹

Detroit Bank—Troy, Troy, Michigan, extension of time to April 15, 1977, within which to establish branches at the intersections of (1) Square Lake and Rochester Roads, and (2) of John R and Watties Roads, both in Troy, Michigan.¹

United Jersey Bank/Northwest, Dover, New Jersey, extension of time within which to open a branch office in the vicinity of Glen and Edison Roads, Township of Sparta, New Jersey.¹

Termination of registration pursuant to Regulation G for Funding, Inc., Fort Lauderdale, Florida.¹

Termination of registration pursuant to Regulation G for St. Louis Telephone Employees Credit Union, St. Louis, Missouri.¹

Termination of registration pursuant to Regulation G for St. Louis Headquarters Telephone Credit Union, St. Louis, Missouri.¹

Termination of registration pursuant to Regulation G for Memphis Buckeye Federal Credit Union, Memphis, Tennessee.¹

Mission Bank, El Toro, California, proposed merger with Southwest Bank, Vista, California; report to the Federal Deposit Insurance Corporation on competitive factors.¹

New Franken Bank, New Franken, Wisconsin, proposed merger with Peoples Marine Bank of Green Bay, Green Bay, Wisconsin; report to the Federal Deposit Insurance Corporation on competitive factors.¹

Southeast Bank of West Bradenton, National Association, Manatee County, Florida, proposed merger with Southeast National Bank of Bradenton, Bradenton, Florida; report to the Comptroller of the Currency on competitive factors.¹

Subsidiaries of Pan American Bancshares, Inc., Miami, Florida, proposed merger with Pan American Bank of Kendale Lakes, National Association, Kendale Lakes, Florida; report to the Comptroller of the Currency on competitive factors.¹

Citibank Overseas Investment Corporation, Wilmington, Delaware, extension of time within which to complete its investment in Istituto Italiano di Intermediazione, Milan, Italy.¹

To establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

Union Trust Company of Maryland, Baltimore, Maryland, Branch to be established at the intersection of Crusader Road and Meteor Avenue, Cambridge, Dorchester County.¹

Union Bank & Trust Company, Montgomery, Alabama, Branch to be established at 5510 Atlanta Highway, Montgomery.¹

To establish an Overseas Branch of a Member Bank Pursuant to Section 25 of the Federal Reserve Act.

Manufacturers Hanover Trust Company; re—Branch—Manilla, Philippines.

International Investments and Other Actions Pursuant to Sections 25 and 25(a) of the Federal Reserve Act and Sections 4(c)(9) and 4(c)(13) of the Bank Holding Company Act of 1956, as amended.

Wells Fargo Bank International; re—continue to hold Wells Fargo Assessoria Financiara Ltda., Brazil after the latter issues debt obligations.

To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

Farmers Bancshares, Inc., Hardinsburg, Kentucky, for approval to acquire 80 per cent of the voting shares of The Farmers Bank, Hardinsburg, Kentucky.¹

Page Bank Holding Company, Page, North Dakota, for approval to acquire 92.7 per cent of the voting shares of Page State Bank, Page, North Dakota.

Buffalo Bank Corporation, Buffalo, Wyoming, for approval to acquire 80 per cent or more of the voting shares of Wyoming Bank and Trust Company, Buffalo, Wyoming.¹

To Expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

First International Bancshares, Inc., Dallas, Texas, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of the successor by merger to Beaumont State Bank, Beaumont, Texas.

Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

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Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

DENIED

Bancorporation of Montana, Great Falls, Montana, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of Bank of Montana, Helena, Montana.

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

DELAYED

Sun Banks of Florida, Inc., Orlando, Florida, notification of intent to engage in de novo activities (the business of acting as agent or broker for the sale of credit life/accident and health insurance directly related to extensions of credit by the bank holding company and/or its banking and non-banking subsidiaries) at 15 West Church Street, Orlando, Florida, through a subsidiary, Sunbank Agency, Inc. (3/4/77).¹

Platte Valley Bancorp, Inc., Brighton, Colorado, notification of intent to engage in de novo activities (providing bookkeeping or data processing services for the internal operations of the holding company, its subsidiary banks, and other unaffiliated organizations such as commercial banks and credit union) at 25 North Spruce Street, Colorado Springs, Colorado, through an interest in First Financial Services, Inc. (3/4/77).¹

PERMITTED

Northern States Bancorporation, Inc., Detroit, Michigan, notification of intent to relocate de novo activities (mortgage banking activities by originating residential, commercial and industrial mortgage loans for its own account but principally for sale to others, servicing such loans for others, and acting as an investment or a financial adviser to the extent of serving as the advisory company for a mortgage or real estate investment trust) from 717 S. Grand Traverse Street, Flint, Michigan to G 3306 W. Corunna Road, Flint, Michigan, through its subsidiary, Kelly Mortgage and Investment Company (3/2/77).¹

First National of Nebraska, Inc., Omaha, Nebraska, notification of intent to engage in de novo activities (in all aspects of the business of a finance company engaged in making or acquiring, for its own account or the account of others and servicing loans and other extensions of credit in connection with a credit card business) at One First National Center, Omaha, Nebraska and will serve the communities of a five State area consisting of Nebraska, Iowa, Minnesota, South Dakota and North Dakota, through a subsidiary, First National Credit Corporation (3/3/77).¹

The Osawatimie Agency, Inc., Osawatimie, Kansas, notification of intent to continue to engage in de novo activities (the sale of credit life and credit accident and health insurance in connection with extensions of credit by its subsidiary bank, The First National Bank of Osawatimie, Osawatimie, Kansas (3/4/77).¹

APPROVED

Trust Company of Georgia, Atlanta, Georgia, for approval to acquire 100 per cent of the voting shares of Adair Mortgage Company, Atlanta, Georgia.

¹ 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

² 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

¹ Application processed on behalf of the Board of Governors under delegated authority.

² Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

Trust Company of Georgia, Atlanta, Georgia, for approval to acquire through its wholly-owned subsidiary, Adair Mortgage Company, Atlanta, Georgia, the loan servicing contracts and certain other assets of Georgia Loan and Trust Company, Macon, Georgia.

Farmers Bancshares, Inc., Hardinsburg, Kentucky, for approval to acquire the assets of Farmers Insurance Agency (previously operated as the Bennett Insurance Agency), Hardinsburg, Kentucky.²

APPLICATIONS RECEIVED

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

Royal Trust Bank of Tampa, Tampa, Florida. Branch to be established on the South Side of Fowler Avenue, 365 feet West of 22nd Street, in the city of Tampa, Hillsborough County.

The State Savings Bank of West Branch, West Branch, Michigan. Branch to be established at 620 Saginaw Street, Village of Sterling, Deep River Township, Arenac County.

Gaylord State Bank, Gaylord, Michigan. Branch to be established at the Southeast Corner of Old U.S. 27 and Grandview Boulevard, Gaylord.

To Establish an Overseas Branch of a Member Bank Pursuant to Section 25 of the Federal Reserve Act.

Citibank North America: re—Branch—Victoria, Seychelles.

Northern Trust Company: re—Branch—Hong Kong.

To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

Inland Beloit Corporation, Milwaukee, Wisconsin, for approval to acquire 100 percent of the voting shares of Financial Network Corporation, Beloit, Wisconsin, and Community Holding Corporation, Beloit, Wisconsin, and indirectly acquire 95.4 percent of the voting shares of The Beloit State Bank, Beloit, Wisconsin, and 75.3 percent of the voting shares of Community Bank of Beloit, Beloit, Wisconsin.

To Expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

Alabama Bancorporation, Birmingham, Alabama, for approval to acquire 100 percent (less directors' qualifying shares) of the voting shares of The Farmers & Merchants Bank, Ashford, Alabama.

Inland Heritage Corporation, Wauwatosa, Wisconsin, for approval to acquire the successor by merger to Community Holding Corporation, Beloit, Wisconsin, and indirectly acquire Community Bank of Beloit, Beloit, Wisconsin.

Inland Heritage Corporation, Wauwatosa, Wisconsin, for approval to acquire the successor by merger to Financial Network Corporation, Beloit, Wisconsin, and indirectly acquire The Beloit State Bank, Beloit, Wisconsin.

The Jacobus Company, Wauwatosa, Wisconsin, for approval to acquire the successor by merger to Community Holding Corporation, Beloit, Wisconsin, and indirectly acquire Community Bank of Beloit, Beloit, Wisconsin.

The Jacobus Company, Wauwatosa, Wisconsin, for approval to acquire the successor by merger to Financial Network Corpora-

tion, Beloit, Wisconsin, and indirectly acquire The Beloit State Bank, Beloit, Wisconsin.

Manufacturers National Corporation, Detroit, Michigan, for approval to acquire 100 percent of the voting shares of Manufacturers Bank of St. Clair Shores, St. Clair Shores, Michigan, a proposed new bank. Valley Bancorporation, Appleton, Wisconsin, for approval to acquire 80 percent or more of the voting shares of Shawano National Bank, Shawano, Wisconsin.

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

CORRECTION

Industrial National Corporation, Providence, Rhode Island, notification of intent to continue to engage in de novo activities (consumer finance and insurance agency for any insurance directly related to an extension of credit or provision of other financial services) at 5972 University Boulevard, Suite No. 1, Jacksonville, Florida, through a subsidiary, Southern Discount Company, a subsidiary of Industrial National Corporation. This was placed on H.2 No. 9 as to engage in de novo activities. It should have read to continue to engage in de novo activities (2/22/77).²

CORRECTION

Industrial National Corporation, Providence, Rhode Island, notification of intent to continue to engage in de novo activities (consumer finance and insurance agency for any insurance directly related to an extension of credit or provision of other financial services) at 42-A Court Square, Mocksville, North Carolina, through a subsidiary, Southern Discount Company, a subsidiary of Industrial National Corporation. This was placed on H.2 No. 9 as to engage in de novo activities. It should have read to continue to engage in de novo activities (2/22/77).²

Massachusetts Bankshares, Inc., Hingham, Massachusetts, notification of intent to engage in de novo activities (making, acquiring, or servicing loans or other extensions of credit to persons, partnerships, trusts, associations and corporations secured by a mortgage or other lien on real estate, or pledge, or by security interest in personal property, or without security) at 13 Main Street, Hingham, Massachusetts, through its subsidiary, Mortgage Shops, Inc. (3/1/77).²

Citicorp, New York, New York, notification of intent to relocate de novo activities (making of consumer installment personal loans and purchasing consumer installment sales finance contracts; credit related insurance coverages are sold; if this proposal is effected, Nationwide Financial Corporation of Idaho will continue to perform the above mentioned activities at the proposed new location; credit related insurance coverages will be sold in accordance with applicable State laws and regulations; in regard to the sale of credit related insurance, the business of a general insurance agency is not conducted) from 3401 Chinden Boulevard, Boise, Idaho to Corner of Five Mile Road and Fairview Avenue, Boise, Idaho, through its subsidiary, Nationwide Financial Corporation and its subsidiary, Nationwide Financial Corporation of Idaho (3/1/77).²

Bank of Virginia Company, Richmond, Virginia, notification of intent to relocate de novo activities (making loans or extensions of credit such as would be made by a finance company; and acting as agent for credit life/accident and health insurance

and other insurance written to protect collateral during the period of credit extension) from 721 Braddock Avenue, Braddock, Pennsylvania to The Greater Valley Shopping Center, Room L, 500 Lincoln Highway, North Versailles, Pennsylvania, through its indirect subsidiary, General Finance Service Corporation (3/4/77).²

Tennessee Valley Bancorp, Inc., Nashville, Tennessee, notification of intent to relocate de novo activities (the making or acquiring, for its own account or for the account of others, loans or other extensions of credit, for the servicing of loans and other extensions of credit made by it and any other persons or entities; acting as an investment or financial adviser; acting as a mortgage bank or agent for others in negotiating, obtaining, placing, or making loans including, but not limited to, real estate loans and in connection therewith and/or to aid thereof; and to sell insurance directly related to such mortgages as prescribed by laws of the State of Tennessee and Kentucky) from 4004 Dutchmans Lane, Louisville, Kentucky to Suite 115, Breckinridge Building, 4400 Breckinridge Lane, Louisville, Kentucky, through a subsidiary, TVB Mortgage Corporation (2/28/77).²

Merchants National Corporation, Indianapolis, Indiana, notification of intent to engage in de novo activities (leasing of capital goods and equipment to industry and banks or others, or acting as agent, broker, or adviser in leasing such personal property where at the inception of the initial lease the effect of the transaction will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease) at Austin Center, Cypress at Westshore Boulevard, Tampa, Florida, through a subsidiary of Circle Leasing Corp. known as Circle Leasing of Florida Corp. (2/28/77).²

Otto Bremer Company and Otto Bremer Foundation, both of St. Paul, Minnesota, notification of intent to engage in de novo activities (providing portfolio investment advice to any other person and furnishing general economic information and advice, general economic statistical forecasting services and industry studies) at 1300 Northern Federal Building, 366 North Wabasha Street, Saint Paul, Minnesota, through a wholly-owned subsidiary, Bremer Service Company, Inc. (3/1/77).²

First Security Corporation, Salt Lake City, Utah, for approval to continue to engage in the activities of an industrial mortgage loan company, through a subsidiary known as Simco Industrial Mortgage Company, San Jose, California.

First Security Corporation, Salt Lake City, Utah, notification of intent to engage in de novo activities (making or acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a mortgage company particularly commercial and residential real estate loans) at 1325 South 800 East Street, Orem, Utah, through its subsidiary, Utah Mortgage Loan Corporation (2/22/77).²

First Security Corporation, Salt Lake City, Utah, notification of intent to engage in de novo activities (making or acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a mortgage company particularly commercial and residential real estate loans) at 1445 South Poplar Street, Casper, Wyoming, through its subsidiary, Utah Mortgage Loan Corporation (2/22/77).²

Security Pacific Corporation, Los Angeles, California, notification of intent to relocate de novo activities (the origination and acquisition of mortgage loans including development and construction loans on multi-family and commercial properties for its own account or for the sale to others and the servicing of such loans for others) from 3441 Torrance Boulevard, Torrance, California to 20620 South Leapwood, Carson, California, through its subsidiary, Security Pacific Mortgage Corporation (2/28/77).²

Wells Fargo & Company, San Francisco, California, for approval to acquire shares of Ben G. McGuire & Company, Houston, Texas (engaged in mortgage banking, to include making or acquiring, for its own account or for the account of others, loans and other extensions of credit; servicing loans and other extensions of credit for other persons).

REPORTS RECEIVED

Registration Statement Filed Pursuant to Section 12(g) of the Securities Exchange Act.

Cape Cod Bank and Trust Company, Hyannis, Massachusetts.

Current Report Filed Pursuant to Section 13 of the Securities Exchange Act.

The Dollar Savings and Trust Company, Youngstown, Ohio.

PETITIONS FOR RULEMAKING

None.

Board of Governors of the Federal Reserve System, March 23, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-9366 Filed 3-28-77;8:45 am]

TRUST COMPANY OF GEORGIA, ATLANTA, GA.

Order Approving Acquisition of Bank

Trust Company of Georgia, Atlanta, Georgia, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting shares (less directors' qualifying shares) of the successor by merger to The First National Bank of Albany, Albany, Georgia ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application affording opportunity for interested persons to submit comments and views has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and this Federal Reserve Bank has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the third largest banking organization in Georgia, controls eight banks, existing and approved, which have deposits of \$1.2 billion or 9.9 percent of deposits in all commercial banks of the State. (All banking data are as of December 31, 1975, and reflect acquisitions and formations approved by the Board through February 1, 1977.) Acquisition of Bank, having deposits of \$28 million would increase Applicant's share of commercial bank deposits by less than one percent and would not change Applicant's rank among other banking organizations in the State in aggregate commercial bank deposits. No undue concentration of banking resources in Georgia would result.

Applicant is seeking to make its initial entry into the Dougherty County market, which is located in the southwestern part of Georgia. Applicant, in acquiring Bank, the third largest of four banks in the market with deposits representing 13.9 percent of commercial bank deposits in the market, will not substantially affect banking competition in the Dougherty County market.

Applicant's closest subsidiary bank is at Columbus, Georgia, 84 miles northwest of Bank. No competition exists between Applicant's banking subsidiaries and Bank, and it is not likely that significant future competition would develop between them because of the distances involved and Georgia's restrictive branching laws. The acquisition would have no adverse competitive effects.

Financial and managerial resources and prospects of Applicant, its subsidiaries and Bank are considered to be generally satisfactory and their future prospects appear favorable. The proposed affiliation with Applicant will allow Bank to make available to the public personal and corporate trust services, investment management, international banking, bond department, leasing and data processing activities. Considerations relating to convenience and needs of the community to be served lend weight toward approval. It is this Federal Reserve Bank's judgment that consummation of the proposed transaction would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Federal Reserve Bank of Atlanta acting under delegated authority for the Board of Governors of the Federal Reserve System, effective March 16, 1977.

ARTHUR H. KANTNER,
Senior Vice President.

[FR Doc.77-9367 Filed 3-28-77;8:45 am]

FEDERAL TRADE COMMISSION

[D. 9044]

GULF OIL CORP.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Placement of Consent Agreement on Public Records 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 of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14), 40 FR 15236, Apr. 4, 1975).

DATE: Comments must be received on or before May 31, 1977.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, D.C. 20580.

The agreement herein, by and between Gulf Oil Corporation, a corporation, respondent in a proceeding initiated by the Federal Trade Commission through the issuance of its complaint on July 15, 1975, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rule governing consent order procedure.

1. Respondent Gulf Oil Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its offices and principal place of business located at 435 7th Avenue, Pittsburgh, Pennsylvania.

2. Respondents have been served with a copy of the complaint, charging them with violation of the Truth in Lending Act and its implementing regulation, Regulation Z.

3. Respondent admits all the jurisdictional facts set forth in the complaint.

4. Respondent waives:

- (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.

5. This agreement shall not become 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 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, within sixty (60) days after the acceptance, 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. The Commission may at any time pending final acceptance of this order, require hearings on the relief requirements provided by this Order.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint.

7. 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 § 3.25(d) of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue 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 shall become final 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 on respondent. Mailing of the complaint and decision containing the agreed to order to proposed respondent's address as stated in the agreement (To the attention of: General Counsel) shall constitute service. Proposed respondents waive any rights they may have to any other manner of service. 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.

8. Respondent has read the complaint, and the order set forth below, and they understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that they may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

It is ordered, That respondent Gulf Oil Corporation, a corporation, its successors and assigns, and its representatives, agents and employees, directly or through any corporate or other device, in connection with any advertisement to aid, promote or assist directly or indirectly, any arrangement or extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR 226) of the Truth in Lending Act (15 U.S. §§ 1601-65 (1970)), as amended, 15 U.S. §§ 1601-65a (Supp. IV 1974), do forthwith cease and desist from:

1. Failing in any advertisement to aid, promote, or assist directly or indirectly an extension of consumer credit repayable by agreement in more than four installments, unless a specific finance charge is or may be imposed, to state clearly and conspicuously: "The Cost of Credit is Included in the Price Quoted for the Goods and Services", as required by § 226.10(f) of Regulation Z.

2. Using in any advertisement to aid, promote or assist directly or indirectly an extension of consumer credit repayable by agreement in more than four installments, unless a specific finance charge is or may be imposed, any of the following statements:

You pay no finance charge * * *
There are no finance charges * * *
No charge for credit * * *

or using other statements of similar import and meaning. *Provided that* respondent may use the statement:

There is no additional cost of credit or finance charge * * *
No additional finance charge * * *
No additional cost of credit * * *
No separate finance charge * * *

or other statements of similar import and meaning, when such statements are used in conjunction with the disclosure required by § 226.10(f) of Regulation Z.

3. Supplying with the disclosures required by § 226.10(f) of Regulation Z any additional information which is stated, utilized or placed so as to mislead or confuse the customer or contradict, obscure or detract attention from the disclosure required by § 226.10(f) of Regulation Z, in violation of § 226.6(c) of Regulation Z.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions in the United States involved in the advertisement or extension of consumer credit.

It is further ordered, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Gulf Oil Corporation.

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 a part of

the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether to withdraw the agreement or make final the agreement's proposed order.

The Complaint in this matter alleged that the respondent had failed to clearly and conspicuously disclose in conjunction with the advertisements for extensions of consumer credit repayable in more than four installments that "the cost of credit is included in the price quoted for the goods and services", as required by Section 146 of the Truth in Lending Act. The complaint further alleged that in certain advertisements in which the respondent had made the required disclosure the respondent had included additional information which contradicted, obscured or detracted attention from the information required to be disclosed by the Truth in Lending Act.

The proposed order requires the respondent make the disclosures required by Section 146 of the Truth in Lending Act as interpreted by § 226.10(f) of Regulation Z. In addition, the proposed order prohibits the respondent from including in its advertisement information which contradicts, detracts or obscures from the disclosure required to be made by Section 146 of the Truth in Lending Act and § 226.10(f) of Regulation Z.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc. 77-9335 Filed 3-28-77; 8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration MEDICAL RADIATION ADVISORY COMMITTEE

Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) (formerly Subpart D of Part 2 prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)) relating to advisory committees. The following advisory committee meeting is announced:

Committee name	Date, time, and place	Type of meeting and contact person
Subcommittee on the Division of Training and Medical Applications of the Medical Radiation Advisory Committee.	Apr. 18 and 19, 10 a.m., room T-400, 12220 Twinbrook Parkway, Rockville, Md.	Open public hearing Apr. 18, 10 a.m. to 11 a.m.; open committee discussion Apr. 18, 11 a.m. to 5 p.m.; Apr. 19, 9 a.m. to 4 p.m.; Mark Barrett (TFX-71), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2845.

General function of the committee. Advises on the formulation of policy and development of a coordinated program related to the application of ionizing radiation in the healing arts.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of education and credentialing of medical radiation technologist; quality assurance programs in diagnostic radiology; medical radiation exposure data; and recommendations on medical x-ray exposures.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and

Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14 (formerly Subpart D of Part 2, prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)).

Dated: March 21, 1977.

JOSEPH P. HILE,
Associate Commissioner
for Compliance.

[FR Doc. 77-9035 Filed 3-28-77; 8:45 am]

[Docket No. 76N-0483]

PARKE, DAVIS & CO.

Benlylin Expectorant; Hearing on Proposal To Deny Approval of Supplemental New Drug Application

AGENCY: Food and Drug Administration, HEW.

ACTION: Notice.

SUMMARY: FDA is granting a hearing on the proposal to deny approval of a supplemental new drug application (NDA 6-514/S-007) for the over-the-counter (OTC) marketing of Benlylin Expectorant as an antitussive, and is announcing a prehearing conference, at which the date for the hearing will be set.

DATES: Prehearing conference on May 2, 1977 at 10 a.m. Notices of participation due by April 28, 1977. Disclosure of data and information by May 31, 1977.

ADDRESSES: FDA Hearing Room, Rm. 4A-35, 5600 Fishers Lane, Rockville, MD 20857. FDA Hearing Clerk, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Tenny P. Neprud, Compliance Regulation Policy Staff (HFC-10), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857. (301-443-3480).

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs issued a notice of opportunity for hearing, published in the FEDERAL REGISTER of November 30, 1976 (41 FR 52537), on his proposed denial of a supplemental new drug application for OTC marketing of Benlylin Expectorant as an antitussive on the grounds that it has not been shown to be safe for OTC distribution and has not been shown to be effective for use as an antitussive. A request for hearing has been received from Parke, Davis & Co. and is granted as to the issues set out

in this notice. The issues are essentially the same as those specified in the hearing request. A prehearing conference will be held at 10 a.m. on May 2, 1977, before Administrative Law Judge Daniel J. Davidson, in the FDA Hearing Room at the address given above.

Parties to the hearing will be the Bureau of Drugs of FDA and Parke, Davis & Co.

The Commissioner has reviewed the issues of fact for which a hearing is requested. One of the issues for hearing suggested by Parke, Davis & Co. is whether Benlylin Expectorant is effective for use as an antitussive. The Commissioner had previously indicated in the November 30, 1976 notice that if a hearing were held, the issue of effectiveness would be limited to the OTC use of Benlylin Expectorant as an antitussive. However, the Commissioner has concluded that, in the interest of judicial economy and convenience, the effectiveness of Benlylin Expectorant as an antitussive for prescription use should also be a factual issue in this hearing. Since, as was indicated in the November 30, 1976 notice, the issue of effectiveness of Benlylin as an OTC product is indistinguishable from the issue of its effectiveness as a prescription product, the applicant will not be prejudiced by this broadening of the issue.

The Commissioner concludes that a hearing will be granted as to the following factual issues:

1. Whether the NDA for Benlylin Expectorant (NDA 6-514/S-007) contains reports of investigations or other information adequate to demonstrate the safety of the drug for OTC distribution, as required by section 505(d) (1), (2), and (4) of the act (21 U.S.C. 355(d) (1), (2), and (4)).

2. Whether the NDA for Benlylin Expectorant (NDA 6-514/S-007) demonstrates that there is substantial evidence of effectiveness of the drug as an antitussive in the form of adequate and well-controlled clinical investigations, as defined by § 314.111(a) (5) (21 CFR 314.111(a) (5)), on the basis of which it could fairly and responsibly be concluded by experts, qualified by scientific training and experience to evaluate drugs, that Benlylin Expectorant is effective as an antitussive for prescription or OTC use.

3. Whether Benlylin Expectorant is generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling.

The Bureau of Drugs of FDA has filed with the Hearing Clerk a narrative statement setting forth its position with respect to the issues for hearing, and a summary of the types of evidence intended to be introduced in support of its position at the hearing. Additionally, the Bureau has filed with the Hearing Clerk copies of the NDA, published studies, and all other data bearing on the question of whether Benlylin Expectorant is safe and

effective for OTC marketing as an antitussive.

Interested persons may obtain a copy of the narrative statement from the office of the Hearing Clerk at the address given above. Such persons may also examine the data on Benlyn Expectorant at the office of the Hearing Clerk from 9 a.m. to 4 p.m., Monday through Friday.

The hearing will take place in the FDA Hearing Room on a date to be set at the prehearing conference. Presiding will be Administrative Law Judge Daniel J. Davidson. Written notices of participation must be filed with the Hearing Clerk, not later than April 28, 1977.

The hearing will be open to the public. Any participant may appear in person, or by or with counsel, or with other qualified representatives, and may be heard with respect to matters relevant to the issues under consideration. Participants other than the Bureau of Drugs shall disclose data and information pursuant to § 12.85 (21 CFR 12.85, formerly § 2.153 prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)) by May 31, 1977.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053, as amended (21 U.S.C. 355)) and § 314.200(g) (21 CFR 314.200(g)) and under authority delegated to him (21 CFR 5.1), the Commissioner orders that a public hearing be held on the issues set out in this notice.

Dated: March 25, 1977.

JOSEPH P. HILE,
Associate Commissioner
for Compliance.

[FR Doc. 77-9534 Filed 3-28-77; 9:46 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. I-4410]

IDAHO

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

The Forest Service, Department of Agriculture, filed application Serial No. I-4410, on July 1, 1971, for a withdrawal in relation to the following described lands:

CLEARWATER NATIONAL FOREST MUSSELSHELL CAMAS HISTORIC SITE, BOISE MERIDIAN

T. 35 N., R. 6 E.,
Sec. 19, E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$,
S $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 20, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 29, NW $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 30, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ -
NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ -
NE $\frac{1}{4}$.

The area described aggregates 242.5 acres in Clearwater County, Idaho.

The applicant desires that the land be reserved as a Historic Site in the Clearwater National Forest.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on November 1, 1972, page 23280, Volume No. 37, Document No. 72-18578.

Pursuant to Section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, Notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the State Director, Bureau of Land Management, Room 398 Federal Building, 550 West Fort Street, Post Office Box 042, Boise, Idaho 83724 on or before April 27, 1977. Upon determination by the State Director that a public hearing will be held, a notice of public hearing will be published in the FEDERAL REGISTER giving the time and place of such hearing. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management at the above address on or before April 21, 1977.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when affected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

VINCENT S. STROBEL,
Chief, Branch of
L&M Operations.

[FR Doc. 77-9376 Filed 3-28-77; 8:45 am]

[Serial No. I-3295]

IDAHO

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

MARCH 21, 1977.

The Forest Service, Department of Agriculture, filed application Serial No. I-3295, on November 24, 1969, for a withdrawal in relation to the following described lands:

BOISE MERIDIAN, IDAHO, SAWTOOTH NATIONAL FOREST

HOWELL CANYON RECREATION AREA

T. 12 S., R. 25 E.,
Sec. 31, lot 4, W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,
SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$; Sec. 32,
SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$.
T. 13 S., R. 24 E.,
Sec. 1, N $\frac{1}{2}$ of lot 1, lots 2, 3, 4;
Sec. 2, lots 1, 2, 3, S $\frac{1}{2}$ N $\frac{1}{2}$, SW $\frac{1}{4}$;
Sec. 3, lots 1, 2, S $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 4, lot 2, S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$,
SE $\frac{1}{4}$;

Sec. 9, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$;
totaling 2048.88 acres in Cassia County.

DOLLAR LAKE RECREATION AREA

T. 4 N., R. 17 E.,
Sec. 10, lots 1, 2, SE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 15, lots 1, 2, 3, 5, and 6,
totaling 264.39 acres in Blaine County.

GALENA SUMMIT OVERLOOK

T. 6 N., R. 15 E. (Unsurveyed Protraction
Diagram No. 95)
Secs. 5, 6, 7, and 8.

A tract of land, described by metes and bounds, as follows:

Beginning at Engineer's Station G05-201-1, which is a 3 inch brass cap set in cement, said monument being established for the Galena Summit Overlook survey baseline. Other points are referenced by 2-inch brass caps set in cement. From said point of beginning by metes and bounds:
S. 12°56'30" W., 373.48 feet to Corner No. 2;
S. 40°30'22" W., 1236.91 feet to Corner No. 3;
S. 47°14'26" W., 783.55 feet to Corner No. 4;
N. 11°46'09" E., 900.46 feet to Corner No. 5;
N. 41°00'45" E., 833.06 feet to Corner No. 6;
N. 70°16'29" E., 750.69 feet to Corner No. 1
the place of beginning.

The tract described contains 20.90 acres, more or less, in Blaine County.

All of the areas described aggregate 2334.17 acres in Cassia and Blaine Counties, Idaho.

The applicant desires that the lands be reserved as recreation sites in the Sawtooth National Forest.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on January 28, 1970, page 1120, Volume 35, No. 19, Document No. 70-1027.

Pursuant to Section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, Notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the State Director, Bureau of Land Management, Room 398, Federal Building, 550 West Fort Street, Post Office Box 042, Boise, Idaho 83724 on or before April 27, 1977. Upon determination by the State Director that a public hearing will be held, a notice of public hearing will be published in the FEDERAL REGISTER giving the time and place of such hearing. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management at the above address on or before April 27, 1977.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when affected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with section 204(g) of the Federal Land

Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

VINCENT S. STROBEL,
Chief, Branch of
L&M Operations.

[FR Doc. 77-9377 Filed 3-28-77; 8:45 am]

CALIFORNIA

ORV Designations for Glamis/Imperial Sand Dunes (North)

The following amendments are made to FR Doc. 77-4970 appearing at page 9725 in the issue dated Thursday, February 17, 1977:

1. Amend column 3, line 2, which reads "non-vehicular," to read "vehicular."
2. Amend column 3, line 6, which reads "Four endangered and one threatened," to read "Five rare."
3. Column 3, line 14, after "This closure," add "conforms to the intent of the act and such closure."

ED HASTEY,
State Director.

[FR Doc. 77-9375 Filed 3-28-77; 8:45 am]

National Park Service

HISTORIC PRESERVATION EASEMENTS; PROPOSED ACCEPTANCE

Change in Place of Public Hearing

This notice corrects the previous notice FR Doc. 77-8199 published Friday, March 18, 1977, and appearing on page 15146. The place the public hearing indicated in that previous notice, Louisa County Courthouse, Louisa, Virginia, is changed.

The new location of the hearing is at the former Wills Chapel now known as the Wills Chapel Meeting House, Louisa County, Virginia. The meeting house is located on the southeast corner of the intersection of State Routes 22 and 636 west of Louisa, Virginia.

Dated: March 23, 1977.

WILLIAM J. MURTAGH,
Acting Chief, Office of Archeology
and Historic Preservation.

[FR Doc. 77-9301 Filed 3-28-77; 8:45 am]

NATIONAL PARKS HISTORIC SITES, BUILDINGS AND MONUMENTS ADVISORY BOARD

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Advisory Board on National Parks, Historic Sites, Buildings and Monuments will be held on April 18, 19 and 20 at the Department of the Interior, 18th and C Streets NW., Washington, D.C.

The purpose of the Advisory Board is to advise the Secretary on matters relating to the National Park Service and the administration of the Historic Sites Act of 1935.

The members of the Advisory Board are as follows:

Mr. Linden C. Pettys (Chairman) Ludington, Michigan
Dr. Douglas W. Schwartz (Vice Chairman) Santa Fe, New Mexico
Hon. E. Y. Berry (Secretary) Rapid City, South Dakota
Hon. Alan Bible, Reno, Nevada
Mr. Laurence W. Lane, Jr., Menlo Park, California
Dr. A. Starker Leopold, Berkeley, California
Mrs. Anne Jones Morton, Easton, Maryland
Mrs. Nancy M. Rennell, Greenwich, Connecticut
Mr. Steven L. Rose, La Canada, California
Dr. William G. Shade, Bethlehem, Pennsylvania
Dr. Edgar A. Topplin, Petersburg, Virginia

Meetings will be as follows:

April 18, 9 a.m., Room 5160, the Advisory Board will meet in general session in regard to administrative matters pertaining to the Board and to receive reports on several topics including a report on the growth of the National Park System; and legislation affecting the System.

April 19, 8 a.m., Room 5160, the History Areas Committee will meet to consider reports on three proposed new areas. At 1:30 p.m. the Advisory Board will reconvene to receive reports on the Alaska park proposals; urban parks task force study; and discuss entrance and user fees, management categories, and revised management policies.

April 20, 9 a.m., Room 5160, the Advisory Board will reconvene to receive a report on the National Visitor Center; to receive reports from the committee meetings; task force reports; consideration of future Advisory Board activities; and to formulate its comments and recommendations.

The meetings will be open to the public, but facilities and space to accommodate members of the public are limited, and it is expected that not more than 25 people will be able to attend.

Any member of the public may file with the Advisory Board a statement in writing concerning any of the matters to be discussed. Persons desiring further information concerning this meeting or who wish to file written statements may contact Shirley Luikens, National Park Service, Washington, D.C., at 202-343-2012.

Minutes of the meeting will be available for public inspection 10 to 12 weeks after the meeting in Room 3013, Interior Building Washington, D.C.

Dated: March 24, 1977.

WILLIAM J. BRIGGLE,
Deputy Director,
National Park Service.

[FR Doc. 77-9300 Filed 3-28-77; 8:45 am]

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 18,

1977. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by April 8, 1977.

WILLIAM J. MURTAGH,
Acting Chief, Office of Archeology
and Historic Preservation.

ALASKA

Kodiak Island Borough

Kodiak vicinity, AHSR Site KOD 207, Cook Bay, Long Island.

KANSAS

Johnson County

Olathe, Mahaffie, J. B., House, 1100 Kansas City Rd.

Neosho County

Chanute, Bridge Over the Neosho, 2.5 mi. E of Chanute.

MISSOURI

Carroll County

Carrollton, U.S. Post Office at Carrollton, 101 N. Folger St.

NEBRASKA

Thomas County

Halsey, Bessey Nursery, on NE 2.

NEW JERSEY

Hudson County

West New York, Steam Yacht "Kestrel," S end of River Rd.

Warren County

Pohatcong township, Seigle Homestead, Rieglesville-Warren Glen Rd.

NEW MEXICO

Valencia County

Tome, The Tome Jail, SW corner of Tome Plaza.

NEW YORK

New York County

New York, Morris, Lewis G., House, 100 E. 85th St.

Onondaga County

Syracuse, Loew's State Theater, 362-374 S. Salina St.

Saratoga County

Saratoga Springs, Union Avenue, Saratoga Track and Yaddo District, Union Ave.

Westchester County

Ardsley-on-Hudson, Nuits, Hudson Rd. at Clifton Pl.

VIRGINIA

Mathews County

Mathews, Mathews County Courthouse Square, SR 611.

Westmoreland County

Oak Grove vicinity, Ingleside, S of intersection of SR 638 and 636.

Oak Grove vicinity, Roxbury, S of Oak Grove. Oak Grove vicinity, Wirtland, W of SR 638.

Winchester (independent city)

Winchester, Old Stone Church, 304 E. Piccadilly St.

WISCONSIN

Waukesha County

Delafield, St. John's Hall.

[FR Doc.77-9303 Filed 3-28-77;8:45 am]

Office of the Secretary

[INT DES 77-12]

ELLENSBURG SERVICE

Availability of Draft Supplement to Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bonneville Power Administration has prepared a draft facility location supplement to its Fiscal Year 1978 Environmental Statement. This supplement covers the proposal for Ellensburg Service.

The Ellensburg Service proposal involves the construction of transmission facilities to provide additional area service at Ellensburg, Washington. The area under discussion lies in central Washington, about 100 miles southeast of Seattle.

Copies of the draft supplement are available for inspection in the library of the headquarters office of Bonneville Power Administration, 1002 NE. Holladay Street, Portland, Oregon 97232; the Washington, D.C., Office in the Interior Building, Room 5600; and at the Spokane Area Office, U.S. Court House, West 912 Riverside Ave., Spokane, Washington 99201.

Copies are also available at the following Government Depository Libraries:

GOVERNMENT DEPOSITORY LIBRARIES

IDAHO

Boise Public Library, Reference Department, 715 Capitol Blvd., Boise, Idaho 83706.
University of Idaho, Library—U.S. Documents, Moscow, Idaho 83843.
Documents Division, Idaho State University Library, Pocatello, Idaho 83209.
Boise State College Library, Boise, Idaho 83725.
Idaho State Library, 325 W. State Street, Boise, Idaho 83702.
Ricks College, David O. McKay Library, Rexburg, Idaho 83440.
Idaho State Law Library, Documents Librarian, Pocatello, Idaho 83201.
College of Idaho, Terteling Library, 2112 Cleveland Blvd., Caldwell, Idaho 83605.
College of Southern Idaho, Documents Librarian—Box 1238, 315 Falls Ave., Twin Falls, Idaho 83301.

MONTANA

Documents Librarian, Montana State University Library, Bozeman, Montana 59715.
University of Montana Library, Documents Division, Missoula, Montana 59801.

OREGON

Southern Oregon State College Library, Documents Section, Ashland, Oregon 97530.
Documents Divisions, William Jasper Kerr Library, Oregon State University, Corvallis, Oregon 97331.
University of Oregon Library, Documents Section, Eugene, Oregon 97403.

Harvey W. Scott Memorial Library, Pacific University, Forest Grove, Oregon 97116.
Eastern Oregon State College Library, Eighth at K. La Grande, Oregon 97850.
Northus Library, Linfield College, McMinnville, Oregon 97128.
Oregon College of Education Library, Monmouth, Oregon 97361.
Aubrey R. Watzek Library, Lewis and Clark College, Attention: Reference Department, 6615 SW. Palatine Hill Road, Portland, Oregon 97219.
Library Association of Portland, 801 SW. Tenth Avenue, Portland, Oregon 97205.

OREGON

Documents Librarian, Portland State University Library, P.O. Box 1151, Portland, Oregon 97207.
Eric V. Hauser Memorial Library, Reed College, 3203 SE. Woodstock, Portland, Oregon 97202.
Oregon State Library, State Library Building, Salem, Oregon 97301.
Willamette University Library, 900 State Street, Salem, Oregon 97301.
Oregon Supreme Court Library, 12th and State Streets, Salem, Oregon 97310.

WASHINGTON

Documents Division, Mabel Zoe Wilson Library, Western Washington State College, 516 High Street, Bellingham, Washington 98225.
Documents Department, Victor J. Bouillon Library, Central Washington State College, Ellensburg, Washington 98926.
Everett Community College Library, 801 Wetmore Avenue, Everett, Washington 98201.
Documents Center, Washington State Library, Olympia, Washington 98501.
University of Puget Sound, Everill S. Collins Memorial Library, Tacoma, Washington 98416.
Eastern Washington State College, John F. Kennedy Memorial Library, Cheney, Washington 99004.
Evergreen State College, Daniel J. Evans Library, Olympia, Washington 98505.
Seattle Public Library, 1000 Fourth Ave., Seattle, Washington 98104.
University of Washington, School of Law Library, 300 Condon Hall, Seattle, Washington 98105.
Tacoma Public Library, 1102 Tacoma Ave. S., Tacoma, Washington 98402.
Everett Public Library, 2702 Hoyt Ave., Everett, Washington 98201.
North Olympic Library System, Library Service Center, 2210 S. Peabody, Port Angeles, Washington 98362.
Spokane Public Library, Comstock Bldg., W. 906 Main Ave., Spokane, Washington 99201.
Port Angeles Public Library, 207 S. Lincoln Street, Port Angeles, Washington 98362.

A limited number of copies are also available and may be obtained by writing to the Environmental Office, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208 or to the Spokane Area Manager at the above address. Comments on the supplement should be sent to the Environmental Office by May 9, 1977.

Dated: March 21, 1977.

STANLEY D. DOREMUS,
Deputy Assistant
Secretary of the Interior.

[FR Doc.77-9336 Filed 3-28-77;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH, SUBGROUP ON COMPLIANCE

Meeting

Notice is hereby given that the Subgroup on Compliance of the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet on April 15, 1977.

The National Advisory Committee was established under section 7(a) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor and the Secretary of Health, Education and Welfare on matters relating to the administration of the Act. The Committee has established the Subgroup on Compliance to assist in carrying out its responsibilities. The Subgroup meeting will be held in Room N-4437, Department of Labor Building, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210. The meeting will begin at 9:00 a.m. The public is invited to attend.

The Compliance Subgroup will develop recommendations on new concepts in compliance techniques and the system for processing employee discrimination complaints under Section 11(c) of the Act.

For additional information contact:

Ken Hunt, Office of Public and Consumer Affairs, Room N-3635, Department of Labor-OSHA, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210, Phone: (202) 523-8024.

Any written data or views concerning these agenda items or suggestions for future agenda items which are received by the Division of Consumer Affairs before the scheduled meeting date, preferably with 20 copies, will be presented to the Subgroup and included in the official record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the Subgroup Chairman, depending on the extent to which time permits.

Official records of the meeting will be available for public inspection at the above address.

Signed at Washington, D.C. this 24th day of March 1977.

J. GOODELL,
Executive Secretary.

[FR Doc.77-9369 Filed 3-28-77;8:45 am]

Office of the Secretary

[TA-W-1294]

J. H. BONCK CO., INC.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 22, 1976, in response to a workers petition dated November 11, 1976, which was filed on behalf of workers and former workers producing men's and boys' dress, sport and uniform/work shirts and boys' and girls' woven parochial school shirts and blouses at J. H. Bonck Company, Incorporated, New Orleans, Louisiana.

The Notice of Investigation was published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53090). No public hearing was requested and none was held.

On July 22, 1975 the Department issued a certification of eligibility to apply for adjustment assistance covering workers of J. H. Bonck Company, Incorporated, New Orleans, Louisiana separated from employment on or after July 22, 1975 and before January 1, 1976 (TA-W-1003).

A review has been conducted regarding (TA-W-1003) whether workers separated from J. H. Bonck Company, Incorporated on or after January 1, 1976 should be covered by the certification. Consequently investigation (TA-W-1294) has been terminated.

Signed at Washington, D.C. this 18th day of March 1977.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

[FR Doc.77-9347 Filed 3-28-77;8:45 am]

[TA-W-1539]

CANTEEN CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1539: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 3, 1977 in response to a worker petition received on January 3, 1977 which was filed on behalf of workers and former workers providing food services at the Edison, New Jersey facility of Canteen Corporation, Chicago, Illinois.

The notice of investigation was published in the FEDERAL REGISTER on January 18, 1977 (42 FR 3369). No public hearing was requested and one was held.

The information upon which the determination was made was obtained principally from officials of the Canteen Corporation and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility re-

quirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

If any of the above criteria is not satisfied a negative determination must be made.

Canteen Corporation is a wholly owned subsidiary of TWA, New York, New York. Headquarters for Canteen are in Chicago, Illinois. The company operates food service facilities throughout the country. The Edison, New Jersey facility of Canteen provides food services to the Metuchen (Edison), New Jersey plant of the Ford Motor Company.

Canteen Corporation does not produce an article within the meaning of section 222(3) of the Act and this Department has already determined that the performance of services are not covered by the adjustment assistance program. See Notice of Determination in *Pan American World Airways, Incorporated* (TA-W-153, 40 FR 54639). The only question in this case is whether Ford Motor Company i.e., a firm which produces an article, namely automobiles, and for whom the service is provided can be considered the "workers' firm". The Department has also previously determined that an independent firm for which such services are provided cannot be considered the "workers' firm". See Notice of Determination in *Nu-Car Driveaway, Incorporated* (TA-W-393, 41 FR 12749).

The Edison, New Jersey facility of Canteen has a contract to provide food services at Ford Motor Company's Metuchen plant. Canteen's workers run a cafeteria at the Ford plant.

Neither Ford Motor Company on one hand, nor Canteen Corporation on the other have any capital of financial investment in the other.

The workers upon whose behalf this petition was filed were hired and are paid by Canteen. They are supervised by and subject to the Control of Canteen personnel only. All employment benefits which they enjoy are provided by and maintained by the Canteen Corporation.

CONCLUSION

After careful review of the issues and facts involved, I have determined that services of the kind provided by the Edison, New Jersey facility of Canteen Corporation are not "articles" within the meaning of Section 222(3) of the Trade

Act of 1974 and that Ford Motor Company cannot be considered the "workers' firm". The petition for trade adjustment assistance is, therefore, denied.

Signed at Washington, D.C. this 18th day of March 1977.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.

[FR Doc.77-9348 Filed 3-28-77;8:45 am]

[TA-W-1388]

ELFSKIN CORP.

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1388: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 8, 1976 in response to a worker petition received on December 8, 1976 which was filed on behalf of workers and former workers of Elfskin Corporation, Worcester, Massachusetts.

The Notice of Investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 877). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Elfskin Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increasing quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation revealed that all four of the above criteria have been met with respect to Elfskin workers producing coated fabric but that the third criterion has not been met with respect to Elfskin workers producing flocked fabric.

The investigation further revealed, without regard to whether the other criteria have been met, that the third criterion has not been met with respect to

Elfskin workers producing cork bottoms for shoes.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Production workers at Elfskin are engaged in employment related to the production of either flocked and coated fabric or cork bottoms for shoes. Fabric workers are employed interchangeably in the production of both flocked and coated fabrics.

The average number of production workers employed by Elfskin in the production of flocked and coated fabric declined 24.4 percent from 1974 to 1975 and fell 13.8 percent from 1975 to 1976. Average weekly hours worked by fabric workers declined 5.0 percent from 1975 to 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED

Elfskin's sales of flocked and coated fabric, adjusted for price changes, decreased 27.5 percent in value from 1974 to 1975 and then rose 7.6 percent in value from 1975 to 1976. Compared to the same quarters of the previous year, adjusted sales increased by more than 20 percent in the fourth quarter of 1975 and in the first two quarters of 1976 before declining 11.2 percent and 18.3 percent in the third and fourth quarters of 1976, respectively.

INCREASED IMPORTS

Imports of coated fabric increased both in absolute terms and relative to domestic production and consumption from 1971 to 1973 and then declined absolutely and relatively from 1973 to 1975. In the first eleven months of 1976, imports increased 77.6 percent in quantity compared to the same period in 1975. Imports of flocked fabric have been negligible.

Imports of heels and unit soles, including cork bottoms, represent less than one-half of one percent of U.S. consumption of heels and unit soles.

CONTRIBUTED IMPORTANTLY

A survey of a representative sample of Elfskin's customers revealed that they had reduced purchases from Elfskin in 1976 and had switched in whole or in part to imports of competitive fabrics. Among the fabrics imported by Elfskin's customers are expanded and coated vinyls, viledon—an imitation suede used for shoe counterpockets, urethane products for upper shoe linings, and other coated and laminated fabrics. Elfskin's customers switched to imported fabrics primarily because of price although some customers indicated that imported fabrics, particularly viledon, were of better quality than similar fabrics produced by Elfskin.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with coated fabric produced at Elfskin Corporation contributed importantly to the total or partial

separation of workers producing flocked and coated fabric at the firm. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

All workers of Elfskin Corporation, Worcester, Massachusetts, engaged in employment related to the production of flocked and coated fabric, who became or will become totally or partially separated from employment on or after June 7, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further conclude that imports of cork bottoms for shoes, like or directly competitive with those produced at Elfskin Corporation, have not been imported in increased quantities either actual or relative to domestic production as required under Section 222(3) of the Trade Act of 1974.

Signed in Washington, D.C. this 18th day of March 1977.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.

[FR Doc. 77-9349 Filed 3-28-77; 8:45 am]

[TA-W-1260]

ENFLO CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1260: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 11, 1976 in response to a worker petition received on November 11, 1976 which was filed by the Teamsters Union on behalf of workers and former workers producing fluorocarbon (TFE) basic shapes at the Maple Shade, New Jersey plant of Enflo Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53087). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Enflo Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

On July 22, 1976 the Department of Labor issued a negative determination regarding eligibility to apply for adjustment assistance for all workers engaged in the production of fluorocarbon (TFE) basic shapes at the Maple Shade, New Jersey plant of Enflo Corporation (TA-W-899).

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that criterion four has not been met for the Maple Shade plant.

FINDINGS OF THE INVESTIGATION

Imports of plastic and rubber basic shapes decreased relative to domestic production each year from 1973 through 1975. Imports decreased 25 percent from 1974 to 1975 while domestic production increased 1.2 percent during this period. The ratio of imports to domestic production decreased from 3.4 percent in 1974 to 2.5 percent in 1975. The ratio of imports to domestic production in 1975 was at a lower level than in any of the previous four years.

The petitioners allege that imports in the basket category of plastic and rubber basic shapes, which includes an unknown amount of TFE shapes, increased from the fourth quarter of 1975 to the first quarter of 1976, and that workers at Maple Shade were displaced to make way for increased imports.

Aggregate imports of plastic and rubber basic shapes increased 25 percent from the fourth quarter of 1975 to the first quarter of 1976. However this increase occurred during a period when the Maple Shade plant was closed due to a union strike. The decision to permanently close the Maple Shade plant occurred in February 1976 as a result of the union's refusal to accept management's final proposal. While imports increased from the fourth quarter of 1975 to the first quarter of 1976, the sole reason for closing the plant in February 1976 was the inability to settle a strike.

The petitioners also allege that production previously performed at the Maple Shade plant was transferred to the Enflo plant in New Brunswick, Canada.

Production was stopped at Maple Shade in August 1975 when the strike began. In October 1975, Enflo began importing TFE shapes from the Canadian plant as an emergency measure to assure customers of a steady source of products. Such imports were a consequence of the strike not the result of a transfer of production.

The Canadian plant produced TFE shapes prior to October 1975 for sale in the Canadian market. Throughout 1976 Enflo's customers were supplied through accumulated inventory from

Maple Shade production in addition to Canadian imports.

Company imports were used only as a temporary source of supply until Enflo could relocate domestic production of TFE shapes. Enflo opened a plant in Bristol, Connecticut in the late summer of 1976. The Bristol plant began shipments to customers in November 1976. Enflo's imports from Canada declined 68 percent in the fourth quarter of 1976 compared to the fourth quarter of 1975. Company imports will be completely phased out as the Bristol plant reaches full capacity. No jobs lost at the Maple Shade plant were replaced at the Canadian plant. From August 1975 through August 1976, employment at the Canadian plant did not increase.

The Maple Shade plant performed both primary and secondary operations in the production of TFE shapes. Primary operations include the mixing of chemicals and forming of large cylindrical shapes. Secondary refers to finishing operations. Only secondary operations are currently performed at Bristol. Enflo now purchases the cylindrical shapes from outside suppliers—all of which are domestic.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with fluorocarbon (TFE) basic shapes produced at the Maple Shade, New Jersey plant of Enflo Corporation did not contribute importantly to the total or partial separation of workers of that plant.

Signed at Washington, D.C. this 21st day of March 1977.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.

[FR Doc. 77-9350 Filed 3-28-77; 8:45 am]

[TA-W-22T]

GENERAL ELECTRIC CO.

Completion of Termination Investigation Regarding Eligibility To Apply for Adjust- ment Assistance

In accordance with Section 223(d) of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-22T: Investigation regarding termination of certification of eligibility to apply for worker adjustment assistance as prescribed in Section 223(d) of the Act.

On July 7, 1975, workers engaged in employment related to the production of color and monochrome television receivers at the Portsmouth, Virginia plant of the General Electric Company, New York, New York were certified as eligible to apply for trade adjustment assistance. The Notice of Determination was published in the FEDERAL REGISTER on July 14, 1975 (40 FR 29576).

The investigation regarding termination of certification was initiated on May 27, 1976 to determine whether the groups of workers specified above con-

tinued to meet the group eligibility requirements of Section 222 of the Act. The Notice of Investigation was published in the FEDERAL REGISTER on June 29, 1976 (41 FR 26768). No public hearing was requested and none was held.

During the course of the investigation, information was obtained from officials of the General Electric Company, its customers, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

- (1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof have become totally or partially separated, or are threatened to become totally or partially separated;
- (2) That sales or production, or both, of such firm or subdivision have decreased absolutely;
- (3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and
- (4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Whenever, it becomes evident that any of the above criteria are no longer met, the certification as issued must be revised to include a termination date. The termination date would apply only with respect to total or partial separations occurring after this date as specified in the revised certification.

The investigation reveals that all four criteria continue to be met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Subsequent to the July 7, 1975 finding, employment of production workers engaged in the manufacture of monochrome televisions at the Portsmouth, Virginia plant of the General Electric Company decreased 44 percent from 1974 to 1975. Employment decreased in the first and second quarters of 1976, 41 percent and 33 percent, respectively, from the same quarters of the previous year. Employment of monochrome television production workers decreased in the first and second quarters of 1976, 65 percent and 64 percent, respectively, compared to the like quarters of 1974.

Employment of production workers engaged in the manufacture of color televisions at the Portsmouth, Virginia plant of the General Electric Company decreased 30 percent from 1974 to 1975. Employment increased in the first quarter of 1976, 16 percent from the same quarter previous year and then decreased in the second quarter of 1976, 7 percent from the same quarter previous year. Employment of color television production workers decreased in the first and second quarters of 1976, 25 percent

and 37 percent, respectively, compared to the like quarters of 1974.

Employment of salaried workers at the Portsmouth, Virginia plant of the General Electric Company decreased 11 percent from 1974 to 1975. Employment decreased in the first and second quarters of 1976, 10 percent and 6 percent, respectively, from the same quarters of the previous year. Employment of salaried workers decreased in the first and second quarters of 1976, 14 percent and 16 percent, respectively, compared to the like quarters of 1974.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Subsequent to the July 7, 1975 finding, sales of color televisions by the Portsmouth, Virginia plant of the General Electric Company decreased 24 percent in quantity from 1974 to 1975. Sales increased in the first quarter of 1976, 19 percent from the same quarter previous year and then decreased in the second quarter of 1976, 8 percent from the same quarter previous year. Sales of color televisions decreased in the first and second quarters of 1976, 34 percent and 26 percent, respectively, compared to the like quarters of 1974.

Sales of monochrome televisions by the Portsmouth, Virginia plant of the General Electric Company decreased 37 percent in quantity from 1974 to 1975. Sales increased in the first and second quarters of 1976, 20 percent and 1 percent, respectively, from the same quarters of the previous year. Sales of monochrome televisions decreased in the first and second quarters of 1976, 42 percent and 28 percent, respectively, compared to the like quarters of 1974.

Production of color televisions by the Portsmouth, Virginia plant of the General Electric Company decreased 32 percent in quantity from 1974 to 1975. Production increased in the first and second quarters of 1976, 27 percent and 23 percent from the same quarters of the previous year. Production of color televisions decreased in the first and second quarters of 1976, 32 and 31 percent, respectively, compared to the like quarters of 1974.

Production of monochrome televisions by the Portsmouth, Virginia plant of the General Electric Company decreased 44 percent in quantity from 1974 to 1975. Production decreased in the first quarter of 1976, 12 percent from the same quarter of the previous year and then increased in the second quarter of 1976, 2 percent from the same quarter of the previous year.

Production of monochrome televisions decreased in the first and second quarters of 1976, 51 percent and 53 percent, respectively, compared to the like quarters of 1974.

INCREASED IMPORTS

Subsequent to the July 7, 1975 finding, imports of monochrome television receivers decreased absolutely and relatively from 1974 to 1975. In 1976 imports of monochrome television receivers increased absolutely to 4,326,900 units from 2,974,700 units in 1975. Imports

increased relative to domestic production and consumption, from 193.8 percent and 67.3 percent, respectively, in 1975 to 311.3 percent and 77.8 percent, respectively, in 1976. When compared to 1974, imports in 1976 declined absolutely but increased relative to domestic production and consumption.

Imports of color televisions decreased absolutely from 1974 to 1975, but increased relative to domestic production and consumption. In 1976, imports of color televisions increased absolutely and relatively compared to 1975. The ratio of imports to domestic production and consumption increased from 23.4 percent and 19.5 percent, respectively, in 1975 to 55.0 percent and 36.2 percent, respectively, in 1976. When compared to 1974, imports increased absolutely and relatively in 1976.

CONTRIBUTED IMPORTANTLY

The evidence developed during the Department's investigation revealed that customers had decreased their purchases of television receivers from the Portsmouth, Virginia plant of the General Electric Company from 1974 to 1975 and in the first 10 months of 1976 compared to the same period in 1975 and increased their purchases of imported television receivers. These customers cited the lower price and high quality of imported television receivers as the reason for the shift in purchasing patterns.

CONCLUSION

Imports of monochrome televisions increased absolutely and relatively from 1975 to 1976. When compared to 1974, imports declined absolutely but increased relative to domestic production and consumption. The ratio of imports to domestic production and consumption increased from 210.3 percent and 69.0 percent, respectively, in 1974 to 311.3 percent and 77.8 percent, respectively in 1976.

Imports of color televisions increased absolutely and relatively from 1975 to 1976. When compared to 1974, imports of color televisions increased absolutely and relatively in 1976. The ratio of imports to domestic production and consumption increased from 21.7 percent and 18.4 percent, respectively, in 1974 to 55.0 percent and 36.2 percent, respectively, in 1976.

While sales of color televisions at the Portsmouth, Virginia plant of the General Electric Company increased in the first quarter of 1976 from the same quarter of 1975, sales of color televisions decreased in the first and second quarters of 1976, 33 percent and 26 percent, respectively, compared to the same quarters of 1974. While sales of monochrome televisions at the Portsmouth, Virginia plant of the General Electric Company increased in the first and second quarters of 1976, from the same quarters in 1975, sales of monochrome televisions decreased in the first and second quarters of 1976, 42 percent and 28 percent, respectively, compared to the same quarters in 1974.

Further evidence that the Portsmouth, Virginia plant of the General Electric

Company has not recovered from the impact of imports is seen in the declines in production of color televisions in the first and second quarters of 1976, 32 percent and 31 percent, respectively, compared to the same quarters in 1974. Additionally, production of monochrome televisions declined in the first and second quarters of 1976, 51 percent and 53 percent, respectively, compared to the same quarters in 1974.

While employment of color television production workers increased in the first quarter of 1976 from the same quarter in 1975, color television employment declined in the first and second quarters of 1976, 25 percent and 37 percent, respectively, compared to the same quarters in 1974.

Employment of monochrome television production workers declined in the first and second quarters of 1976 compared to both the same quarters in 1975 and the same quarters in 1974.

After careful review of the facts obtained in the investigation, I conclude that total or partial separations of workers engaged in employment related to the production of color and monochrome television receivers at the Portsmouth, Virginia plant of the General Electric Company, New York, New York continue to be attributable to the conditions specified in Section 222 of the Trade Act of 1974.

Therefore, the certification issued on July 7, 1975 for TA-W-22, the Portsmouth, Virginia plant of the General Electric Company, New York, New York is not revised to include a termination date of eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 21st of March 1977.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.

[FR Doc. 77-9351 Filed 3-28-77; 8:45 am]

[TA-W-1610]

JONELL SHOE INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1610: investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 27, 1977 in response to a worker petition received on January 27, 1977 which was filed by the United Shoe Workers of America on behalf of workers and former workers producing women's casual canvas shoes at the Lawrence, Massachusetts plant of Jonell Shoe, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on February 15, 1977 (42 FR 9241). No public hearing was requested and none was held.

The information upon which the determination was made was obtained

principally from officials of Jonell Shoe, Inc., its customers, the Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

On September 29, 1976, the Department issued a negative notice of determination of eligibility for all workers producing women's casual canvas shoes at Jonell Shoes, Inc., Lawrence, Massachusetts (TA-W-992).

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities; either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers declined 6.3 percent from 1973 to 1974, declined 23.5 percent from 1974 to 1975, and increased 18.8 percent from 1975 to 1976. Employment declined 6.4 percent in the fourth quarter of 1976 compared to the fourth quarter of 1975. All employment ceased in February, 1977, when the company dissolved. Employment of salaried workers remained constant in each year from 1973 to 1975, and then declined 5.9 percent from 1975 to 1976. All production ceased in January, 1977, and the company closed in February.

INCREASED IMPORTS

Imports of rubber/canvas footwear declined absolutely from 1971 to 1972, increased absolutely and relative to domestic production in each year from 1972 to 1974, and then declined from 1974 to 1975. Imports then increased absolutely and relative to domestic production in the first nine months of 1976 compared to the same period of 1975. The ratio of imports to domestic production increased from 18.3 percent in the first nine months of 1975 to 25.4 percent in the same period of 1976.

CONTRIBUTED IMPORTANTLY

Evidence developed by the Department's investigation revealed that retail customers accounting for approximately 50 percent of Jonell's volume of business in 1976 decreased their purchases from Jonell over the past year and increased

[TA-W-1181]

NATIONAL TANNING & TRADING CORP.
Certification Regarding Eligibility To Apply
for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1181: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 19, 1976 in response to a worker petition received on that date which was filed on behalf of workers and former workers producing tanned and finished hides at the Peabody, Massachusetts plant of National Tanning and Trading Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on November 5, 1976 (41 FR 48815). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of National Tanning and Trading Corporation, A.C. Lawrence Leather Company, their customers, the Tanning Council of America, the U.S. Department of Commerce, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number of proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL
SEPARATIONS

Average employment at the Peabody tannery increased two percent in 1974 compared to 1973 and decreased 19 percent in 1975 compared in 1974. Average employment decreased 57 percent in the first nine months of 1976 compared to the same period of 1975. All production workers were terminated by March 14, 1976 when the previous owner of the plant, A. C. Lawrence Leather Company, sold the plant to National Tanning and Trading Corporation. When the plant reopened under new ownership in early

purchases of imported canvas footwear during the same period.

Jonell Shoe was dissolved in February, 1977 due to lack of business. The import influence at the retail level was a factor involved in the decline in orders which led to the company's closure. As a result, all employment at Jonell has been terminated.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's casual canvas footwear produced by Jonell Shoe, Inc. contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Lawrence, Massachusetts plant of Jonell Shoe, Inc. who became totally or partially separated from employment on or after August 6, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of March 1977.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.

[FR Doc.77-9352 Filed 3-28-77;8:45 am]

[TA-W-1402]

MIDVALE-HEPPENSTALL CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1402: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 13, 1976 in response to a worker petition received on December 13, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing high grade alloy steel ingots, forgings and forged rolls at the Philadelphia, Pennsylvania plant of Midvale-Heppenstall Corporation.

The notice of investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 890). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Midvale-Heppenstall, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first two criteria have been met, criteria (3) and (4) have not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATION

Employment declined 100 percent on April 30, 1976 when the entire plant closed permanently.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

No records were made available from the firm. All sales and production ceased on April 30, 1976 when the plant closed.

INCREASED IMPORTS

Imports of steel forgings increased each year from 1971 to 1975, from 56.1 million tons to 108.6 million tons. Imports decreased 50 percent in the first 11 months of 1976 compared to the like period in 1975, from 103.3 million tons to 51.6 million tons.

The ratio of imports to domestic production of steel forgings has remained less than 6.0 percent since 1971. The ratio of imports to domestic production decreased from 5.8 percent in the first 11 months of 1975 to 2.8 percent in the first 11 months of 1976.

CONTRIBUTED IMPORTANTLY

Customers of Midvale-Heppenstall did not switch to imports of high grade alloy steel ingots, forgings, or forged rolls. Most of their customers did not purchase any imported steel products of any type.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with high grade alloy steel ingots, forgings, and forged rolls produced at the Philadelphia, Pennsylvania plant of Midvale-Heppenstall Corporation did not contribute to the total or partial separation of workers at that plant.

Signed at Washington, D.C. this 21st day of March 1977.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.

[FR Doc.77-9353 Filed 3-28-77;8:45 am]

May 1976, some of the workers were re-employed. In the third quarter of 1976 employment was less than half of the third quarter of 1975 level.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales at the Peabody, Massachusetts plant increased three percent in value in 1974 compared to 1973 and decreased five percent in 1975 compared to 1974. Sales in value decreased 53 percent in the first nine months of 1976 compared to the same period of 1975. This firm had no sales or production in March and April of 1976 due to the temporary closing of the plant.

Production remained virtually unchanged in quantity in 1974 compared to 1973 and declined 10 percent in 1975 compared to 1974. Production in value increased 11 percent between 1973 and 1974 and then decreased 13 percent between 1974 and 1975. Production decreased 56 percent in value in the first nine months of 1976 compared to the same period of 1975. In the third quarter of 1976 production in value was less than one-third of the level for the same quarter of 1975.

INCREASED IMPORTS

Imports of tanned and finished cattle-hides increased absolutely and relative to domestic production in 1972 compared to 1971, and decreased absolutely and relatively each year thereafter through 1975. These imports decreased 38 percent in 1975 compared to 1974, then increased 127 percent in 1976 compared to 1975. Imports of tanned and finished cattlehides in 1976 obtained their highest level compared to any year in the 1971-1976 period except for 1972. The ratio of imports to domestic production decreased from 17.6 percent in 1974 to 9.9 percent in 1975, then increased to 21.2 percent in 1976.

CONTRIBUTED IMPORTANTLY

Declines in plant production were adversely affected by increased imports of shoes and other finished leather products prior to 1976. Imports of shoes and other finished leather products are not considered like and directly competitive with imports of tanned and finished cattlehides and may not serve as a basis for determining that increased imports contributed importantly to the separation of the workers.

However, imports of cattlehides surged to almost record levels in 1976. At the same time the price competitiveness of imported hides improved considerably vis-a-vis domestic hides. Between 1975 and 1976 the price of imported leather hides increased 10.9 percent whereas the price of domestic leather hides increased 26.1 percent.

Customers of National Tanning and Trading Corporation purchased tanned and finished leather from foreign sources for several years. These customers chose to place new orders with foreign suppliers rather than with other domestic firms when they learned that A. C. Lawrence would close early in 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with tanned and finished hides produced at the Peabody, Massachusetts plant of National Tanning and Trading Corporation contributed importantly to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Peabody, Massachusetts plant of National Tanning and Trading Corporation who became totally or partially separated from employment on or after October 1, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 21st day of March 1977.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.

[FR Doc. 77-9354 Filed 3-29-77; 8:45 am]

[TA-W-1292]

UNITED STATES STEEL CORP.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1292: investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 17, 1976 in response to a worker petition received on November 17, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing carbon plate at the Baytown, Texas plant of the U.S. Steel Corp., Pittsburgh, Pa.

The Notice of Investigation was published in the FEDERAL REGISTER on December 3, 1976 (41 FR 53097). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the U.S. Steel Corporation, its customers, the Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

- (1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;
- (2) That sales or production, or both, of such firm or subdivision have decreased absolutely;
- (3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased

quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment of production workers increased 3.8 percent from 1973 to 1974, declined 1.0 percent from 1974 to 1975, and declined 7.9 percent in the first nine months of 1976 compared to the same period of 1975. Beginning in the fourth quarter of 1975 and continuing through the third quarter of 1976, employment declined in each quarter compared to the same quarter of the previous year. Employment of salaried workers increased 3.9 percent from 1973 to 1974, increased 15.2 percent from 1974 to 1975, and then declined 3.5 percent in the first nine months of 1976 compared to the same period of 1975.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales data represent shipments of carbon plate from the Baytown, Texas plant. Sales declined 2.1 percent in quantity from 1973 to 1974, declined 4.7 percent from 1974 to 1975, and declined 10.6 percent in the first nine months of 1976 compared to the same period of 1975. Production data was not available.

INCREASED IMPORTS

Imports of carbon plate steel increased absolutely and relative to domestic shipments from 1971 to 1972, declined from 1972 to 1973, increased from 1973 to 1974, and then increased relatively from 1974 to 1975. Imports increased both absolutely and relatively in the first nine months of 1976 compared to the same period of 1975. The ratio of imports to domestic shipments increased from 18.7 percent in the first nine months of 1975 to 24.8 percent in the same period of 1976.

CONTRIBUTED IMPORTANTLY

Customer purchases of carbon plate from U.S. Steel have been affected both directly and indirectly by import shipments. Eighty percent of the customers contacted increased their purchases of imported carbon plate from 1975 to 1976. The shift from domestic sources to foreign sources of carbon plate is due to the cheaper price of the imports. The other twenty percent of the customers surveyed experienced a declining volume of sales from 1975 to 1976, due to competition from users of foreign plate. The decrease in the volume of sales by these customers is reflected in their decreased purchases of carbon plate from U.S. Steel.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly

competitive with carbon plate produced by the Baytown, Texas plant of the U.S. Steel Corporation contributed importantly to the total or partial separation of the workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of carbon plate at the Baytown, Texas plant of the U.S. Steel Corp., Pittsburgh, Pa., who became totally or partially separated from employment on or after October 15, 1975 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 18 day of March 1977.

JAMES P. TAYLOR,
Director, Office of Management
Administration and Planning.

[FR Doc.77-9355 Filed 3-28-77;8:45 am]

**NATIONAL FOUNDATION ON THE
ARTS AND THE HUMANITIES
NATIONAL COUNCIL ON THE ARTS
Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the National Council on the Arts will be held on April 23, 1977, from 9 a.m. to 6 p.m., and April 24, 1977, from 9 a.m. to 2 p.m., in the 14th Floor Conference Room, Columbia Plaza Building, 2401 E Street NW., Washington, D.C.

This meeting is for the purpose of Council review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of March 17, 1977; these sessions may be closed to the public pursuant to subsection (c) (4), (6), and 9 (B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. Robert M. Sims, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6377.

ROBERT M. SIMS,
Administrative Officer, National
Endowment for the Arts, National
Foundation on the Arts
and the Humanities.

[FR Doc.77-9380 Filed 3-28-77;8:45 am]

**NATIONAL SCIENCE FOUNDATION
ADVISORY PANEL FOR THE DIVISION OF
POLICY RESEARCH AND ANALYSIS
Meeting**

NAME: Advisory Panel for the Division
of Policy Research and Analysis.

DATE: April 13, 1977.

TIME: 9:00 a.m. to 5:00 p.m.

PLACE: National Science Foundation,
Room 543, 1800 G Street, NW., Wash-
ington, D.C. 20550.

TYPE OF MEETING: Open.

CONTACT PERSON:

Mrs. Agnes Rhodes, Administrative Of-
ficer, Division of Policy Research and
Analysis, Directorate for Scientific,
Technological and International Af-
fairs, Room 1233, National Science
Foundation Room 1800 G Street, NW.,
Washington, D.C. 20550, telephone
(202) 632-5990. Anyone who plans to
attend should contact Mrs. Rhodes by
April 6, 1977.

SUMMARY MINUTES: May be obtained
from the Committee Management Staff,
Division of Personnel and Management,
Room 248, National Science Foundation,
Washington, D.C. 20550.

PURPOSE OF ADVISORY PANEL: The
purpose of the Advisory Panel is to pro-
vide advice about the program emphases
and directions of the Division of Policy
Research and Analysis, as well as to re-
view proposals to that Division or awards
made by that Division.

TENTATIVE AGENDA:

1. Welcome and Introductory remarks
by the Chairman.
2. Discussion of purposes and workings
of the Policy Research and Analysis
Division.
3. Discussion of role and functions of
Advisory Panel.
4. General discussion, work assignments
and agenda for next meeting.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

MARCH 23, 1977.

[FR Doc.77-9157 Filed 3-28-77;8:45 am]

**ADVISORY PANEL FOR METALLURGY
AND MATERIALS**

Meeting

In accordance with the Federal Ad-
visory Committee Act, Pub. L. 92-463,
the National Science Foundation an-
nounces the following meeting:

NAME: Advisory Panel for Metallurgy
and Materials.

DATE: April 18 and 19, 1977.

TIME: 9:00 a.m. on 4/18—8:45 a.m. on
4/19.

PLACE: Room 338, National Science
Foundation, 1800 G Street, NW., Wash-
ington, D.C. 20550.

TYPE OF MEETING: Open.

CONTACT PERSON:

Dr. John C. Shyne, Chairman, Ad-
visory Panel for Metallurgy and Mate-
rials, Room 412, National Science
Foundation, Washington, D.C. 20550,
telephone (202) 632-7406. Anyone who
plans to attend should notify Dr. Shyne
prior to the meeting.

SUMMARY MINUTES: May be obtained
from the Committee Management Co-

ordination Staff, Division of Personnel
and Management, Room 248, National
Science Foundation, Washington, D.C.
20550.

PURPOSE OF PANEL: To provide ad-
vice and counsel to the Metallurgy and
Materials Section, Division of Materials
Research.

AGENDA: April 18, 1977.

- 9:00 Welcome and Introductory Re-
marks—Chairman.
- 9:15 Comments—Assistant Director, Math-
ematical and Physical Sciences and
Engineering.
- 9:30 Comments—Director, Division of
Materials Research.
- 10:00 Overview of Polymers Program and
discussion.
- 10:45 Overview of Ceramics Program and
Discussion.
- 11:30 Recess.
- 1:00 Review of Metallurgy Program.
- 3:00 Committee report on Metallurgy
Program and discussion.
- 5:00 Adjournment.
- 8:45 Panel Report on Metallurgy Program.
- 9:15 Discussion of materials (metallurgi-
cal) processing and extractive metal-
lurgy.
- 9:15 Discussion of materials (metallurgi-
cal) processing and extractive metal-
lurgy.
- 10:30 Report on Responses to a Ceramics
Questionnaire, and discussion.
- 11:15 Discussion of biomaterials activities.
- 11:45 Recess.
- 12:30 Panel discussion of the Section's Long
Range Plans, and of the instru-
mentation needs of the materials
community.
- 2:30 General discussion.
- 3:30 Adjournment.

MARCH 23, 1977.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

[FR Doc.77-9156 Filed 3-28-77;8:45 am]

**OFFICE OF MANAGEMENT AND
BUDGET**

**PRIVACY ACT OF 1974
Reports on New Systems**

The purpose of this notice is to list
reports on new systems filed with the
Office of Management and Budget to give
members of the public the opportunity
to make inquiries about them and to
comment on them.

The Privacy Act of 1974 requires that
agencies give advance notice to the Con-
gress and the Office of Management and
Budget of their intent to establish or
modify systems of records subject to the
Act (5 U.S.C. 552a (a)). During the period
March 7, 1977 through March 18, 1977
the Office of Management and Budget
received the following reports on new
(or revised) systems of records.

FEDERAL DEPOSIT INSURANCE CORPORATION

System Names: (1) Medical Records and
Emergency Contact Information System;
(2) Municipal Securities Principals and
Representatives System.

Report Date: March 3, 1977.

Point of Contact: Mr. Daniel William Per-
singer, Associate General Counsel, Federal
Home Loan Bank Board, 320 First Street,
NW., Washington, D.C. 20552.

TENNESSEE VALLEY AUTHORITY

System Names: (1) Personnel Files; (2) Employee Accident; (3) Information System; (4) Medical Record System; (5) Payroll Records; (6) Employment Applicant File.
Report Date: March 10, 1977.
Point of Contact: Mr. Alan R. Griswold, Privacy Act Coordinator, Tennessee Valley Authority, Knoxville, Tennessee 37902.

FEDERAL ENERGY ADMINISTRATION

System Name: Electric Rate Demonstration Data Base.
Report Date: March 8, 1977.
Point of Contact: Mr. Furman Layman, Privacy Act Officer, Federal Energy Administration, 12th and Pennsylvania Avenue N.W., Washington, D.C. 20461.

DEPARTMENT OF JUSTICE

System Name: Automated Intelligence Record System (Pathfinder).
Report Date: March 11, 1977.
Point of Contact: Mr. Harry L. Gastley, Administrative Counsel, Department of Justice, Washington, D.C. 20240.

DEPARTMENT OF JUSTICE

System Name: Employee Locator File General Personnel Records.
Report Date: March 11, 1977.
Point of Contact: Mr. Harry L. Gastley, Administrative Counsel, Department of Justice, Washington, D.C. 20240.

DEPARTMENT OF JUSTICE

System Names: (1) Tax Division Special Projects Files; (2) Tax Division Central Classification Cards, Index Docket Cards, and Associated Records, Criminal Cases; (3) Tax Division Central Classification Cards, Index Docket Cards, and Associated Records, Civil Cases.
Report Date: March 11, 1977.
Point of Contact: Mr. Harry L. Gastley, Administrative Counsel, Department of Justice, Washington, D.C. 20240.

VELMA N. BALDWIN,
Assistant to the Director
for Administration.

[PR Doc. 77-9363 Filed 3-28-77; 8:45 am]

SECURITIES AND EXCHANGE
COMMISSION

[Rel. No. 19942, 70-5939]

AMERICAN ELECTRIC POWER SERVICE
CORP., ET AL.

Application for Exemption for Loans Made to Employees for Moving Expenses Related to Transfers Within the Holding Company System

MARCH 18, 1977.

In the Matter of American Electric Power Service Corp., 2 Broadway, New York, N.Y. 10004; Appalachian Power Co., 40 Franklin Road, Roanoke, Va. 24009; Cardinal Operating Co., Box Drawer B, Brilliant, Ohio 43913; Cedar Coal Co., 1220 Charleston National Plaza, Charleston, W. Va. 24301; Central Appalachian Coal Co., 301 Virginia Street East, Charleston, W. Va. 24301; Central Coal Co., P.O. Box 190, New Haven, W. Va. 25265; Central Ohio Coal Co., 301 Cleveland Avenue, S.W., Canton, Ohio 44702; Central Operating Co., P.O. Box 368, New Haven, W. Va. 25265; Indiana & Michigan Electric Co., 2101 Spy Run Avenue, Ft. Wayne, Ind. 46801; Indiana & Michigan Power Co., Donald C. Cook

Nuclear Plant, Bridgman, Mich. 49106; Kanawha Valley Power Co., 301 Virginia St. E., Charleston, W. Va. 25327; Kentucky Power Co., 15th Street and Carter Avenue, Ashland, Ky. 41101; Kingsport Power Co., 40 Franklin Road, Roanoke, Va. 24009; Michigan Power Co., P.O. Box 413, Three Rivers, Mich. 49093; Ohio Electric Co., 301 Cleveland Avenue, S.W., Canton, Ohio 44702; Ohio Power Co., 301 Cleveland Avenue, S.W., Canton, Ohio 44702; Southern Appalachian Coal Co., 301 Virginia St. E., Charleston, W. Va. 25327; Southern Ohio Coal Co., P.O. Box K, Moundsville, W. Va. 25041; Wheeling Electric Co., 51 Sixteenth St., Wheeling, W. Va. 26003; Windsor Power House Coal Co., 301 Cleveland Avenue, S.W., Canton, Ohio 44702.

Notice is hereby given that the above-named subsidiary companies of American Electric Power Company, Inc., a registered holding company, or subsidiaries of subsidiaries thereof, (collectively referred to as the "AEP System"), have filed an application, and an amendment thereto, with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Section 9 of the Act and Rules 48(b) and 100(a) promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

The AEP system has adopted a Moving Policy ("Policy") in making home purchase loans to employees transferred to new geographical locations within the AEP System. The Policy permits companies within the System to make loans to employees who must make down payments on their new residences before they have been able to complete the sales of their former residences and obtain the proceeds therefrom. The loans are without interest, in an amount not exceeding the difference between the fair market value of the employee's former residence (95 percent of the average of the appraised value as determined by at least two qualified independent real estate appraisers) and the unpaid balance of any mortgage thereon, and for a period of 90 days or until such residence is sold, whichever is shorter. It is stated that under unusual circumstances the loan period may be extended beyond 90 days for one or more 30 day periods. If the loan is not repaid on or prior to the end of the 90 day period and any extensions, interest is charged from the date of making the loan at a rate of 6 percent per annum. If an applicant declines to extend a loan at the end of 90 days, the employee may request this his home be purchased by an affiliate of applicant and the loan repaid from the proceeds. The home is purchased by either Franklin Real Estate Company or its subsidiary, Indiana Franklin Realty, Inc., depending upon the location of the home, for a price equal to its fair market value as described above. The acquiring company immediately places the home for sale in the open mar-

ket. If the home is resold within 90 days of acquisition and the net proceeds exceed the price paid to the employee, such excess is paid to the employee. All loans made to employees must be approved by the Executive Vice President of the applicant, if the transfer is made intra-company, or by the Executive Vice President of both affected companies if the transfer is between companies.

Rule 48(b), as amended effective June 1, 1976, requires Commission approval for any loan to an employee in excess of \$10,000, even pursuant to the Policy, unless a first mortgage is obtained to secure the loan. Applicants state that this condition cannot be met in the majority of cases since an employee's residence will usually be subject to a first mortgage when it becomes necessary to sell it and any new residence will generally be subject to a first mortgage in favor of the principal lender. It is also stated that pursuant to the Policy applicants made 21 loans in excess of \$10,000 between June 1, 1976, and February 18, 1977, ranging in amounts between \$11,000 and \$43,000, of which some 14 loans were still unpaid on February 18, 1977. It is further stated, concerning purchases and resales of employees' homes, that in 1976 the real estate affiliates of applicants bought 2 houses, sold 8 houses (and 1 additional house in 1977), and had on hand as of March 7, 1977 1 house that had been purchased in 1975.

Applicants request that they be exempted from the \$10,000 limitation imposed by Rule 49(b)(1) with respect to unsecured loans made to employees pursuant to the Policy.

It is stated that the fees and expenses to be incurred in connection with the proposed transaction are estimated at \$2,500. It is also stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given, that any interested person may, not later than April 11, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as amended, 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 at the above-stated addresses, 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, as amended or as it may be further amended, may be granted 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.77-9179 Filed 3-28-77;8:45 am]

[Rel. No. 19339; 31-759]

ARABIAN AMERICAN OIL CO.

Electrical Generating Facilities

MARCH 18, 1977.

Notice is hereby given That Arabian American Oil Company ("Aramco"), 1345 Avenue of the Americas, New York, New York 10019, a Delaware corporation, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 2(a)(3)(A), 2(a)(7), 3(a)(5) and 3(b) of the Act as applicable to the proposed request. All interested parties are referred to the application, which is summarized below, for a complete statement of the status requests.

Aramco was originally formed in 1933 and has become one of the largest oil companies in the world in terms of oil production. The outstanding capital stock of Aramco is presently owned by subsidiaries of four United States corporations ("Owner Companies") as follows:

Exxon Corporation, 29 1/4 %
Standard Oil Company of California, 29 1/4 %
Texaco Inc., 29 1/4 %
Mobil Corporation, 12 %

It is engaged in the exploration for, and production and refining of, hydrocarbons within Saudi Arabia. Aramco's gross production of crude oil in 1976 was 3,053,886,653 barrels, or 8,343,953 barrels per day, and the amount of crude oil refined and natural gas liquid processed was 231,949,969 barrels, or 633,743 barrels per day. Aramco presently operates electrical generating facilities with a capacity of 1015 megawatts. These facilities were constructed by Aramco to supply the power needs of its oil operations as well as the needs of its employees and their families.

It is stated that all electrical power generated by Aramco from its existing facilities has been used, distributed and transmitted only within Saudi Arabia, and Aramco owns no electrical facilities outside of Saudi Arabia.

It is stated that Aramco's sales of power have been wholly incidental to its business of producing and refining petroleum and related products and have been limited to surplus power furnished in support of small communities near Aramco's area of operations. Aramco's sales of surplus electric power currently constitute less than 1.75 percent of its total power production and less than 0.0018 percent of its gross revenues.

It is now proposed that Aramco will transfer all of its electrical transmission

facilities and about three-fourths of its electrical generation facilities, both of which are located wholly in Saudi Arabia, to a Saudi corporation to be formed and called Saudi Consolidated Electric Company ("SCECO"). In exchange for the facilities transferred, Aramco will receive and hold voting shares of SCECO stock with a value equal to the full net book value of such facilities at the time of transfer. The SCECO shares held by Aramco may constitute more than 10 percent of SCECO's equity. Such shares will not be transferable except as described below. After an interim period, the SCECO shares held by Aramco will be sold to the Saudi Arabian Government ("SAG"), or an entity wholly owned by SAG, for cash equal to the value of such shares. While no date for the sale of SCECO shares has been set, it is hoped that the sale can occur within approximately one year. At no time will Aramco have any responsibility whatsoever for capital requirements of SCECO or for any indebtedness incurred by SCECO or for any deficiency in SCECO's operating funds. Aramco will enter into an agreement with SCECO under which Aramco will service, maintain and operate such facilities as well as facilities to be built by SCECO and facilities of other parties which may thereafter be transferred to SCECO, and supervise development and expansion of the SCECO power system.

Following the transfer of its facilities, Aramco anticipates that it will constitute the principal purchaser of electric power from SCECO. It is contemplated that, following the transfer of facilities by other private power companies to SCECO, SCECO will supply substantially all of the wholesale and retail electric power sold in the Eastern Province of Saudi Arabia. Sales of electric power by SCECO also will be made only within Saudi Arabia.

After the transfer to SCECO of 73 megawatts of Aramco's 1015 megawatts generating capacity and all of Aramco's transmission facilities, the 262 megawatts of generating capacity retained by Aramco, which is an integral part of existing petroleum facilities using by-products of such facilities in the generation of power, will be used primarily to supply power for petroleum operations at these facilities, though some power generated will also be supplies, as in the past, to Aramco employees associated with such facilities and their families.

It is stated that Aramco does not plan to sell any power generated by the retained generating facilities, though these facilities will be connected to the national power grid, and shortages and/or surpluses of power at various places in the national power grid system may result from time to time in sales of power by Aramco from the retained facilities, purchases of power by Aramco at the sites of petroleum operations normally served by the retained facilities or exchanges of power with the SCECO system.

Despite its ownership and operation of the electrical generation facilities, Aramco states its belief that it is en-

titled to an order, as provided in Section 2(a)(3), declaring it not to be an electric utility company under the Act inasmuch as it is primarily engaged on one or more businesses other than the business of an "electric utility company" (as defined in the Act), and by reason of the small amount of electric energy sold by it, it is not necessary in the public interest or for the protection of investors or consumers that Aramco be considered an "electric utility company" for the purposes of the Act.

Furthermore Aramco states that in the event that, by reason of future events, the statements made with respect to its entitlement to an order pursuant to Section 2(a)(3)(A) becomes inapplicable, Aramco claims on exemption from the requirements of the Act pursuant to Section 3(b) inasmuch as it derives no material part of its income, directly or indirectly from sources within the United States and neither it nor any of its subsidiary companies is a public utility company operating in the United States.

In addition to the foregoing, Aramco further requests an order pursuant to Section 3(a)(5) declaring that, to the extent Aramco may be deemed to be a "holding company" by reason of the definition contained in Section 2(a)(7), it is exempt from all provisions of the Act, as it is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a "public utility company" as defined in the Act.

Notice is further given, That any interested person may, not later than April 12, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, and reasons for such request, and the issues of fact or law raised by said application 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 applicant 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, as filed or as it may be amended, may be granted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act. 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.77-9180 Filed 3-28-77;8:45 am]

[Release No. 10944; 70-5838]

ARKANSAS-MISSOURI POWER CO.
Issuance and Sale of Short-Term Bank
Notes

MARCH 18, 1977.

Notice is hereby given That Arkansas-Missouri Power Company ("Arkansas-Missouri"), 405 West Park Street, Blytheville, Arkansas 72315, a wholly-owned subsidiary of Middle South Utilities, Inc., a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Section 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 amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated May 4, 1976 (HCAR No. 19511), Arkansas-Missouri was authorized to borrow from a group of Arkansas banks, from time to time for a period of one year, up to \$5,500,000 through the issuance and sale of promissory notes. On March 8, 1977, \$3,000,000 of such notes were outstanding.

It is now proposed that Arkansas-Missouri issue and sell to a group of banks, from time to time during the period commencing on the effective date of the supplemental order herein and continuing for one year thereafter, up to \$5,500,000 of unsecured, short-term promissory notes to Worthen Bank & Trust Company, Little Rock, Arkansas, for the account of fifteen participating Arkansas banks.

The notes will be payable in not more than 270 days from the date of issuance and may be renewed from time to time, but will mature not later than one year from the effective date. As the notes mature, they will be renewed (but to mature not later than one year from the effective date) or repaid out of funds then available to the company. The notes will, at the option of the company, be prepayable, in whole or in part, at any time without premium or penalty.

The notes will bear interest, payable quarterly and at maturity, on the unpaid principal amount thereof at the prime commercial loan rate of Chemical Bank, New York, New York, in effect from time to time. Arkansas-Missouri will not be required to maintain any compensating balances with, or pay any commitment fee to, any of the participating banks in connection with the proposed borrowings.

Arkansas-Missouri will apply a portion of the net proceeds received from the new borrowings to the payment at maturity of the presently outstanding \$3,000,000 principal amount of bank borrowings referred to above and the balance of said proceeds to the company's 1977 construction program. It is stated that the proposed new borrowings are in addition to other bank borrowings by the company from the First National Bank in Little Rock, Arkansas, which

total \$7,750,000 in principal amount as of March 8, 1977, and which may not exceed that amount at any one time outstanding (HCAR Nos. 19264 and 19756).

It is stated that no special or separable expenses are anticipated in connection with the proposed notes and that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given That any interested person may no later than April 18, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from 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.

[PR Doc.77-9181 Filed 3-28-77; 8:45 am]

[Rel. No. 9681; 812-4047]

LEXINGTON RESEARCH FUND, INC.,
ET AL.

Application for Exemption

MARCH 18, 1977.

Notice is hereby given, That Lexington Research Fund, Inc., Lexington Growth Fund, Inc., and Lexington Income Fund, Inc. (the "Funds"), 177 North Dean Street, Englewood, New Jersey 07631, open-end diversified management companies registered under the Investment Company Act of 1940 (the "Act") and Piedmont Capital Corporation ("Piedmont Capital"), 10100 Santa Monica Blvd., Los Angeles, California 90067, and Westamerica Financial Corporation ("Westamerica"), 444 Sherman Street, Denver, Colorado 80203, principal underwriters for the Funds (collectively, "Applicants"), filed an application on October 26, 1976 and an amendment thereto on March 7, 1977

pursuant to Section 6(c) of the Act for an order exempting Applicants from the provisions of Section 22(d) of the Act to the extent necessary to permit proceeds from life insurance or annuity contracts issued by certain companies to be used to purchase shares of the Funds at a sales charge equal to one-half of the otherwise applicable sales charge. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations therein, which are summarized below.

Piedmont Management Company, Inc. ("Piedmont") directly or indirectly owns all of the outstanding common stock of Piedmont Capital and Westamerica, as well as all of the stock of Pacific Fidelity Life Insurance Company (the "Life Company"). The Life Company offers a wide variety of insurance products through its agents, many of whom are dually licensed to sell shares of the Funds in addition to insurance products.

Shares of the Funds are offered to the public at net asset value plus a sales charge, which ranges from 8.5 percent to 1 percent of the public offering price. Applicants proposed to sell shares of the Funds at a sales charge equal to one-half the otherwise applicable sales charge where the shares are purchased with the proceeds from life insurance or annuity contracts issued by the Life Company or any other life insurance company controlled by Piedmont, provided that such proceeds are used to purchase shares of the Funds within 90 days of their having been received by the purchaser from the insurance company. Proceeds which could be so invested would include sums payable by reason of the death of an insured or annuitant under any such contract and, in the event of a cash surrender or withdrawal of a dividend accumulation, if the payee has reached sixty years of age.

Section 22(d) provides, in part, that no registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus.

Applicants state that the sales effort required in soliciting persons who have received proceeds of any contract will be significantly less than that involved in soliciting persons not having this relationship, and that a sales charge will have previously been deducted under the insurance or annuity contract issued by the Life Company. Applicants also state that, in many cases, the purchase of securities issued by the Funds with the proceeds of an insurance policy may have been contemplated at the time of the purchase of the insurance policy as a part of an overall estate plan.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given. That any interested person may, not later than April 11, 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 should 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 Applicants at the addresses 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, on 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 order 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. 77-9182 Filed 3-28-77; 8:45 am]

[Release No. 19943; 70-5415]

MIDDLE SOUTH UTILITIES, INC.

Issuance and Sale of Notes by Fuel-Supply Subsidiary to a Bank

MARCH 18, 1977.

Notice is hereby given. That System Fuels, Inc. ("SFI"), a jointly-owned, non utility, fuel-supply subsidiary company of Arkansas Power & Light Company, First National Building, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company, Electric Building, Jackson, Mississippi 39205, and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112, (collectively referred to as "Operating Companies"), each an electric utility subsidiary company of Middle

South Utilities, Inc., 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and the above-named companies 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 amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By supplemental orders in this proceeding dated April 15, 1974, and April 13, 1976 (HCAR Nos. 18378 and 19484), the Commission authorized SFI to issue and sell bank notes up to an aggregate amount of \$40,000,000 outstanding at any one time pursuant to a loan agreement dated as of April 17, 1974, among SFI, the Operating Companies, and First National City Bank (Citibank as of March 1, 1976). The loan agreement terminates on April 17, 1977.

SFI now intends to extend the term of the loan agreement for one year through April 17, 1978, and proposes to issue and sell its notes to Citibank in accordance therewith up to an aggregate of \$40,000,000 outstanding at any one time. All of the other terms and conditions of the loan agreement are to remain unchanged. The notes will bear interest at a rate per annum equal to one hundred fifteen percent (115 percent) of the base rate charged by Citibank on 90-day loans to responsible and substantial commercial borrowers. Compensating balances are not required. SFI will use the proceeds of the notes for the financing of a portion of its fuel-oil inventory and for other expenditures in connection with its fuel-supply program for the Middle South Utilities system.

No State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. It is requested that authorization be granted to file certificates pursuant to Rule 24 on a quarterly basis.

Notice is further given. That any interested person may, not later than April 11, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said 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 addresses, 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 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 promul-

gated 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 Dec. 77-9183 Filed 3-28-77; 8:45 am]

[Rel. No. 19940, 70-5985]

OHIO EDISON CO.

Proposed Charter Amendment Authorizing Increase in Number of Authorized Preferred Stock and Order Authorizing Solicitation of Proxies in Connection Therewith

MARCH 18, 1977.

Notice is hereby given. That Ohio Edison Company ("Ohio Edison"), 76 South Main Street, Akron, Ohio 44305, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a), 7, and 12(e) of the Act and Rule 62 promulgated thereunder, as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Ohio Edison proposes to amend its Articles of Incorporation to increase the number of authorized shares of Preferred Stock, \$100 par ("new Preferred Stock") from 3,000,000 to 4,000,000 shares. Ohio Edison states that all of the presently authorized 3,000,000 shares are currently outstanding. Ohio Edison states that, to provide funds for its presently contemplated construction expenditures through 1979, it anticipates the issue and sale of up to 500,000 shares of new Preferred Stock in each of 1978 and 1979. Ohio Edison estimates its construction expenditures for the year 1977, 1978, and 1979 are at least \$1,200,000,000. Ohio Edison further states that the new Preferred Stock which will have preference over common stock as to dividends, cumulative, and as to assets up to the redemption prices thereof, will be issued, subject to the requisite statutory authorization, at such times and in such amounts and at such dividend rates, payment dates, redemption terms and liquidation value as determined by the Board of Directors (Board) at such time, without solicitation of prior authorization by the stockholders by the Board.

Ohio Edison proposes to submit the amendment to its shareholders at the Annual Meeting to be held on April 28, 1977. The amendment will require the favorable vote of the holders of two-thirds of the shares of common stock outstanding on the record date for its

adoption. Ohio Edison proposes to solicit proxies from its shareholders, through the use of the proposed soliciting material, to obtain the required approval of the amendment and to elect directors, appoint auditors, amend their Code of Regulations and act upon a shareholder's proposal.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at \$11,300 including \$1,500 in legal fees. It is stated that no state commission and no federal commission, other than this Commission has jurisdiction with respect to the proposed transaction.

Notice is further given That any interested person may, not later than April 12, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed, or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant 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.

It appearing to the Commission that the declaration, insofar as it proposes to solicitation of proxies from Ohio Edison's stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered That the declaration, regarding the proposed solicitation of proxies of Ohio Edison's stockholders be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 77-4184 Filed 3-28-77; 8:45 am]

[Release No. 34-13392; File No. SR-PSD-77-1]

PACIFIC SECURITIES DEPOSITORY TRUST CO.

Proposed-Rule Changes by Self-Regulatory Organization

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on March 15, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes as follows:

TEXT OF PROPOSED RULE CHANGE

The Pacific Securities Depository Trust Company (PSDTC) proposed to amend its fee schedule by adding a provision at the end thereof which reads as follows:

"No clearing agency which has been granted registration as a clearing agency by the Securities and Exchange Commission pursuant to Sec. 19(a) of the Securities Exchange Act of 1934 which (i) acts as a securities depository in that it holds securities in custody for its participants and completes book-entry deliveries pursuant to the instructions of the participants, (ii) is organized under state law as a trust company, (iii) does not seek to profit from services to participants and (iv) interfaces with other such entities for the purpose of permitting its participants to effect book-entry deliveries of securities to participants in another such entity (a "registered securities depository") shall be obligated to pay fees for PSDTC services other than the fees designated herein for Withdrawals by Depository Accommodation Transfer (DAT), Physical Withdrawals (of Nominee Certificates), and Transfer Agent Custodian (TAC) Withdrawals, provided, however, that such registered securities depository maintains securities in custody for PSDTC's account and charges PSDTC fees only for withdrawal services for which PSDTC charges fees to it."

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to establish a uniform policy with respect to interdepository fees between PSDTC, Depository Trust Company (DTC) and Midwest Securities Trust Company (MSDTC). PSDTC, DTC and MSTC are presently the only registered trust company clearing agencies which maintain interfaces with each other. The rule change proposed herein is substantially identical to rule changes being proposed by DTC and MSTC.

PSDTC, DTC and MSTC are linked together by a communications network which permits bookkeeping movements of security positions between the three entities. Within this system, each depository acts as a custodian for the

other. This national depository system permits broker, bank and institutional participants access to the depository system from any of three geographical locations, whereby participants in one system can, for example, make book entry deliveries of securities to a participant in another system. This reduces the expense to the participant which would be otherwise incurred and improves safety in the settlement of transactions.

Under the proposed rule registered securities depositories would not charge each other for delivery, custody, or fixed monthly fees chargeable to participants. Their respective charges would be applicable only to withdrawals of securities, and exception designed to encourage a minimum of such withdrawals.

The proposed rule change relates to the fostering of cooperation and coordination among persons engaged in the clearing and settlement of securities transactions and to the removal of impediments to and perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. See item 6 below.

Comments have neither been received nor solicited.

PSDTC is of the opinion that the proposed rule change will not impose any burden on competition. Rather, PSDTC feels the rule change will further the intent of Congress with respect to the establishment of a national system for the clearance and settlement of securities transactions as set forth in Sec. 17A(a)(1)(D) of the Act:

"The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors."

Furthermore, Congress directed the Commission, in Sec. 17A(a)(2) of the Act, to

"Use its authority under [the Act] to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities * * * in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection."

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection in the Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of such filing will also be available for inspection at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before April 19, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 18, 1977.

[FR Doc.77-9176 Filed 3-28-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

CLARKSBURG DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Clarksburg District Advisory Council will hold a public meeting at 9:30 a.m., Friday, April 29, 1977, at the Town House Motel, Charles Town, West Virginia, 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 Isaac R. Mayfield, District Director, U.S. Small Business Administration, 109 North Third Street, Clarksburg, West Virginia 26301, (304) 622-6601.

Dated: March 18, 1977.

ANTHONY S. STASIO,
Acting Assistant Administrator for Advocacy and Public Communications.

[FR Doc.77-9337 Filed 3-28-77;8:45 am]

[Declaration of Disaster Loan Area No. 1307]

MASSACHUSETTS

Declaration of Disaster Loan Area

The Roxbury section of Quincy and Savin Streets, bordered by Blue Hill Boulevard in Boston, Suffolk County, Massachusetts constitutes a disaster area because of damage resulting from a fire which occurred on February 19, 1977. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on May 23, 1977, and for economic injury until the close of business on December 22, 1977 at:

Small Business Administration, District Office, 150 Causeway Street, 10th Floor, Boston, Massachusetts 02114

or other locally announced locations.

Dated: March 22, 1977.

ROGER H. JONES,
Acting Administrator.

[FR Doc.77-9339 Filed 3-28-77;8:45 am]

NEW ORLEANS DISTRICT ADVISORY COUNCIL

Meeting

The Small Business Administration New Orleans District Advisory Council

will hold a public meeting at 10:00 a.m., Thursday, May 19, 1977, at the Chateau Capitol, 201 Lafayette Street, Baton Rouge, Louisiana, 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 William Murfin, District Director, U.S. Small Business Administration, Plaza Tower, 1001 Howard Avenue, New Orleans, Louisiana 70113, (504) 682-2744.

Dated: March 18, 1977.

ANTHONY S. STASIO,
Acting Assistant Administrator for Advocacy and Public Communications.

[FR Doc.77-9338 Filed 3-28-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Waiver Petition No. HS-77-5]

MORRISTOWN & ERIE RAILROAD CO.

Petition for Exemption From the Hours of Service Act

The Morristown & Erie Railroad 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-77-5, Room 5101, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before May 13, 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 SW., Washington, D.C. 20590.

Issued in Washington, D.C. on March 23, 1977.

DONALD W. BENNETT,
Chairman, Railroad Safety Board.

[FR Doc.77-9172 Filed 3-28-77;8:45 am]

[FRA Waiver Petition No. HS-77-4]

OREGON & NORTHWESTERN RAILROAD CO.

Petition for Exemption From the Hours of Service Act

The Oregon & Northwestern Railroad 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 trip-

licate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Attention: FRA Waiver Petition No. HS-77-4, Room 5101, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before May 13, 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 SW., Washington, D.C. 20590.

Issued in Washington, D.C. on March 23, 1977.

DONALD W. BENNETT,
Chairman, Railroad Safety Board.

[FR Doc.77-9189 Filed 3-28-77;8:45 am]

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1976 Rev., Supp. No. 11]

SURETY COMPANIES ACCEPTABLE ON FEDERAL BONDS

Allianz Insurance Co., Change of Name

General Fire and Casualty Company, a New York corporation, has formally changed its name to Allianz Insurance Company, effective September 15, 1976. Documents evidencing the change of name are on file in the Treasury.

A new certificate of authority as an acceptable surety on Federal bonds, dated September 15, 1976, has been issued by the Treasury to Allianz Insurance Company under Sections 6 to 13 of Title 6 of the United States Code, to replace the certificate issued July 1, 1976 (41 FR 28243, July 8, 1976) to the company under its former name, General Fire and Casualty Company. The underwriting limitation of \$253,000 previously established for the company remains unchanged.

The change in name of general Fire and Casualty Company does not affect its status or liability with respect to any obligation in favor of the United States or in which the United States has an interest, which it may have undertaken pursuant to the certificate of authority issued by the Treasury.

Certificates of authority expire on June 30 each year, unless sooner revoked and new certificates are issued on July 1, so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1, in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: March 21, 1977.

D. A. PAGLIAI,
Commissioner, Bureau of Government Financial Operations.

[FR Doc.77-9149 Filed 3-28-77;8:45 am]

[Public Debt Series—No. 7-77]

Office of the Secretary
TREASURY NOTES OF SERIES NO. 7-77

Interest Rates

MARCH 23, 1977.

The Secretary of the Treasury announced on March 22, 1977, that the interest rate on the notes described in Department Circular—Public Debt Series—No. 7-77, dated March 11, 1977, will be 6 percent per annum. Accordingly, the notes are hereby redesignated 6 percent Treasury Notes of Series N-1979. Interest on the notes will be payable at the rate of 6 percent per annum.

DAVID MOSSO,
Fiscal Assistant Secretary.

[FR Doc. 77-9167 Filed 3-28-77; 8:45 am]

UNITED STATES INFORMATION
AGENCY

U.S. ADVISORY COMMISSION ON
INFORMATION

Review

The United States Information Agency is conducting a review of the U.S. Advisory Commission on Information and is soliciting input from interested persons for that appraisal. In a memorandum dated February 25, 1977 addressed to the heads of Executive Departments and Agencies, the President has ordered a comprehensive, zero-base review of Federal advisory committees. The review is being conducted in accordance with the Office of Management and Budget Circular No. A-63, Transmittal Memorandum No. 5 dated March 7, 1977.

The President considers three prerequisites essential to the continuation of any advisory committee: (1) there must be a compelling need for the committee; (2) the committee must have a balanced membership; and (3) the committee must conduct its business as openly as possible consistent with the law and its mandate. He also deems it essential that each agency provide for open and public participation in its committee review process to the maximum extent possible.

All comments pertinent to a review of the U.S. Advisory Commission on Information should be addressed to the Committee Management Officer, Office of Administration and Management, U.S. Information Agency, Washington, D.C. 20547 no later than April 5, 1977. Comments received after that date will be incorporated in subsequent reviews of the above-named commission.

EDWARD J. NICKEL,
Assistant Director,
Administration and Management.

MARCH 22, 1977.

[FR Doc. 77-9164 Filed 3-28-77; 8:45 am]

WATER RESOURCES COUNCIL
STANDING STATE ADVISORY COMMITTEE
Review

The Water Resources Council in accordance with Section 7(c) of the Federal Advisory Committee Act (Pub. L. 92-463) is conducting the annual comprehensive review of its Standing State Advisory Committee to determine:

- Whether it is carrying out its purpose;
- Whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised; or
- Whether it should be abolished.

The Standing State Advisory Committee (SSAC) is composed of the Executive Committee of the Interstate Conference on Water Problems (ICWP). The Executive Committee is selected by the entire membership of the ICWP which is composed of State officials serving as a result of election, by statute, or by designation by their respective States. The Council, therefore, has no control over selection to the SSAC. The function of the SSAC is to provide for increased participation by the States in the development of policies and procedures for the conservation, development and utilization of water and related land resources of the Nation and to provide the Water Resources Council with the views and opinions of State interests on matters of concern to the Council and the States.

Public participation in the review process is invited by the solicitation of written comments. All comments received by April 3, 1977 will be considered in the review process. Comments should be addressed to:

Committee Management Officer, U.S. Water Resources Council, Room 810, 2120 L Street, NW., Washington, D.C. 20037.

GARY D. COBB,
Acting Director.

[FR Doc. 77-9199 Filed 3-28-77; 8:45 am]

INTERSTATE COMMERCE
COMMISSION

[Notice No. 356]

ASSIGNMENT OF HEARINGS

MARCH 24, 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 140303 (Sub-2), Frank Quesada Salazar, d/b/a Horse Broder Crossing Transportation Co., now assigned April 18, 1977 at San Diego, California, will be held in

The Georgian Room, U. S. Grant Hotel, 327 Broadway.

MC 130416, Voyager Teen Tours, Ltd. now being assigned June 27, 1977 (1 week) at New York, New York in a hearing room to be later designated.

MC 29613 Sub 8, Jayne's Motor Freight, Inc. now being assigned June 29, 1977 (3 days) at New York, New York in a hearing room to be later designated.

MC 117940 Sub 202, Nationwide Carriers, Inc. now being assigned June 27, 1977 (2 days) at New York, New York in a hearing room to be later designated.

MC 142124 Sub 1, Package Delivery, Inc. now being assigned June 6, 1977 (1 week) at Charlotte, North Carolina in a hearing room to be later designated.

MC 135288 Sub 7, McGill's Taxi & Bus Lines, Inc., d/b/a Asheboro Coach Co. now being assigned June 1, 1977 (3 days) at Greensboro, North Carolina in a hearing room to be later designated.

MC 141804 (Sub-No. 35), Western Express, Division of Interstate Rental, Inc. now being assigned for hearing on the 25th day of May 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 142602 (Sub-No. 1), Containerized Moving Service, Inc., now being assigned May 4, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 142449, Speedway Haulers, Inc. now being assigned May 24, 1977 (3 days) at Indianapolis, Indiana in a hearing room to be later designated.

MC 113678 (Sub-No. 644), Curtis, Inc., now being assigned June 23, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 103066 (Sub-44), Stone Trucking Company, now assigned March 29, 1977 at New York, New York, hearing canceled and the application is dismissed.

MC 115557 (Sub-No. 13), Charles A. McCauley, now being assigned May 10, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 141641 (Sub-No. 5), Wilson Certified Express, Inc., now being assigned May 25, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 141804 (Sub-No. 33), Western Express, Division of Interstate Rental, Inc., now being assigned June 9, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 142269, Eagle Hawk Corp., dba All Iowa LTL Perishable Service now being assigned May 24, 1977 (3 days) at Des Moines, Iowa in a hearing room to be later designated.

MC 110166 Sub 22, Tennessee Carolina Transportation, Inc. now being assigned June 1, 1977 (3 days) at Raleigh, North Carolina in a hearing room to be later designated.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 77-9372 Filed 3-28-77; 8:45 am]

[Amdt. No. 4 to I.C.C. Order No. 20 under Service Order No. 1252]

GRAND TRUNK WESTERN RAILWAY CO.
Rerouting Traffic

Upon further consideration of I.C.C. Order No. 20, (Grand Trunk Western Railroad Company) and good cause appearing therefor:

It is ordered, That: I.C.C. Order No. 20 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) Expiration date. This order shall expire at 11:59 p.m., March 31, 1977, unless otherwise modified, changed or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., March 21, 1977, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., March 17, 1977.

INTERSTATE COMMERCE COMMISSION, JOEL E. BURNS, Agent.

[FR Doc.77-9373 Filed 3-28-77;8:45 am]

[Rule 19, Ex Parte No. 241, revised exemption No. 133]

MISSOURI PACIFIC RAILROAD CO. AND NATIONAL RAILWAYS OF MEXICO

Exemption Under Mandatory Car Service Rules

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 in Appendix A hereto.

Effective March 22, 1977, and continuing in effect until further order of the Commission.

Issued at Washington, D.C., March 22, 1977.

INTERSTATE COMMERCE COMMISSION, JOEL E. BURNS, Agent.

APPENDIX A TO REVISED EXEMPTION NO. 133 REPORTING MARKS NDM

Table with 10 columns of numbers ranging from 100020 to 104978, representing reporting marks for exempted freight cars.

TOTAL=6417

March 22, 1977

[FR Doc.77-9129 Filed 3-28-77;8:45 am]

OFFICE OF THE FEDERAL REGISTER

LIST OF ACTS REQUIRING PUBLICATION IN THE FEDERAL REGISTER

The basic provisions requiring or authorizing publication of documents in the FEDERAL REGISTER are contained in 5 U.S.C. 551-559 and 44 U.S.C. 1501-1511. The list of acts contemplated by 44 U.S.C. 1505(a) (3) beginning in 1936 are in Table III of the Finding Aids Volume of the Code of Federal Regulations. Notice is hereby given that the Office of the Federal Register is adding to the list the following acts enacted in 1976:

<i>Description of act</i>	<i>Citation</i>
Railroad Revitalization and Regulatory Reform Act of 1976.	Public Law 94-210; 90 Stat. 31; 45 U.S.C. 801 note.
Rice Production Act of 1975.....	Public Law 94-214; 90 Stat. 181; 7 U.S.C. 428c note.
Chickasaw National Recreation Area, Okla., establishment.	Public Law 94-235; 90 Stat. 235; 16 U.S.C. 460hh.
Fishery Conservation and Management Act of 1976.	Public Law 94-265; 90 Stat. 331; 16 U.S.C. 1801 note.
Federal Election Campaign Act Amendments of 1976.	Public Law 94-283; 90 Stat. 475; 2 U.S.C. 431 note.
Consumer Product Safety Commission Improvements Act of 1976.	Public Law 94-284; 90 Stat. 503; 15 U.S.C. 2051 note.
Medical Device Amendments of 1976.....	Public Law 94-295; 90 Stat. 539; 21 U.S.C. 301 note.
Klondike Gold Rush National Historical Park, Alaska-Washington, establishment.	Public Law 94-323; 90 Stat. 717; 16 U.S.C. 410bb.
Alpine Lakes Area Management Act of 1976..	Public Law 94-357; 90 Stat. 905; 16 U.S.C. 1132 note.
Endangered Species Act of 1973, amendments.	Public Law 94-359; 90 Stat. 911; 16 U.S.C. 1533(f) (2) (B) (H).
Energy Conservation and Production Act.....	Public Law 94-385; 90 Stat. 1125; 42 U.S.C. 6801 note.
Ninety-Six National Historical Site.....	Public Law 94-393; 90 Stat. 1196; 16 U.S.C. 461 note.
Government in the Sunshine Act.....	Public Law 94-409; 90 Stat. 1241; 5 U.S.C. 552b note.
National Emergencies Act.....	Public Law 94-412; 90 Stat. 1255; 50 U.S.C. 1601 note.
Postal Reorganization Act Amendments of 1976.	Public Law 94-421; 90 Stat. 1303; 39 U.S.C. 101 note.
Hart-Scott-Rodino Antitrust Improvements Act of 1976.	Public Law 94-435; 90 Stat. 1383; 15 U.S.C. 1311 note.
Indian Health Care Improvement Act.....	Public Law 94-437; 90 Stat. 1400; 25 U.S.C. 1601 note.
Emergency Jobs Programs Extension Act of 1976.	Public Law 94-444; 90 Stat. 1476; 29 U.S.C. 801 note.
Tax Reform Act of 1976.....	Public Law 94-455; 90 Stat. 1520; 26 U.S.C. 1 note.
Health Maintenance Organization Amendments of 1976.	Public Law 94-460; 90 Stat. 1945; 42 U.S.C. 300e note.
Minnesota Valley National Wildlife Refuge Act.	Public Law 94-466; 90 Stat. 1992; 16 U.S.C. 668kk note.
Toxic Substances Control Act.....	Public Law 94-469; 90 Stat. 2003; 15 U.S.C. 2601 note.

AVAILABILITY OF AGENCY INDEX MATERIAL 1/

Instructions for agencies. 5 U.S.C. 552 (commonly called the Freedom of Information Act) requires agencies to maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required to be made available or published (5 U.S.C. 552(a)(2)). Recent amendments (Pub. L. 93-502, November 21, 1974, 88 Stat. 1561) require the publication (with some exceptions) and distribution of these indexes at least quarterly. The following format is designed for use by agencies in notifying the public of the availability of these indexes for sale and/or public inspection. This information should be submitted to the Office of the Federal Register typewritten, in triplicate, with the signature, title, and telephone number of the approving official at the bottom. The information should be submitted quarterly on or before March 31, June 30, September 30, and December 31 and mailed to the Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408. Information submitted by agencies will be compiled and published quarterly in the FEDERAL REGISTER. Blank copies are available from the Office of the Federal Register or by calling (202) 523-5266.

AGENCY AND SUBAGENCY NAME	INDEX TITLE: PERIOD COVERED; BRIEF DESCRIPTION OF CONTENTS	ORDER FROM: PRICE; MAKE CHECKS PAYABLE TO:	FOR INSPECTION, COPYING OR ABSTRACTS INFORMATION CONTACT:

Quarter:

- Jan.-Mar. _____
- Apr.-June _____
- July-Sept. _____
- Oct.-Dec. _____

Date: _____

Signature of authorizing official: _____

Title: _____

Telephone No.: _____

1/Reprinted as a reminder to agencies to submit material for the first quarter of 1977.

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

CONTENTS

Civil Aeronautics Board.....	1
Commodity Futures Trading Commission.....	2
Consumer Product Safety Commission.....	7
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Federal Deposit Insurance Corporation.....	4
Federal Election Commission.....	5
Postal Service.....	6

1

CIVIL AERONAUTICS BOARD

[MA-4]

MEETING

The CAB will meet:

NOTICE OF ADDITION OF ITEM TO
MARCH 24, 1977 MEETING AGENDA

REVISED AGENDA

TIME AND DATE: 9:30 a.m., March 24, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT:

1. Docket 280336, South Pacific Service Case.

2. Docket 30314, SPDR-53, Part 370—Employee Responsibilities and Conduct.

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Member West desired to determine the status and location of the circulating draft opinion in the South Pacific Service Case (Docket 28036). The following Members voted that agency business required the addition of this item to the agenda of the meeting scheduled for March 24, 1977, 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 was not present.

[S-31-77 Filed 3-24-77; 4:19 pm]

2

COMMODITY FUTURES TRADING COMMISSION

MEETING

Notice is hereby given, pursuant to Section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552(b)(e)(3),

Item

and 17 CFR 147.4(e), that the Commodity Futures Trading Commission will conduct a meeting of the Commission on March 29, 1977, at 2033 K Street, N.W., Washington, D.C., in Room 520, beginning at 10:00 a.m. The Commission intends to consider the following items in open session:

1. Title III.
2. Customer Protection Rules.
3. Revisions of Registration Forms.
4. Proposed Revisions to Regulation 1.17, Minimum Financial Requirements, FCM's.

The Commission also intends to consider the following items in closed session:

1. Enforcement matter.
- Questions concerning the agenda for the March 29, 1977, Commission meeting, or possible changes therein, may be directed to the Commission's Office of the Secretariat at (202) 254-6126.

Pursuant to 17 CFR 147.5(d), any person whose interests may be directly affected by a portion of an open Commission meeting may request in writing that the Commission close that portion of the meeting to public observation. Requests should be directed to the Commission's Office of the Secretariat, 2033 K Street, N.W., Washington, D.C. 20581.

Dated: March 24, 1977.

JANE K. STUCKEY,
Director, Office of the Secretariat,
Commodity Futures Trading Commission.

[S-26-77 Filed 3-24-77; 12:00 pm]

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

MEETING

MARCH 22, 1977.

Pursuant to the Government in the Sunshine Act, 5 U.S.C. 552b, notice is hereby given that the Equal Employment Opportunity Commission will meet on Tuesday, March 29, 1977, in the Chairman's Conference Room, Room No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street, N.W., Washington, D.C. 20506.

The first portion of the meeting, starting at 9:30 a.m. (Eastern Time) will be open to the public, and the Commission plans to consider the following matters during this open session:

- (1) *Freedom of Information Act Appeal No. 77-2-FOIA-23.* This appeal concerns a request for an affidavit submitted to the Commission by a party filing a charge of discrimination. The names of the parties to the charge will

not be made public, and the Commission will consider the appeal as a policy matter.

(2) *Proposal for Training of Commission Employees.* Immediately after the open session and departure of the public observers, the Commission plans to consider the following matters in closed session:

Litigation Authorization; General Counsel Recommendations. Seven cases will be presented to the Commission by the General Counsel recommending authorization to bring suit.

If you have any questions concerning the agenda for the March 29, 1977, Commission meeting, please contact the Office of the Executive Secretariat at (202) 634-6748.

By Order of the Commission.

ETHEL BENT WALSH,
Vice Chairman.

[S-26-77 Filed 3-24-77; 9:42 am]

4

FEDERAL DEPOSIT INSURANCE CORPORATION

MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Federal Deposit Insurance Corporation met in closed session at 2:15 p.m. on Thursday, March 24, 1977, to consider the following matters:

Application for Federal deposit insurance: Connecticut Women's Bank (proposed new bank), to be located at 100 Mason Street, Greenwich, Fairfield County, Connecticut.

Recommendations regarding liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 42,978-L—Franklin National Bank
New York, New York
Case No. 42,986-L—Franklin National Bank
New York, New York
Case No. 42,991-L—Franklin National Bank
New York, New York

The meeting was held in Room 6023 of the FDIC Building located at 550 17th Street N.W., Washington, D.C.

Corporation's business required consideration of those matters on less than seven days' public notice. No earlier announcement of the meeting was possible.

FEDERAL DEPOSIT INSURANCE CORPORATION,
HOYLE L. ROBINSON,
Assistant Executive Secretary.

[S-30-77 Filed 3-24-77; 4:01 pm]

5

FEDERAL ELECTION COMMISSION MEETING

AGENCY: Federal Election Commission.

LOCATION: 1325 K Street, N.W., Washington, D.C.,

DATE AND TIME: Thursday, March 31, 1977, 10:00 a.m.

PORTION OF THE MEETING OPEN TO THE PUBLIC:

- I. Future Meetings.
- II. Correction and approval of minutes—March 16, 1977.
- III. Advisory opinions: A. AO 1976-112; B. AO 1977-10; C. AO 1977-11.
- IV. Policy: A. Terminating Candidate Status of 1976 Candidates; B. Release of Data by Individual Commissioner's Offices.
- V. FEC equal employment opportunity regulation.
- VI. Presentation of proposed commission internal management control and program development system.
- VII. Report on the FEC computer program.
- VIII. Executive session: A. Compliance; B. Personnel.

PERSON TO CONTACT: Mr. David Fiske, Press Officer, Telephone: 202-52-34065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-29-77 Filed 3-24-77; 1:25 pm]

6

POSTAL SERVICE BOARD OF GOVERNORS Meeting

The Board of Governors of the United State Postal Service, pursuant to its By-laws (39 CFR 7.5 (as amended, 42 FR 12863)) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 9:00 a.m. on Tuesday, April 5, 1977, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475

L'Enfant Plaza, S.W., Washington, D.C. 20260. The meeting is open to the public. The Board expects to discuss the matters stated in the Agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

AGENDA

1. Opening Prayer.
2. Minutes of the Previous Meeting.
3. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the occurrence of a recent Congressional hearing, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)
4. Review of EY 1976 Management Letter from External Auditors. (Mr. Gould, Senior Assistant Postmaster General (Finance), will brief the Board on certain financial control procedure points mentioned in the Ernst & Ernst letter.)
5. Report on Government Relations Matters. (Mr. Finch, Assistant Postmaster General (Government Relations), will report on the current operation of the Government Relations Department and on current legislative activity involving the Postal Service.)
6. Report of Regional Postmasters General. (The five Regional Postmasters General, Messrs. Biglin, Doran, Morris, Sommerkamp, and Symbol, will report on postal conditions in their respective regions.)
7. Recommended Decision of the Postal Rate Commission, Commission Docket No. MC 77-1. (The Governors will consider the Commission's Recommended Decision of February 23, 1977, recommending that the Domestic Mail Classification Schedule be amended in accordance with the provisions of Sections 11 and 12 of the Postal Reorganization Act Amendments of 1976 (Public Law No. 94-421), which became effective on September 24, 1976.)
8. Review of Capital Investment Program. (Mr. Ellington, Senior Assistant Postmaster

General (Administration), will review with the Board the general status of, and accomplishments under, the Postal Service's Capital Investment Program. Similar reviews are scheduled semi-annually.)

LOUIS A. COX,
Secretary.

[S-32-77 Filed 3-24-77; 4:19 pm]

7

CONSUMER PRODUCT SAFETY COMMISSION MEETING

AGENCY HOLDING THE MEETING: Consumer Product Safety Commission.

TIME AND DATE: April 4, 1977, 1:00 pm. 1:00 p.m.

PLACE: 3rd Floor Hearing Room, 1111 18th St., NW., Washington, D.C.

STATUS: Closed.

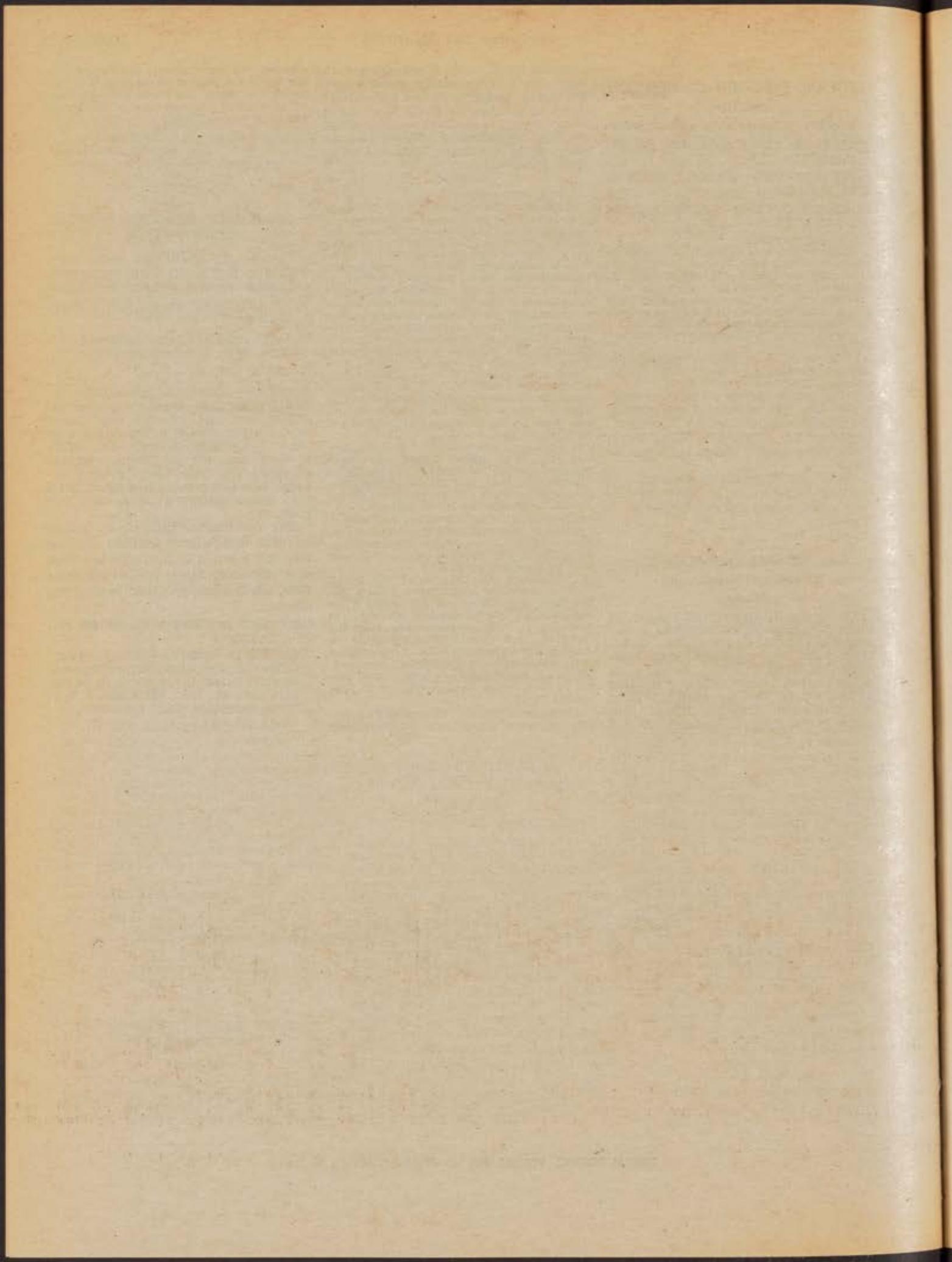
MATTERS TO BE CONSIDERED: *Petition on Tris*. At this briefing, the Commission and its staff will discuss legal options related to a petition from the Environmental Defense Fund (EDF) to ban the use of flame-retardant chemical Tris from use in wearing apparel. The Commission has scheduled a vote on the petition at its April 7, 1977 meeting.

The Commission decided, on March 25, 1977 that Agency business requires that this meeting be held with less than seven days advance notice. At the same time, the Commission voted to close the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Consumer Product Safety Commission, Suite 300, 1111 18th St., NW., Washington, D.C. 20207, telephone (202) 634-7700.

[S-41-77 Filed 3-25-77; 4:22 pm]



Register
Order
Federal

TUESDAY, MARCH 29, 1977

PART II



**DEPARTMENT OF
HOUSING AND
URBAN
DEVELOPMENT**

**Federal Insurance
Administration**

■

**NATIONAL FLOOD
INSURANCE PROGRAM**

**Appeals from Flood Elevation
Determination and Judicial Review**

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-2323]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Anderson, California

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the City of Anderson, California.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas.

In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 3476 Shasta Drive, Anderson, California 96007.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevation for the selected locations set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Sacramento River	North Street Bridge	406	50	(1)
	I-5 northbound ²	419	100	80
Anderson Creek	Barney Rd ²	427	20	20
	Emily Dr	438	700	100
Sacramento Gulch	Southern Pacific RR ²	436	70	50
	Highway 273 ²	452	40	20
Torney drain	Pinon Ave	465	180	120
	Rupert Rd	469	700	200
	I-5 north ²	414	100	100
	Silver St	422	100	150
	Shasta St	428	12	12

¹ Outside corporate limits.
² Downstream side of road.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: January 26, 1977.

HOWARD B. CLARK,
 Acting Federal Insurance Administrator.

[FR Doc. 77-9045 Filed 3-28-77; 8:45 am]

[Docket No. FI-2327]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Adel, Georgia

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the City of Adel, Georgia.

The Administrator, to whom the Secretary has delegated the statutory au-

thority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

Final flood elevations (100-year flood) are listed below for selected locations.

Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, Adel, Georgia 31620.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations as set forth below:

U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: March 7, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance
Administrator.

[FR Doc.77-9047 Filed 3-28-77;8:45 am]

[Docket No. FI-1064]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Zachary, Louisiana

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the City of Zachary, Louisiana.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No scientific or technical data in support of the appeals of the proposed base flood elevations has been received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, Zachary, Louisiana 70791.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Bear Creek	Mitchell St	227	440	240
	4th St	223	280	240
	East 6th St	222	330	300
Giddens Mill Creek	Edin St	230	330	(1)
	Georgia Southern and Florida RR	230	480	(1)
Channel A	Hutchinson Ave	228	220	480
	East Rogers St	225	120	100
	South Gordon Ave	223	120	100

¹ Extends to corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: February 18, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-9046 Filed 3-28-77;8:45 am]

[Docket No. FI-2499]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Chamblee, Georgia

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the City of Chamblee, Georgia.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at 5468 Peachtree Boulevard, Chamblee, Georgia 30341.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations set forth below:

Source of flooding	Location	Elevation in feet above mean sea level
Nancy Creek	Keswick Dr. ¹	943
	Tributary No. 1, Keswick Dr. ²	947
	Nancy Creek Tributary No. 1.1, Cold Spring Lane	941
Nancy Creek Tributary No. 1.2, Confluence with Tributary 1	933	
Nancy Creek Tributary No. 2, Longview Dr	950	
North Fork Peachtree Creek Tributary No. 1	Hickory Rd. ²	944
	Canfield Dr	945
North Fork Peachtree Creek Tributary No. 2	Carroll Ave	955
	Old Stone Mountain Rd.	975
North Fork Peachtree Creek Tributary No. 2.1	Munday Dr	964
	Blackburn Way ²	977
	Catalina Dr. ²	990

¹ Downstream.
² Upstream.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended: (42

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Cypress Bayou Tributary No. 1	LA 64 ¹	90.3	500	390
Cypress Bayou Tributary No. 2	LA 19 ²	84.5	46	80
	Lower Zachary Rd. ³	83.1	240	280
	Lower Zachary Rd. ³	85.0	200	250
Cypress Bayou	Rollins Rd. ²	97.2	170	190
	LA 64 ¹	87.0	540	360
	LA 64 ¹	86.8	460	110
White Bayou	Port Hudson Pride Rd.	104.6	2,200	3,800
	LA 19 ²	97.7	3,520	3,280
	LA 19 ²	97.6	3,520	7,580
	LA 64 ¹	93.0	180	(?)
	Lower Zachary Rd. ³	90.2	4,400	(?)

¹ Upstream side of road.² Downstream side of road.³ To corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: March 7, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-9048 Filed 3-28-77; 8:45 am]

[Docket No. FI-2478]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Escanaba, Michigan

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the City of Escanaba, Michigan.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at 121 South 11th Street, Escanaba, Michigan 49829.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations set forth below:

Source of flooding	Location	Elevation in feet above mean sea level
Little Bay De Noc	2nd St.	584
	13th Ave	581

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: February 18, 1977.

HOWARD B. CLARK,
Acting Federal
Insurance Administrator.

[FR Doc.77-9049 Filed 3-28-77; 8:45 am]

[Docket No. FI-2491]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Burnsville, Minnesota

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the City of Burnsville, Minnesota.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 1313 East Highway 13, Burnsville, Minnesota 55337.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations set forth below:

Source of flooding	Location	Elevation in feet above mean sea level
Minnesota River	1-35 west	717
	Cedar Ave	715
Almagnet Lake	County Rd II	990

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: February 18, 1977.

HOWARD B. CLARK,
Acting Federal
Insurance Administrator.

[FR Doc.77-9050 Filed 3-28-77; 8:45 am]

[Docket No. FI-3238]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Mora, Minnesota

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the City of Mora, Minnesota.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No

appeals of the proposed base flood elevations were received from the community or from individuals within the community.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 117 Southeast Railroad Avenue, Mora, Minnesota 55051.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Snake River	County Highway 6. ¹	969	110	575
	Burlington Northern R.R. (50-ft upstream of railroad)	967	630	600
Mora Lake	Main Highway 23 and 65. ¹	964	1,300	90
	Lake shore area	980	(²)	

¹ Upstream side.
² Variable.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: February 11, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-9051 Filed 3-28-77;8:45 am]

[Docket No. FI-2188]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of St. Mary's, Missouri

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations, of flood elevations for the City of St. Mary's, Missouri.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base

flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No scientific or technical data in support of the appeals of the proposed base flood elevations has been received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, St. Mary's, Missouri 63673.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
St. Laurent Branch	U.S. Highway 61	393	(¹)	280
St. Laurent Creek	2d St.	343	2 90	3,490
Walnut Creek	U.S. Highway	398	2 3,280	250
	4th St.	393	90	185

¹ Outside corporate limits.
² Extends to corporate limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: March 7, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-9052 Filed 3-28-77;8:45 am]

[Docket No. FI-1116]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Times Beach, Missouri

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the City of Times Beach, Missouri.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent

with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No scientific or technical data in support of the appeals of the proposed base flood elevations has been received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, Beach and Grove Streets, Eureka, Missouri 63025.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Meramec River	Park Dr	449	(1)	(1)
	Dahlia Dr	449	(1)	(1)
	Lincoln Dr	445	(1)	(1)

¹ Shoreline to corporate limit.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: March 7, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-9053 Filed 3-28-77;8:45 am]

[Docket No. FI-2378]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for Town of Bloomfield, New Jersey

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the Town of Bloomfield, New Jersey.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Municipal Building, Bloomfield, New Jersey 07003.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations set forth below:

Source of flooding	Location	Elevation in feet above mean sea level
3d River	Private road	166.9
	West Passaic Ave.	164.7
	Watchung Ave.	160.9
	Dam	154.5
	Footbridge	149.8
	Private road	146.2
	Hay Ave.	135.8
	Hoover Ave.	127.0
	Baldwin St.	121.0
	Pitt St.	118.0
	John F. Kennedy Dr.	115.1
	Private Rd.	109.1
	Garden State Parkway	101.5
3d River Tributary	Footbridge	80.0
	Footbridge	140.2
2d River	Erie-Lackawanna R.R.	128.0
	Washington St.	123.5
	Factory	120.2
	Erie-Lackawanna R.R.	115.5
	John F. Kennedy Dr. North	112.9
	West St.	110.4
	Berkeley Ave.	107.0
2d River Tributary	Footbridge	104.6
	Footbridge	121.0
	Prospect St. and Glenwood Ave.	117.8
	Erie-Lackawanna R.R.	115.9

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: February 11, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-9054 Filed 3-28-77;8:45 am]

[Docket No. FI-1150]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for Borough of Dumont, New Jersey

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the Borough of Dumont, New Jersey.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the

National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No scientific or technical data in support of the appeals of the proposed base flood elevations has been received from the community or from individuals within

the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Borough Hall, 50 Washington Avenue, Dumont, New Jersey 07628.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Hirschfeld Brook	Lafayette Ave	26	250	20
	West Madison Ave	36	50	50
Hirschfeld Brook Tributary	Ebonyville Ave	57	220	30
	Virginia Ave	98	570	60
	Cresskill Ave	107	860	250
	Lenox Ave	115	130	200

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: March 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-9055 Filed 3-28-77; 8:45 am]

[Docket No. FI-2192]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for Township of Lacey, New Jersey

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the Township of Lacey, New Jersey.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or

through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Town Hall, 818 West Lacey Road, Forked River, New Jersey 08731.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations set forth below:

Source of flooding	Location	Elevation in feet above mean sea level
North Branch Forked River	Parker Ave	8
	Central Railroad of New Jersey	10
	Deerhead Lake	21
	Garden State Parkway North Bound Lane	20
Barnegat Bay	Bay Way	7
	Laurel Blvd	7
	Sunrise Blvd	7
	East Lacey Rd	7
	Parker's Point Blvd	7
	Clearwater Dr	7

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: February 11, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-9056 Filed 3-28-77; 8:45 am]

[Docket No. FI-2196]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for Borough of Upper Saddle River, New Jersey

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the Borough of Upper Saddle River, New Jersey.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No scientific or technical data in support of the appeals of the proposed base flood elevations has been received from the community or from individuals within the community. Therefore, publication of this notice is in compliance with § 1917.10.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Borough Hall, 376 West Saddle River Road, Upper Saddle River, New Jersey 07458.

Accordingly, the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations set forth below:

[Docket No. FI-2493]

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Saddle River	Lake St	195	600	150
	Upper Cross Rd.	175	500	450
East Branch Saddle River	Old Stone Church Rd	239	450	10
	Brook Rd.	274	100	400
Oost Val Brook	East Saddle River Rd.	265	50	100
West Branch Saddle River	Lake Rd.	250	100	500
	Old Stone Church Rd.	262	20	400
Sparrow Bush Tributary	West Saddle River Rd.	272	400	1,100
Pleasant Brook	West Saddle River Rd.	175	400	1,100
	Pleasant Ave.	197	90	450
	Knollwood Rd.	229	50	10
	Pleasant Ave.	266	20	40
	Ware Rd.	277	140	100
	Overbrook Rd.	310	80	100
	Lake St.	332	250	200
	Evergreen Dr.	352	30	50
Krongr's Brook	West Saddle River Rd.	188	40	390
	Lake St.	266	50	70
Tributary to Pleasant Brook	Millstream Rd.	266	40	150
	Route 17	270	10	60

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: March 4, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-9057 Filed 3-28-77;8:45 am]

[Docket No. FI-2494]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for Town of Warren, Vermont

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the Town of Warren, Vermont.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain man-

agement measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from the individuals within the community.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at Municipal Building, RFD, Warren, Vermont 05674.

Accordingly the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations set forth below:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Right	Left
Mad River	State Route 100 Bridge. ¹	788	(²)	(²)
	Warren Road Bridge. ¹	855	(²)	(²)
	State Route 100 Bridge. ¹	915	10	(²)
Freeman Brook	Warren Road Bridge. ¹	883	(²)	(²)
	Freeman Brook Road Bridge. ¹	901	(²)	150
	do.	935	(²)	10

¹ Downstream side of road.
² At bank.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: February 11, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-9058 Filed 3-28-77;8:45 am]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation for City of Chippewa Falls, Wisconsin

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917), hereby gives notice of the final determinations of flood elevations for the City of Chippewa Falls, Wisconsin.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas. In order to continue participation in the National Flood Insurance Program, the community must adopt flood plain management measures that are consistent with these criteria and reflect the base flood elevations determined by the Secretary in accordance with 24 CFR Part 1910.

In accordance with Part 1917, an opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

Final flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations are available for review at City Hall, 30 West Central Street, Chippewa Falls, Wisconsin 54729.

Accordingly the Administrator has determined the 100-year (i.e., flood with one percent chance of annual occurrence) flood elevations for the selected locations set forth below:

Source of flooding	Location	Elevation in feet above mean sea level
Chippewa River	Highway 53	824
	Sooline RR.	827
	Main St.	828
	Bridge St.	843
	Chicago and North Western RR.	840
Duncan Creek	Bridge St.	828
	Spring St.	829
	Central St.	832
	Grand Ave.	833
	Columbia St.	833
	Jefferson Ave.	856
	Starnin Dam	861
Bridgewater Ave.	882	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128) and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: February 11, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

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TUESDAY, MARCH 29, 1977

PART III



**DEPARTMENT OF
TRANSPORTATION**

**Federal Highway
Administration**



**CERTIFICATION
ACCEPTANCE AND
SECONDARY ROAD PLAN**

Notice of Proposed Rulemaking

**DEPARTMENT OF
TRANSPORTATION**

Federal Highway Administration

[23 CFR Parts 640 and 642]

[Docket No. 77-2]

**CERTIFICATION ACCEPTANCE AND
SECONDARY ROAD PLAN**

Notice of Proposed Rulemaking

Purpose. The purpose of this document is to propose revisions of regulations implementing section 117 of title 23, U.S.C., and to issue these revised regulations as notice of proposed rulemaking.

Certification Acceptance (CA) regulations interpreting and implementing section 116 of the Federal-Aid Highway Act of 1973 (23 U.S.C. 117) were promulgated by the Federal Highway Administration (FHWA) on May 15, 1974 (39 FR 17309), and codified as 23 CFR Part 640. Previously unpublished material was included in these regulations by amendment dated November 19, 1975 (40 FR 53728). These regulations were then revised and interim regulations were published on February 13, 1976 (41 FR 6914). Advanced notice of proposed rulemaking was then published for notice and comment on June 10, 1976 (41 FR 23421), FHWA Docket No. 76-8.

Secondary Road Plan (SRP) regulations were originally published on May 7, 1973 (38 FR 11341), and codified as 23 CFR Part 305. These regulations were later redesignated at 39 FR 10430 on March 20, 1974, and codified as 23 CFR 642.

Both the SRP and the CA regulations are being revised in order to eliminate unnecessary red tape in accordance with 23 U.S.C. 101(e) and to comply with the requirements of Section 116 of the Federal-Aid Highway Act of 1976. This Act eliminated the necessity that the State in order to be eligible for CA establish "requirements at least equivalent to those contained in, or issued pursuant to, (Title 23 U.S.C.)". Instead, the State must have State laws, regulations, standards and directives "which will accomplish the policies and objectives contained in or issued pursuant to (Title 23, U.S.C.)". As a result of this change in legislation FHWA encourages the State to use its existing regulations and directives to the maximum extent possible.

The Federal-Aid Highway Act of 1976 also reinstated as subsection (f) of 23 U.S.C. 117 the SRP. FHWA regulations regarding the Secondary Road Plan closely follow the language in the legislation, see, e.g., proposed 23 CFR 642.107. This Act further stipulates that the State must provide FHWA with a certified statement "setting forth that the plans, design, and construction for each such project are in accord with those standards and procedures which (A) were adopted by such State highway department, (B) were applicable to projects in this category, and (C) were approved by him." This final certification by the State will be contained in its final voucher (see proposed 23 CFR 642.111 below). Under previous procedures the State was, in essence, forced to certify

three times in advance of final payment that all its projects were in accord with its approved standards and procedures. Under the proposed regulations the State need only make this certification on the final voucher (after the project is completed).

At the present time CA plans in varying degrees have been approved for the following ten states: Georgia, Pennsylvania, Virginia, Kentucky, Maryland, Nevada, Tennessee, Connecticut, Missouri, and Montana. Other states have expressed interest in continuing and/or expanding their present Secondary Road Plans. In accordance with the following proposed SRP regulations all present Secondary Road Plans are to be updated.

In response to several comments from State and county highway associations criticizing the difficulty of obtaining CA approvals, FHWA in its CA regulation (see 23 CFR 640.109) is proposing to include two types of CA plans. In one type of CA plan, the State may choose to include any non-Interstate projects which are both (1) determined to be non-major actions in accordance with 23 CFR Part 771.9 and (2) estimated to cost less than \$500,000. In accordance with the following proposed regulations, 23 CFR 640.109(b), a State may submit a supplemental SRP as the certification and FHWA will evaluate the State's performance under its current SRP in order to determine its eligibility for this form of CA. Alternatively the State may choose to adopt the older form of CA which permits the State to assume the responsibilities of FHWA under title 23, U.S.C. for all eligible projects. The requirements for this form of CA may be found in 23 CFR 640.109(a) below.

We received several comments from States, legislators, counties, State organizations, county organizations and one public interest group in response to our advance notice of proposed rulemaking for the CA regulations published June 10, 1976. We have carefully considered these comments as well as the comments from our own program offices in the proposed revision of the regulations implementing 23 U.S.C. 117. We shall generally respond herein to those comments received.

All of the comments received from the States, counties and their organizations and legislators generally endorsed the certification acceptance program itself. Several of the above stated that they liked the SRP and hoped to continue that plan at the present time. Since the Federal-Aid Highway Act of 1976 reinstated the SRP the States may continue to use that plan but must update it. Comments were received from one State, its legislators, and a group of county engineers expressing an interest in exempting projects which cost less than \$100,000 from the more onerous project review procedures of CA. The form of CA described in proposed 23 CFR 640.109(b) below provides an alternative CA procedure which reflects consideration of this suggestion. Several States, counties and their organizations criticized the equivalency requirement of the old CA regulation. It should be noted that this requirement

was removed by the Federal-Aid Highway Act of 1976 as was noted above. Comments were received expressing the desire that the State have increased responsibility and flexibility in many areas. In accordance with our proposed regulation the State may assume many responsibilities of FHWA under title 23, U.S.C. However, the legislation does not permit FHWA to delegate responsibilities under other Federal laws to the State. Comments received from two counties indicated that the local agency (city/county) should have more responsibility in the administration of programs and projects. In accordance with the legislation, 23 U.S.C. 117, FHWA deals only with the State highway department in Certification Acceptance and Secondary Road Plans. One comment was received expressing satisfaction with the fact that FHWA will make periodic evaluations of the State's operation under CA. In accordance with proposed 23 CFR 640.117, these reviews will be conducted at least once every three years.

The following general comments were received from the Center for Auto Safety, an independent, non-profit public interest organization:

1. The Center indicated that it opposed "FHWA granting Certification to a State without first conducting a careful review of that State's ability to implement fully and consistently the laws, regulations, and standards described in its CA Plan." In accordance with proposed 23 CFR 640.109, especially 23 CFR 640.109 (a) (2) FHWA shall make an evaluation of the State's capability. FHWA will utilize information from recent reviews conducted for other purposes covering operations in relevant areas of responsibility.

2. The Center alleges that as a result of "administrative failures at State and Federal levels," "many serious hazards continue to be built into the Nation's newest Federal-aid roads." FHWA does not agree with this assessment. Safety is certainly one of the major areas in the evaluation of the State's CA proposal—see proposed 23 CFR 640.111(a) (1) below.

3. The Center expresses the opinion that most States will follow the simplified format for CA in their requests for CA approval even though the "equivalency" requirement of old 23 U.S.C. 117 has been deleted. As has been previously stated herein, the States are encouraged to use their own standards, laws and regulations to the extent possible to "accomplish the policies and objectives contained in or issued pursuant to" title 23. The simplified format has been deleted from the regulation.

4. The Center challenges the adequacy of FHWA's construction zone safety standards. Questions concerning the adequacy of FHWA's safety standards are more properly addressed under other regulations currently being revised.

5. The Center suggests that FHWA retain the items enumerated in old 23 CFR 640.7 (b) and (c). FHWA has generally enumerated the requirements for CA in proposed 23 CFR 640.111.

6. The Center indicates that the FHWA has not addressed the requirement for a determination that the State will carry out its projects under CA in accordance with applicable laws, regulations, standards and directives. Proposed 23 CFR 640.111 mentions that the State's past performance in several areas will be evaluated. Certainly the State is required to indicate in its application for CA the laws, regulations, directives and standards it will use to comply with the title 23, U.S.C. requirements. Also, FHWA conducts on-going evaluations of the State's performance under CA.

For the reasons set forth herein, CA and SRP policies and procedures are hereby promulgated in the form of notice of proposed rulemaking.

Interested parties and government agencies are encouraged to submit written comments, views and suggestions concerning these regulations. All comments should refer to Docket No. 77-2 and should be submitted in five copies to the Federal Highway Administration, 400 7th Street, SW., Room 4230, Washington, D.C. 20590. All submissions received on or before 45 days after issuance will be considered prior to the promulgation of final regulations. Copies of all written communications received will be available for examination during normal business hours (7:45 am-4:15 pm) at the foregoing address.

This proposed revision of title 23, CFR, is made under the authority of 23 U.S.C. 101(e), 117 and 315 and the delegation of authority by the Secretary of Transportation at 49 CFR 1.48(b).

Pursuant to the Department of Transportation Policies To Improve Analysis and Review of Regulations (41 FR 16200), the Secretary of Transportation has been notified that this regulation is expressly mandated by statute or has minimal impact.

Issued on: March 22, 1977.

L. P. LAMM,
Acting Federal
Highway Administrator.

NOTE.—The Federal Highway Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

Proposed revisions to 23 CFR Part 640 and 23 CFR Part 642 are as follows:

PART 640—CERTIFICATION ACCEPTANCE

Sec.	
640.101	Purpose.
640.103	Definitions.
640.105	Effect of State Certification approval.
640.107	Coverage.
640.109	Requirements for Certification Acceptance.
640.111	Content of State Certification.
640.113	Procedures.
640.115	Evaluation of State's operation.
640.117	Rescission.

Appendix A—FHWA reports.

49 CFR 1.48(b).

AUTHORITY: 23 U.S.C. 101(e), 117 and 315; 49 CFR 1.48(b).

§ 640.101 Purpose.

The purpose of the regulation is to provide guidance on preparation of State certifications of performance to the Secretary assuring accomplishment of policies and objectives of Title 23, U.S.C. (hereinafter Title 23).

§ 640.103 Definitions.

As used in this part: (a) "Administrator" means Federal Highway Administrator.

(b) "Certification Acceptance (CA)" is the alternative procedure which may be used for administering non-Interstate highway projects involving Federal Funds pursuant to 23 U.S.C. 117(a).

(c) A "State highway agency" is that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State highway agency" if the context so implies.

(d) A "State Certification" is a written statement prepared by a State highway agency setting forth the laws, regulations, directives, and standards it will use, or cause to be used, in the administration of certain highway projects.

(e) An approved "Action Plan" is as described in 23 CFR, part 795.

(f) All other definitions are in accordance with 23 U.S.C. 101.

§ 640.105 Effect of State Certification Approval.

(a) Approval of a State Certification permits the State to discharge responsibilities otherwise assigned to the Secretary under Title 23 for construction of Federal-aid projects.

(b) Approval of a State Certification does not constitute commitment or obligation of Federal funds.

(c) Certification acceptance as an alternative procedure does not replace the fundamental provisions of law in Title 23 with respect to the basic structure of the Federal-aid highway program, such as the authorization of funds (23 U.S.C. 102), Federal-aid systems, 23 U.S.C. 103), apportionment (23 U.S.C. 104), programs (23 U.S.C. 105), designation of urbanized area boundaries (23 U.S.C. 101(a)), allocation of urban system funds (23 U.S.C. 150), Federal share payable (23 U.S.C. 120), and toll roads and bridges (23 U.S.C. 129). Nor are provisions of Title 23 conferring a benefit or privilege abrogated by the approval of a State Certification.

(d) Nothing in this regulation shall affect or discharge any responsibility or obligation of the FHWA under any Federal law other than Title 23.

(e) All projects under CA shall be available for review by FHWA at any time and all project documents shall be retained and available for inspection during the plan development and construction stages and for a 3-year period after submission of the final voucher for the project.

§ 640.107 Coverage.

(a) Certification Acceptance may apply to projects on all Federal-aid Systems except the Interstate System.

(b) Forest Highways, Public Lands, and Emergency Relief projects, highway transfer projects under Section 103(e) (4), all projects included under Sections 131, 136, 151, 152, 153, 219, 155 and 319(b) of Title 23 and all projects constructed under the provisions of Section 203 of the Federal-Aid Highway Act of 1973 (Pub. L. 93-87, 87 Stat. 250) may be included in a State Certification and processed under this regulation.

(c) The CA procedure shall not apply to transportation planning and research (23 U.S.C. 134 and 307), highway safety (Chapter 4, Title 23), those public transportation projects proposed pursuant to Section 142(a) (2), 142(c), and 103(e) (4) of Title 23, and projects on the Interstate system, except as otherwise provided in this regulation.

§ 640.109 Requirements for Certification Acceptance.

(a) Approval of a State Certification for all eligible projects will be based upon (1) State requests and submission of the State laws, regulations, directives and standards that will accomplish the policies and objectives contained in or issued pursuant to Title 23, and

(2) An FHWA finding that the State highway agency performance indicates that projects will be carried out in accordance with established State procedures.

(1) State laws, regulations, directives, and standards, either separately or collectively, must satisfactorily address the following Title 23 policy areas:

(A) Public involvement in the development of projects in the location and design stages.

(B) Application of appropriate design and construction standards.

(C) Emphasis on increasing safety in location, design and construction of projects.

(D) Controls to assure quality and economy of construction.

(E) Provision of adequate signing, marking and traffic control devices.

(F) Minimizing adverse economic, social and environmental impacts of any project.

(G) Non-discrimination in all phases of the program and affirmative action to ensure equal employment opportunity.

(H) Competitive bidding on construction contracts.

(I) Preservation of natural beauty.

(ii) The FHWA finding on State highway agency performance may consider the results of available secondary road plan reviews, Action Plan reviews, audit reports, reviews of State bidding practices, inspections-in-depth, and/or maintenance inspections. If recent reviews are considered to be insufficient to form a conclusive judgment, they may be supplemented by additional reviews in specific areas to determine the State's performance. These additional reviews may involve examination of a sample

of typical projects in varying degrees of development.

(b) Approval of a State Certification limited to projects which are both (1) determined to be a non-major action in accordance with 23 CFR 771.9 and (2) estimated to cost less than \$500,000 may be based on evaluation of the State's operations and performance under the Secondary Road Plan. These evaluations must support findings that:

(i) The State's approved Secondary Road Plan and Action Plan, along with supplementary information, will accomplish the broad objectives of Title 23.

(ii) The State's performance, has been found to be satisfactory in the last two years by an in-depth review by FHWA.

§ 640.111 Content of State Certification.

The State Certification shall include the following:

(a) The name of the State highway agency and the legal authority which permits such agency to accomplish the policies and objectives contained in or issued pursuant to Title 23, U.S.C.

(b) A statement of the systems, programs, phases of work and classes of projects or combinations thereof that the State is including in the Certification being submitted for approval.

(c) For submissions providing general coverage of projects as described in 23 CFR 640.109(a) above, a listing (and a copy) of the State laws, regulations directives and standards marked to show coverage to accomplish the objectives of Title 23 described in 23 CFR 640.109(a). For submissions providing limited coverage as described in 23 CFR 640.109(b) above, supplementary standards and procedures, which, together with the State's approved Secondary Road Plan, will apply to the types of projects to be covered.

§ 640.113 Procedures.

(d) Existing assurances and formal agreements between the State and FHWA with respect to equal employment opportunity, current billing, and control of outdoor advertising will continue in full force and effect and similarly may be incorporated by reference. Likewise, the State's approved Action Plan may be incorporated by reference.

(e) A statement of the design and construction standards applicable to CA procedure projects.

(f) A description of the State's methods for assuring local government knowledge of and compliance with State and Federal requirements where they perform services on projects to be administered under this alternative procedure.

(g) State Certifications are to be signed by the chief official of the State highway agency and submitted through the FHWA Division Administrator.

§ 640.113 Procedures.

(a) Established procedures for system revisions, program actions and project authorizations will not be affected by ap-

proval of a State Certification. In addition, established procedures for (1) submission and approval of a Relocation Plan and Project Assurances and (2) certification of compliance with such plans and assurances will not be affected by approval of a State Certification.

(b) If variances from State Certification procedures or standards are appropriate on a project, the State shall bring them to the attention of the FHWA and request approval. Exceptions to the procedures and standards in the State Certification may be approved by the FHWA Division Administrator on a project basis.

(c) The State shall submit a copy of the contract estimate to the FHWA.

(d) The reports listed in Appendix A are to be furnished FHWA Headquarters for projects administered under the State Certification.

(e) FHWA shall make an inspection of each physical construction project upon its completion. The State is to notify FHWA when a project is complete and/or ready for such inspection.

(f) Final vouchers shall be submitted to the FHWA on Form FHWA 1447 on which the State certifies that the plans, design, and construction for the project were in accord with those standards and procedures contained in the Plan or such variances as were approved by the FHWA as project exceptions. The FHWA Division Administrator shall certify that on the basis of the FHWA final inspection of the project and the certification by the

State highway agency the amount approved in the final voucher is justly due.

§ 640.115 Evaluation of State's operation.

(a) Periodically, an evaluation of the State's operation under the Certification Acceptance shall be made. An evaluation shall be made at least once every 3 years.

(b) Should deficiencies be found which violate State and/or Federal laws carrying out the objectives of Title 23, the review should be pursued to determine the scope and magnitude of the problem. Details of the finding and review are to be provided to the Administrator along with the recommendations of the Regional Federal Highway Administrator.

(c) Failure to comply with Federal or State laws may be remedial and repairable or non-remedial and irreparable. In the event the noncompliance is remedial, corrective action shall be required to protect the Federal interest. If the noncompliance cannot be remedied or corrected, the Administrator will determine the action to be taken.

§ 640.117 Rescission.

The Administrator's approval of a State Certification may be rescinded at any time upon request by the State or if, in the Administrator's opinion, it is necessary to do so. The rescission may be applied to all or part of the programs or projects approved in the State Certification.

APPENDIX A.—Federal Highway Administration reports (originating in the field and in program areas that can be included under CA)

Originating office	Title	Format	Frequency	Due date	Respondents
ASSOCIATE ADMINISTRATOR FOR ENGINEERING AND TRAFFIC OPERATIONS (HEO)					
HBO	Force Account Affirmative Finding (except projects on FAS system).	Nar.....	EA	Jan. 15, July 15,	States.
HBO	Bid Price Data (except FAS)	PR-45.....	AR	Award of contract... ..	Do.
HBO	Report on Opening of Bids.....	Tabulation (optional with State).	ARdo.....	Do.
HBO	Federal-Aid Highway Construction Contractor's Quarterly Training Report.	FHWA-1409.....	Q	EOQ+20.....	Contractors.
HBO	Federal-Aid Highway Construction Quarterly Training Report.	FHWA-1410.....	Q	EOQ+30.....	States.
HBO	Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds (except FAS).	PR-47.....	AR	Completion of project.	Contractors.
HNG	Lists of Candidate Bridges for Replacement.	Punched computer cards (5).	AR	As soon as possible..	States.
HNG	Urban Railroad Demonstration Project Status.	Nar.....	Q	EOQ+30.....	Do.
ASSOCIATE ADMINISTRATOR FOR SAFETY (HHS)					
HHS	Progress and Effectiveness of Unified Safety Improvement Programs (4).	Nar.....	A	Aug. 31.....	States.
HHS	Progress and Effectiveness of Pavement Marking Demonstration Program.	Nar with FHWA-1451.	A	Sept. 30.....	Do.
ASSOCIATE ADMINISTRATOR FOR RIGHT-OF-WAY AND ENVIRONMENT (HRE)					
HRW	Outdoor Advertising Sign Removal.	FHWA-1424.....	Q	EOQ+45.....	States.

Originating office	Title	Format	Frequency	Due date	Respondents
ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION (HAD)					
HFS	Accounting Statement, Accrued Unbilled Costs.	FHWA-186	M	EOM-15th work day.	States.
HFS	Project Status Record	PR-37	AR	As soon as possible.	Div.-Reg.
OFFICE OF CHIEF COUNSEL (HCC)					
HCC	Semiannual Labor Compliance Enforcement Report.	PR-1286	SA	Jan. 10, July 10.	States-Div.-Reg.

PART 642—SECONDARY ROAD PLAN

- Sec.
- 642.101 Purpose.
- 642.103 Definition.
- 642.105 Policy.
- 642.107 Applicability.
- 642.109 Content.
- 642.111 Procedures.
- 642.113 Evaluations.
- Appendix A FHWA reports.

AUTHORITY: 23 U.S.C. 101(e), 117(f) and 315; 49 CFR 1.48(b).

§ 642.101 Purpose.

The purpose of this regulation is to prescribe policies and procedures for the development of Secondary Road Plans and for the administration of projects on the Federal-aid secondary system in accordance with those plans.

§ 642.103 Definition.

The "Secondary Road Plan" is a written statement setting forth the standards and procedures adopted by the State highway agency to be used in the administration of projects on the Federal-aid secondary (FAS) system and the provision for certifying that all work undertaken on covered projects was in accord with those standards and procedures. (The term "Secondary Road Plan" is hereinafter referred to as the "Plan.")

§ 642.105 Policy.

(a) Based upon the provisions of 23 U.S.C. 117, and its legislative history, it is the policy of the Federal Highway Administration (FHWA) to extend to State highway agencies maximum flexibility in selection of standards, procedures, and operations, under the Plan and to encourage maximum local initiative and cooperation in selecting, developing and constructing projects under the Plan.

(b) FHWA regulations and directives which implement various provisions of Title 23, U.S.C. (hereinafter Title 23) may apply to projects administered

under the Plan if the State chooses to adopt them.

(c) The Federal Highway Administrator's responsibilities and obligations under Federal laws other than Title 23 will not be affected by approval of a State Plan.

(d) FHWA personnel are available to the State for consultation and advice on Plan projects.

(e) All Plan projects are subject to review by FHWA at any time. A final inspection of each Plan project shall be made by FHWA upon completion of construction.

(f) The plan and any subsequent revision shall be signed by the chief official of the State highway agency and submitted to the FHWA for approval.

§ 642.107 Applicability.

The Plan shall apply to the plans, specifications, estimates, surveys, contract awards, design, inspection, and construction of all projects on the Federal-aid secondary (FAS) system.

§ 642.109 Content.

The Plan shall include:

(a) A description of the State highway agency organization, including the secondary road unit prescribed in 23 U.S.C. 302(a), which will administer the Plan.

(b) An outline or flowchart of project activities with assignment of approval authority identified by the position of the State officials who will approve the surveys, plans, specifications, and estimates, concur in the noise study reports, determine consistency with the State Implementation Plan when air quality considerations are involved, approve individual utility, railroad, and consulting engineer agreements, authorize advertisement for bids or use of force account, authorize award of contract or rejection of bids, and be responsible for contract administration including approval of change orders and extra work.

(c) An outline of procedures, consistent with the State's Action Plan to be used in administering Plan projects.

(d) A statement of the design and construction standards applicable to Plan projects.

(e) A description of the State highway agency's methods for assuring local government knowledge of and compliance with State and Federal requirements on Plan projects when such local governments accomplish any phase of the work.

(f) A description of the State highway agency's recordkeeping requirements and retention schedules to be used on Plan projects.

§ 642.111 Procedures.

(a) Established procedures for system revisions, program actions and project authorizations will not be affected by approval of a Plan. In addition, established procedures for (1) submission and approval of a Relocation Plan and Project Assurances and (2) certification of compliance with such plans and assurances will not be affected by approval of a Plan.

(b) If variances from Plan procedures or standards are appropriate on a project, the State shall bring them to the attention of the FHWA and request approval. Exceptions to the procedures and standards in the Plan may be approved by the FHWA Division Administrator on a project basis.

(c) The State shall submit a copy of the contract estimate to the FHWA.

(d) The reports listed in Appendix A are to be furnished FHWA Headquarters for projects administered under the Plan.

(e) FHWA shall make an inspection of each physical construction project upon its completion. The State is to notify FHWA when a project is complete and/or ready for such inspection.

(f) Final vouchers shall be submitted to the FHWA on Form FHWA 1447 on which the State certifies that the plans, design, and construction for the project were in accord with those standards and procedures contained in the Plan or such variances as were approved by the FHWA as project exceptions. The FHWA Division Administrator shall certify that on the basis of the FHWA final inspection of the project and the certification by the State highway agency the amount approved in the final voucher is justly due.

§ 642.113 Evaluations.

Periodically, an evaluation of the State's operation under the Plan shall be made. An evaluation shall be made at least once every 5 years.

PROPOSED RULES

APPENDIX A.—Federal Highway Administration reports (originating in the field and in program areas that can be included under the plan)

Originating office	Title	Format	Frequency	Due date	Respondents
ASSOCIATE ADMINISTRATOR FOR ENGINEERING AND TRAFFIC OPERATIONS (AEO)					
HHO	Report on Opening of Bids.....	Tabulation (optional with State).	AR	Award of contract...	States.
HHO	Federal-aid Highway Construction Contractor's Quarterly Training Report.	FHWA-1400.....	Q	EOQ+20.....	Contractors.
HHO	Federal-aid Highway Construction Quarterly Training Report.	FHWA-1400.....	Q	EOQ+30.....	States.
HNG	List of Candidate Bridges for Replacement.	Punched computer cards (5).	AR	As soon as possible...	Do.
ASSOCIATE ADMINISTRATOR FOR SAFETY (HSA)					
HHS	Progress and Effectiveness of Unified Safety Improvement Programs (4).	Nar.....	A	Aug. 31.....	States.
HHS	Progress and effectiveness of Pavement Marking Demonstration Program.	Nar with FHWA 1451.	A	Sept. 30.....	Do.
ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION (HAD)					
HFS	Accounting statement, accrued Unbilled Costs.	FHWA-186.....	N	EOG+5th work day.	States.
HFS	Project Status Record.....	FR-37.....	AR	As soon as possible...	Div.-Reg.
OFFICE OF CHIEF COUNSEL (HCC)					
HCC	Semiannual Labor Compliance Enforcement Report.	FR-126.....	SA	Jan. 10, July 10.....	States-Div.-Reg.

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Federal Register

TUESDAY, MARCH 29, 1977

PART IV



DEPARTMENT OF
COMMERCE

Domestic and International
Business Administration



ALUMINUM

Revision of DMS Order 3

Title 32A—National Defense, Appendix
CHAPTER VI—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION,
DEPARTMENT OF COMMERCE

[DMS Order 3, as revised March 24, 1977]

PART 633 (DMS ORDER 3)—ALUMINUM

On June 20, 1975, a notice of proposed rulemaking was published in the FEDERAL REGISTER (40 FR 26174) proposing to revise DMS Order 3 (Aluminum). All comments received in response to the proposal were given due consideration.

As a result of comments received and as a result of further agency review, the following changes are made:

1. In Section 2, technical changes have been made in the definitions of "primary producer" and "secondary smelter."

2. In Section 6, an additional ground for rejection of ACM orders by aluminum producers has been added which relates to controlled materials not usually made or supplied.

3. In Section 8 a provision has been added requiring aluminum producers who do not receive set-aside notifications to accept ACM orders but expressly authorizing them to apply for such notifications.

4. In Sections 9 and 10 the provisions which require that inventories of production materials expended in the filling of mandatory acceptance orders, be replenished through use of either ACM orders or rated orders, as the case may be, are revised to allow but not require the use of ACM or rated orders to replace inventory.

5. A few editorial or technical modifications.

This revised order is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended. In the formulation of this revised order, there has been consultation with industry representatives, including trade association representatives, and consideration has been given to their recommendations.

DMS Order 3 in 32A CFR Chapter VI is redesignated as Part 633 and revised to read as follows:

Sec.

1. What this order does.
2. Definitions.
3. Directives.
4. Opening of order books.
5. Acceptance of orders by aluminum producers.
6. Rejection of orders by aluminum producers.
7. Priority status of orders.
8. Set-asides.
9. Production requirements of aluminum producers.
10. Rules applicable to aluminum distributors.
11. Small order exemption.
12. Records and reports.
13. Requests for adjustment or exception and appeals.
14. Communications.
15. Violations.

AUTHORITY: (Defense Production Act of 1950, as amended (64 Stat. 816; 50 U.S.C. App. 2061 et seq); Executive Order 10480, as amended, 18 FR 4939, 6201, 19 FR 3807, 7249,

21 FR 1673, 23 FR 5061, 6971, 24 FR 3779, 27 FR 9683, 11447, 3 CFR 1949-1953 Com., p. 962; Executive Order 11725, 38 FR 17175; DMO 3, 32A CFR 15; Department of Commerce Organization Orders 10-3, 40 FR 59764, as amended, 41 FR 28334, and 40-1, 40 FR 8978; Department of Commerce, Domestic and International Business Administration Organization and Function Orders 41-1, as amended 39 FR 2780, 39 FR 18490; 45-1, 40 FR 10217, 45-2, 40 FR 10218.)

Sec. 1. What this order does.

This revised order supplements DMS Regulation 1 (Basic Rules of the Defense Materials System), including its Schedules and Directions, and sets forth certain rules regarding operations of aluminum producers and aluminum distributors.

Sec. 2. Definitions.

As used in this order: (a) "Person" means any individual, corporation, partnership, association, or any other organized group of persons, and includes any agency of the United States Government or any other government.

(b) "BDC" means the Bureau of Domestic Commerce, Domestic and International Business Administration, United States Department of Commerce.

(c) "Controlled material" means domestic and imported steel, copper, aluminum, and nickel alloys, in the forms and shapes specified in Schedule I of DMS Reg. 1, whether new, remelted, re-rolled, or redrawn.

(d) (1) "Aluminum controlled material" means the forms and shapes of aluminum specified in Schedule I of DMS Reg. 1. These forms and shapes are:

Rolled bar, rod, structural shapes, and bare wire.

Aluminum conductor steel reinforced (ACSR) and bare aluminum cable.

Insulated or covered wire or cable.

Extruded bar, rod, shapes, and tube (extruded, drawn and welded tube).

Sheet and plate.

Ingot, granular or shot, and molten metal.

Foil.

Powder, flake, paste.

(2) "Primary aluminum ingot" means ingot produced from alumina.

(3) "Primary aluminum molten metal" means molten metal produced from alumina.

(e) "Aluminum producer" means any person who produces an aluminum controlled material. It includes a primary producer, a secondary smelter, and an independent fabricator.

(f) "Primary producer" means any person who produces primary aluminum ingot or primary aluminum molten metal. A primary producer may also produce one or more of the other aluminum controlled materials.

(g) "Secondary smelter" means any person who is primarily engaged in remelting scrap to produce properly alloyed, chemically tested, specification ingot and/or molten metal, and who has the equipment and technical knowledge necessary to perform this function; and includes a primary producer to the extent that he performs such function.

(h) "Independent fabricator" means any person (except a primary producer

or a secondary smelter) who does not produce aluminum ingot or aluminum molten metal, but who produces other aluminum controlled materials for sale.

(i) "Aluminum distributor" means any person (including a warehouseman or jobber, but not a retailer) engaged in the business of stocking aluminum controlled materials at a location regularly maintained by him for sale or resale in the form or shape as received, or after performing such operations as cutting to length or shape, slitting, shearing, or sorting and grading.

(j) "Aluminum importer" means any person who imports an aluminum controlled material.

(k) "Set-aside" means the amount and kind of any aluminum controlled material which a person is required to reserve for filling mandatory acceptance orders during specified periods of time, as prescribed by BDC.

(l) "Authorized controlled material order" (ACM order) means any delivery order for any controlled material (as distinct from a product containing controlled material) bearing an authorized program identification, the calendar quarter in which delivery is required, and the certification required by DMS Reg. 1 or any other applicable regulation or order of BDC. The term "ACM order" shall have the same meaning as "authorized controlled material order."

(m) "ACM-DX order" means an authorized controlled material order identified by the suffix "DX" as provided in section 5 of DMS Reg. 1.

(n) "Rated order" means any delivery order for any product, service, or material other than controlled material bearing an authorized rating and the certification required by DPS Reg. 1 or any other applicable regulation or order of BDC.

(o) "Mandatory acceptance order" means an ACM order, a rated order, or any other delivery order which a person is required to accept pursuant to any regulation or order of BDC, or pursuant to a specific authorization or directive of BDC.

(p) "Lead time" means the period of time in advance of the month of required shipment for controlled materials as specified in Schedule III of DMS Reg. 1.

(q) "Production material" means, with respect to any aluminum producer, any products or materials (including controlled materials) which will be physically incorporated into aluminum controlled materials which he produces and the portion of such products and materials normally consumed or converted into scrap or by-products in the course of processing. It also includes chemicals used directly in the production of the materials he produces, and products and materials used for packaging or containers required to make delivery of the materials he produces. It does not include products and materials for plant improvement, expansion or construction, production equipment, or maintenance, repair and operating supplies (MRO). Direction 1 to DMS Reg. 1 provides a separate self-authorization procedure to

obtain MRO needed to fill mandatory acceptance orders.

(r) "FC program identification" means the letters "FC" used by aluminum producers in placing ACM orders for aluminum controlled materials in accordance with section 9 of this order.

Sec. 3. Directives.

Each aluminum producer and aluminum distributor shall comply with such production, delivery or other directives as may be issued from time to time by BDC, and with all applicable regulations and orders of BDC.

Sec. 4. Opening of order books.

(a) Each aluminum producer shall open his order books for the acceptance of ACM orders no later than 105 days prior to the first day of each calendar quarter during which deliveries are to be made.

(b) An aluminum producer may open his order books for acceptance of ACM orders for delivery in any calendar quarter as long in advance of such 105-day period as he may choose, but after his order books are opened he shall accept all ACM orders as provided in this order and in DMS Regulation 1: *Provided*, That acceptance prior to the date he opens his order books of (1) an ACM order directly from an agency of the United States Government or (2) an ACM-DX order, shall not effect an opening of his books so as to require acceptance of other ACM orders.

Sec. 5. Acceptance of orders by aluminum producers.

(a) Except as provided in this order and other applicable regulations and orders of BDC, an aluminum producer must accept all ACM orders.

(b) Each aluminum producer who receives an ACM order must transmit written notification to the person who tendered such order of its acceptance or rejection within ten consecutive calendar days after its receipt, except that in the case of an ACM-DX order such notification must be transmitted within five consecutive calendar days after its receipt. Receipt of such an order shall mean when received at the place where the aluminum producer usually processes such orders.

Sec. 6. Rejection of orders by aluminum producers.

An aluminum producer may reject ACM orders in the following cases, but he shall not discriminate among customers in rejecting or accepting such orders:

(a) If the order is received after commencement of the applicable lead time: *Provided*, That an ACM-DX order must be accepted without regard to lead time unless it is impracticable for him to make delivery within the required delivery month in which event he must accept such order for the earliest practicable delivery date.

(b) If the order is one for less than the minimum mill quantity specified in Schedule IV of DMS Reg. 1.

(c) If the person seeking to place the order is unwilling or unable to meet such

producer's regularly established prices and terms of sale or payment.

(d) If the applicable set-aside has been reached or would be exceeded by acceptance, except that an ACM-DX order must be accepted without regard to such set-aside.

(e) If the order is received from an aluminum distributor who did not purchase aluminum controlled materials from the producer-supplier during the preceding calendar year, and if the order tendered by an aluminum distributor is not in accordance with section 10 of this order.

(f) If the order is received from a primary producer.

(g) If the order is received from a secondary smelter or an independent fabricator who did not purchase aluminum controlled materials from the producer-supplier during the preceding calendar year.

(h) If the order is for an aluminum controlled material not usually made or supplied.

Sec. 7. Priority status of orders.

(a) All ACM orders shall have equal preferential status and shall take precedence in acceptance and delivery over other orders previously or subsequently received. All ACM-DX orders shall have equal preferential status and shall take precedence in acceptance and delivery over ACM orders previously or subsequently received and over other orders previously or subsequently received.

(b) Orders pursuant to directives issued by BDC shall take precedence in acceptance and delivery over ACM-DX orders, ACM orders and other orders previously or subsequently received, unless a contrary instruction appears in the directive.

(c) An aluminum producer must make shipment on each ACM order as close to the requested delivery date as is practicable. If an aluminum producer, after accepting an ACM order finds that, due to contingencies he could not reasonably have foreseen, he is obliged to postpone the delivery date, he must promptly advise his customer of the approximate date when shipment can be made, and keep his customer advised of any changes in that date. Shipment of any such carry-over order must be scheduled and made in preference to any order originally scheduled for a later date. When the new date for shipment on a carry-over order falls within a later quarter than that indicated on the original order, the producer must make shipment on the basis of the original order even if that order shows a quarterly identification earlier than the one in which shipment is actually made. Carry-over orders shall not be applied against the set-aside established pursuant to section 8 of this order for the month in which such carry-over orders are rescheduled but shall be in addition thereto.

Sec. 8. Set-asides.

BDC will notify primary producers, secondary smelters and independent fabricators of the maximum aggregate

quantities of aluminum controlled materials, by form and shape, which must be set aside for the acceptance by them of ACM orders for delivery during each calendar month. For primary aluminum ingot and primary aluminum molten metal, these set-aside quantities will be determined on the basis of production capacity during a representative base period or on a representative date; for other aluminum controlled materials, these set-aside quantities will be determined on the basis of shipments during a representative base period. Any primary producer, secondary smelter or independent fabricator who has not received a set-aside notification must accept ACM orders but may apply for such notification, by letter in triplicate, addressed as provided in section 14(a) of this order.

Sec. 9. Production requirements of aluminum producers.

(a) An aluminum producer must place ACM orders using the program identification FC in obtaining production materials consisting of aluminum controlled materials needed to fill mandatory acceptance orders. An aluminum producer may place ACM orders using the program identification FC to replace in inventory aluminum controlled materials which he has used to fill mandatory acceptance orders.

(b) An aluminum producer must place ACM orders using the program identification D-1 in obtaining production materials consisting of controlled materials (other than aluminum) needed to fill mandatory acceptance orders. An aluminum producer may place ACM orders using the program identification D-1 to replace in inventory controlled materials (other than aluminum) which he has used to fill mandatory acceptance orders.

(c) An aluminum producer who requires controlled materials to fill an ACM-DX order or to replace in inventory controlled materials used to fill an ACM-DX order must, in addition to complying with paragraphs (a) and (b) of this section, indicate the suffix DX on his delivery orders for such controlled materials.

(d) An aluminum producer must place rated orders using the rating DO-D-1 in obtaining production materials other than controlled materials needed to fill mandatory acceptance orders. An aluminum producer may place rated orders using the rating DO-D-1 to replace in inventory production materials other than controlled materials which he has used to fill mandatory acceptance orders.

(e) An aluminum producer who requires materials other than controlled materials to fill an ACM-DX order or to replace in inventory such materials used to fill an ACM-DX order must, in addition to complying with paragraph (d) of this section, use the rating DX-D-1 (in lieu of the rating DO-D-1) on his delivery orders for such materials.

(f) An aluminum producer may combine his requirements of controlled materials needed to fill mandatory acceptance orders in one or more ACM orders.

He may also combine his requirements for other production materials needed to fill mandatory acceptance orders in one or more rated orders.

(g) An aluminum producer obtaining controlled materials or products and materials other than controlled materials to replace in inventory materials used to fill mandatory acceptance orders pursuant to this section shall place ACM orders or rated orders, as appropriate, for such inventory replacement, only in the calendar month in which such products or materials were taken from inventory to fill such mandatory acceptance orders, or in the immediately succeeding two calendar months.

Sec. 10. Rules applicable to aluminum distributors.

(a) Except as provided in this order and other applicable regulations and orders of BDC, an aluminum distributor must accept all ACM orders.

(b) An ACM order placed with an aluminum distributor shall be considered as calling for immediate delivery unless such order specifically provides otherwise.

(c) An aluminum distributor must accept all mandatory acceptance orders; however, he may reject ACM orders in the following cases, but he shall not discriminate among customers in rejecting or accepting such orders:

(1) If the order is not for immediate delivery.

(2) If he does not have the material ordered in stock, unless he knows that such material is in transit to him.

(3) If the person seeking to place the order is unwilling or unable to meet such distributor's regularly established prices and terms of sale or payment.

(4) If a set-aside has been established, and the applicable set-aside has been reached or would be exceeded by acceptance, except that an ACM-DX order must be accepted without regard to such set-aside.

(5) If the person seeking to place the order is another aluminum distributor.

(6) If acceptance of the order for delivery in any calendar month of any aluminum form or shape, together with the quantity of such form or shape for which he has previously accepted ACM orders for delivery during such month, would exceed 130 percent of the average monthly quantity of such form or shape delivered by him during the preceding calendar year pursuant to ACM orders, except that an ACM-DX order must be accepted without regard to such limitation.

(7) If the order is for a quantity equal to or greater than the minimum mill quantity established by such distributor's principal producer-supplier pursuant to Schedule IV of DMS Reg. 1.

(d) An aluminum distributor must place ACM orders using the program identification D-8 in obtaining aluminum controlled materials needed to fill mandatory acceptance orders. An aluminum distributor may place ACM orders using the program identification D-8 in

obtaining aluminum controlled materials needed to replace in inventory aluminum controlled materials which he has used to fill mandatory acceptance orders: *Provided however*, That new orders placed by a distributor for replacement of inventory shall call only for delivery of products of the same form and of substantially the same size in a quantity no greater than the quantity of such product which such distributor delivered from his inventory to fill ACM orders.

(e) An aluminum distributor who requires aluminum controlled materials to fill an ACM-DX order or to replace in inventory aluminum controlled materials used to fill an ACM-DX order must, in addition to complying with paragraph (d) of this section, indicate the suffix DX on his delivery orders for such controlled materials.

(f) An aluminum distributor obtaining aluminum controlled materials to replace in inventory aluminum controlled materials used to fill mandatory acceptance orders pursuant to this section shall place ACM orders only in the calendar month in which such materials were taken from inventory to fill such mandatory acceptance orders, or in the immediately succeeding two calendar months.

Sec. 11. Small order exemption.

The provisions of this order requiring aluminum producers and aluminum distributors to use ratings and program identifications need not be followed in the case of any individual delivery order of \$500 or less.

Sec. 12. Records and reports.

(a) Each person participating in any transaction covered by this order shall make, and preserve for at least three years thereafter, accurate and complete records thereof. Such records shall be maintained in sufficient detail to permit the determination, upon examination or audit, whether or not each transaction complies with the provisions of this order or any other applicable regulation or order of BDC. However, this order does not specify any particular accounting method or system to be used. Records may be retained in the form of microfilm or other record-keeping systems which provide the information contained in the original records.

(b) All records required by this order shall be made available for inspection and audit by duly authorized representatives of BDC at the usual place of business of the person involved.

(c) Upon request by BDC, each aluminum producer, aluminum importer and such other persons who are requested, shall each month complete and submit Form DIB-978 in accordance with the instructions applicable to such form.

(d) Persons subject to this order shall develop and maintain such records and submit such reports to BDC as it shall require, subject to the terms of the Federal Reports Act of 1942 (44 U.S.C. 3501-3511).

Sec. 13. Requests for adjustment or exception and appeals.

(a) Any person subject to any provision of this order may submit a request for adjustment or exception to BDC upon the ground that such provision works an undue or exceptional hardship upon him not suffered generally by others in the same trade or industry, or that its enforcement against him would not be in the interest of the national defense or in the public interest. The submission of a request for adjustment or exception shall not relieve any person of his obligation to comply with any such provision. In examining requests for adjustment or exception claiming that the public interest is prejudiced by any provision of this order, consideration will be given to the requirements of public health and safety, civil defense, and dislocation of labor and resulting unemployment that would impair the defense program. Each request shall be in writing, by letter in triplicate, addressed as provided in section 14(a) of this order, and shall set forth all pertinent facts and the nature of the relief sought, and shall state the justification therefor.

(b) Any person may appeal to the Appeals Board for the Department of Commerce from an adverse decision against him by BDC pursuant to this order. Each appeal shall be submitted to the Appeals Board not later than 45 days after receipt by the appellant of an adverse decision and shall be in writing, by letter in triplicate, addressed as provided in section 14(b) of this order, and shall set forth all pertinent facts and the nature of the relief sought, and shall state the justification therefor. In addition, one copy of such letter shall be furnished to BDC by the appellant, addressed as provided in section 14(a) of this order. The decision of the Appeals Board shall be final within the Department and shall be provided in writing to the appellant and to BDC.

Sec. 14. Communications.

(a) All communications concerning this order or requests for adjustment or exception pursuant to section 13(a) of this order shall be addressed to the Bureau of Domestic Commerce, U.S. Department of Commerce, Washington, D.C. 20230, Ref: DMS Order 3.

(b) All appeals pursuant to section 13(b) of this order shall be addressed to the Appeals Board, U.S. Department of Commerce, Washington, D.C. 20230, Ref: DMS Order 3.

Sec. 15. Violations.

(a) Any person who willfully violates any provision of this order, or who willfully furnishes false information or conceals any material fact in the course of operation under this order, is guilty of a crime and upon conviction may be punished by fine or imprisonment, or both.

(b) Violation of any provision of this order may subject any person committing or participating in such violation to administrative action to suspend his

privilege of making or receiving deliveries of products or materials, or using products, materials or facilities. In addition to such administrative action, an injunction and order may be obtained from a court of appropriate jurisdiction prohibiting any such violation and enforcing compliance with the provisions hereof.

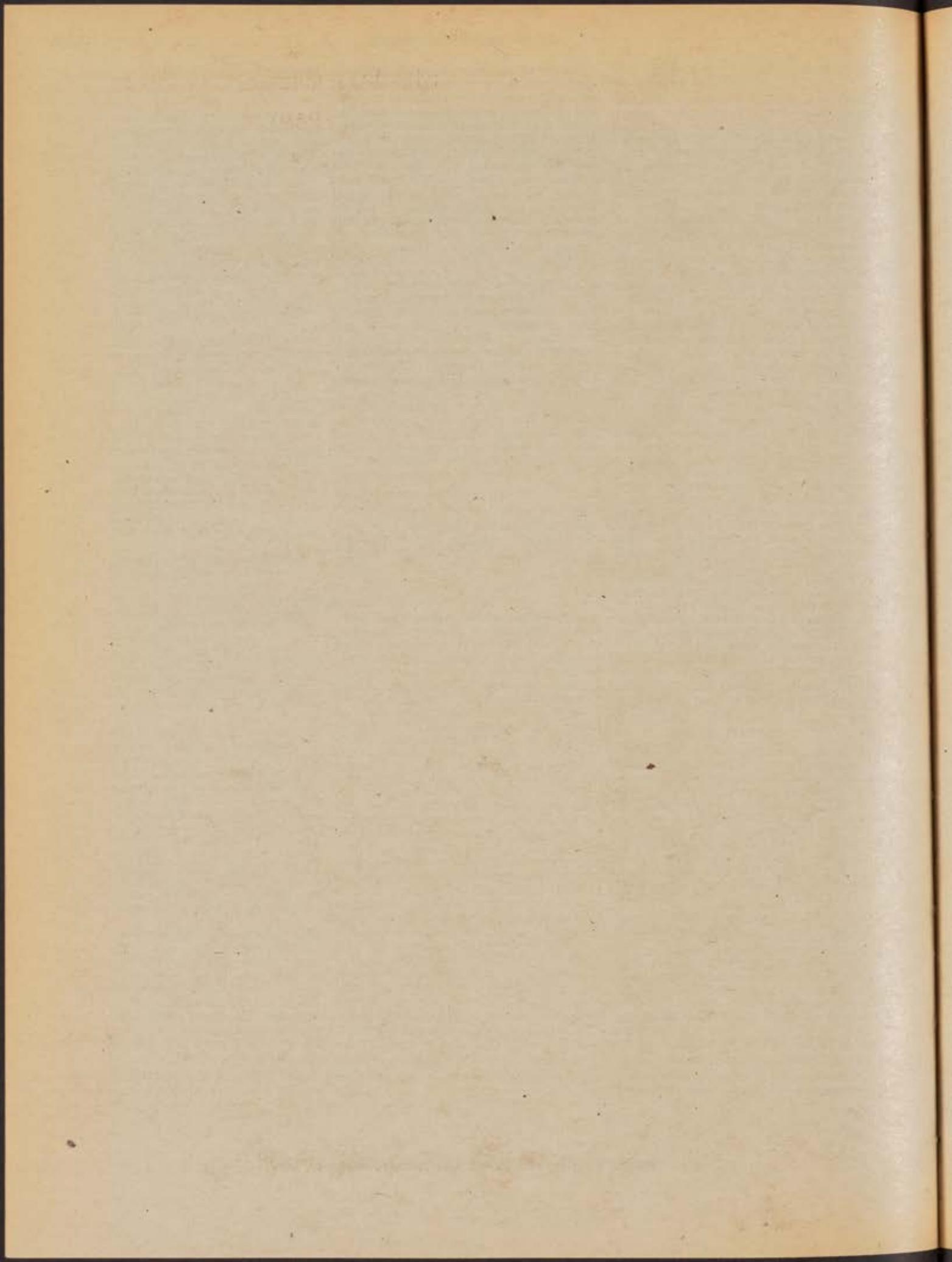
NOTE.—It is hereby certified that the economic and inflationary impacts of this revised order have been carefully evaluated in accordance with OMB Circular A-107.

This revised order shall take effect April 30, 1977.

DOMESTIC AND INTERNATIONAL
BUSINESS ADMINISTRATION,
BUREAU OF DOMESTIC COM-
MERCE,

MICHAEL DOYLE,
*Acting Deputy Assistant Secretary
for Domestic Commerce.*

[FR Doc.77-9208 Filed 3-28-77;8:45 am]



federal register

TUESDAY, MARCH 29, 1977

PART V



**SECURITIES AND
EXCHANGE
COMMISSION**

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**SECURITIES
TRANSACTIONS BY
MEMBERS OF NATIONAL
SECURITIES EXCHANGES**

**Securities Exchange Act of 1934; Floor
Trading Regulation (Rule 11a-1)**

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-13388; File No. S7-613]

SECURITIES TRANSACTIONS BY MEMBERS OF NATIONAL SECURITIES EXCHANGES

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: On January 27, 1976, the Commission requested public comment on Section 11(a) of the Securities Exchange Act of 1934.¹ The public response indicated that there are extremely serious and difficult policy questions to be addressed with respect to the impact of Section 11(a).² In order to provide some focus for additional public discussion, the Commission is proposing three rules for consideration and is providing a detailed background discussion.³ In certain cases, the rule proposals present different solutions to the same problem or are otherwise duplicative. It is anticipated that the discussion process will assist the Commission in choosing principles embodied in some of the rules while discarding others. Nevertheless, commentators are urged to address all issues which they believe relevant, even if a specific issue is not raised by any of the proposed rules, and to advance alternative solutions to the problems discussed herein.

DATES: Comments should be received by May 15, 1977.

¹ Securities Exchange Act Release No. 12055 (Jan. 27, 1976), 41 FR 8075 (Feb. 24, 1976). Section 11(a) of the Securities Exchange Act of 1934 prohibits an exchange member from effecting transactions on that exchange for its own account, the account of an associated person, or an account managed by the member or an associated person. The general prohibition is qualified by eight exceptions, one of which is a grant of rulemaking authority to the Commission. In addition, the Commission may regulate or prohibit members' transactions permitted by the statutory exemptions and transactions effected by non-members. For members of exchanges on May 1, 1975, the prohibitions will become effective May 1, 1978. To guide discussion and analysis, the Commission asked nine broad questions. In addition, the Commission adopted a temporary rule and proposed a rule for comment. The Commission also proposed an amendment to Securities Exchange Act Rule 17a-3(a)(9). That proposal was discussed further in Securities Exchange Act Release No. 13149 (Jan. 10, 1977), 42 FR 3312 (Jan. 18, 1977).

² The policy questions are presented in large part because of the profound changes in the securities markets resulting from the elimination of fixed commission rates in May 1975. Continuing changes are expected as a result of the Commission's current efforts to ensure open access to all exchange markets. Accordingly, a further public inquiry appears appropriate to assist the Commission in determining how its rulemaking powers under Section 11(a) should be used to adapt that Section's purposes to current circumstances.

³ In addition, a detailed summary of earlier comments is set forth in Appendix A for the benefit of interested persons.

ADDRESSES: Interested persons should submit six copies of their views and comments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street, N.W., Washington, D.C. and should refer to Securities and Exchange Commission File No. S7-613.

FOR FURTHER INFORMATION CONTACT:

Richard A. Steiwurtzel, Esq.,
Office of the Chief Counsel,
Division of Market Regulation,
Securities and Exchange Commission,
500 North Capitol Street,
Washington, D.C. 20549,
(202)-755-8749.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 11(a) of the Securities Exchange Act of 1934 (the "Act")⁴ is, in a sense, one of the last remnants of regulatory action relating to a transitional period which may now be drawing to a close. Predicated in part on the reasoning which led the Commission to adopt its Rule 19b-2,⁵ Section 11(a) derives, in large part, from the Commission's effort to uphold the use of exchange memberships for public purposes at a time when brokerage commissions on exchange transactions remained subject to exchange rules prescribing minimum rates and access to exchange membership and facilities was limited. At the time Rule 19b-2 was developed, however, the Commission was also moving on a careful and deliberate course toward the development of a national market system that would rely increasingly on competition among marketplaces, and competition among market participants, to replace regulation, including rate regulation and restrictions on access. Nevertheless, the complexities of that evolutionary process make it not altogether surprising that there has been substantial hesitation in considering whether some of the strictures of Rule 19b-2, or Section 11(a), were among those which could most easily be supplanted by competition. Some historical perspective is required to understand the current situation.

Development of Exchanges. While the ancestors of modern day national securities exchanges were formed at the end of the 18th Century as voluntary associations of brokers and dealers,⁶ they evolved, over the next century, into organizations with multiple functions and

⁴ 15 U.S.C. 78k. Section 11(a) in its current form was enacted in the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975) (hereinafter referred to as the "1975 Amendments").

⁵ 17 CFR 240.19b-2. Rule 19b-2 was rescinded in Securities Exchange Act Release No. 12055 (Jan. 27, 1976), 41 FR 8075 (Feb. 24, 1976).

⁶ The Philadelphia Stock Exchange was the first exchange, founded in 1790.

complex relationships with their members.⁷ Inevitably, the exchanges were traditionally seen by their members as obligated to protect the members' perquisites and prerogatives. That was the case even when the institutional interest and, perhaps coincidentally, the public interest lay elsewhere, and the combination of parochial member interests frequently prevailed for want of an adequate counterbalance in the system. But, despite the dangers inherent in such unregulated combinations, the matter was of little public importance in the early days of exchanges. "The general public was not involved to any significant extent in exchange trading * * * and there was some justification for regarding the stock exchanges as, in considerable measure, private clubs."⁸

After the end of World War I, however, the public began to increase dramatically its investment in equity securities, which were already supplanting debt securities as the principal securities traded on exchanges.⁹ Furthermore, the use of equity securities to raise capital was also assuming increasing importance in the function of the Nation's burgeoning industrial economy. It was thus not surprising that, with the stock market crash in 1929, fundamental questions were raised about the status of exchanges. Operated as private clubs, they were ill-equipped to fulfill their new public interest responsibilities and had in

⁷ As marketplaces, their interests were not, and are not, always coterminous with the interests of their members; in fact, the proper functioning of an exchange market (or indeed any market) may require a subordination of member interests to the larger interests of the investment community as a whole. In addition to their role as marketplaces, exchanges have been, and are, educators of participants in the securities business. They have also provided a mechanism for developing standardized operating procedures and thereby improving the efficiency of their members, who, perhaps more than other businessmen, deal in the ordinary course, and of necessity, with each other. Exchanges also endeavored to set and raise other standards of business conduct; they first articulated the concept of requiring members to observe just and equitable principles of trade, a concept with some ethical content. Finally, to some extent, exchanges represent their members' interests, both before governmental bodies and in negotiations with others.

⁸ Securities Exchange Act Release No. 11203 (Jan. 23, 1975), at 7, 40 FR 7403 (Feb. 20, 1975).

⁹ Initially, exchanges were the marketplace for U.S. Government debt securities; gradually that market moved off exchanges and exchange trading volume was successively concentrated in railroad bonds, corporate bonds, high quality corporate equity securities and, most recently, options on high quality corporate equity securities. When trading volume in particular types of securities has gone "off board", exchanges have turned to new products, with options and some commodities being most recently the new area of interest. The last officially recognized withdrawal from exchange trading was that of high quality preferred stocks, which are now traded largely off board. There are indications, however, that the highest quality and most active common stocks are today

fact been instrumental in promoting various abuses.¹⁹

Initial Regulatory Controls. In response, the Congress enacted the federal securities legislation, first the initial disclosure requirements of the Securities Act of 1933 and then, one year later, the Securities Exchange Act of 1934, which created the Commission. The Commission was granted authority to ensure, among other things, the maintenance of fair and honest markets in securities. At the same time, the Act left open to exchanges the opportunity to continue, and indeed enhance, positive aspects of their function as marketplaces, subject to the Commission's regulation.²⁰

Thus was forged a unique scheme of cooperative regulation, which reserved initial regulatory authority in the private sector and reserved the "shotgun" of more direct government intervention behind the door.²¹ It was, at the same time, a regulatory scheme that concentrated on the evils of the day—the garden-variety frauds that were then everyday occurrences. It did not analyze as thoroughly the potential regulatory problems of a system which was permitted to remain closed in many respects. Direct access to the marketplace was still reserved to club members, and candidates applied to existing members for entry. Those who did not, or could not, join exchanges purchased access from members in the form of brokerage commissions, at fixed prices. Nevertheless, the Act's limitations were not initially of great moment. Most investors had little desire to obtain direct access; indeed, the technology of the 1930's, far more than today, made access largely a question of physical presence on the floor of the exchange.²²

traded very frequently off board though the practice of reporting transactions through exchanges has persisted. For some of the earlier history, see Eames, *The New York Stock Exchange* (1894). See also Staff Report: Rule 394 in Study of the Securities Industry, Hearings Before the Subcommittee on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce, H.R. Serial No. 92-376, 92d Cong., 2d Sess., Part 6, at 3293-3372 (1972); Securities Exchange Act Release No. 11942 (Dec. 19, 1975), 41 FR 4507 (Jan. 30, 1976).

¹⁹ In the early 1930's, comprehensive Congressional investigations uncovered obvious abuses—corners, pools, manipulations, insider trading and a host of other fraudulent and deceptive practices which seriously injured investors. See generally Report of the Senate Comm. on Banking and Currency on Stock Exchange Practices, S. Rep. No. 1455, 73d Cong., 2d Sess. (1934).

²⁰ For example, they became legally obligated to enforce compliance by their members with just and equitable principles of trade—which, at a minimum, would include the Act and the rules and regulations thereunder. See former Section 6, 15 U.S.C. 78f (1970) (amended 1975).

²¹ See W. Douglas, *Democracy and Finance* 82 (Allen ed. 1940).

²² Viewed in that light, brokerage commissions were not, for the most part, seen to be unreasonable, nor were there substantial public indications that many were disadvantaged by the peculiar systems that remained for denying some applications for membership.

Institutional Activities. After World War II, public participation in exchange trading multiplied again, and the reforms built into the Act contributed in no small measure to giving investors confidence that exchange markets operated more fairly and honestly. As important, financial institutions that had not joined exchanges also began to invest in the equity securities traded there.²³ In addition, the share of the Nation's liquid financial assets controlled by financial institutions was growing.

The reasons were complex; they included the growth of private pension plans in response to union demands and the tax advantages of investing through such plans. Conversely, the manifest advantages of tax shelters caused wealthy individuals to invest their assets in vehicles which were not, and could not be, traded on exchanges; and for investors of modest means the growth of mutual funds (as well as pension plans) offered diversification of investment risk in equity assets and the purchase of money management services at a more reasonable cost.²⁴ These phenomena resulted in the "institutionalization" of exchange securities markets,²⁵ which were then the primary markets for common stock of major corporations. While institutionalization had little to do with the manner in which the exchanges operated their markets, it had profoundly disturbing effects on the basic structure of exchanges. At first, however, those effects were only dimly perceived.

Institutional investment vehicles and intermediaries impinged on the full-service functions of exchange members. In

²³ It was increasingly accepted that the "prudent man" rule applicable to many financial institutions permitted, if it did not eventually require, that part of their managed assets be invested in equity securities; owning equity securities, it was believed, would protect against the risks of inflation and provide an opportunity for overall growth of the managed assets. See Scott, *The Law of Trusts*, Vol. III, §§ 227.11-227.13 (2d ed. 1967). Earlier law generally held that the purchase of equity shares by a trust was not a prudent investment, and was therefore improper. See, e.g., *King v. Telbot*, 40 N.Y. 76 (1868).

²⁴ For a somewhat more complex formulation of the basic economic concepts involved, see Institutional Investor Study Report of the Securities and Exchange Commission, H.R. Doc. No. 92-64, 92d Cong., 1st Sess. 39-40 (1971) (hereinafter referred to as the Institutional Investor Study).

²⁵ The Commission's Report of the Special Study of Securities Markets (H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963) (hereinafter referred to as the Special Study) noted that, during the 1952-1961 decade, the number of individual shareholders tripled; *Id.*, Part 2, at 6. While the New York Stock Exchange, Inc. (hereinafter referred to as the "NYSE"), had mounted an extensive publicity campaign to urge everyone to own a share in "Corporate America", the volume of trading represented by individuals, as a proportion of total NYSE volume, had decreased while institutional activity had increased. *Id.* Over a somewhat longer period, estimated institutional holdings of NYSE listed securities more than doubled, from 14.5 percent in 1949 to 32.7 percent in 1974. NYSE, *Fact Book* 53 (1976).

its survey of institutional participation in the securities markets, the Special Study found that "[v]irtually all of the institutions (surveyed) had trading or order departments which retained control over the details of executing purchases and sales of stocks."²⁶ Technological improvements in communications, and the size (and frequency) of institutional transactions, made it efficient, and perhaps even prudent, to internalize at least part of the traditional brokerage function. The institution delegated to its order department "substantial discretion to choose the broker-dealer, type of order, or market channel that would be used for a particular execution * * *."²⁷ Actual investment discretion was, of course, allocated to a staff of professional employees, even though outside views might be actively sought.

By contrast, exchange members had traditionally shaped, if not actually controlled, investment decisions of their customers who purchased equity securities. Those customers had been individual investors, and exchange members offered investment advice from the vantage point of a market professional to those who had neither the time nor the resources to duplicate that expertise. But that advice remained, for the most part, a "free" service, given away by an exchange member who expected real revenues to come from commissions on transactions. Perhaps because investment advice was incidental, many, though far from all, gave it scant attention.²⁸ A new professional—the investment counselor, who professed to eschew active participation in the brokerage function—took over the full-time investment advisory function for many individuals as well as for many collective investment vehicles.²⁹ Exchange members became accustomed to dealing with larger clients through intermediaries, comforted by impressions of fulfilling an important role and by an antiquated system that appeared to preserve revenues.

The Special Study recognized that it had uncovered a new phenomenon, and concluded that further studies were needed,³⁰ and, subsequently, the Institu-

²⁶ Special Study, Part 2, at 867.

²⁷ Special Study, Part 2, at 867.

²⁸ See Securities Exchange Act Release No. 11203 (Jan. 23, 1975), 40 FR 7403 (Feb. 20, 1975).

²⁹ Investment counselors were prominent during earlier periods (See, e.g., Section 208 (c) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-8(c)), but their importance increased further in response to the increasing reliance on investment intermediaries generally. Of course, many individuals used other types of institutional intermediaries, such as mutual funds or bank trust departments. Also, some brokers took on the function of full-time investment advisers, charging an advisory fee and sometimes crediting brokerage commissions against that fee.

³⁰ "In view of the growing importance of institutional transactions and the probability that needs and problems associated with them will not remain static, it is particularly important that there be an adequate body of information about them on a continuous basis for the use of the Commission, the self-regulatory bodies and the investing public." *Special Study*, Part 2, at 870.

tional Investor Study was funded to begin the recommended data collection. During the intervening period, which was one of great economic growth and optimism, the noise and confusion of the collision between the old market structure of exchange and non-member financial institutions were sublimated to some extent by a host of "Byzantine" devices.²² The Institutional Investor Study and the Commission's Rate Structure Hearings²³ discovered that "reciprocal practices", to which the Special Study had alluded, had mushroomed. "This has had the effect of making commission rates for institutions negotiable but limiting the extent to which the ultimate investor rather than the money manager can benefit from such negotiation."²⁴ Nevertheless, the institutional brokerage business appeared so profitable that many in the exchange member firm community abandoned or postponed other endeavors.

Regulatory Response. The economic dislocations caused by a stagnating commission rate system first crystallized in a recognition by the Commission that the system—despite its relative success for 180 years—was falling.²⁵ Finally, in response to unequivocal directions from the Commission,²⁶ exchanges eliminated part of the fixed commission rate system. That action acknowledged at least a partial failure of the exchange self-regulatory system, for it had been theorized that exchanges would have a flexibility and responsiveness that more ponderous procedures of government could not duplicate. Instead, the self-regulatory system had frozen. In part,

²² Securities Industry Study, Report of the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce, H.R. Doc. No. 92-1519, 92d Cong., 2d Sess. 133 (1972).

²³ In the Matter of the Commission Rate Structure of Registered National Securities Exchanges, Securities and Exchange Commission File No. 4-144 (1968-1971).

²⁴ Institutional Investor Study, Summary Volume, at xxii.

²⁵ See Securities Exchange Act Release No. 8239 (Jan. 26, 1968), 33 FR 2393 (Jan. 30, 1968). The initial expression of concern by the Commission focused on the adverse effect on investors rather than the underlying market structure problems (but see Special Study, Part 2, Chap. VIII). Nonetheless, the problems engendered by a malfunctioning market structure illustrates, to a certain extent, a continuing problem of permitting the self-regulatory system to engage in private economic regulation. If such regulation is fundamentally out of step with economic reality, it will have unfortunate effects, for the ingenuity of the regulated will be devoted to developing, and refining, evasive measures and techniques, and the private regulatory scheme has little effective capacity to combat its own members' ingenuity. At the same time, such patterns of regulation, once established, are often guarded doggedly by those whose private empires can be sheltered behind the regulation. Consequently, the regulatory structure cannot easily be abandoned.

²⁶ See Securities Exchange Act Release Nos. 9007 (Oct. 22, 1970); 9079 (Feb. 11, 1971); 9096 (Mar. 4, 1971); 9105 (Mar. 11, 1971); and 9132 (Apr. 1, 1971).

that can be attributed to the absence, in 1934, of an analysis of exchange structures, which were preserved largely as they had been found.²⁷

When, however, the Commission determined to address the problems of the fixed commission rate system, the issues relating to access, or as it was then styled, "institutional membership",²⁸ were understandably put aside as "at least partially separable from questions regarding the level and structure of brokerage commissions."²⁹ Two years later, the Commission recognized in its Future Structure Statement³⁰ that questions related to the parent test, which excluded certain types of intermediaries from membership on the New York and American Stock Exchanges, could no longer be postponed. At the same time, the securities industry, because of the paperwork crisis³¹ and the introduction of competitive commission rates for

²⁷ See former Section 6(b) of the Act, 15 U.S.C. 78f (1970) (amended 1975). In addition, paperwork and financial crises overtook the securities industry generally so that immediate, radical solutions became too risky. The exchange member community and its various supporting industries had not taken advantage of technological advances in data processing, or had introduced them belatedly and then too quickly to deal with the explosion in trading volume that occurred during the late 1960's. Exchange members were unable to handle the business boom, and the result was four-day trading weeks, five-day settlements (in place of the previous four-day standard), severe curtailments of operations by some firms, and finally financial failure by a number of firms. The sharp decline in securities prices in late 1969 contributed further to making the entire industry's situation precarious. See Securities and Exchange Commission, Study of Unsafe and Unsound Practices of Brokers and Dealers, Report and Recommendations of The Commission, H.R. Doc. No. 92-231, 92d Cong., 1st Sess. (1971).

²⁸ While many of the financial intermediaries excluded from membership were content to rely on the schemes devised for recapturing brokerage commissions, a growing number of others rapidly concluded that the best solution was to avoid the fixed non-member rates entirely and began pressing for exchange membership.

²⁹ Institutional Investor Study, Summary Volume, at xx. In admitting members, some exchanges relied on so-called "parent" tests, which effectively restricted ownership of member firms to individuals active in certain phases of the securities business. As the fixed commission rate system began breaking down, some regional exchanges abandoned the parent test while the so-called principal exchanges made modifications only to the extent necessary to permit member firms to "go public." For an analysis of exchange membership rules, see Securities Industry Study, Report of the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, S. Rep. No. 93-13, 93d Cong., 1st Sess. 68-73 (1973) (hereinafter referred to as the Securities Industry Study).

³⁰ Securities Exchange Commission, Statement on the Future Structure of the Securities Markets, 37 FR 5286 (Mar. 14, 1972) (hereinafter referred to as the Future Structure Statement).

³¹ See n. 27 supra.

large transactions, was ill-prepared for any immediate wrenching of the existing market structure. Accordingly, while the parent test, for which the Commission saw "no reason either of law or policy,"³² was to be abolished, the Commission remained sensitive to the public policy concerns presented by the use of exchange memberships under the circumstances then prevailing—fixed commission rates for most transactions and restricted access for most exchanges—and concluded that immediate abandonment of all regulation of exchange memberships would not be desirable.³³

The reasoning was rooted in its time and place. Since "it would be inappropriate to impose an absolute restriction prohibiting an affiliate of an institution from conducting any commission business on behalf of its institutional affiliate,"³⁴ the Commission requested "the stock exchanges to adopt uniform rules restricting membership to firms which do * * * a (predominantly) public brokerage business."³⁵ When exchanges did not respond to that request,³⁶ the Commission itself proposed, and after extensive hearings adopted, Rule 19b-2³⁷ to set standards for determining that exchange members had, as the principal purpose of their membership, the conduct of a public securities business.³⁸

In adopting Rule 19b-2, the Commission clearly recognized that it was embarking on a difficult and complex regulatory venture and indeed that Rule 19b-2 might require subsequent revision in the light of further experience. But the fact that it might not prove to be a permanent solution, or indeed an absolutely perfect solution for that moment, was not ultimately an acceptable excuse for declining to act: "[T]he very nature and purpose of administrative agencies demands that current industry problems be found and dealt with as expeditiously as possible and that the ad-

³² Future Structure Statement, at 21-22.

³³ Abandoning regulation could result "in the use of exchange memberships for private purposes rather than for the purpose of serving the public in an agency capacity or otherwise performing a useful market function." *Id.*, at 21. Under the circumstances, the Commission concluded "membership in the market system should be confined to firms whose primary purpose is to serve the public as brokers or marketmakers."

³⁴ *Id.*, at 22.

³⁵ *Id.*, at 23.

³⁶ Under the Commission request, any brokerage firm which was not doing significantly more than half of its brokerage commission business for non-affiliated persons would not be considered to be conducting a public brokerage business. *Id.*, at 23-25.

³⁷ Securities Exchange Act Release No. 9950 (Jan. 16, 1973), at 31-35, 38 FR 3902, 3905-6 (Feb. 8, 1973).

³⁸ More than 80 percent of the value of exchange securities transactions effected by an exchange member were required to be done for non-affiliated persons or in the specific types of transactions deemed to be beneficial to the marketplace.

ministrative authority not abdicate its clearly-defined obligation to act."³⁸

While the Commission recognized that its regulatory initiative involved an area of dynamic and complex activity for which there might not be any permanent resolution of the problems in a single proposal, there was considerable criticism of the Commission's rule.³⁹ Many of the comments submitted by the exchange member firm community on Rule 19b-2 showed a lack of sensitivity to the emphasis in the Commission's Future Structure Statement on ensuring that exchange memberships were used for public purposes,⁴⁰ and, subsequently, they

³⁸ Securities Exchange Act Release No. 9950 (Jan. 16, 1973) at 3-4, 38 FR 3902 (footnote omitted). Professor Kenneth Culp Davis has argued cogently that administrative agencies should not unduly delay making rules because they lack confidence in their own capacity and that of their staff "to strike off a rule that will not cause unforeseen and unwarranted consequences." K. Davis, *Discretionary Justice* 59 (1969).

³⁹ See in the Matter of Proposed Securities Exchange Act Rule 19b-2, Securities and Exchange Commission File No. S7-452 (hereinafter referred to as File No. S7-452). The Antitrust Division of the Department of Justice criticized the emphasis on defining the statutes of legal entities as affiliated or unaffiliated while ignoring "most of the traditional affiliations of man—for example—blood and marriage * * *." Statement of the United States Department of Justice, File No. S7-452. Other critics suggested that (i) the Commission could not succeed in enforcing Rule 19b-2 because "the 'mazes of blatant gimmickry' which have been the stock and trade of the securities industry . . . will become even more bizarre * * *"; (ii) The Commission's approach did "nothing to reduce the conflicts of interest which exists (sic) by virtue of the combination of money management and brokerage"; (iii) the Commission's lack of authority to resolve the problems created by the closed membership provisions of exchanges could be characterized as a failure "to come to grips with the fundamental unfairness"; and (iv) the Commission's efforts to preserve a fair administration of the fixed commission system while simultaneously phasing it out should be plainly identified as failing to "help the individual or institutional investor." Regulation of Securities Trading By Members of National Securities Exchanges and the Sale of Investment Advisers of Registered Investment Companies, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 470, S. Rep. No. 93-187, 93d Cong., 1st Sess. 13 (1973) (hereinafter referred to as Report on S. 470). Late in 1974, the House Committee on Interstate and Foreign Commerce also found Rule 19b-2 to fall "far short of its noble purpose" and its underlying reasoning to be "difficult to understand or accept * * *." Securities Act Amendments of 1974, Report to Accompany H.R. 5050, House Comm. on Interstate and Foreign Commerce, H. Rep. No. 93-1478, 93d Cong., 2d Sess. 52 (1974) (hereinafter cited as the Report on H.R. 5050). The Commission had, however, previously stated that it did not believe it was empowered to resolve the problems posed by the critics. See Future Structure Statement, at 22-23.

⁴⁰ See, e.g., Statement of Laird, Inc. (Oct. 5, 1972); Cyrus J. Lawrence & Sons (Sept. 29, 1972); Lehman Brothers, Inc. (Oct. 17, 1972); Committee on the Martin Report (Oct. 3, 1972); Merrill Lynch, Pierce, Fenner & Smith Incorporated (Oct. 16, 1972); New York Stock

pressed for reconsideration of the Commission's program for phasing out fixed commission rates and of reform legislation pending in the Congress.⁴¹

Congressional Perceptions. When the Congress turned its attention to devising solutions to those problems, the proposed legislative solution in 1973 was to some degree similar to Rule 19b-2. There were, however, important revisions, principally the replacement of the 80-20 formulation⁴² used by the Commission as an initial regulatory step with an absolute 100-0 test. Perhaps the most difficult questions the Congress grappled with were the purposes of its initiatives. For example, one report discussed the possibility that asserted conflicts of interest could lead to churning, diversion of orders because of restrictions on access to some exchanges, parking securities in managed accounts and favoring one customer over another. Nevertheless, that report concluded that:

While there is no evidence that the conflicts of interest described above have led to widespread breaches of fiduciary duty, the existence of these conflicts is extremely troublesome.⁴³

The legislative history reflects a concern with those potential conflicts, specifically in combining money management and brokerage,⁴⁴ but both the Senate and the House also took note of the Commission's historical concerns with the trading advantages accruing to members in the closed exchange system:⁴⁵

From the beginning it has been recognized that important and complex regulatory problems are presented when brokers and dealers trade for their own account in the public markets. In the early thirties, when the first federal securities laws were written, concern

Exchange, Inc. (Oct. 16, 1972); Oppenheimer & Co. (Oct. 2, 1972); Reich & Tang, Inc. (Sept. 29, 1972); Securities Industry Association (Oct. 9, 1972); Sherman, Dean & Co. (Oct. 10, 1972); Smith, Barney & Co., Inc. (Sept. 29, 1972); Sutro & Co., Incorporated (Sept. 28, 1972); and Wertheim & Co., Inc. (Oct. 2, 1972), File No. S7-452.

⁴² For example, a comprehensive reform bill, H.R. 5050, 93d Cong., 2d Sess. (1974), was reported on favorably by the House Committee on Interstate and Foreign Commerce at the end of the 93d Congress but was not acted on by the House. The House Rules Committee failed to take the action needed to permit the bill to be brought to a vote on the floor. Accordingly, the reforms embodied the bill, and companion bills which had passed the Senate, were not enacted into law until the next Congress.

⁴³ See no. 38 *supra*.

⁴⁴ Report on S. 470, at 9.

⁴⁵ But see Securities Industry Study, at 68.

⁴⁶ Report on S. 470, at 7-10. Perhaps because of the centennial determination of both Houses of Congress to concur in the Commission's determination (and schedule) to abolish fixed commission rates, concerns with respect to the proper use of exchange memberships decreased during the legislative process. Concern was, however, expressed with "[t]he distortion in market trading patterns resulting from the combination of money management and brokerage, as well as the competitive unfairness between stock exchange members and nonmembers * * *." *Id.*

focused on the trading advantage which members of an exchange acquired by reason of their physical proximity to the specialist's post and their ability to respond to trading activity in particular securities before transactional reports were disseminated on the tickertape * * *.

The advanced communication systems of today enable exchange members to trade from off the floor with many of the same advantages over individual public investors that were enjoyed by floor traders in times past. In its 1967 Report on Trading on the New York Stock Exchange by Off-Floor Members, the SEC found that the off-floor trader has many informational and market proximity advantages similar to those of the floor trader. He is apparently more quickly aware of developing market trends since he has a direct wire to the floor to keep him posted. Once having made an investment decision, the off-floor trader is able to execute the decision faster than a public investor.⁴⁶

The Congressional analysis thus recognized that the problems of undue professional advantage were no longer limited to floor trading and necessarily required a more comprehensive analytical attack in an environment rapidly changing in response to modern technology.⁴⁷ At the same time, it was recognized, "as the national market system expands and greater numbers of brokers and dealers are permitted direct and free access to the system, the relative trading advantage can be expected to dissipate."⁴⁸

In light of the considerable criticism of Rule 19b-2, it might initially seem surprising that Congress would have put forward a solution similar in many respects to the Commission's transitional proposal and similarly rooted in traditional concerns of undue professional advantage.⁴⁹ While the Congressional initiatives in 1973⁵⁰ and 1974⁵¹ for reform of the securities markets were not enacted, the ideas were re-introduced as

⁴⁷ Report on H.R. 5050, at 49-50. A similar analysis is presented in the Report on S. 470, at 15.

⁴⁸ Part of any more comprehensive analysis of regulatory problems associated with undue professional advantage will necessarily recognize the need to define with precision the true "profession" in today's securities markets and in an eventual national market system. See generally Special Study, Part 2, at 240-242. In relation to secondary trading of securities, whether debt or equity, the institutionalization of the securities markets points to new professionals, whose potential trading advantages may upset the balance of protections which might otherwise be afforded individual investors. In other areas the Commission has already moved to exercise its definitional powers. See, e.g., proposed Securities Exchange Act Rule 3a4-1 concerning persons deemed not to be brokers, Securities Exchange Act Release No. 13195 (Jan. 10, 1977), at 42 FR 5084 (Jan. 27, 1977).

⁴⁹ Report on H.R. 5050, at 30.

⁵⁰ In fact, even in formulating Rule 19b-2, the Commission had not comprehended within its objectives the taking of stronger measures on its own motion to deal with floor trading than were provided under Securities Exchange Act Rule 11a-1, 17 CFR 240.11a-1.

⁵¹ See e.g., S. 470, 93d Cong., 1st Sess. (1973).

⁵² See, e.g., H.R. 5050, 93d Conf., 2d Sess. (1974).

new legislation in the next Congress and promptly enacted into law. Section 11(a) as finally enacted differed in some respects from the earlier versions,⁵² but the final Congressional analysis of that Section, embodied in the reports on the bills which became the 1975 Amendments, remained in large part unchanged.

Most importantly, it was recognized that a broad administrative flexibility, consistent with the pervasive themes of competition and free access with which the 1975 Amendments revitalized the Act, should be preserved for the Commission.⁵³ Many conflicts of interest cannot ultimately be eliminated; and virtues of particular conflict regulation may, over time, become a stalking horse for those with hidden economic interests. In the final analysis, it is often not possible to regulate conflicts while accommodating diverse factual situations except by relying to a great extent on full disclosure.⁵⁴

For the securities markets, the effective management of conflicts of interest depends on several factors. The greater part of the professional participants in the securities markets, whether styled as brokers or institutional investors, act as fiduciaries for others; they owe "the duty of the finest loyalty" to their beneficiaries.⁵⁵ Those who cannot or will not meet the requisite standards of honesty and integrity must be excluded from participation in the securities markets.⁵⁶

⁵² See text accompanying notes 93-108 *infra*.

⁵³ Indeed, that has traditionally been the Congressional approach to the complexities with which the securities laws must deal. In 1934, Congressman Lea characterized the original Securities Exchange Act as follows: " * * * [W]here we gave the regulatory commission power, it would be a flexible power. If the commission finds a mistake has been made, it can readily change its rules to more favorable ones and thus accomplish the purposes of Congress. 78 Cong. Rec. 7862 (1934).

⁵⁴ See, e.g., rules adopted pursuant to Section 15(c) of the Act.

⁵⁵ In that regard, the fiduciary principles embedded in the securities laws reflect Judge Cardozo's formulation: "A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd." *Meinhard v. Salmon*, 249 N.Y. 458, 464 (1928).

⁵⁶ While Section 11(a) could be said to divide up the zones of activity of some participants in the securities markets, the multiple exceptions to the prohibition, even without Commission rulemaking, make the line of demarcation somewhat difficult to analyze in terms of the reasons advanced for the regulation. From the point of view of a strictly conflict-of-interest analysis, perhaps the most perplexing conundrum is the so-called "natural person" exemption from the general prohibition of Section 11(a).

A sound regulatory approach must be sensitive to the interests of public investors in the light of existing circumstances, not the circumstances of an earlier day. It must also be equipped, with sound economic analysis, to recognize the need, when there is a need, for new solutions.⁵⁷

In fact, a month before the 1975 Amendments became law, the Commission's rule abolishing the last vestige of fixed commission rates took effect. Today, that action can be seen to have been a watershed in the regulatory approach to securities regulation, for it anticipated and, in a sense, relied in advance on what was to prove to be the overall competitive thrust of the 1975 Amendments. The Commission ruled out fixed commission rates on the explicit assumption that fundamental regulation of private economic behavior in that area could best be achieved by competitive forces and fiduciary law.⁵⁸ For that reason also, the Commission expressed reluctance to see the 1975 Amendments embody any fixed approach to the problems that engendered Rule 19b-2, and argued successfully for the inclusion of broad exemptive authority.

The Commission testified that:

[D]evelopments not present when we first adopted Rule 19b-2 and when S. 470 was passed—such as the elimination of fixed commission rates, and creditable progress toward the development of a national market system—call into serious question the need for a legislative formulation to deal with this issue, and particularly for a legislative solution too rigid to permit the Commission to adjust its rules to changing conditions and circumstances.⁵⁹

The Commission consequently urged that the issue be left to flexible Commission rulemaking based on an understanding that exchange membership would be made "available to all registered brokers and dealers."⁶⁰

Others attempted to reshape, or even undercut, the Commission's basic position. For example, it was urged that "unfixed rates and open membership for companies doing a public business"⁶¹ had

⁵⁷ "[A]dministrative authorities must be permitted, consistently with the obligations of due process, to adapt their rules and policies to the demands of changing circumstances." *Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968).

⁵⁸ At the same time, the Commission supported the addition of Section 28(e) to the Act, in order to counter what were feared to be inordinately restrictive interpretations of the effect of eliminating fixed commission rates. Because of the risks inherent even in minor tinkering with basic fiduciary principles, Section 28(e) also provided authority for additional disclosures.

⁵⁹ Hearings Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs on S. 249, 94th Cong., 1st Sess. 256. (1975) (hereinafter referred to as S. 249 Hearings).

⁶⁰ *Id.*

⁶¹ *Id.*, at 351. [Emphasis added.] Some doubts about the meaning intended by the phrase "for companies doing a public business" may have been resolved by a companion comment urging that the "categorical opening of membership to all registered broker-

eliminated the need for additional restrictions or exclusions. Similarly, a major exchange argued that there was not any valid basis for the discrimination inherent in the application of Section 11(a) only to exchange markets and suggested that, if the proscribed activities were "detrimental or inconsistent with the public interest, they should be eliminated across the board wherever they exist."⁶² But that exchange also acknowledged that S. 249 would "severely limit the basis on which an exchange may deny membership * * *"⁶³ and argued for revisions in the bill.⁶⁴ Nevertheless, none of the proposals for diluting the basic membership provisions of S. 249 were accepted.⁶⁵

The Commission was not, however, the only one to suggest that a rigid approach to regulation of membership trading was inadvisable; the advantages of deregulation as an alternative were also explored by others. For example, there was support for an approach which would open stock exchange membership to all registered brokers and dealers, coupled with the elimination of affiliate trading restrictions, so long as there was "specific language in the bill which negates Rule 19b-2 and which does not grant to the SEC the authority to impose 19b-2 type standards."⁶⁶

The evolution in legislative thinking which occurred during the introduction

dealers is overly broad," and suggesting a number of exclusions for consideration. *Id.*, at 353.

⁶² *Id.*, at 405.

⁶³ *Id.*, at 404.

⁶⁴ "[T]he longstanding * * * requirement that the 'primary purpose' of every member organization must be the transaction of business as a broker or dealer in securities would be abrogated." *Id.* When it was suggested by Senator Harrison A. Williams, Chairman of the Senate Subcommittee, to former NYSE Chairman James J. Needham that an appropriate solution was in fact the retention of the open membership provisions, coupled with the grant of authority to the Commission to assure that trading by a member for any managed account was consistent with the maintenance of fair and orderly markets, Mr. Needham professed to have "philosophical difficulties" with the proposal. *Id.*, at 395.

⁶⁵ The Commission has rejected efforts to adopt exchange rules which would have the effect of undercutting the basic open membership provisions of the Act. See Securities Exchange Act Release No. 12737 (Aug. 25, 1976), 41 FR 38847 (Sept. 13, 1976), in which the Commission disapproved proposed rules which would have restricted institutional access, through membership, to exchange markets.

⁶⁶ S. 249 Hearings, at 298. The 1975 Amendments did not adopt that specific suggestion. Nevertheless, the legislative history made abundantly clear a Congressional desire that Rule 19b-2 specifically be repealed. See, e.g., Report on S. 249, at 67. Securities Acts Amendments of 1975, Conference Report to Accompany S. 249, Joint Explanatory Statement of the Comm. of Conference, H.R. Rep. No. 94-229, 94th Cong., 1st Sess. 106 (1975) hereinafter referred to as the Conference Report). In light of that legislative history, the Commission rescinded Rule 19b-2. Securities Exchange Act Release No. 12055 (Jan. 27, 1976), 41 FR 8075 (Feb. 24, 1976).

and consideration of successive bills reflected the need for flexible rulemaking authority in any sound scheme of regulation. S. 470¹⁰ and H.R. 5050,¹¹ two earlier bills, would have given to the Commission exemptive authority only with respect to members' proprietary transactions or transactions for affiliates who were natural persons. S. 249 and H.R. 4111 were not similarly limited and the Commission's exemptive powers under Section 11(a) would encompass any class of transactions deemed to be consistent with the maintenance of fair and orderly markets and "consistent with the purposes of (Section 11(a))" (H.R. 4111) or "consistent with the protection of investors" (S. 249). These standards were combined in the 1975 Amendments.

Current Trends. The rapid evolution in the securities markets since May 1975 underscores the need for a flexible approach. With respect to the Commission decision to introduce fully competitive commission rates, the effects are well known. The Commission's most recent study indicates that, during the period from May 1976 to September 1976, institutional customers were receiving average discounts of 36 percent from what had been the old fixed commission rate on orders between 1,000 and 10,000 shares, the bulk of institutional share volume. If institutional commission rates are adjusted in relation to the general inflation rate, the discounts approximate 46 percent.¹² Furthermore, from the limited data available since the Commission's last report, it appears that there have been significant further reductions. The magnitude of those price effects indicates that the securities industry is making very significant adjustments to the introduction of direct price competition.

At the same time, the Commission has taken substantial steps to open access to exchange markets in response to new directives from the Congress. In addition to the elimination of exchange authority to refuse membership to qualified broker-dealers, the whole administration of exchange markets has been subjected to specified elementary standards of due process. In March 1976, the Commission advised each national securities exchange that a number of its rules appeared to limit access in ways no longer permitted;¹³ in response to the Commission's letter, a number of exchange rules have been repealed or revised.¹⁴ Also, the Commission has refined the broad statutory direction that exchanges enforce compliance by members with the Act,

which should reduce opportunities to use "regulatory" processes to promote and preserve private empires.¹⁵ In the case of "foreign membership", the Commission has sought to enforce strictly the Act's mandate of membership for every qualified broker-dealer.¹⁶ Finally, additional exchange rules were questioned on December 1, 1976, in order to ensure that exchanges came as rapidly as possible into line with the requirements of the 1975 Amendments.¹⁷

While it may be possible in the near future to observe some of the competitive benefits following from more open access to exchange markets, the Commission does not assume that the action taken to date is all that is needed, for the response has not been reassuring in all respects. With respect to Section 11(a), however, enough has transpired already in the Commission's implementation of the 1975 Amendments to make it appropriate to carry out the Congressional intent that the Commission use its broad rulemaking power under that section to fashion either more restrictive or more flexible standards in furtherance of the purposes of the Act and in light of the events that have occurred and are occurring since the enactment of the 1975 Amendments.¹⁸

It is also important to determine whether Section 11(a)'s bare strictures need strengthening, modification, or reformulation to deal with the securities markets of the future. It is evident, for example, that many broker-dealers will be free, under the current posture of Section 11(a), to effect transactions in the over-the-counter market which would be prohibited on exchange markets.¹⁹ Under those circumstances, the Commission is plainly compelled to examine the need for and purposes of Section 11(a) with a view to determining whether the basic prohibitions should be extended to the over-the-counter market, and to various types of participants in the over-the-counter market, in the interest of equal regulation.²⁰ On the

other hand, should the extension of those prohibitions seem for any reason inappropriate or doubtful, then it would seem similarly advisable to reexamine specific aspects of those prohibitions as applied to exchange markets.

Not only does the Act require consideration of questions of equal regulation, but the self-regulatory governance functions of exchanges may also be at stake. As both marketplaces and self-regulators, their ability to regulate themselves and their current, diverse memberships is dependent, to a certain extent, on their success in operating efficient securities markets.²¹ After the removal of all unjustified anti-competitive restraints, exchange markets may or may not retain their preeminence in the trading of the types of securities currently listed on exchanges, but it could be undesirable to place them at an unnecessary competitive disadvantage in the coming national market system. The risk would not simply be the loss of one or more of the potential competitors in a national market system; there would also be the possibility of an abrupt loss of an effective system of self-governance for a major part of the securities industry. If, on May 1, 1978, the date on which the grandfather provisions of Section 11(a) expire,²² there were to be an abrupt loss of membership by exchanges, there might be an unfortunate loss of regulatory controls, which could be detrimental to the public interest and the protection of investors.²³ Alternatively, if Section 11(a) will lead to the resignations of "non-floor" member firms from exchanges, that could be planned for now so that exchanges may

parity in their regulation under this title which the Commission determines is unfair and not necessary or appropriate in furtherance of the purposes of this title."

For example, one commentator initially endorsed the extension of Section 11(a) to the over-the-counter markets, along with a broad expansion of the definition of "member" under the Act pursuant to Section 6(f), 15 U.S.C. 78d(f), if "the prohibitions of off-board principal transactions are eliminated or if for other reasons trading in listed securities moves off-board * * *." Response of the Securities Industry Association (May 13, 1976), at 7-10; Security and Exchange Commission File No. S7-613 (hereinafter referred to as File No. S7-613). Those views were subsequently withdrawn. Two other respondents did not so qualify their support. Response of the New York Stock Exchange, Inc. (June 25, 1976), at 7, 28; Response of the Philadelphia Stock Exchange, Inc. (May 4, 1976), at 10-11. File No. S7-613.

¹⁰ See also Securities Exchange Act Release No. 12994 (Nov. 18, 1976), 41 FR 51804 (Nov. 24, 1976).

¹¹ See Section 11(a) (3) of the Act, 15 U.S.C. 78k(a) (3).

¹² Of course, to a certain extent, exchanges have started a process of relinquishing their leadership role in regulation. See Securities and Exchange Commission File No. SR-NYSE-76-53, Securities Exchange Act Release No. 13238 (Feb. 2, 1977), 42 FR 8250 (Feb. 9, 1977). To the extent that process is substantially completed before May 1, 1978, and appropriate reallocations of regulatory authority are consummated under the Act, the risks described above may be substantially diminished.

¹⁰ Securities Exchange Act Release No. 12994 (Nov. 18, 1976), 41 FR 51804 (Nov. 24, 1976).

¹¹ Securities Exchange Act Release No. 12737 (Aug. 25, 1976), 41 FR 38847 (Sept. 13, 1976).

¹² Securities Exchange Act Release No. 13027 (Dec. 1, 1976), 41 FR 53557 (Dec. 7, 1976). Under the authority pursuant to which the Commission acted, the Commission will, on and after June 1, 1977, be able, among other things, to limit exchange functions to the extent necessary to prohibit enforcement of any of those exchange rules which are inconsistent with the Act even though the exchanges have not formally repealed them.

¹³ See Report on S. 249, at 68.

¹⁴ For example, on January 1, 1977, part of the so-called "off-board" trading rules was eliminated. Securities Exchange Act Release No. 11942 (Dec. 19, 1975), 41 FR 4507 (Jan. 30, 1976). The balance of such rules will be the subject of future Commission review and consideration.

¹⁵ Section 3(a) (36), 15 U.S.C. 78c(a) (36), states:

"A class of persons or markets is subject to 'equal regulation' if no member of the class has a competitive advantage over any other member thereof resulting from a dis-

¹⁰ 93d Cong., 1st Sess. (1973).

¹¹ 93d Cong., 2d Sess. (1974).

¹² Securities and Exchange Commission, Fourth Report to Congress on the Effect of the Absence of Fixed Rates of Commissions (Jan. 28, 1977).

¹³ Securities Exchange Act Release No. 12157 (Mar. 2, 1976), 41 FR 10662 (Mar. 12, 1976).

¹⁴ See, e.g., Securities and Exchange Commission File Nos. SR-CBOE-76-13, SR-MSE-76-16, SR-NYSE-76-26, SR-NYSE-76-48, and SR-PSE-77-2.

reorient their activities so as to regulate solely their "floor" members, and to represent more exclusively the interests of those members rather than a somewhat broader spectrum of the securities industry.²²

APPROACHES TO SECTION 11(a)

The Commission started the process of exploring the available alternatives in January 1976, when it published a release adopting a temporary rule, proposing other rules, and raising basic questions under Section 11(a).²³ The purpose of that release—to stimulate thoughtful discussion and analysis of Section 11(a)—has in turn led the Commission to believe that it is important to continue exploring the implications of Section 11(a). Accordingly, the foregoing background materials, as well as a summary of the comments received in response to the earlier release,²⁴ were prepared in order to focus further discus-

²² That alternative would affect the need to implement a new system providing for fair representation of member firms in the selection of exchange directors and administration of exchange affairs. See Section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3), and Letter dated January 3, 1976, from Roderick M. Hills, Chairman, Securities and Exchange Commission, to James J. Needham, Chairman, NYSE, Securities and Exchange Commission File No. SR-NYSE-75-4.

²³ Securities Exchange Act Release No. 12055 (Jan. 27, 1976), 41 FR 8075 (Feb. 24, 1976). The release adopted on a temporary basis Rule 11a1-1(T) to provide exemptive relief under Section 11(a), proposed Rule 11a1-2 for public comment, outlined the impact of Section 11(a) in certain respects and asked nine broad policy questions. Rule 11a1-2 was proposed because the prohibition on members' trading for associated persons is sufficiently broad so as to prohibit a member firm from effecting any transaction for the account of a parent or sister corporation, regardless of the economic interests of the parent or sister corporation in the account. Thus, a member firm effecting transactions for an omnibus account carried in the name of its parent or subsidiary (or any other associated person) would be deemed, for purposes of Section 11(a)(1), to be effecting transactions for an associated person regardless of whether the transactions were in fact effected for the public customers of the parent or subsidiary (or other associated person). See Conference Report, at 105-106. The Conference Report recognized that members' trading for accounts of associated persons could be consistent, in any event, with the purposes of Section 11(a) if such persons had no economic interest in the accounts, and the Congress recommended consideration of an exemption. *Id.* Because of the context in which the exemption might apply, the Commission also proposed an amendment to Rule 17a-3(a)(9) for simultaneous consideration. While it currently appears that the adoption of Rule 11a1-2 should be dependent upon the implementation of the proposed amendment to Rule 17a-3(a)(9), the basis for that amendment is, of course, independent of considerations arising under Section 11(a). See Securities Exchange Act Release No. 13149 (Jan. 10, 1977), 42 FR 2312 (Jan. 18, 1977).

²⁴ See Appendix A.

sion. In the balance of this release, the Commission is proposing three new rules. Those rules are, to a certain extent, duplicative, but it is anticipated that the public comment process will assist the Commission in selecting from these proposals the appropriate principles for implementation at this time.²⁵

The Natural Person Exemption. Section 11(a)(1)(E) exempts transactions for the account of natural persons from the overall prohibition.²⁶ The Commission had expressed its view that that exemption was intended to apply only to transactions for a member's associated natural persons and transactions for the managed accounts of natural persons.²⁷ Not exempted under Section 11(a)(1)(E) are transactions by a natural person who is a member,²⁸ in view of the legislative history of Section 11(a) and the Congressional intent to take into account the advantages of time and place associated with presence on the exchange floor.²⁹ In that regard, Section 11(a)(1) represents an evolution from former Securities Exchange Act Rule 19b-2.³⁰ Rule 19b-2 established categories of exempted transactions, including floor trading as regulated under former Section 11(a),³¹ which the Commis-

²⁵ In addition, because of the seriousness of the questions raised, it may become appropriate to consider also seeking remedial legislation from Congress.

²⁶ The exemption appears to eliminate the prohibition, which would otherwise be applicable, against a member firm executing transactions for its officers or directors, i.e., natural persons who are "associated persons" within the meaning of Section 3(a)(21) of the Act, 15 U.S.C. 78c(a)(21). It also eliminates the prohibition in the case of accounts of natural persons (as well as estates and certain trusts) over which the member (or an associated person) exercises investment discretion. This exemption causes certain interpretive difficulties with respect to the overall objectives of the Section, as well as with respect to the particular application discussed in the text. For further discussion, see Securities Industry Study, Report of the Senate Comm. on Banking, Housing and Urban Affairs, Containing a Report of the Subcomm. on Securities, Together with Minority Views (For the Period Ended February 4, 1972, Pursuant to S. Res. 109), 92d Cong., 2d Sess. 68 (1972).

²⁷ See Securities Exchange Act Release No. 12055 (Jan. 27, 1976), 41 FR 8075 (Feb. 24, 1976). Of course, Section 11(a)(1)(E) also covers estates and trusts, as indicated above, n. 85.

²⁸ The definition of "member" in Section 3(a)(3)(A) of the Act, 15 U.S.C. 78c(a)(3)(A), covers, among others, both member firms and natural persons permitted to effect transactions on the floor of an exchange without the services of another person acting as a broker.

²⁹ Other types of member trading, such as market making or arbitrage, were specifically exempted. See Sections 11(a)(1)(A), (B), (C) and (D), 15 U.S.C. 78c(a)(1)(A), (B), (C) and (D).

³⁰ Securities Exchange Act Release No. 9950 (Jan. 16, 1973), at 146, 38 FR 3928 (Feb. 8, 1973).

³¹ 15 U.S.C. 78k(a) (1970) (amended 1975).

sion treated as contributing "to the effective functioning of the securities markets," and "to the public nature of the securities markets"

S.470,³² the first Senate bill intended to replace Rule 19b-2 with a legislative solution, would have prohibited transactions by an exchange member for its own account, the account of an affiliated person, or any "managed institutional account";³³ there were at the same time the customary exemptions, including an exemption for "any transaction for a member's own account"³⁴ effected in compliance with Commission rules. The Commission was to regulate members' transactions "from on or off the floor of the exchange, directly or indirectly for their own account or for the account of any affiliated person, or in the case of floor trading, for any discretionary account."³⁵ In the same Congress, proposed legislation reported by the House Committee on Interstate and Foreign Commerce would have provided for prohibitions similar to those passed by the Senate, with an exemption for "transactions for a member who is a natural person"³⁶ and a separate exemption for transactions for a natural person's managed account.³⁷

In the 94th Congress, the Senate bill, S. 249, created a distinction, in formulat-

³² *Id.*, at 8. The list of exempted transactions was largely identical to those in Securities Exchange Act Rule 11a-1, 17 CFR 240.11a-1, including floor trading (whether for the member's own account or one over which it exercised investment discretion on the floor) effected in conformity with a Commission approved plan (17 CFR 240.19b-2(a)(6) (1973)).

³³ 93d Cong., 1st Sess. (1973), S. 470 was passed by the Senate on June 18, 1973, 119 Cong. Rec. 20043 (1973).

³⁴ *Id.*, Section 2. There was no prohibition with respect to managed accounts of natural persons.

³⁵ *Id.* At that time, the Senate also used, but only in a grandfather clause, the 80-20 test embodied in Rule 19b-2. A similar provision was later embodied in S. 249 as introduced on January 17, 1975, but was deleted prior to passage.

³⁶ Commission rules were "as a minimum" to require "that such trading contribute to the maintenance of a fair and orderly market." *Id.*, Section 1. Commission rules requiring members to yield priority and precedence to public orders would have satisfied S. 470's requirement for regulation of members' proprietary trading, but transactions by affiliated natural persons of exchange members, e.g., officers, directors and employees, could be exempted without limitation since "many employees and individual stockholders of member firms do not, by virtue of that affiliation alone, have trading advantages over public investors." Report on S. 470, at 17.

³⁷ H.R. 5050, as reported by the House Committee on Interstate and Foreign Commerce, 93d Cong., 2d Sess. (1974), Section 204 (proposed Section 11(a)(3)(G) of the Act). In addition, transactions for an account of an affiliated or associated natural person were exempted.

³⁸ *Id.*, Section 204 (proposed Section 11(a)(3)(F) of the Act).

ing exemptions from the general prohibition, between transactions for members' proprietary accounts and transactions for associated natural persons and for managed accounts of natural persons and their trusts.³⁰⁰ In the House version,³⁰¹ parallel exemptions were made available for transactions for (i) managed accounts of certain natural persons and their trusts³⁰² and (ii) a member who was a natural person, or an account of a natural person who was an affiliated or associated person of such a member,³⁰³ and were, together with other exemptions, described as "traditionally recognized as contributing to the maintenance of fair and orderly markets."³⁰⁴

The Conference Committee, which worked basically with the Senate formulation, accepted Section 11(a) (1) largely as set forth in S. 249 but with a combination of the exemptions proposed in S. 249 and H.R. 4111. Two Senate exemptions ("any transaction for the account of a natural person * * *"³⁰⁵ and "any transaction for a member's own account,"³⁰⁶) were combined with two

³⁰⁰S. 249 included exceptions for, among other things, "(E) any transaction for the account of a natural person or a trust (other than an investment company) created by a natural person for himself or another natural person" and "(H) any transaction for a member's own account * * *". S. 249 thus separated the single exemption in S. 470 into two exemptions, paragraph (E) for transactions for the account of natural persons (broadening it to cover both accounts of associated persons and accounts subject to investment discretion and trusts (estates were added later)), and paragraph (H) for transactions for a member's own account. The rationale for Paragraph H ("no case has yet been made for prohibiting traditional trading by exchange members for their own accounts," Report on S. 249, at 68) represented, to some degree, a departure from prior analysis. Cf. Report on S. 470, at 16. As indicated infra, text at n. 108, that departure was subsequently abandoned.

³⁰¹H.R. 4111, 94th Cong., 1st Sess. (1975). An earlier bill, H.R. 10, 94th Cong., 1st Sess. (1975), was introduced and then replaced by H.R. 4111, which was introduced on March 3, 1975.

³⁰²See proposed Paragraph (F) of proposed Section 11(a) (3) in Section 105 of H.R. 4111, 94th Cong., 1st Sess. (1975).

³⁰³See proposed paragraph (G) of Section 11(a) (3) in Section 105 of H.R. 4111, 94th Cong., 1st Sess. (1975).

³⁰⁴Securities Reform Act of 1975, Report of the House Comm. on Interstate and Foreign Commerce to Accompany H.R. 4111, H.R. Rep. No. 94-123, 94th Cong., 1st Sess. 72 (1975).

³⁰⁵Section 11(a) (1) (E), as proposed to be added by S. 249, Section 5.

³⁰⁶Section 11(a) (1) (G), as proposed to be added by S. 249, Section 5. (Former paragraph (H) was renumbered to reflect deletion of another exemption.) The Senate emphasized that, by including that specific exemption for floor trading, it nevertheless did not intend to eliminate traditional Commission authority:

"* * * The SEC would, however, retain its full powers under the Exchange Act to regulate floor trading and members' trading for their own account."

Summary of Principal Provisions of Securities Acts Amendments of 1975 (S. 249), Senate Comm. on Banking, Housing and Urban Affairs, Comm. Print, 94th Cong., Sess. 4 (1975).

House exemptions (transactions "for a managed account of a [n unaffiliated] natural person"³⁰⁷ and transactions by "a natural person who is a member or for an account of an affiliated or associated person of a member."³⁰⁸) The Senate's natural person exemption, containing one half of its earlier, combined member and natural person exemption, remained unchanged, sweeping up the two House exemptions for managed accounts of natural persons and transactions for associated and affiliated natural persons. On the other hand, the Senate exemption for transactions by any member emerged in a reformulated, and limited, subsection (G), exempting only proprietary transactions by certain types of members effected in specified ways.³⁰⁹

To qualified under the reformulated exemption of Section 11(a) (1) (G) which became law, members' transactions must yield priority, parity, and precedence in execution to non-members' orders so as to limit the power of members from on and off the floor to enjoy trading advantages over non-members.³¹⁰ Furthermore, only members "primarily engaged", on the basis of a gross income test, in conducting a public securities business are permitted to use the exemption. The Conference Committee stated that, in place of the complete Senate exemption for members' proprietary trading, it had substituted Subsection (G)³¹¹ and that the House had receded to the Senate with respect to exemptions for affiliated individual accounts, by accepting Subsection (E) of the Senate bill encompassing that exemption.³¹²

A number of commentators, however, have expressed contrary views and urged that Section 11(A) (1) (E) be read so as to permit continued floor trading by natural person members.³¹³ For example, a leading representative of the member firm community suggested that floor trading contributes substantial liquidity to the exchange marketplace and is in the public interest.³¹⁴ Other representatives proposed a "plain meaning" approach to the natural person exemption embodied in Section 11(a) (1) (E), asserting that a "fair reading" of the legislative history supported the view that the natural person exemption should be available to any exchange member who is a natural person.³¹⁵ A

³⁰⁷Section 11(a) (3) (F), as proposed to be added by H.R. 4111, Section 105.

³⁰⁸Section 11(a) (3) (G), as proposed to be added by H.R. 4111, Section 105.

³⁰⁹Of course, both bills and the 1975 Amendments contained exemptions for market making, arbitrage, odd lot, stabilizing and error transactions.

³¹⁰See Senate Report on S. 470, at 7; Report on H.R. 5050, at 49-50; and Report on H.R. 4111, at 54-55.

³¹¹Conference Report, at 105.

³¹²Id., at 106.

³¹³See Securities Exchange Act Release No. 12055 (Jan. 27, 1976), n. 27, 41 FR 8075 (Feb. 24, 1976).

³¹⁴Response of the New York Stock Exchange, Inc. (June 25, 1976), at 3, File No. S7-613.

³¹⁵Response of The Association of the Bar of the City of New York (April 15, 1976),

combination of 96 NYSE floor traders argued not only that members should be free to trade for their own account but also that natural persons who are members of trading partnerships should be free to effect transactions for the account of the partnership.³¹⁶ In their view, if Section 11(a) (1) banned floor trading, it constituted a "horrendous drafting error" because the activities of some floor traders (the natural persons as opposed to the partnerships and corporations³¹⁷) "clearly would not have been prohibited by Congress without a whisper";³¹⁸ accordingly, equity would require the Commission to adopt exemptive rules permitting floor trading by corporations.³¹⁹

File No. S7-613. The proposed reading of the legislative history would be to the effect that the Conference Committee rejected a blanket exemption for members' transactions in the Senate bill and accepted a more limited exemption in the House bill for members who are natural persons. It would be useful if this reading could be reconciled with the legislative history on the House side reflecting grave concerns with floor trading. See text accompanying n. 47 supra. See Report on H.R. 4111, at 54-55. Of course, reliance on legislative history is a step to be taken cautiously. *Piper v. Chris-Craft Industries, Inc.*, 45 U.S. L.W. 4182 (U.S. Feb. 23, 1977). And the ambiguities of Section 11(a) in many respects make resort to "plain meaning" incantations less than altogether satisfactory, particularly when the available legislative history materials include official explanatory statements prepared by "persons responsible for the preparation or drafting" of the 1975 Amendments. *Cf. Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 203-4, n. 24 (1976).

³¹⁶Response of Wachtell, Lipton, Rosen & Katz on behalf of 96 NYSE Floor Traders (May 17, 1976), File No. S7-613. That advice was tempered by a cautionary note that [i]n order to avoid an attempt to evade the member trading proscriptions intended by Congress, the Commission may wish to state expressly that its position with respect to floor trading relates only to floor trading and does not extend to other types of member trading." Id., at 23.

³¹⁷Among the 96 floor traders represented, 41 were affiliated with member partnerships and traded only for their firm account or (in two cases) for joint account with their firm; and additional 6 were affiliated with member partnerships and traded both for their individual accounts and for joint accounts with their firms; 14 more were affiliated with member corporations and traded only for the corporate account. Id., Exhibit A. Much doubt was expressed by others with respect to the proposition that partnerships (or personal holding companies) were natural persons. See, e.g., Responses of the American Stock Exchange, Inc. (Nov. 1, 1976), at 2; Merrill Lynch, Pierce, Fenner & Smith Incorporated (received June 16, 1976), at 3, 8; and Overseas Securities Corporation (May 12, 1976), at 8, File No. S7-613.

³¹⁸Response of Wachtell, Lipton, Rosen & Katz on behalf of 96 NYSE Floor Traders (May 17, 1976), at 3, 22, File No. S7-613. That interpretation appears to suggest that the Congress conditioned an exemption for floor trading on proper selection of a form of business organization.

³¹⁹Id., at 25. Of course, were the Commission to adopt any such rule, it would have to observe the Congressional injunction that Section 11(a) "is designed to assure that the power to control trading on exchanges is never again used to establish de facto mem-

Nevertheless, Section 11(a)(1) does not specifically exempt floor trading transactions,¹³⁰ as had the Commission's Rule 19b-2. Thus, the view that Section 11(a)(1)(G) may provide the exclusive statutory exemption for member trading must be considered carefully. Subsection (G) requires that those entitled to use it must give deference to public orders. Because of the record developed since 1934 with respect to the problems created by floor trading, there would necessarily be anomalies in proposing that floor trading, whether by members, member partnerships or member corporations, should be freed of all statutory constraints¹³¹ and, in particular, of statutory constraints imposed by Section 11(a)(1)(G) on those members for whom there was no prior history of trading problems. But, in light of the Commission's broad powers under Section 11(a), both to grant exemptions pursuant to Section 11(a)(1)(H) and to withdraw statutory exemptions pursuant to Section 11(a)(2), and also its comprehensive rulemaking authority under Sections 11(b) and 15(c)(5),¹³² the Commission believes that inquiries focused exclusively on the meaning, or "plain" meaning, of a few words will lose sight of the critical question—the role, if any, of proprietary trading by exchange members in the evolving national market system.¹³³ The inquiry should instead concentrate ini-

bership requirements." Report on S. 249, at 67. Accordingly, any such rule would necessarily permit all types of corporations (and other business entities such as partnerships) to engage in floor trading activities (as defined in any such rule) without regard to their other business activities.

¹³⁰ One knowledgeable observer of the legislative history of the 1975 Amendments in general, and the Conference Committee deliberations in particular, has described the interplay between Paragraphs (E) and (G) as follows:

To summarize, existing exchange members are unaffected by (Section 11 (a)) until May 1, 1978. After that date such member may not execute transactions for the account specified in the section unless there is an exemption provided therein. The exemption for the account of a natural person will allow a member firm to engage in transactions for its officers, directors, and employees, and the exemption for personal trusts will allow member firms to engage in transactions for trusts created by such persons for their children, grandchildren, etc., as well as for other personal trusts. Member firms will not be able to engage in transactions for their own accounts after the grandfather clause has expired, unless the SEC adopts rules meeting the requirements specified in new Section 11(a)(1).

Rowen, Securities Acts Amendments of 1975, 8 Review of Securities Regulation 894 (1975).

¹³¹ Floor trading by pre-May 1, 1975, members continues to be regulated by exchange plans filed pursuant to Securities Exchange Act Rule 11a-1, 17 CFR 240.11a-1.

¹³² 15 U.S.C. 78k(b) and 78o(c)(5).

¹³³ See Special Study, Part 2, at 96-97, for one analysis of arguments for floor trading. Also, compare reports on floor trading prepared by Cresap, McCormick and Paget for the NYSE.

tially on the utility of exchange members' proprietary trading from the perspective of promoting fair and orderly markets.¹³⁴ In order to focus attention on those far broader policy issues, the Commission is proposing for comment the following rule:

§ 240.11a2-1 Transactions for the account of a member.

(a) A member of a national securities exchange shall not effect any transaction on the exchange for its own account (other than transactions by a person acting in his capacity as an odd-lot dealer) otherwise than in accordance with the following conditions:

(1) The member's order yields priority in execution to orders at the same price for the account of persons which are not members or associated persons of members of the exchange; and

(2) The transaction is effected on an exchange which has a plan declared effective pursuant to paragraph (d).

(b) An account shall be deemed to be "an account of a member" for the purposes of section 11(a) if members have, directly or indirectly, more than a 10 percent interest in the equity of (or profits derived from) an account.

(c) A national securities exchange which permits members to effect transactions for their own account in accordance with paragraph (a) shall provide adequate means to ensure that, subject to paragraph (a)(1) of this section, all orders at the same price are granted priority solely on the basis of time of entry.

(d) Exchanges may file with the Commission pursuant to section 19(b) of the Act a plan (in the form of comprehensive rules) (1) setting forth objective criteria with respect to membership and access to exchange and member services (on and off the floor) and specifying time periods for action on all applications for membership or access; and (2) delineating precisely the scope of exchange jurisdiction to be exercised over associated persons. The Commission shall not declare any such plan effective unless it shall determine that such plan eliminates all burdens on competition not reasonably necessary in furtherance of the Act and is otherwise consistent with the Act and the rules and regulations thereunder.

(e) Any transaction effected in compliance with the requirements of paragraph (a) shall be deemed to be of a kind which is consistent with the purposes of section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets.

In formulating comments on the proposed rule, several aspects should be noted:

1. The proposed rule would encompass all member transactions and, if adopted,

¹³⁴ Related questions include whether an exemption should be created for transactions by other floor members (such as commission house brokers, specialists trading in non-specialty stocks and two-dollar brokers) who effect transactions for their own accounts but not as floor traders. See discussion of "effect" infra.

make it unnecessary to give further consideration to questions relating to the scope of the natural person exemption. Under the rule, an institutional member would be able to effect its own transactions.¹³⁵ Furthermore, previously proposed Rule 11a1-2, if adopted, would permit a member to effect transactions for the account of an institutional parent.¹³⁶

2. Proposed Rule 11a2-1 would permit floor trading on essentially the same basis as other members' proprietary trading would be permitted (although, as discussed below, transactions by odd-lot dealers would be treated differently).¹³⁷ In general, members' proprietary trading, without regard to its exempt or non-exempt status under existing Section 11(a), would be required to yield priority to non-member orders (and exchanges permitting proprietary trading of any sort would be required to forego all rules granting precedence on the basis of size). The requirement that members' proprietary orders yield priority to non-member orders was built into the rule because of the legislative history emphasizing traditional concerns with undue professional advantage accruing to members and in light of the policies underlying the requirement in Section 11(a)(1)(G) that members qualifying for an exemption under that subsection be required to yield priority. At the same time, the Commission recognizes that, with the elimination of anti-competitive entry barriers, "the relative trading advantages can be expected to dissipate."¹³⁸ To the extent those advantages are in fact dissipated, it may not be necessary to insist in all cases on distinguishing between mem-

¹³⁵ The term "institutional member" encompasses, among others, institutional investors such as insurance companies or their subsidiaries which register as broker-dealers and either become associated with natural persons who are permitted to effect transactions on the floor of the exchange without the services of another person acting as a broker or are entitled to designate as a representative such natural persons. See Section 3(a)(3)(A) of the Act. But see discussion of "effect" infra and proposed Rule 11a2-2.

¹³⁶ See proposed Securities Exchange Act Rule 11a1-2 as set forth in Securities Exchange Act Release No. 12055 (Jan. 27, 1976), 41 FR 8075 (Feb. 24, 1976). Proposed Rule 11a1-2 would permit a member to effect such a transaction since, if the transaction were for the member's account, the member would have been permitted under proposed Rule 11a2-1 to effect the transaction. Under those circumstances, an institutional investor such as an insurance company might form a subsidiary which would register as a broker-dealer; of course, a number of insurance companies are already associated persons of exchange members. Under Section 19(g)(2) and Rule 19g2-1 thereunder, exchanges could be seen to have certain more limited duties to enforce the Act and the rules and regulations thereunder against associated insurance companies. See Securities Exchange Act Release No. 12994 (Nov. 18, 1976), 41 FR 51804 (Nov. 24, 1976).

¹³⁷ If exchange plans under existing Rule 11a-1 (17 CFR 240.11a-1) were to be changed, additional consideration could be given to particular aspects of floor trading.

¹³⁸ Report on H.R. 4111, at 55.

bers' and non-members' orders for the purpose of establishing trading priorities. Furthermore, as "greater numbers of brokers and dealers are permitted direct and free access,"¹²⁸ it appears that there could be substantial administrative problems in devising a system which made the necessary distinctions without impeding trading. Accordingly, commentators are particularly requested to consider the feasibility of devising systems (including appropriate audit trails) to ensure that requirements with regard to yielding priority were satisfied.

3. Proposed Rule 11a2-1 would be adopted under, among others, Sections 11(a)(1)(H), 11(a)(2), 11(b) and 15(c)(5). As drafted, transactions effected by members subject to Section 11(a) would be exempted from the general prohibition in Section 11(a)(1) but would be regulated in accordance with the rule, whether or not another exemption were available. The rule would permit proprietary trading by members generally (including, subject to the conditions discussed below, floor trading), under the conditions specified. Transactions by a person acting in his capacity as an odd-lot dealer would not be limited by the rule, and odd-lot dealers could continue to effect odd-lot transactions, and necessary offsetting round-lot transactions.¹²⁹ All other members, including dealers acting as registered exchange specialists or exchange marketmakers, would be required to yield absolute priority (as provided in paragraph (c) of the rule). That requirement would be similar to Securities Exchange Act Rule 11b-1(a)(2)(iii), which restricts specialists' dealings so far as practicable to those reasonably necessary to permit maintenance of a fair and orderly market. The rule would also cover block positioners in order to apply, consistent with equal regulation, the same standard with respect to their dealings.

4. In order to permit members' proprietary trading (other than by odd-lot dealers), exchanges would have to develop plans (in the form of comprehensive rules) with regard to membership, and access to exchange and member services,¹³⁰ and scope of exchange jurisdiction exercised over associated

persons. In general, the 1975 Amendments contemplated a much more open approach to exchange membership than had previously been required under the Act. Exchanges are required to admit to membership any registered broker or dealer; however, they retain some latitude, subject to Commission oversight and approval, to develop rules embodying standards of operational and financial capability and to employ various procedures for the purpose of ensuring compliance by their members with the Act, the rules and regulations thereunder and exchange rules.¹³¹ That latitude afforded to exchanges is, to a certain extent, appropriate in a self-regulatory system; it permits the Commission to afford exchanges a substantive role in the development of a regulatory policy. The Commission may generally approve exchange rules so long as they do not impose burdens on competition not necessary or appropriate in furtherance of the Act. In addition, the Commission may adopt exchange rules on its own motion in order to refine or redirect the regulatory approach taken in particular areas; in addition, the Commission has been directed to review all exchange rules in effect at the time the 1975 Amendments were enacted to determine compliance with the Act.¹³² At the same time, notwithstanding the authority of the Commission to take direct action, the plan concept embodied in the proposed rule may well offer a number of advantages. It might permit a somewhat greater degree of flexibility in policy development by exchanges on the basis of practical experience. It can also provide a new opportunity for those concerned to determine in good faith the pace and timing of necessary action. That could, with cooperation, prove beneficial to the self-regulatory process.

5. In drafting the proposed rule, attention was given to the Congressional concern of assuring that "the power to control trading on exchanges is never again used to establish de facto membership requirements."¹³³

Conflict-of-Interest Problems. Because of the emphasis in the legislative history on conflict-of-interest problems, such as churning, which might inhere in the combination of money management and brokerage,¹³⁴ coupled with the grant of authority to the Commission to adopt exemptive rules, the Commission has given consideration to providing exemptive relief on a basis that would sufficiently control the stated conflicts. In

that connection, the Commission believes it to be particularly important for consideration to be given to ways in which the conflict-of-interest problems perceived to arise from the combination of brokerage and institutional money management can be addressed without requiring a complete separation of functions on the part of either traditional exchange members or traditional money managers.¹³⁵

Some commentators observed that problems would likely arise in the absence of rules permitting money managers to effect transactions for managed accounts.¹³⁶ Arguing that the money management restrictions of Section 11(a) can now be seen, after experience with competitive commission rates, to restrain to some extent the implementation of "the basic thrust of the 1975 Amendments toward free access * * * and greater competition,"¹³⁷ it was suggested that, unless restructured by rule-making, Section 11(a)(1) would diminish competition in both money management and brokerage.¹³⁸ It was also argued that Section 11(a)(1) would threaten the economic health of brokerage firms by making it impossible for firms doing an institutional brokerage business to retain the revenue stability provided by asset-related management fees.¹³⁹

Brokerage revenues are an unstable revenue stream. That was true even when commission rates remained "fixed" and brokerage revenue levels were adjusted indirectly rather than directly.

¹²⁸The need to focus attention in that area is all the more compelling in view of the parallel potential for problems in the over-the-counter markets, and the Commission's obligation to give due consideration to the need for equal regulation.

¹²⁹A number of commentators stated that the decision to provide generally for the separation of money management and brokerage (subject, of course, to the Commission's exemptive rulemaking powers) was not preceded by a sufficient evaluation of actual problems. Indeed, several commentators suggested that it is now possible to conclude that the evidence of abuse would not have justified the complete segregation of functions. See, e.g., Responses of Oppenheimer & Co., Inc., (June 14, 1976); Philadelphia Stock Exchange, Inc. (May 4, 1976); and Wilmer, Cutler & Pickering on behalf of Cyrus J. Lawrence Incorporated; David J. Greene and Co.; First Manhattan Co.; Newberger & Berman; Reich & Tang, Inc.; Stralem & Co., Inc.; Weiss, Peck & Greer; and Wood, Struthers & Winthrop (June 15, 1976), File No. S7-613.

¹³⁰Response of Wilmer, Cutler & Pickering on behalf of Cyrus J. Lawrence Incorporated; David J. Greene & Co.; First Manhattan Co.; Newberger & Berman; Reich and Tang, Inc.; Stralem & Co., Inc.; Weiss, Peck & Greer; and Wood, Struthers & Winthrop (June 15, 1976), at 3, File No. S7-613.

¹³¹Id., at 6, 15.

¹³²The argument is as follows: Brokerage income is relatively unstable since it has traditionally been dependent not only on stock prices but also on trading volume. Consequently, the ability of member firms to preserve a broad economic base through the continuation of their discretionary money management businesses is particularly important to their long-term economic well-being. Id., at 15.

¹²⁸Id.

¹²⁹Transactions by odd-lot dealers acting in that capacity are treated separately under the proposed rule since they are effected to facilitate transactions by, for the most part, individual public customers.

¹³⁰For example, some exchange rules have in the past purported to authorize exchanges to grant or withhold approval of various communications facilities "without being obliged to assign any reason or cause for its action." Furthermore, the license such rules might appear to authorize has also been asserted in collateral areas. Since such rule formulations are inconsistent with the requirements of the Act, revisions of such rules would have to be submitted as part of the plan. The Commission also is considering the possibility of permitting trading by registered exchange specialists or marketmakers whether or not an appropriate plan had been adopted; commentators are invited to consider that alternative.

¹³¹See Sections 6(c) and 19(g) of the Act, 15 U.S.C. 78f(c) and 78s(g).

¹³²See Section 31(b) of the 1975 Amendments. The Commission has taken a number of steps to date. See text accompanying notes 71-75. Certain existing exchange rules, which might have to be eliminated in formulating any such plan, may in any case be inconsistent with the Act. See Securities Exchange Act Release Nos. 12157 (Mar. 2, 1976), 41 FR 10662 (Mar. 12, 1976); and 13027 (Dec. 1, 1976), 41 FR 53557 (Dec. 7, 1976).

¹³³Report on S. 249, at 67.

¹³⁴See Background, supra.

It remains true today. Unlike asset-related fees, which are affected only by changes in the value of an entire managed portfolio, brokerage revenues are transaction-related and thus also have tended to vary directly with the volume of trading. The historic dependency of the securities industry on brokerage revenues (which have been described as that industry's "lifeblood"³⁰⁰) has contributed in no small part to the instability of the industry itself and the consequent difficulties the industry has faced in raising and retaining capital for its own operations. The prospect of making brokerage firms choose between exchange membership and an opportunity to compete for asset management revenues is thus a matter to be considered carefully under conditions now prevailing. Not only does it inhibit competition in asset management but it could be said to threaten the continued viability of exchanges.

In that regard, however, there was some sensitivity, in fashioning the rule set forth below (as indeed in formulating all the rules proposed in this release), to the Congressional injunction that member firms not be allowed "exemptions from the statutory prohibitions unrelated to the market impact of the transactions at issue,"³⁰¹ since to do so would be "inconsistent and a violation of Congressional intent."³⁰² It would appear inconsistent with Congressional intent, in formulating rules under Section 11(a)(1)(H), to create a potential market impact by discriminating among types of members.³⁰³ Any person who is now or later becomes an exchange member would be permitted to avail itself of the following rule, which the Commission is proposing for comment:

§ 240.11a1-3 Transactions for accounts subject to investment discretion.

(a) Any transaction effected on a national securities exchange by a member

³⁰⁰ Special Study, Part 2, at 295.

³⁰¹ Conference Report, at 106.

³⁰² *Id.* In that connection, there are some indications of Congressional perceptions about market impact of transactions. The Chairman of the House Subcommittee on Commerce and Finance, which developed H.R. 5050 (93d Cong., 2d Sess. (1974)) and H.R. 4111 (94th Cong., 1st Sess. (1975)), indicated that "banning the institutions from exchange membership will do nothing to abate increasing institutional trading." Address by Congressman John E. Moss, New York Conference for Senior Management, Jan. 18, 1974. The Senate's views appear to have been similar:

"The essential elements involved in the institutional impact on the markets for equity securities, for example, the trading of large blocks of stock in a manner which avoids the auction market, short swing speculation, primary access [sic] to advantageous research, concentration of investments, liquidation of positions with little regard for market impact, and other matters, appear to have nothing whatsoever to do with whether or not institutions may become members of exchanges. Report on S. 470, at 15."

Cf. Remarks of Senator Harrison A. Williams in Hearings on S. 249, at 395.

³⁰³ But see Section 11(a)(1)(G)(i).

thereof for an account as to which the member or an associated person exercises investment discretion shall be deemed to be of a kind which is consistent with the purposes of section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets if:

(1) Neither the member nor any of its associated persons assesses any charge on transactions effected by or for the account; provided, however, That the foregoing shall not preclude payment by the account of brokerage commissions paid to brokers which are not associated persons of the member or payment of transfer taxes;

(2) The member acts only as agent for such account and does not, in any such transaction, participate for the account of any associated person or for its own account; and

(3) The transaction is effected on an exchange which has declared effective a plan pursuant to paragraph (b) hereof.

(b) Exchanges may file with the Commission pursuant to section 19(b) of the Act a plan (in the form of comprehensive rules) (1) setting forth objective criteria with respect to membership and access to exchange and member services (on and off the floor) and specifying time periods for action on all applications for membership or access; and (2) delineating precisely the scope of exchange jurisdiction to be exercised over associated persons. The Commission shall not declare any such plan effective unless it shall determine that such plan eliminates all burdens on competition not reasonably necessary in furtherance of the Act and is otherwise consistent with the Act and the rules and regulations thereunder.

The following observations may be helpful to commentators:

1. The approach taken by the rule with regard to conflict-of-interest incentives to churn a managed institutional account is, basically, a requirement that there not be any fee based solely on transactions. Thus, while an appropriate periodic management fee could be charged, no specific charge could be made by the member exercising investment discretion on the occasion of a decision to sell one security or to buy another (aside from commissions paid to unaffiliated brokers and transfer taxes). It would be anticipated, however, that, in negotiating an appropriate fee, both the customer and the money manager would take into account the extent to which the money manager would perform brokerage services. Nevertheless, the effect of the requirement could be viewed as creating the opposite of an incentive to churn, and creating instead a bias against normal transaction levels since, by reducing transaction volume, a member with managed accounts might reduce expenses. On balance, however, particularly in light of efficient market theories,³⁰⁴ this possibility seems, as a

³⁰⁴ See J. Lorie and M. Hamilton, *The Stock Market* (1973). The proposed rule would also be similar to prohibitions on direct or indi-

practical matter, substantially less serious than the possible problems of churning and seems not to warrant an absolute separation of functions which could be, overall, more costly to investors.

2. The rule also anticipates that, in appropriate situations, a money manager may determine to retain unaffiliated brokers to effect transactions for the account. Particularly in the case of large transactions or thinly traded securities, it may be desirable for the money manager to obtain specialized services. If the money manager were required to absorb the expense, there might thereby be created a bias against obtaining the services of unaffiliated brokers. On the other hand, it is today the common practice of many money managers, whether or not they are members of exchanges, to act, in effect, as brokers on behalf of their managed accounts. This is particularly true in the case of the over-the-counter and third markets where many money managers seek out marketmakers directly, but, in cases where there are other legitimate considerations, such as confidentiality, an unaffiliated broker may be retained. With the contemplated elimination of restraints on access to exchange markets, money managers should have the freedom to make similar decisions, consistent with their fiduciary responsibilities, if they determine to become exchange members. On the other hand, the fact that there would be available to all money managers access to exchange markets would not preclude them from determining to avoid direct involvement in the functioning of the securities markets and to continue to rely on retaining unaffiliated brokers for their managed accounts when necessary or appropriate.³⁰⁵ The principal consideration in all situations would appear to be full disclosure to the account concerned and informed consent by that account.

3. To prevent "parking" of securities in a managed account, a member would not be permitted in connection with any transaction to participate for the account of any associated person or for its own account.³⁰⁶ Since, however,

direct sales, exchanges or leasing of any property between an employee benefit plan and a party-in-interest. See the Employee Retirement Income Security Act, 1974, Pub. L. 93-406 (Sept. 2, 1974) (hereinafter referred to as "ERISA"), Section 406.

³⁰⁵ In that case, the management fee might reflect the fact that the account would pay separately for brokerage. See, e.g., Securities Exchange Act Release No. 8746 (Nov. 10, 1969), 34 FR 18543 (1969); see also Delaware Management Company, Inc., 43 SEC 392 (Jul. 19, 1967).

³⁰⁶ In dealing in an impersonal market, there may be some problems in being aware of the identity of the parties on the other side of a particular transactions. The Committee of Conference on ERISA recognized this question in dealing with prohibited transactions under ERISA:

"In general, it is expected that a transaction will not be a prohibited transaction (under either the labor or tax provisions) if the transactions is an ordinary "blind" purchase or sale of securities through an ex-

some securities transactions are technically structured as principal transactions (or as transactions in which a member acts as an agent for another party) even though they could be treated as, in substance, transactions for the account of the member's customer, appropriate recognition could be given to such situations.¹⁴⁷

4. Many managed accounts are employee benefit plans and will therefore also be subject to the provisions of ERISA. If fee arrangements for services to accounts such as pension plans as to which a member (or an associated person) acts as a fiduciary were structured in accordance with the requirements of proposed Rule 11a1-13, it will still remain necessary to determine, under ERISA, whether adequate safeguards are present so that either those services would be considered as a single service for purposes of the prohibition against multiple services in Section 406(a)(1)(C) of ERISA or potential exemptive approaches, appropriately protective of plan participants, could be developed.¹⁴⁸

change where neither buyer nor seller (nor the agent of either) knows the identity of the other party involved. In this case, there is no reason to impose a sanction on a fiduciary (or party-in-interest) merely because, by chance, the other party turns out to be a party-in-interest (or plan)."

Joint Explanatory Standard of the Comm. of Conference, S. Rep. No. 93-1090, 93d Cong., 2d Sess. 265 (1974). Commentators are invited to suggest solutions to this possible problem under proposed Rule 11a1-3.

¹⁴⁷ See, e.g., NYSE Rules 391 and 392. Again, commentators are invited to offer specific alternatives for consideration.

¹⁴⁸ ERISA is administered by the Department of Labor and the Internal Revenue Service. Because it is a relatively new statute affecting a very complicated area, the Department and the Service have necessarily been careful in adopting definitive views on some of the more complex provisions. For example, in adopting exemptions (which currently expire on May 1, 1978) respecting employee benefit plans and broker-dealers, reporting dealers and banks, the Department and the Service have cautioned:

"* * * Furthermore, the fact that a transaction is the subject of an exemption is not dispositive of whether the transaction would have been a prohibited transaction in the absence of such exemption; or, though it would have been a prohibited transaction is exempt by operation of a statutory exemption or a transitional rule. 40 FR 50845 (Oct. 31, 1975).

The legislative history of Section 11(a) makes it clear that it was, to some extent, viewed as related to ERISA in concept. For example, the Conference Report stated that:

"The Conferees believe that the Department of Labor and the Internal Revenue Service in administering the Employee Retirement Income Security Act ("ERISA"), should provide an exemption from the prohibited transactions provisions of that statute to permit securities firms to continue to provide brokerage services to accounts with respect to which they exercise investment discretion until May 1, 1978. Such an

5. In addition, the proposed rule would be dependent on open access to the exchange and the exchange would be required to develop an access plan identical to that described in connection with proposed Rule 11a2-1.

Effect vs. Execute. Since Section 11(a)(1) is drawn to prohibit "effecting" certain transactions on an exchange, it might be interpreted only to cover exchange transactions executed directly by a member for its own account, the account of an associated person, or an account as to which the member or its associated person exercises investment discretion. Alternatively, it might be interpreted to cover not only those transactions but also transactions for those accounts effected indirectly by the member by using the services of another member to execute the transaction.¹⁴⁹ Section 11(a)(2)(C) authorizes regulation (or prohibition) of transactions "effected" on an exchange by any broker or dealer not a member thereof. Taken together, those two uses of the word "effect" point toward the second interpretation since, under current circumstances, a non-member may "effect" a transaction only by utilizing the serv-

exemption would conform that statute and the provisions of this bill, thus permitting securities firms to phase out this combination of businesses in an orderly way. Similarly, the conferees hope that the Department of Labor and the Internal Revenue Service will, to the maximum degree consistent with the policies of ERISA, conform the prohibitions in that statute applicable to securities firms and municipal securities dealers to the provisions and policies of this bill. Conference Report, at 107."

While the prohibitions of Section 11(a) and the prohibited transactions provisions of ERISA may overlap to some extent, there are areas covered by Section 11(a) which would not be covered by ERISA. Nevertheless, in view of the apparent Congressional desire to harmonize the policies of the 1975 Amendments and ERISA, the Commission anticipates consulting with the Department and the Service in order to develop a policy approach to Section 11(a) that will be consistent, to the maximum extent feasible, with the approach to ERISA taken by the Department and the Service.

¹⁴⁹ Section 3(a)(3)(A) of the Act defines the term "member," when used with respect to a national securities exchange, to include, among others, "(i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, [and] (iii) any registered broker or dealer permitted to designate as a representative such a natural person * * *." Presumably, under current circumstances, a non-member would be a person who fit none of those categories and was, accordingly, not able to "effect" any transactions without utilizing the services of a member. Many members do, of course, choose currently to rely on the services of other members to execute transactions for their customers and do not, themselves, maintain a floor presence. If "effect" were to be read narrowly, those members would not be subject to Section 11(a).

ices of a member.¹⁵⁰ Under that interpretation a member would not be able to effect a transaction by using the services of another member to execute the transaction unless the member would itself have been permitted under Section 11(a)(1) to execute the transaction.¹⁵¹

Several commentators criticized the broader interpretation¹⁵² on the theory that it would restrict the activities of exchange member firms in a way not intended by Congress. That interpretation would, they argued, unfairly deprive them of the opportunity, as exchange members, to manage institutional accounts for which other firms were engaged to execute exchange transactions. On the other hand, some industry representatives agreed in substance with that interpretation on the theory that exchange members might hire a two-dollar broker, if "effect" were interpreted narrowly, and thereby avoid Section 11(a).¹⁵³ Other representatives noted that

¹⁵⁰ The introduction of more modern electronic equipment and further developments of a national market system may, in time, obviate the need for off-floor members, who typically are "regional" members, to rely on the execution services of other members. Similarly, the development of a national system for clearance and settlement may displace, to some extent, private clearing systems. Those developments may make at least part of the definition of "member" obsolete. In any event, restrictions currently imposed on use of modern communications equipment to obtain access to exchange facilities are under review. See Securities Exchange Act Release Nos. 12157 (Mar. 2, 1976), 41 FR 10662 (Mar. 12, 1976); and 13027 (Dec. 1, 1976), 41 FR 53557 (Dec. 7, 1976).

¹⁵¹ For example, if member firm A (which would generally be a registered broker-dealer) exercises investment discretion over an account, then, even though member B (whether or not member B was part of a member firm) executes a transaction for the account, member firm A would also "effect" the transaction by directing it to member B. On the other hand, if investment manager C, an associated person of member firm A, exercises investment discretion over an account and directs transactions through member B (without any participation by member firm A), then member firm A would not be "effecting" the transaction. See Gordon Securities Limited, 1975-1976 Transfer Binder Fed. Sec. L. Rep. (COH) ¶ 80,473 (Mar. 1, 1976). That distinction, which flows from the structure of Section 11(a), could be seen as depending wholly on formal considerations. On the other hand, if the distinction were not made, there would be additional disincentives to exchange membership.

¹⁵² See, e.g., Responses of The Association of the Bar of The City of New York (Apr. 15, 1976); Baer & McGoldrick on behalf of Weiss, Peck & Greer (Jun. 15, 1976); Goldman, Sachs & Co. and Salomon Brothers (Jun. 22, 1976); Merrill Lynch, Pierce, Fenner & Smith Incorporated (received Jun. 16, 1976); the New York Stock Exchange, Inc. (Jun. 25, 1976); and the Securities Industry Association (May 13, 1976), File No. 87-613.

¹⁵³ See, e.g., Response of Goldman, Sachs & Co. and Salomon Brothers (Jun. 22, 1976), at 6-8; Response of the New York Stock Exchange, Inc. (Jun. 25, 1976), at 1-3, File No. 87-613.

"[u]nlike many other Exchange Act provisions where the term 'effect' is used (for example, Section 9, 15 U.S.C. 78(i), the term 'effect' as used in Section 11(a) (1) is not qualified by the phrase 'directly or indirectly.'" ¹²⁴ It was also suggested that Section 11(a) (2) (C), which authorizes the Commission to extend the Section 11(a) prohibitions to nonmembers, was addressed to possible future circumstances.

Section 11(a) can be viewed as intended in large part to redress a perceived competitive imbalance favoring member firms which would use advantages of time and place given them by direct access. They might thereby be in a position to provide, it could be suggested, better executions than might be available to nonmembers that did not have their own in-house employees on exchange floors nor effective and ready means of obtaining access. In view of that possibility and in view of the consequences of a consistent construction of "effect" in Section 11(a) on the structure of the securities industry, the Commission is proposing for comment the following rule which, if adopted, would be intended to eliminate certain disparities:

§ 240.11a2-2 Members' transactions effected through other members.

(a) A member (the "initiating member") may not effect a transaction on a national securities exchange for its own account, the account of an associated

¹²⁴ Response of The Association of the Bar of The City of New York (Apr. 15, 1976), at 2, File No. 87-613. That observation, to the extent it was thereby being suggested that inferences should be drawn as to the meaning of "effect" from the presence or absence of the phrase "directly or indirectly," does not appear to be predicated on an entirely comprehensive analysis. In several places in the Act, the word "effect" is modified by the phrase "directly or indirectly." See, e.g., Sections 5, 9(a) and 30, 15 U.S.C. 78e, 78i(a) and 78dd. At the same time, the word "effect," and its cognates, are more often used alone, in contexts (other than Section 11(a)) where a constricted interpretation would be wholly inappropriate. See, e.g., Sections 3(a) (4), 3(a) (31), 3(d), 6(e) (1) (A), 6(e) (1) (B), 6(e) (3), 9(b), 10(a), 11(b), 11(d), 11A(c) (1), 11A(c) (2), 11A(c) (3) (A) (i), 11A(c) (3) (A) (ii), 11A(c) (3) (B), 11A(c) (4) (A), 12(a), 12(f) (2), 12(j), 12(k), 13(f) (1) (D), 13(f) (1) (E) (iv), 13(f) (1) (E) (vii), 13(f) (1) (E) (viii), 15(a) (1), 15(b) (7), 15(b) (8), 15(b) (9), 15(c) (1), 15(c) (2), 15(c) (3), 15(c) (5), 15(c) (6), 15B(a) (1), 15B(b) (2) (A), 15B(c) (1), 28(d), 28(e) (1), 28(e) (2) and 28(e) (3) (C), 15 U.S.C. 78c(a) (4), 78c(a) (31), 78c(d), 78f(e) (1) (A), 78f(e) (1) (B), 78f(e) (3), 78i(b), 78j(a), 78k(b), 78k(d), 78k-1(c) (1), 78k-1(c) (2), 78k-1(c) (3) (A) (i), 78k-1(c) (3) (A) (ii), 78k-1(c) (3) (B), 78k-1(c) (4) (A), 78i(a), 78i(f) (2), 78i(j), 78i(k), 78m(f) (1) (D), 78m(f) (1) (E) (iv), 78m(f) (1) (E) (vii), 78m(f) (1) (E) (viii), 78o(a) (1), 78o(b) (7), 78o(b) (8), 78o(b) (9), 78o(c) (1), 78o(c) (2), 78o(c) (3), 78o(c) (5), 78o(c) (6), 78o-2(a) (1), 78o-2(b) (A), 78o-2(c) (1), 78bb(d), 78bb(e) (1), 78bb(e) (2) and 78bb(e) (3) (C). At the same time, the Commission added qualifying phrases in other sections where a narrower meaning was intended. See, e.g., Sections 3(a) (3), 6(c) (4), 6(f) (1) and 6(f) (2), 15 U.S.C. 78c(a) (3), 78f(c) (4), 78f(f) (1) and 78f(f) (2).

person, or an account as to which it or an associated person exercises investment discretion unless:

(1) Such transaction is of a kind described in paragraphs A through H of section 11(a) (1) of the Act and the rules and regulations thereunder; or

(2) Such transaction is effected in compliance with the following conditions:

(i) Such transaction is executed on the floor, or through use of the facilities, of the exchange by a member (the "executing member") which is not an associated person of the initiating member;

(ii) The order for such transaction is transmitted from off the exchange floor;

(iii) Neither the initiating member nor any associated person of the initiating member participates in the execution of the transaction at any time after the order for such transaction has been transmitted to the exchange floor; and

(iv) The transaction is effected on an exchange which has a plan pursuant to paragraph (b) hereof.

(b) Exchanges may file with the Commission pursuant to section 19(b) of the Act a plan (in the form of comprehensive rules) (1) setting forth objective criteria with respect to membership and access to exchange and member services (on and off the floor) and specifying time periods for action on all applications for membership or access; and (2) delineating precisely the scope of exchange jurisdiction to be exercised over associated persons. The Commission shall not declare any such plan effective unless it shall determine that such plan eliminates all burdens on competition not reasonably necessary in furtherance of the purposes of the Act and is otherwise consistent with the Act and the rules and regulations thereunder.

(c) Any transaction effected in compliance with the requirements of paragraph (a) (2) shall be deemed to be of a kind which is consistent with the purposes of section 11(a) (1) of the Act, the protection of investors, and the maintenance of fair and orderly markets.

Several points should be noted in connection with the proposed rule. First, the proposed rule would relate not only to members' proprietary trading but also their trading for certain associated person and managed institutional accounts. It would be adopted under, among others, Sections 11(a) (1) (H) and 11(a) (2). Transactions effected pursuant to the rule would be exempted from the general prohibition in Section 11(a) (1) but would be regulated in accordance with the rule. Second, the rule would permit transactions to be executed by any unaffiliated member, including a two-dollar broker, a commission house broker, or an exchange specialist or marketmaker. Third, the initiating member would be required to transmit the order from off the floor and would not thereafter be permitted to participate in executing the transaction.¹²⁵ In addition, the proposed

¹²⁵ This would mean, for example, that a member firm could not use its own floor broker, thus limiting the extent to which a

rule would be dependent on open access to the exchanges, which would be required to develop an access plan identical to that described above, in connection with proposed Rule 11a2-1.

(Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., and particularly Sections 2, 3, 6, 10, 11, 11A, 15 and 23, 15 U.S.C. 78b, 78e, 78f, 78j, 78k, 78k-1, 78o and 78w.)

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 18, 1977.

APPENDIX A.—SUMMARY OF COMMENTS SUBMITTED ON SECTION 11(a) IN RESPONSE TO SECURITIES EXCHANGE ACT RELEASE NO. 10255

PART I: OVERVIEW

Thirty respondents submitted a total of over 350 pages of comments on Securities Exchange Act Release No. 12055. The commentators included five national securities exchanges, the Securities Industry Association (the "SIA"), the United States Department of the Treasury (the "Treasury"), the Association of the Bar of The City of New York (the "City Bar Association"), the American Council of Life Insurance, and numerous registered brokers and dealers.

The submission reflected in many cases concern with Section 11(a) of the Securities Exchange Act of 1934 (the "Act"), which, it appears, has begun to affect adversely the operations of exchange member organizations and to alter the manner in which business is conducted generally in the securities industry. Considerable dissatisfaction was voiced concerning the impact which Section 11(a) is expected to have on exchange members' ability to compete with non-exchange member brokers and dealers, and other persons offering forms of investment advice, for money management business. Section 11(a) was thus believed to be a major disincentive to the retention or acquisition of exchange membership. It was repeatedly suggested that the policies underlying Section 11(a) were obsolete as the result of events occurring after the enactment of Section 11(a); it was also argued that those policies were supported by unsubstantiated assertions. Consequently, the commentators, by and large, expressed the view

member firm could achieve vertical integration of one aspect of its brokerage operations. Commentators may wish to compare the benefits, if any, to investors and the public interest derived from proscribing one aspect of vertical integration with possible efficiencies to be derived from permitting all money managers to decide for themselves whether vertical integration is or is not desirable under rules directed at specific conflict-of-interest problems. Also, commentators may wish to consider whether the rule should be modified to permit use of automatic order executions systems currently in place on several exchanges.

¹ Securities Exchange Act Release No. 12055 (Jan. 27, 1976), 41 FR 8075 (Feb. 24, 1976) (hereinafter referred to as "Release No. 12055").

² 15 U.S.C. 78k(a).

that the exemptive provisions of Section 11(a) should be broadly construed and fully utilized by the proposal and adoption of Commission rules. Many requests for exemptions were received with respect to different types of specialized activities performed by member organizations.²

Release No. 12055 offered an opportunity for some commentators to reconsider past positions and statements made concerning Section 11(a) during the legislative process or during legislative consideration of earlier bills with similar provisions.³ In the past, the SIA, for example, has endorsed the prohibition of affiliated trading contained in former Rule 19b-2 in preference to Section 11(a) as proposed in S. 249.⁴ In response to Release No. 12055, the SIA initially presented a detailed set of comments, recommending a broad expansion of the coverage of the general prohibition of Section 11(a) (1) to the over-the-counter markets under certain conditions,⁵

*The Commission, for example, was requested to exempt, pursuant to Section 11(a) (1) (H), principal transactions in listed corporate bonds, options hedging transactions, and transactions for such managed accounts as pension funds, Keogh plans and ERISA accounts. The New York Stock Exchange, Inc. (the "NYSE") alone sought exemptions to cover the situations in which (1) a member has an inventory remaining from a prior offering and wishes to dispose of those shares; (2) there is an order imbalance in a specific security on the floor which requires a member to assist the specialist; (3) there is a special block transaction subject to applicable NYSE rules; or (4) a member wishes to trade as a principal in listed corporate bonds.

² See S. 249, 94th Cong., 1st Sess., Section 5 (1975); H.R. 4111, 94th Cong., 1st Sess., Section 105 (1975); S. 470, 93d Cong., 1st Sess., Section 1 (1973); S. 488, 93d Cong., 1st Sess., Section 2 (1973); H.R. 5050, 93d Cong., 1st Sess., Section 204 (1973); S. 3347, 92d Cong., 2d Sess. (1972); S. 1164, 92d Cong., 2d Sess. (1972).

³ Hearings on S. 249 before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 94th Cong., 1st Sess. 359 (1975) (hereinafter referred to as the S. 249 Hearings). Earlier, in the hearings on S. 470, the SIA had then advocated a broad ban on institutional exchange membership but opposed any prohibition on the combination of money management and brokerage business by "securities firms." Hearings on S. 470 before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 93d Cong., 1st Sess. 388-390 (1975) (hereinafter referred to as the S. 470 Hearings). During testimony on two earlier bills relating to institutional membership, S. 1164 and S. 3347, the SIA had gone on record as opposed to institutional membership on national exchanges, but had also expressed reservations as to any general ban on member self-dealing. Hearings on S. 3347 and S. 1164 before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 92d Cong., 2d Sess. 658, 661-62 (1972).

⁴ Response of the SIA (hereinafter referred to as the SIA), (May 13, 1976), Securities and Exchange Commission File No. S7-613 (hereinafter referred to as File No. S7-613). The SIA had proposed a revision of the definition of "member" to mean any person, including

and exemptive relief such as the permanent extension of the grandfather clause under Section 11(a) (3) to benefit pre-May 1, 1976 members which perform brokerage on behalf of managed institutional accounts.⁷ It later withdrew those comments, concluding that full application of Section 11(a) would not be in the best interests of the securities industry.⁸

Other respondents which had earlier expressed support for Section 11(a) or similar provisions in earlier bills also modified their positions. The NYSE stated that "Section 11(a) currently provides a potentially serious disincentive to NYSE membership"⁹ and suggested that the exemptions contained in Section 11(a) (1) be construed broadly. In addition, the NYSE proposed a number of exemptions¹⁰ as a means of promoting, *inter alia*, "equality of regulation" between exchange markets and the over-the-counter markets.¹¹

The only two nonmember, money management organizations to respond to Release No. 12055 favored Section 11(a). The American Council of Life Insurance has, along with its predecessors,¹² given some support to Section 11(a).¹³ The second organization, the

a bank or other financial institution, executing transactions in listed securities on a regular basis without the services of another person acting as a broker. That proposal was made on the assumption that restrictions on off-board principal transactions would be eliminated or the growth of off-board trading in listed securities would, in any event, continue. Two other respondents had also suggested, albeit briefly, the extension of Section 11(a) (1) to non-member broker-dealers.

⁷ *Id.*

⁸ SIA (Dec. 21, 1976).

⁹ Response of the New York Stock Exchange, Inc. (hereinafter referred to as the NYSE) at 7, File No. S7-613.

¹⁰ Note 3 *supra*.

¹¹ The NYSE suggested, in the alternative, that the regulatory scheme of Section 11(a) (1) should be extended to the third market through the Commission's exercise of its regulatory authority under Section 11(a) (2).

¹² The American Council of Life Insurance is the product of a merger in 1976 between the Institute on Life Insurance and the American Life Insurance Association. The latter was in turn the product of an earlier merger between the American Life Convention and the Life Insurance Association of America.

¹³ Response of the American Council of Life Insurance (Dec. 1, 1976), File No. S7-613. It had also suggested that a repeal of all restrictions on access to exchange membership—in particular Rule 19b-2 type provisions—would be a "legitimate" alternative to Section 11(a). Testimony of the American Life Insurance Association on S. 249, S. 249 Hearings, at 296. See also Testimony of Harold E. Bigler, Jr., and Paul J. Mason, Esq. on behalf of the American Life Convention and the Life Insurance Association of America, Commission Hearings on Proposed Rule 19b-2 (Nov. 28, 1972), Securities and Exchange Commission File No. S7-452 (hereinafter referred to as File No. S7-452).

Investment Counsel Association of America, Inc., has, in the past, expressed opposition to the 80-20 test of former Rule 19b-2 and stated that exchange members' "relationships with both investment companies and all such discretionary accounts should be prohibited, and on a 100 percent and not an 80-20 basis."¹⁴ Recently, it expressed strong support for maintaining high professional standards in the securities industry.¹⁵

Part II contains a detailed summary of the comments submitted in response to Release No. 12055. First, there is a summary of the comments according to major issues arising with respect to Section 11(a). Second, there is a summary of the comments submitted in response to each of nine questions posed in Release No. 12055.

PART II: DETAILED SUMMARY

*Securities Exchange Act Rule 11a1-1 (T).*¹⁶ Although the respondents generally favored Rule 11a1-1(T),¹⁷ there were significant comments with respect to its form or the potential interpretation of its terms. Those comments related, for the most part, to the language of Section 11(a) (1) (G) itself, which respondents generally viewed as ambiguous.

One submission argued for a liberal construction of Section 11(a) (1) (G) and Rule 11a1-1(T) in order to permit firms with a broad and diverse securities business to remain exchange members.¹⁸ For purposes of the income test imposed by Section 11(a) (1) (G), it was contended that income derived from market making and investment advisory services should be included, and that the phrase, "selling securities to customers,"¹⁹ should not be construed to include only public customers. A contrary view would exclude the revenues of market makers and other types of dealers, which do business generally with other broker-

¹⁴ Response of the Investment Counsel Association of America, Inc. (Oct. 3, 1972), File No. S7-452.

¹⁵ Letter to Roderick M. Hills, Chairman, Securities and Exchange Commission, from John L. Casey, Chairman, Investment Counsel Association of America, Inc. (Dec. 1, 1976).

¹⁶ 17 CFR 240.11a-1(T).

¹⁷ See, e.g., Response of Asiel & Co. (hereinafter referred to as Asiel & Co.), at 1, File No. S7-613; Response of Baer & McGoldrick on behalf of Weiss, Peck & Greer (hereinafter referred to as Weiss, Peck), at 21, File No. S7-613; Response of the Boston Stock Exchange (hereinafter referred to as the BSE), at 3, File No. S7-613; SIA (May 13, 1976), at 7.

¹⁸ Weiss, Peck, at 2. The business of that respondent includes brokerage for individual and institutional customers; specialist activities on the NYSE; investment management services to pension, profit-sharing and welfare trusts, universities and other trusts, and individuals; serving as an investment advisor; participation in an institutional venture capital partnership; and consulting services to corporations with respect to mergers, acquisitions and general business planning.

¹⁹ *Id.*, at 8.

dealers, and deprive many such entities of the exemption provided by Section 11(a)(1)(G). That respondent further argued that a contrary view would be inconsistent with the legislative history of the Securities Acts Amendments of 1975²⁰ and the Commission's interpretation of Section 3(c)(2) of the Investment Company Act of 1940.²¹ In support of its view that "related activities" include certain types of income from investment advisory services, that firm considered the legislative history of the 1975 Amendments and the meaning of Section 3(c)(2). The legislative history, it stated, discloses that both the Senate and the House bills contained a proprietary exemption, although the Senate version was much broader than the House version, and that, in light of a presumed goal to eliminate exchange membership by financial institutions, the exemption should continue to permit proprietary transactions by members with a bona fide securities business. That firm further pointed out that Section 3(c)(2) reinforces such a view of the proprietary exemption under Section 11(a)(1); Commission staff interpretative and no-action letters issued with respect to that Section, it stated, have construed its language to refer to a broad range of securities activities conducted by investment banking firms, broker-dealers, and exchange members generally.²²

Overall, that commentator asserted that Section 11(a) and its legislative history evidence a Congressional concern with the strength of the auction market and, as an integral part thereof, the role of specialist firms. To exclude specialist income from being a permissible source of income in the computation of the income test, it contended, would impair that Congressional purpose. Similarly, to exclude advisory fees would ignore the close link between the rendition of advisory services and the execution of resulting brokerage, deprive the industry of a stable source of revenue and thereby tend to destabilize the auction market. It would also encourage contributors of capital to a member organization to withdraw their investments since Rule 11a1-1(T) would not recognize income from member trading for the purposes of the Section 11(a)(1)(G) income test, or it would act as an incentive for a member organization to divest nonqualifying businesses, e.g., specialist activities. Divesting non-qual-

ifying businesses would cause member firms' revenues to become less stable because they would be more subject to any fluctuations in the level of each remaining activity. In lieu of the tests employed in Section 11(a)(1)(G)(i), it was suggested, qualifying businesses should be determined by reference to Section 4(1)(1) of the Securities Investor Protection Act of 1970.²³ A broad construction of the income test, that firm believed, would not pose the danger of resurrecting the narrow "business mix" test of former Rule 19b-2.²⁴

The NYSE also pressed for an expanded reading of the income test.²⁵ The NYSE argued that the income test provision would not accommodate, or permit the continuation of, most floor trading firms, as currently organized. The result would be a competitive burden on individual members.²⁶ The Philadelphia Stock Exchange opposed Rule 11a1-1(T), arguing that the Temporary Rule and its income test were not too different than former Rule 19b-2; that the rule would be easily circumvented by reciprocal practices between member organizations; and that member organizations would tend to "churn" their accounts in order to increase the proportion of business necessary to satisfy the income test.²⁷

There were a number of conflicting statements with respect to the mechanical feasibility of the Temporary Rule. On the one hand, the Treasury and the Boston Stock Exchange expressed the view that the exemption is desirable and workable²⁸ and protects public orders without imposing undue disclosure burdens on exchange members. The Boston Stock Exchange emphasized that the concept of public orders taking precedence over member orders is well established.²⁹ The NYSE, on the other hand, suggested that the order identification requirement in the Rule would obstruct the flow of the market as maintained by the specialist. The NYSE urged the deletion of that requirement and reliance solely upon current exchange rules governing priority, parity, and precedence.³⁰

Proposed Securities Exchange Act Rule 11a1-2. Although there was some differences of opinion, the commentators

generally endorsed the proposed Rule.³¹ The U.S. affiliates of foreign banks supported it as being essential to meaningful foreign access to the United States securities markets.³² They stated that foreign institutions do not have any practical alternatives to the use of omnibus accounts. First, omnibus accounts are widely used in transactions for the accounts of customers of foreign banks by reason of the confidentiality and secrecy laws or customs of several European countries. Second, to place customers' orders through unaffiliated U.S. member organizations in order to avoid the proscription of Section 11(a), defeats their objective of direct access to the United States securities markets.

Each of the three exchanges addressing proposed Rule 11a1-2 took a different position. The Boston Stock Exchange favored its adoption; failure to do so, it argued, would cause a loss of substantial and responsible exchange members, principally foreign-affiliated organizations, which have contributed capital to the exchange markets and have been above reproach in all aspects of their business conduct. That exchange expressed its longstanding view that so long as no U.S. interests are demonstrably subject to injury, rules governing foreign-affiliated member organizations should allow for and accommodate historic differences between the United States and other countries with respect to investment customs and practices, business structures, and legal restrictions. Since proposed Rule 11a1-2 does not create artificial barriers or disincentives, the Boston Stock Exchange concluded, foreign financial institutions would continue after its adoption to commit capital to the operation of exchange member firms in the United States.³³ The Philadelphia Stock Exchange expressed the view that proposed Rule 11a1-2 is not sufficiently broad, and that it should extend to situations in which either the interests of the money manager and beneficial owner or the interests of the broker and beneficial owner as the same.³⁴ The NYSE, however, thought that the proposed rule was too broad. It pointed out, in that connection, that a member could effect transactions through an omnibus ac-

²⁰ Pub. L. No. 94-29 (June 4, 1975) (hereinafter referred to as the "1975 Amendments").

²¹ 15 U.S.C. 80a-3(c)(2). According to the Committee of Conference, Section 11(a)(1)(G)(i) was patterned on Section 3(c)(2), which serves the purpose of excluding from the definition of "investment company" persons which meet the prescribed standards. See Securities Acts Amendments of 1975, Conference Report to Accompany S. 249, Joint Explanatory Statement of the Comm. of Conference, H.R. Rep. No. 229, 94th Cong., 1st Sess. 105 (1975).

²² Weiss, Peck, at 10-15.

²³ 15 U.S.C. 78ddd(1)(1).

²⁴ Weiss, Peck, at 15-19.

²⁵ It suggested that specialist and arbitrage income, for example, should be computed as permissible income under the Temporary Rule.

²⁶ NYSE, at 6-7.

²⁷ Response of The Philadelphia Stock Exchange, Inc. (hereinafter referred to as the Phlx), at 8, File No. S7-613.

²⁸ Response of the United States Department of the Treasury (hereinafter referred to as Treasury), at 1, File No. S7-613. See BSE, at 2-3.

²⁹ BSE, at 3.

³⁰ NYSE, at 9-10. Those rules generally do not distinguish between members' orders and nonmembers' orders and consequently would not appear to comply with the requirements of Section 11(a)(1)(G).

³¹ See, e.g., BSE, at 3; Response of Gadsby & Hannah on behalf of Overseas Securities Corporation (hereinafter referred to as Overseas), at 2, File No. S7-613; Treasury, at 1. Compare NYSE, at 11, with Phlx, at 9. The respondents believed that the proposal would serve their interests in a manner consistent with the purposes of Section 11(a). Response of Gadsby & Hannah on behalf of ABD Securities Corporation (hereinafter referred to as ABD), at 3-4, File No. S7-613; Overseas, at 1-3; Response of Gadsby & Hannah on behalf of Transatlantic Securities Corporation (hereinafter referred to as Transatlantic), at 1-2, File No. S7-613.

³² ABD, at 3; Response of Ultrafin International Corporation (hereinafter referred to as Ultrafin), at 4, File No. S7-613.

³³ BSE, at 3-6.

³⁴ Phlx, at 10.

count for associated persons under any of the other exemptions under Section 11(a).³⁰

The Treasury endorsed proposed Rule 11a1-2. It stated that the proposed Rule would be consistent with national policy concerning foreign broker-dealer access to the United States securities markets. The lack of such a rule, it contended, would bar foreign persons from exchange membership in light of their need to maintain omnibus accounts for customer transactions, and would consequently deprive the United States of necessary investment capital without providing investors with any added protection.³¹

Proposed Amendment to Securities Exchange Act Rule 17a-3(a) (9). Representing diverse interests, the commentators opposed the proposed amendment for a variety of reasons.³² Those comments were summarized in an earlier release.³³

Extension of Section 11(a) (1) to the Third Market. Several commentators criticized the disparity of regulation between exchange members and nonmembers under Section 11(a).³⁴ The Philadelphia Stock Exchange pointed out that the issues raised by Section 11(a) are not isolated to exchange markets but are identical to practices existing "in the third and fourth markets." To avoid the disparity of regulation, that exchange briefly recommended identical restrictions for participants in markets other than exchange markets.³⁵

The SIA's original views on this subject were extensive. One major proposal in its first set of comments was to extend Section 11(a) to all markets by the redefinition of "member" as any person executing transactions in listed securities on a regular basis without the services of another person acting as a broker.³⁶ Furthermore, the SIA would have invoked Section 6(f) as authority to redefine "member" to include institutions and banks. Those financial entities would be forced to comply with Section 11(a) as a "member" to the extent that a broker was not utilized in a given transaction. Accordingly, they would generally be required to use a broker-dealer in order not to be considered a "member."³⁷ In subsequent correspond-

ence, however, that organization retracted its comments.³⁸

"Effect" vs. "Execute". Although few respondents discussed the issue, those which did generally asserted that the phrase in Section 11(a)—to "effect any transaction"—would only cover transactions by members executed directly on an exchange and would not cover transactions executed by members indirectly by use of the services of another member.³⁹ One small firm contended that the trading advantages cited by the Congress in adopting Section 11(a) (1) are not present where a member effects transactions through another member and that the need to attract additional capital to the exchange markets, to increase the number of market participants, and to foster competition on the floor support a different result.⁴⁰ A second member organization argued that reliance on Section 11(a) (2) (C) to support a broader interpretation of "effect" was a patent misreading of that Section, and that "there was no basis" for drawing a distinction between member and nonmember institutions with respect to proprietary trading on an exchange through "other member brokers." Another member organization concluded that, under the Commission's interpretation, it would be impossible to handle transactions for managed accounts or proprietary accounts of other member organizations and their associated persons.⁴¹ Moreover, some of the consequences of the Commission's interpretation, it expected, would include unjust discrimination among comparable brokerage customers (permitting trades for only the non-proprietary and non-managed accounts of another member) and would result in favored treatment for proprietary and managed accounts of nonmember broker-dealers. It was suggested, as a preferable alternative, that a member "effects" a transaction on an exchange through the direct placement of the order whereas a nonmember "effects" a transaction on an exchange by placement of the order through a member organization.⁴² One major broker-dealer agreed that the word "effect" created an ambiguity and that use of a two-dollar broker would not necessarily obviate the problem. A reasonable approach, it contended, was to consider the person who "carries" an account to be the person who is effecting transactions for that account.⁴³

The City Bar Association asserted that the Congress did not intend to prohibit a member from placing transactions through another member. The result of

such a prohibition, it stated, would be to limit transactions between members to executions only for natural person accounts pursuant to Section ((a)(1) (E)).⁴⁴ The NYSE found the broader interpretation not required by the Act and unsupported by the legislative history of the 1975 Amendments. That exchange represented that the narrowing of the phrase "to effect" to cover only direct transactions by members would remedy the Congress' explicit concern with respect to conflicts of interest, barriers to fair competition between money managers, and interference with the evolution of the securities markets. Otherwise, a member organization, the NYSE continued, would be unable to handle transactions on the NYSE for managed accounts and therefore would be unable to trade in the primary market. The NYSE concluded that member organizations with managed accounts would be forced to relinquish their membership in order to discharge their obligations of "best execution."⁴⁵ In its initial response, the SIA contended that the legislative history of the 1975 Amendments does not support a prohibition on member trading for covered accounts effected through members.⁴⁶ Member organizations, it initially pointed out, would be unable to compete for the management of institutional accounts without the ability to achieve "best execution." The SIA initially concluded, however, that the Commission has the authority to allow the combination of brokerage and money management consistent with the pro-competitive thrust of the 1975 Amendments.⁴⁷

Two small broker-dealers separately expressed concern with respect to corporate bond transactions on the NYSE. Such transactions, one stated, occur often as principal transactions rather than as agency transactions on the NYSE whereas large lots of corporate bonds are traded in the over-the-counter markets. Customers typically demand, that commentator continued, one price, one ticket, and same day execution in a sale or purchase transaction of bonds. That commentator stated also that its activity as a principal either facilitates the handling of a customer's order or contributes to the maintenance of a fair and orderly market, or both. In turn, the market has greater liquidity and depth. On the basis of those arguments, the respondents were both of the opinion that a new exemption should be adopted to permit such transactions since it is difficult to classify such activity within the market, arbitrage, and hedging exemptions under Section 11(a) (1).⁴⁸ The NYSE expressed similar concerns but viewed such trades to be within the marketmaking exemption under Section 11(a) (1) (A).⁴⁹

³⁰ NYSE, at 11.

³¹ Treasury, at 1.

³² See, e.g., BSE, at 7; Overseas, at 3-4; Response of Goldman Sachs & Co. and Salomon Brothers (hereinafter referred to as Goldman, Sachs and Salomon), at 7; Treasury, at 2.

³³ Securities Exchange Act Release No. 13149 (Jan. 10, 1977), 42 FR 3312 (Jan. 10, 1977).

³⁴ See, e.g., Wilmer, Cutler & Pickering on behalf of Cyrus J. Lawrence Incorporated; David J. Greene and Co.; First Manhattan Co.; Neuberger & Berman; Reich & Tang, Inc.; Stralem & Co., Inc.; Weiss, Peck & Greer; and Wood, Struthers & Winthrop (hereinafter referred to as Eight NYSE firms), at 12, Filed No. S7-613.

³⁵ Phlx, at 10-11.

³⁶ SIA (May 13, 1976), at 7.

³⁷ Id., at 10.

³⁸ See text accompanying note 8 supra.

³⁹ City Bar Association, at 2; Goldman, Sachs and Salomon, at 6; SIA (May 13, 1976), at 4. But see SIA (Dec. 21, 1976).

⁴⁰ Asiel & Co., at 3.

⁴¹ "Associated persons" was understood here to encompass non-natural persons which are unable to utilize Section 11(a) (1) (E). Goldman, Sachs and Salomon, at 6.

⁴² Id., at 7-8.

⁴³ Merrill Lynch, at 1-2.

⁴⁴ City Bar Association, at 2.

⁴⁵ NYSE, at 1-3.

⁴⁶ SIA (May 13, 1976), at 3-4. See text accompanying note 5 supra.

⁴⁷ Id., at 4.

⁴⁸ Asiel & Co., at 1-3; Response of Mabon, Nugent & Co., at 1-2, File No. S7-613.

⁴⁹ NYSE, at 9.

Question 1:

Paragraph (A) of Section 11(a)(1) exempts transactions by dealers acting in the capacity of marketmakers; marketmakers are defined to include specialists, any dealer acting in the capacity of block positioner and any dealer who holds himself out as being willing to buy and sell on a regular or continuous basis. The term "block positioner" has been defined for the purpose of some exchange rules, some Commission reporting rules and for purposes of Regulation T. Are any of those definitions appropriate for use under Section 11(a) in light of the purposes of that Section? If not, what would be an appropriate definition? Are any restrictions on the general exemption appropriate? How should transactions by firms acting as block positioners, including any "lay-off" transactions, be distinguished from other transactions by such firms? Would a time limit for lay-off transactions be appropriate? Would any such restrictions be appropriate in the case of arbitrage or hedge transactions? Should persons be subject to any of the limitations imposed on, or have any of the obligations of, exchange marketmakers or specialists in order to qualify for the exemption for dealers acting as block positioners or as arbitrageurs?

Responses covering Question 1 were submitted by several exchange member organizations, the City Bar Association, the NYSE, the Philadelphia Stock Exchange, and the Midwest Stock Exchange. They generally favored broad definitions of the terms "marketmaker" and "block positioner" as well as a broad interpretation of the transactions qualifying as arbitrage or hedge transactions.¹⁰ For example, the City Bar Association, with support from another respondent, stated that the Commission's authority to modify exemptions is limited to definitional questions and does not extend to the creation of criteria for exemption transactions by a marketmaker, including any block positioner.¹¹ The City Bar Association considered an exchange specialist or marketmaker to be a person which has a special franchise and is properly subject to limitations and obligations.¹² Two major broker-dealers stated that the unique advantages of time and place afforded a specialist justify the imposition of special requirements.¹³

With regard to existing definitions of marketmaker, both the City Bar Association and the NYSE indicated some dissatisfaction with the definition in Securities Exchange Act Rule 17a-17.¹⁴ The City Bar Association urged reliance on Rule 17a-17 if its references to Regulation U¹⁵ were deleted and on the NYSE's interpretations of its Rules 97 and 127. The City Bar Association proposed in part to define a block positioner as a person which would have (1) to purchase long or sell short as principal, from time to time and from or to one or more cus-

tomers, a block of securities with a current value of \$200,000 or more in a single transaction (or in several transactions at approximately the same time from a single source) in order to facilitate a sale or purchase by its customers, and (2) to sell the securities comprising that block as rapidly as possible under the circumstances.¹⁶ Along with others who commented on "lay-off" transactions; it rejected time limitations upon such transactions.¹⁷ The City Bar Association pointed out that significant sums of money are involved; that market conditions vary greatly on short notice; and that a block positioner cannot reasonably be expected to liquidate a position within a time period if market conditions do not permit absorption of the position.¹⁸

The NYSE rejected Rule 17a-17 as well as Regulation U. Its position was based on Rule 17a-17's exclusion from a block positioner's activity of any purchase or sale of a convertible security which is handled to facilitate a customer's order and the Rule's requirements that (1) the block could not have been sold to or purchased from others on equivalent or better terms and (2) the liquidation of the block should be accomplished as rapidly as possible, commensurate with the circumstances. The business of a block positioner, the NYSE argued, depends upon the rapid disposal of a block as well as upon the ability to acquire, when necessary, a large number of shares, and that artificial limitations would conflict with "professional judgment" and force an unwarranted loss from time to time. The NYSE generally agreed with the City Bar Association's definition of block positioning, but would not impose definitive time limitations upon the disposal of shares of a block.¹⁹

By comparison, other respondents were not as dissatisfied with Rule 17a-17. Two large broker-dealers, for example, preferred the definition of "block positioner" in that rule, but made additional suggestions as to a net capital requirement and a description of the nature of a block.²⁰ A third major U.S. broker-dealer thought that the phrase "block positioner" had acquired sufficient meaning through long-standing usage and that it should not be read restrictively.²¹ The Boston Stock Exchange stated that no specific or further definition is necessary and that a monitoring program would suffice if it assured that block positioning contributed to the

depth, liquidity and stability of the market.²² The Philadelphia Stock Exchange suggested that distinctions in definitions among the exchanges should be preserved.²³

With respect to the Section 11(a)(1) exemptions for arbitrage and hedge transactions, the consensus of the commentary was that limitations or restrictions should not be imposed upon such exemptions,²⁴ which one commentator characterized as absolute.²⁵ The primary function and benefit of arbitrage, that person noted, is to narrow spreads between markets or between similar and exchangeable securities or securities expected to become similar or exchangeable at some later date.²⁶ The NYSE described its own criteria for bona fide arbitrage: (1) the possibility of a profit after expenses, (2) the necessity of an existing equivalent bid, and (3) simultaneous purchase and offsetting sales. It argued against placing any restrictions upon the block positioner which is effecting hedge transactions triggered by customer orders.²⁷

Two respondents, concerned about the impact of Section 11(a) with respect to transactions in the options markets, asserted that options hedging activities should be permitted under Section 11(a). The Midwest Stock Exchange argued that transactions by its options marketmakers in the securities underlying the options are an extension of part of their marketmaking responsibilities and should be permissible under Sections 11(a)(1)(A) and 11(a)(1)(D). It stated that transactions which are bona fide hedges "strengthen the marketmaking activities of options marketmakers" and thus "contribute to the depth and liquidity of the securities markets."²⁸ Similar arguments were presented by a regional broker-dealer and investment adviser.²⁹ That commentator also urged the Commission to allow "the continued combination of investment management and member execution for accounts engaging in . . . Options Hedging activities . . . as well as other types of options trading activities" by exercising its authority under Section 11(a)(1)(A) and to provide "confirmation" of the availability of Section 11(a)(1)(D) for bona fide hedge transactions.³⁰

Question 2:

Section 11(a)(1), in contrast to Rule 19b-2, does not provide any exemption for floor traders. Floor traders will not generally qualify for an exemption under paragraph (G), would not generally be recognized as

¹⁰ City Bar Association, at 6-7.

¹¹ Id., at 8; Goldman, Sachs and Salomon, at 14-5; Phlx, at 12-3. The NYSE opposed time limits on the basis that (1) in adverse market situations, forced liquidations may worsen the market in a particular security and may impose losses on the public investor and on the block positioners, (2) that other persons utilize time limits against the block positioner, and (3) that financial risks act as a natural limit in any case. NYSE, at 15.

¹² City Bar Association, at 8.

¹³ NYSE, at 12-15.

¹⁴ Goldman, Sachs and Salomon, at 2-3.

¹⁵ Merrill Lynch, at 6.

¹⁶ BSE, at 11.

¹⁷ Phlx, at 12.

¹⁸ See City Bar Association, at 8; BSE, at 11; Goldman, Sachs and Salomon, at 1-2; Phlx, at 13.

¹⁹ Asiel & Co., at 4.

²⁰ Id.

²¹ NYSE, at 15-16.

²² Letters from the Midwest Stock Exchange Incorporated (Oct. 1, 1976 and Feb. 25, 1977), File No. S7-613.

²³ Response of Pope, Ballard, Shepard & Fowle on behalf of Harris Associates, Inc. (Jan. 5, 1977), File No. S7-613.

²⁴ Id., at 9.

²⁵ See, e.g., City Bar Association, at 5; Goldman, Sachs and Salomon, at 2.

²⁶ City Bar Association, at 5. See also Asiel & Co., at 4.

²⁷ City Bar Association, at 5-6.

²⁸ Goldman, Sachs and Salomon, at 4.

²⁹ 17 CFR 240.17a-17.

³⁰ 12 CFR Part 221.

dealers acting in the capacity of market-makers (dealers who hold themselves as being willing to buy and sell on a regular or continuous basis) under paragraph (A) and, as noted above, may not come within the exemption for natural persons in paragraph (E) since they would be transacting for their own account. Heretofore, floor trading has been regulated under exchange plans submitted to the Commission under Rule 11a-1. If floor trading is to be permitted to continue, under what conditions should an exemption be granted? Is there a basis for making an exemption conditional on the yielding of priority, parity, and precedence as required by paragraph (G) or should there be lesser, or additional restrictions? If floor trading is permitted to continue, is there any basis for classifying the types of members permitted to engage in floor trading?

The comments reflected a belief that Section 11(a)(1)(E) should be read to permit transactions for the account of a member who is a natural person, particularly transactions by floor traders.⁷⁴ There was also a consensus that floor trading should be regulated, and one commentator suggested that floor trading should be restricted to transactions in active stocks.⁷⁵ The City Bar Association believed that the natural person exemption under Section 11(a)(1)(E) should be available to an exchange member who is a natural person. It pointed out that S. 249 contained a broad exemption for transactions for natural persons' account and for transactions for a member's account. H.R. 4111, the City Bar Association continued, had provided an exemption only for a member who was a natural person or a natural person who was an affiliate or associated person of a member. The City Bar Association then concluded that the blanket Senate exemption was rejected, in the version produced by the Conference Committee, in preference to the limited House exemption. In commenting on the application of the Commission's interpretation to transactions Association found it somewhat anomalous to regulate individuals who are members more by accident and whose membership is, in reality, owned by the member organization. It suggested that the Commission could implement Section 11(a)(2) as a means to regulate floor traders.⁷⁶

Four exchanges submitted responses. The Boston Stock Exchange briefly stated that floor trading makes a positive contribution to the market and that it should not be eliminated so long as public orders are accorded priority, parity, and precedence. That exchange was not in favor of classification.⁷⁷ The Philadelphia Stock Exchange offered a somewhat similar view. It asserted that floor trading on a regional exchange occurring in response to public orders supplements the specialist's market. Noting

that present regulation of floor trading requires the yielding of priority, parity, and precedence, the Philadelphia Stock Exchange favored some form of classification to bring floor traders within an exemptive provision of Section 11(a).⁷⁸ The NYSE strongly supported the continued permissibility of floor trading. It contended that floor traders contribute \$37 million in capital depth, liquidity, and stability of the market; that the exemption under Section 11(a)(1)(G) should cover member organizations; and that the exemption under Section 11(a)(1)(E) should cover individual members engaged in floor trading activities. That conclusion flows, the NYSE suggested, from the proposition that a natural person who becomes a member does not forfeit his status as a natural person. The NYSE asserted that the Conference Committee's revisions in Sections 11(a)(1)(E) and (G) of S. 249 were predicated on a finding that the two exemptions were duplicative and, for that reason, it struck S. 249's version of Section 11(a)(1)(G); it further asserted that there was no evidence that the Congress sought to exclude individual floor traders from Section 11(a)(1)(E). The NYSE proposed that, along with an exemption under Section 11(a)(1)(E) construed to be available to individual members, an exemption rule should be adopted under Section 11(a)(1)(H) to exempt floor trading by a member organization.⁷⁹ The American Stock Exchange (the "Amex"), for the same reasons, requested adoption of an exemptive rule under Section 11(a)(1)(H).⁸⁰ The Amex also cited the importance of floor traders' contributions with respect to the depth and liquidity of the auction market and the degree of regulation of floor traders, claiming that there is not any basis for drawing a distinction between floor trading effected by an individual member and that effected by a member firm.⁸¹

On the premise that the Congress intended generally to permit floor trading, one major brokerage firm argued that, since exemptions under Section 11(a) definitely overlap in some cases (e.g., a registered odd-lot dealer may qualify for both the marketmaker and odd-lot dealer exemption), there is little reason to conclude in other situations that exemptions should be narrowly construed to avoid that result. It also made suggestions about the purpose to be ascribed to the revisions adopted by the Conference Committee, on the basis that floor trading contributes to market liquidity, particularly if that trading is confined to relatively inactive stocks.⁸²

The NYSE Floor Traders also asserted that floor trading contributes to the depth, liquidity and stability of exchange markets and is within the natural person

exemption under paragraph (E), at least with respect to floor traders who conduct their business as sole proprietorships or partnerships.⁸³ But, because floor traders doing business as corporations would not (they indicated) be covered by any statutory exemption, an exemptive rule should be adopted in order to correct the disparity of treatment that results from such an interpretation.⁸⁴

It was argued that the "plain language" of Section 11(a)(1)(E) permits floor trading since a natural person may be a member and, as a natural person, a member should be entitled to the exemption. The NYSE Floor Traders asserted that otherwise the natural person exemption would in effect be rewritten in order to cover accounts of associated persons and managed accounts but to exclude a member's own account; that the exemption under Section 11(a)(1)(G) does not refer to or limit the natural person exemption since it applies to "non-natural" members; and that staff interpretations of the arbitrage exemption under Section 11(a)(1)(D) to cover a member's own account, an associated person's account, and managed accounts should apply also to the natural person exemption.⁸⁵

The NYSE Floor Traders contended that the legislative history of Section 11(a)(1) evidences a desire to regulate institutional membership and not to abolish floor trading, noting that the Senate exempted all member and affiliated transactions whereas the House exempted only transactions for members and their associated persons which were natural persons. The compromise produced by the Conference Committee, the NYSE Floor Traders surmised, could not imply a prohibition said to be rejected by both the Senate and House Committees. The NYSE Floor Traders also referred (1) to the lack of any mention of prohibiting floor trading in the legislative history and (2) to S. 470,⁸⁶ a predecessor to S. 249, and the accompanying Committee Report⁸⁷ (along with other Congressional studies) which indicate Congressional interest in institutional membership and in the continuance of member firms' trading for their own account but not any intention to prohibit floor trading per se.⁸⁸

The NYSE Floor Traders also urged that an analysis of S. 249 and H.R. 4111 supports the availability of an exemption

⁷⁴ Other commentators doubted that paragraph (E) covers, for example, a partnership or a personal holding company. See, e.g., Amex, at 2; Merrill Lynch, at 3, 8. See also Overseas, at 8.

⁷⁵ NYSE Floor Traders, at 1-5.

⁷⁶ Id., at 5-11. See Debevoise, Plimpton, Lyons & Gates (Current Binder) Fed. Sec. L. Rep. (CCH) ¶ 80,416 (Oct. 3, 1976).

⁷⁷ 93d Cong., 1st Sess. (1973).

⁷⁸ Regulation of Securities Trading by Members of National Securities Exchanges and the Sale of Investment Advisers of Registered Investment Companies, Report of the Sen. Comm. on Banking, Housing, and Urban Affairs To Accompany S. 470, S. Rep. No. 93-187, 93d Cong., 1st Sess. (1973).

⁷⁹ NYSE Floor Traders, at 11-18.

⁸⁰ 94th Cong., 1st Sess. (1975).

⁷⁴ See, e.g., City Bar Association, at 3; NYSE, at 3-4; Wachtell, Lipton, Rosen & Katz on behalf of 96 NYSE Floor Traders (hereinafter referred to as the NYSE Floor Traders), at 2-7, File No. 87-613.

⁷⁵ Merrill Lynch, at 6.

⁷⁶ City Bar Association, at 3-5.

⁷⁷ BSE, at 12.

⁷⁸ Phlx, at 13-14.

⁷⁹ NYSE, at 3-6.

⁸⁰ Response of the American Stock Exchange Inc. (hereinafter referred to as the Amex) (Nov. 1, 1976), at 3, File No. 87-613.

⁸¹ Id., at 2.

⁸² Merrill Lynch, at 6-7. See also Goldman, Sachs and Salomon, at 4-5.

to a member who is a natural person. They urged that the natural person exemption would have reflected a specific limitation, if one existed, since both the House and the Senate utilized restrictive language when needed; that the adoption of the Senate language by the Conference Committee simplified the language of H.R. 4111 and incorporated into Section 11(a)(1)(E) the managed non-associated natural person, and member and associated natural person, exemptions contained in the House Bill; and that the Commission, before the 1975 Amendments, regulated floor trading and now has expanded power to regulate such activity but no mandate to forbid it.¹⁶ Referencing past studies and papers by the Commission, Securities Exchange Act Rule 11a-1,¹⁷ and NYSE rules, they concluded that floor trading is a necessary and beneficial market function.¹⁸

Question 3:

In addition to prohibiting floor trading, Section 11(a) does not provide an exemption for trading for investment accounts by specialists and other members (other than members qualifying under paragraph (G)(1)). As noted above, it would appear that such members could not acquire or dispose of securities for their investment accounts in transactions on exchanges of which they are members. Assuming an exemption should be provided for such transactions (or more generally for all transactions) by such members, on what basis should it be framed? The standards of paragraph (G)? More stringent standards? If "effect" were to be broadly interpreted, would it be appropriate to let any member, whether an individual member or own account if the transaction were effected a member firm, effect transactions for its by placing the order through another member firm off the floor of the exchange? For example, should there be an exemption for transactions for a member's own account or its managed institutional accounts effected through the order desk of another member and not communicated directly to the exchange floor by the initiating member? Can the conflicts of interest perceived in the combination of money management and brokerage be alleviated if such an exemption is provided? Should there be prohibitions against reciprocal business arrangements if such an exemption is provided?

The commentators unanimously favored an exemption which would permit transactions for investment accounts by specialists and members not qualifying under Section 11(a)(1)(G)(i).¹⁹ The few broker-dealers responding to Question 3 urged that no public policy is served by banning transactions for the investment accounts of members,²⁰ but that a specialist firm should not engage in floor trading other than in hedging transactions.²¹

The exchanges providing responses concurred. The Boston Stock Exchange, for example, supported an exemption

for all members' investment accounts framed on the standards of Section 11(a)(1)(G). In contrast, that exchange opposed permitting members to effect transactions for their own accounts or their managed accounts if relayed through another member, on the ground that such an exemption would foster undesirable reciprocal practices.²² The NYSE urged a broad interpretation of Section 11(a)(1)(E) to provide a safe harbor for individual members. It also suggested that the marketmaking exemption is sufficient since "investment" transactions are essentially a matter of bookkeeping entries and, in any event, assist the specialist in accumulating inventory in its specialty stocks. Moreover, the NYSE asserted, specialists are adequately regulated and should qualify for an absolute exemption regardless of any revenue test under Section 11(a)(1)(G). The NYSE, in contrast to the Boston Stock Exchange, would permit a member to effect transactions for managed accounts through other members on the theory that the member originating the order would not exercise control over its handling and execution; on that basis, the NYSE contended, an exemption should be provided to the money manager since he would be acting independently of the broker executing the transaction. The NYSE resisted a prohibition against reciprocal business, however.²³ The Philadelphia Stock Exchange also advocated an exemption for the investment accounts of specialists and other members (other than those qualifying under Section 11(a)(1)(G)(i)) for similar reasons and, along with the Boston Stock Exchange, rejected any exemption allowing the reciprocal practices it felt would be stimulated.²⁴

Question 4:

Are there any other types of members for whom special rules should be provided? Bearing in mind that any test along the lines of the 80-20 test of Rule 19b-2 would be inappropriate and inconsistent with Congressional intent, to what degree, if any, should any such rules depend on the affiliations of such members? Should the Commission exercise its classification power under Section 23 to effect a different result than proposed Rule 11a1-2 would accomplish? Specifically, should the Commission distinguish between transactions effected by an exchange member for the account or the accounts of its foreign parent or sister corporation and transactions effected by an exchange member for its foreign subsidiaries? On what basis under the purposes of the Act should such distinctions be made? In light of Section 20 of the Act, and otherwise, is there any reason to believe that a foreign parent not registered with the Commission would be less likely to ensure compliance with federal securities laws with respect to its own activities involving United States securities markets and those of its United States subsidiary exchange member than would a domestically-owned exchange member with respect to its own activities and those of its unregistered foreign subsidiaries? In that

connection, to what degree is it appropriate to rely on the obligation of associated persons of members to supply the exchange with such information with respect to its relationship and dealings with the member as is prescribed in exchange rules and to permit the examination of its books and records to verify the accuracy of such information? Should the Commission exercise its power under Section 19(c) of the Act to require that uniform rules be adopted by all national securities exchanges for that purpose? What entities should conduct any such examinations? Should such examinations be permitted to be conducted on a sampling or test basis? What standards should govern any such sampling or test method? What records should be readily available to the Commission?

There were few comments on this question other than with respect to the possible exercise of the Commission's classification authority under Section 23. On the issue of regulation of associated persons, the Boston Stock Exchange and one U.S. broker-dealer opposed the promulgation of a uniform rule under Section 19(c).²⁵ The Boston Stock Exchange wanted to preserve freedom to experiment and innovate and wanted also to retain its ability to compete with other national securities exchanges consistent with the intent of the 1975 Amendments.²⁶ The NYSE disagreed and argued in favor of a uniform rule.²⁷

In terms of Section 20 and experience to date with foreign-owned and domestically-owned exchange members, the Philadelphia and Boston Stock Exchanges stated that they have not had any special regulatory problems. The latter exchange has 24 member organizations that are affiliated with European and Japanese concerns. Those exchanges asserted that, if anything, their foreign-affiliated member organizations have a greater sensitivity to the federal securities laws and other member organizations.²⁸ Three broker-dealers affiliated with foreign banks strongly contended that they do, and will continue to, obey applicable securities laws and that their associated persons will fulfill obligations to exchanges to provide information.²⁹ In that connection, the NYSE made two points in its submission. First, a foreign broker or dealer should be required to conduct its U.S. transactions through a registered broker-dealer which is incorporated under state law, to establish its principal place of business in the United States and to maintain its books and records in the United States.³⁰ Each foreign broker or dealer controlling a U.S. broker-dealer, the NYSE further suggested, should be required to subject itself to the jurisdiction of the federal courts pursuant to Sections 20(a) and

¹⁶ Id., at 18-22.

¹⁷ 17 CFR 240.11a-1.

¹⁸ NYSE Floor Traders, at 22-25.

¹⁹ See e.g. Response of Ferris & Company Incorporated (hereinafter referred to as Ferris & Co.), at 3, File No. 87-613.

²⁰ Merrill Lynch, at 7.

²¹ Id.

²² BSE, at 12-13.

²³ NYSE, at 16-20.

²⁴ Phlx, at 14-16.

²⁵ BSE, at 13; Asiel & Co., at 5.

²⁶ BSE, at 14.

²⁷ NYSE, at 22-23.

²⁸ BSE, at 9-10; Phlx, at 17-18.

²⁹ ABD, at 7; Overseas, at 5; Transatlantic, at 6.

³⁰ 17 CFR 240.17a-7 has set forth a books and records requirement, or an alternative thereto, since 1956.

6(b)(1) of the Act.¹⁰⁷ Second, the NYSE stated that controlling persons should agree to furnish information on transactions in listed securities and to permit examination of their books and records. A presumption should exist, the NYSE continued, that transactions on an omnibus account of an affiliate are, in fact, for the account of an associated person in the absence of proof to the contrary.¹⁰⁸

The bulk of comments on Question 4 concerned the issue of classification. The Treasury, the Boston and Philadelphia Stock Exchanges, and several U.S. affiliates of foreign banks rejected any distinction between transactions effected by an exchange member for the account of its foreign parent's or sister corporation's customers and transactions effected by a United States controlled exchange member for its foreign subsidiaries' customers. The two exchanges indicated their satisfaction with existing arrangements with their foreign-controlled member organizations, which supply needed information upon request and submit to examination of their books and records.¹⁰⁹ The foreign-controlled broker-dealers contended that any distinction could impose a competitive burden not necessary or appropriate under the Act. Those broker-dealers stated that Section 20(a) and existing jurisdiction over them adequately insures their compliance with the federal securities laws.¹¹⁰ Another U.S. affiliate of several foreign banks argued that there is no basis to distinguish between economically equivalent transactions based on the irrelevant criterion of nationality. Any discrimination, it suggested, would inform the world of the United States' use of its dominant financial position to bestow a legally protected competitive advantage upon the U.S. securities markets.¹¹¹

Question Five:

In countries which have secrecy laws, are customers nevertheless permitted to establish arrangements with banks and other entities which would permit the making of disclosures requested by the Commission and other regulatory authorities within the United States? If so, is there any reason in law or policy why such disclosure should not be required in the case of customers of foreign affiliates of exchange member firms? If not, what position should the Commission take?

Several exchanges and U.S. affiliates of foreign banks commented on Question 5. The exchanges found the pro-

posed amendment to Securities Exchange Act Rule 17a-3(a)(9) burdensome in light of its objective to obtain information as to the beneficial ownership of accounts. The Boston Stock Exchange argued that there is no demonstration of necessity; that the proposal is an offensive and unwelcome intrusion into the relationship between the customer and a foreign financial institution; that large numbers of customers will not waive their right to confidentiality; and that the proposal represents a failure to accommodate foreign customs.¹¹² The NYSE stated that, while only Germany and Switzerland have secrecy laws, a waiver can only be obtained in Germany, Switzerland, on the other hand, may bring penal action against a violator of a right to confidentiality. Estimating that ten percent of NYSE volume represents from transactions by foreign persons, the NYSE asserted that an impractical burden of compliance would be placed upon brokers and dealers and that the Commission's recordkeeping proposal could thereby diminish the flow of foreign capital into the United States and impair the capital raising efforts of the U.S. securities industry.¹¹³ The Philadelphia Stock Exchange expressed similar opposition to the proposed amendment.¹¹⁴

U.S. affiliates of foreign banks also raised objections. The question, one foreign-controlled firm contended, is not whether customers of foreign associated persons may waive confidentiality, but whether there is any incentive for them to do so. It believed there are none.¹¹⁵ A second U.S. affiliate of one foreign bank suggested that Swiss law places financial transactions on a confidential basis unless a customer provides a waiver, which seldom occurs.¹¹⁶ A discussion of the law of three European countries was submitted by a third U.S. affiliate of several foreign banks. In Switzerland, that respondent stated, banks are under a legal duty to preserve in confidence the details of a customer's financial and personal affairs. That duty, it continued, encompasses all items of a business or personal nature of which the bank acquires knowledge. That commentator stated that waivers may be obtained, but that they do not obviate the danger of injury to unrelated third parties; that an agreement to disclose in advance future transactions would have to be defined with utmost care and specificity; and that information waived is sent only to the customer, under the practice of its affiliate.¹¹⁷ In France, it was asserted, all communications and transactions between a bank and its customer are deemed confidential; violations are subject to criminal and civil

liabilities. The sole exemptions are granted to the Government and judiciary.¹¹⁸ In the Netherlands, bank secrecy, that respondent stated, is not regulated by statute but is often set forth in a bank's articles of association; a breach of that confidentiality may lead to civil liability. That commentator urged that, while a waiver arrangement could be constructed, its severe consequences militate against the adoption of the proposed amendment to Rule 17a-3(a)(9).¹¹⁹

Question Six:

To what extent, if any, should exchanges adopt their own rules similar to Section 11(a)(1)? Should entities which become members of an exchange pursuant to Commission action under Section 6(f) of the Act be required to abide by the standards of Section 11(a)(1)?

A few commentators briefly addressed Question 6.¹²⁰ The Boston and Philadelphia Stock Exchanges, respectively, objected to the adoption of rules similar to Section 11(a)(1) by each exchange and indicated that Section 11(a)(1) should be applied to all brokers and dealers or to persons which become "members" pursuant to Section 6(f).¹²¹ The NYSE opposed different rules among the exchanges and favored the extension of Section 11(a)(1) to all brokers and dealers.¹²² One U.S. affiliate of several foreign banks argued against different rules among the exchanges which would be duplicative, subject to bias, and employed to withhold membership from foreign-affiliated broker-dealers. Past proposals by the NYSE, such as its proposed Rules 309, 310, 335 and 389, were cited as examples.¹²³ By comparison, one U.S. brokerage firm endorsed the adoption of rules based on Section 11(a)(1) by each exchange. Its position was based on the obligation of exchanges, under Section 19(g)(1), to enforce compliance with the provisions of the Act and on the exchanges' experience in enforcing trading prohibitions.¹²⁴

Question Seven:

Transactions for the managed accounts of natural persons and for certain personal trusts are excluded from the prohibition of Section 11(a)(1); however, no similar exclusion is provided for pension funds or other aggregations of investments by small investors. Should any consideration be given to providing a broader exemption? Should

¹⁰⁷ SoGen-Swiss (July 22, 1976), at 1-2.

¹⁰⁸ SoGen-Swiss (Aug. 10, 1976), at 1-2. As noted above, the proposed amendment to Securities Exchange Act Rule 17a-3(a)(9) was discussed further in Securities Exchange Act Release No. 18149 (Jan. 10, 1977), 42 FR 3312 (Jan. 18, 1977).

¹⁰⁹ The sole exception was the original set of comments filed by the SIA. See text accompanying notes 5-6, 40-43 supra for a summary of the pertinent part of that organization's submission.

¹¹⁰ BSE, at 15; Phlx, at 19-20.

¹¹¹ NYSE, at 25.

¹¹² SoGen-Swiss (June 15, 1976), at 4-5. Proposed NYSE Rules 309 and 310 were subsequently disapproved by the Commission. Securities Exchange Act Release No. 12737 (Aug. 25, 1976), 41 FR 38847 (Sept. 13, 1976).

¹¹³ Merrill Lynch, at 7.

¹¹⁴ BSE, at 14-15.

¹¹⁵ NYSE, at 23-24.

¹¹⁶ Phlx, at 19.

¹¹⁷ ABD, at 8.

¹¹⁸ Overseas, at 7. See also Transatlantic, at 3.

¹¹⁹ Response of SoGen-Swiss International Corporation (hereinafter referred to as SoGen-Swiss) (June 15, 1976), at 2-4.

¹⁰⁷ Compare the NYSE's proposal with 17 CFR 240.15b1-4, which directs nonresident brokers or dealers and nonresident general partners and managing agents of brokers or dealers to consent to service of process and to agree to submit to the jurisdiction of the federal courts as a prerequisite to registration.

¹⁰⁸ NYSE, at 21-22.

¹⁰⁹ BSE, at 13; Phlx, at 17.

¹¹⁰ ABD, at 7-8; Overseas, at 6; Transatlantic, at 5-6. The Treasury stated that an exchange member could provide all necessary records with its parent's assistance. Treasury, at 8.

¹¹¹ Ultrafin, at 8.

any attention be given to circumscribing the circumstances under which the statutory exemption could be utilized? Recognizing that one of the stated reasons for adoption of Section 11(a)(1) was conflict-of-interest problems in the combination of brokerage and money management, should individual investors be provided with additional safeguards? Or should a general exemption be provided if the broker money manager makes a single charge for his services not based on transactions?

There was a large response to this question particularly from U.S. broker-dealers which earn a significant amount of revenues from investment advisory fees and related brokerage.

The exchanges were generally not receptive to a broader exemption for aggregations of investments by small investors or an exemption based on the imposition of a single charge for a broker's services not based on transactions. The Boston Stock Exchange rejected an exemption for pension funds and preferred to rely on existing fraud concepts and concepts of fiduciary obligation to protect individual investors against possible conflicts of interest. An exemption based on a single charge was not endorsed on the ground that it would be related to the cost and volume of transactions and would not eliminate any existing conflict.¹²⁵ The NYSE suggested that current safeguards adequately protect the individual investor and that the single charge is not sufficient evidence of a lack of a conflict of interest. That exchange favored expansion of the natural person exemption to include natural person members, but it opposed any exemption for pension funds or for insurance company affiliates.¹²⁶ The Philadelphia Stock Exchange, noting its general disaffection with Section 11(a), suggested that transactions for a pension fund should be subjected to strong regulation in order to deter breaches of fiduciary obligations.¹²⁷ By comparison, the American Council of Life Insurance would not comment in the absence of a more precise focus on the "specific" transaction. It suggested that any Commission proposal for exempting aggregations of investments by small investors should be accompanied by an analysis of its impact on competition pursuant to Section 23(a)(2) of the Act. Rejecting the remedy of an exemption based on a single fee charge, the American Council of Life Insurance offered open membership as the only legitimate alternative to Section 11(a)(1).¹²⁸

One major broker-dealer firm proposed exemptions permitting it to effect exchange transactions for that portion of an account managed by a person with which it has no affiliation and for certain types of accounts, (e.g., partner-

ships, personal holding companies, professional corporations and certain types of trust) which do not qualify for the natural person exemption.¹²⁹ It also proposed exemptions for odd-lot transactions by a dealer not so registered and for transactions on behalf of syndicate members to liquidate positions which remain after the completion of an unsuccessful underwriting.¹³⁰ A second brokerage firm indicated that the advantages of a single fee arrangement include, for the broker, eliminating the problem of negotiating a rate on each transaction and eliminating questions of "churning" — (noting at the same time, that it might be questioned whether any reduction in activity was for the purpose of reducing costs) and, for the customer, converting capital expense (brokerage commissions) into an ordinary expense (management fees). On the other hand, a single fee charge, the firm asserted, might dramatically alter the relationship between broker-dealers and institutional investors through an enhancement of the profits of the institutional investors and greater pressure on commission rates.¹³¹ A third firm expressed concern over the meaning of the phrase "investment discretion." The use of that phrase in Section 11(a)(1) could prohibit, it believed, virtually every transaction in which a broker recommends any securities for purchase or sale to any type of account not specifically exempted. That commentator favored an exemption based on a one-fee concept applicable to all transactions.¹³² In contrast, another brokerage firm preferred an exemption for an institutional account whose size does not exceed \$200,000.¹³³ Yet another organization urged broader exemptions for pension funds or other aggregations of investments by smaller investors on the theory that, in an environment that no longer allows protections of cartel pricing, there is no logic to preventing a broker from dealing with any class of potential investors, especially pension funds or other groups which are supervised by financially experienced businessmen and professionals.¹³⁴

An extensive set of comments was jointly submitted by eight member organizations of the NYSE which act both as money managers and brokers. They believed that the Commission, and the Secretary of the Department of Labor with respect to the Employee Retirement

Income Security Act of 1974 ("ERISA"), should, subject to appropriate safeguards, permit member firms to provide money management services to institutional accounts, including mutual funds, investment companies and ERISA accounts, and to effect transactions for such accounts.¹³⁵ The objective of Section 11(a)(1), they indicated, was to preclude institutional membership on the exchanges but not to discriminate against unaffiliated member organizations which provide discretionary management services. Citing the 1975 Amendments' goal of increased competition through the elimination of unjustifiable restraints and equal regulation of all dealers, markets for qualified securities, exchange members, and brokers, they asserted Section 11(a)(1) would run counter to those goals. First, member organizations are now experiencing difficulty in competing for new discretionary accounts and will be, on May 1, 1978, completely barred from competing with nonmember brokers which have accounts over which they or their associated persons exercise investment discretion.¹³⁶ The result would be lessened competition in the provision of money management and brokerage services and greater concentration of those functions in fewer entities. Second, the increased concentration and decreased competition would not be justified by the risk that the member will effect excessive trading in managed accounts for the purpose of generating commissions. Those commentators pointed out that there is no evidence of widespread breaches of fiduciary duty; that a competitive rate structure generally reduces the potential for conflicts of interest; and that, even if there were abuses, there exist tested and effective methods to handle such conflicts.¹³⁷ Third, with respect to "churning," they indicated that investors judge member firm money managers on the basis of overall service and performance; that member firms offer a variety of pricing plans for their money management services which permit investors to assess and to avoid the risk of excessive trading; that effective legal prohibitions on excessive trading in managed accounts currently exist; and that appropriate disclosure requirements could be imposed on members executing transactions for their managed accounts.¹³⁸ Fourth, they asserted that Congress was uncertain, at the time of the passage of the 1975 Amendments, as to the effect of negotiated commission rates and that it indicated a need for flexible Commission authority to respond to new developments. The eco-

¹²⁵ Merrill Lynch, at 2, 7. Accord, Overseas, at 8.

¹²⁶ Merrill Lynch, at 2, 7.

¹²⁷ Response of Oppenheimer & Co., Inc. (hereinafter referred to as Oppenheimer), at 10, File No. S7-613.

¹²⁸ Response of H. O. Peet & Co., Inc., at 2-3, File No. S7-613. Examples of types of transactions given by that respondent included union defense funds, hospital or college endowment funds, funeral trusts, charitable trusts or foundations, corporate portfolios, and police retirement systems.

¹²⁹ Response of F. L. Putnam & Company, Inc., at 1, File No. S7-613.

¹³⁰ Response of Shufro, Rose & Ehrman, at 1-2, File No. S7-613.

¹³¹ Eight NYSE firms, at 2-3.

¹³² Accord, Response of Lazard, Frères & Co. (hereinafter referred to as Lazard, Frères), at 1-2, File No. S7-613.

¹³³ Eight NYSE Firms, at 6-7.

¹³⁴ Id., at 8-10. There also was some discussion of unfair allocation of securities between accounts and "dumping". Those conflicts were seen by the commentators to be not peculiar to the combination of money management and brokerage. Id., at 10, n. 4.

¹²⁵ BSE, at 15-16.

¹²⁶ NYSE, at 25-26.

¹²⁷ Phlx, at 20-21.

¹²⁸ Response of the American Council of Life Insurance (June 15, 1976), at 7-9, File No. S7-613. But see Response of the American Council of Life Insurance (Feb. 9, 1977) File No. S7-613.

conomic power of institutional investors, competition for their business under negotiated rates, and the increased emphasis on fiduciary duties, particularly with respect to ERISA accounts, today serve, they continued, as effective restraints on conflicts of interest and obviate the need for Section 11(a).¹³⁸

Those member organizations also stated that it is in the public interest to encourage a large number of investment decision makers to offer services to institutional accounts. In their opinion, a larger number of participants in such activities assures realistic pricing of securities and greater depth, liquidity, and stability of the markets.¹³⁹

In that connection, it was also suggested that member organizations are offering money management services to individuals and institutions whose business may not be sufficiently large or profitable to secure the services of the major financial institutions.

From their viewpoint, those member organizations believed that their ability to raise capital and to preserve their economic health depends, in light of the reduction in income from the brokerage business under negotiated commission rates, upon alternative sources of income such as investment advisory fees. That group of respondents contended that investment advisory fees are a major stabilizing factor in overall revenues and aid members' long-term economic well-being, unlike commission income, which is dependent on stock prices and volume and therefore inherently unstable.¹⁴⁰ The respondents sought an exemptive rule under section 11(a)(1)(H) that would allow exchange members to execute transactions on the exchanges for accounts over which they exercise investment discretion but in which they have no beneficial interest.¹⁴¹

Question Eight:

What additional recordkeeping rules, if any, will be necessary or appropriate to ensure adequate documentation by members of their compliance with Section 11(a)(1) and the rules thereunder? To what extent should exchanges or exchange officials require additional documentation in connection with trading?

There were no proposals and generally no comments on this question other than, in one case, opposition to any new rules.¹⁴²

¹³⁸ *Id.*, at 12.

¹³⁹ *Id.*, at 13-14.

¹⁴⁰ *Id.*, at 14-15. See also Ferris & Co., at 1.

¹⁴¹ *Id.*, at 15-17.

¹⁴² NYSE, at 27.

Question Nine:

Has the experience to date with unfixed commission rates affected in any way the reasoning (and the factual predicates therefor) underlying the enactment of Section 11(a)? In an environment of unfixed commission rates, is Section 11(a) a disincentive to exchange membership on the part of current or prospective member firms which do not, or do not propose to, maintain a presence on exchange floors? On the part of other current or prospective members? Should the Commission propose to the Congress any amendments to Section 11(a)?

The commentators generally found little current justification for Section 11(a) in light of the advent of negotiated commission rates; they thought it to be a serious disincentive to exchange membership, but did not favor any immediate resort to amendment by legislation. The bulk of comments addressed the issue of the validity of the reasoning underlying the enactment of Section 11(a). The U.S. broker-dealers stated, among other things, that there is little chance for abuse if a firm does not act as an underwriter or make markets;¹⁴³ that it is too early to draw any conclusions;¹⁴⁴ that negotiated commission rates have removed the incentive for institutional membership, that is, the recapture of excessive brokerage fees;¹⁴⁵ and that there is no evidence of significant abuse arising from the potential conflict of interest between professional management of money and brokerage.¹⁴⁷ After a detailed analysis, one larger brokerage firm concluded that a number of potential conflicts of interest, except for churning and discrimination among accounts, do not arise from the combination of brokerage and money management; that such conflicts do not support Section 11(a); and that competitively determined rates have resolved the institutional membership issue.¹⁴⁶ The natural person exemption, that commentator further argued, implies that Section 11(a)(1) was grounded upon a basis other than the prevention of conflicts of interest since it fails to face the reality that individuals generally are not more sophisticated or protected than institutional investors. That commentator further asserted that the possession of an exchange membership is not necessary to

¹⁴³ Response of Bartlett & Co. (hereinafter referred to as Bartlett & Co.), at 1-2, File No. S7-613.

¹⁴⁴ Merrill Lynch, at 9.

¹⁴⁵ Ferris & Co., at 1; Lazard, Freres, at 2; Oppenheimer, at 7-8.

¹⁴⁶ Ferris & Co., at 1. See also Bartlett & Co., at 1.

¹⁴⁷ Oppenheimer, at 2.

satisfy an adviser's fiduciary obligation to a managed account and that, regardless of Section 11(a), institutions enter the securities business without an emphasis on the execution of affiliated business.¹⁴⁸

Other submissions reflected similar views. One U.S. affiliate of several foreign banks contended that Section 11(a)(1) separates two functions, i.e., broker and money management, which are complementary and have been historically conducted abroad by one organization, and that the pressure for institutional membership has been substantially eased, if not eliminated, by negotiated commission rates.¹⁴⁹ The Boston Stock Exchange and the NYSE suggested that experience to date has not vindicated the reasoning underlying the enactment of Section 11(a). Nonetheless, they felt that Section 11(a) creates a disincentive for exchange membership if a person provides both money management and brokerage services.¹⁵¹ After tracing the history of Section 11(a) and its predecessor, Rule 19b-2, the Philadelphia Stock Exchange concluded that, while competitive commission rates have lessened the incentive for institutional membership, an institution should have the right to join an exchange. Denial of such a right, it urged, unfairly penalizes and restricts the institutions in regard to direct access to the exchanges.¹⁵²

The exchanges and other commentators either favored a delay on legislative proposals in order gain experience under Section 11(a)¹⁵³ and to consider modifications,¹⁵⁴ or flatly opposed any amendments.¹⁵⁵ The NYSE, however, proposed an amendment to extend Section 11(a)(1) to apply to any "dealer" effecting trades in "any market."¹⁵⁶

¹⁴⁸ Oppenheimer, at 4-11.

¹⁴⁹ ABD, at 2.

¹⁵⁰ BSE, at 17; NYSE, at 27.

¹⁵¹ Phix, at 6-7.

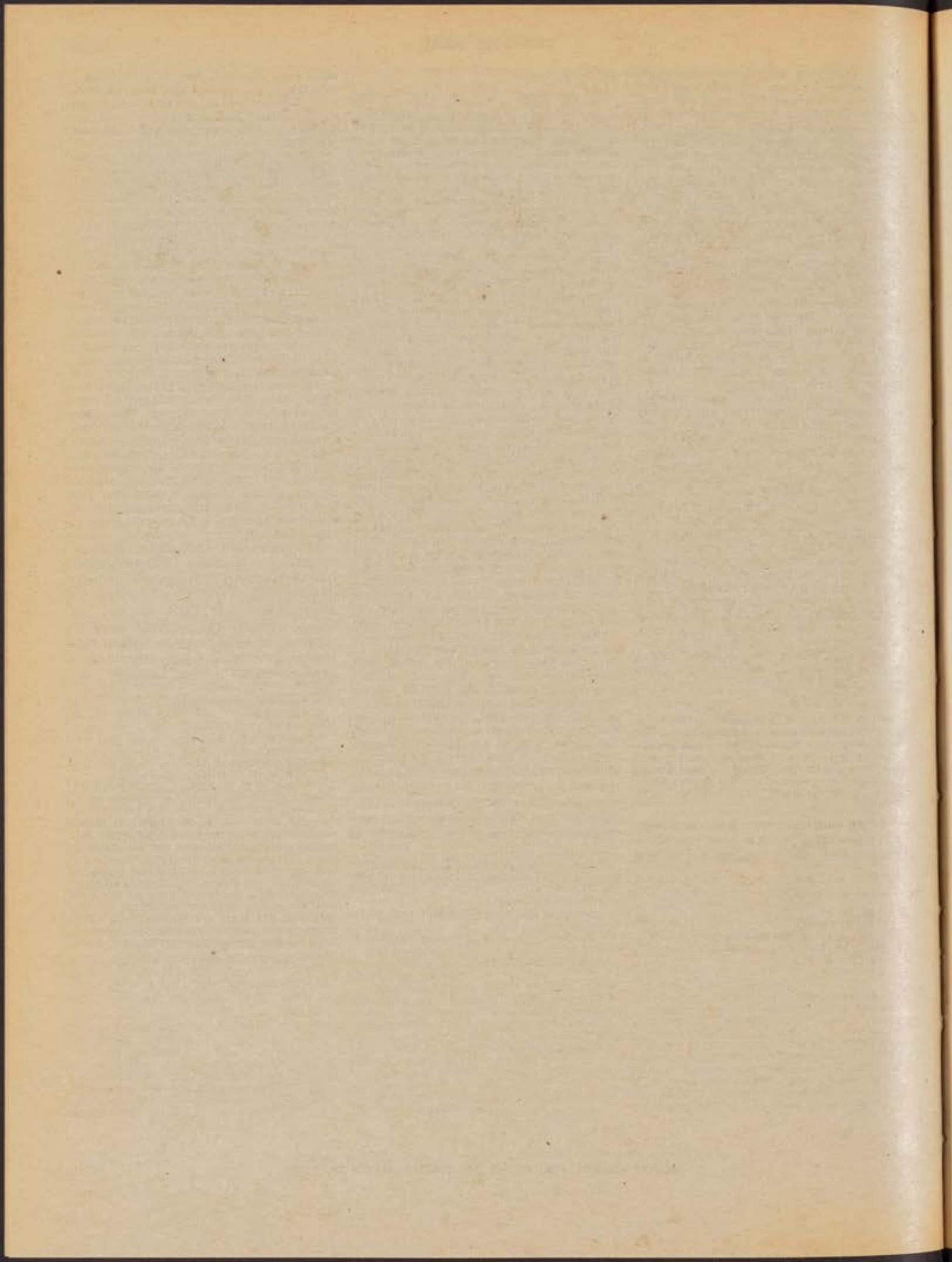
¹⁵² Overseas, at 8.

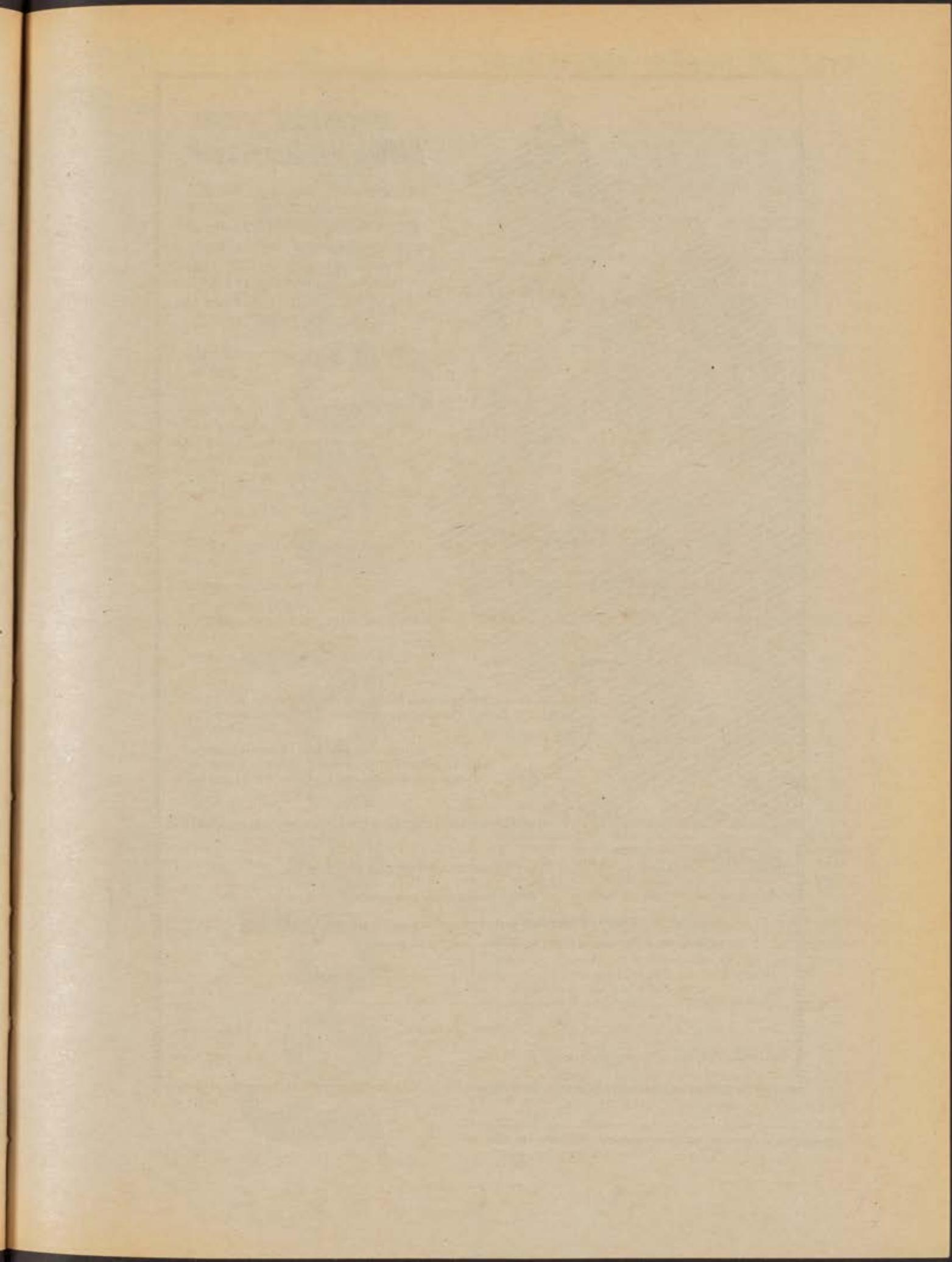
¹⁵³ Oppenheimer, at 11.

¹⁵⁴ BSE, at 17; Merrill Lynch, at 9.

¹⁵⁵ NYSE, at 27. The SIA initially proposed, under certain conditions, a broadening of the scope of Section 11(a). See text accompanying notes 5-6, 40-43 *supra*. Its initial position was later retracted. The NYSE also sought exemptions to cover the situations in which (1) a member has an inventory remaining from a prior offering and wishes to dispose of those shares, (2) there is an order imbalance in a specific security on the floor which requires member assistance to the specialist, (3) there is a special block transaction under particular NYSE rules, and (4) bond trading on the floor. NYSE, at 7-9.

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