

Federal Register

WEDNESDAY, MARCH 30, 1977



highlights

Soon, your
AGENCY
must take
ACTION.

In
SUMMARY:

on the
EFFECTIVE DATE
of April 1, 1977,
preambles for proposed and
final rules must be clear, concise,
and in the new format.

FOR FURTHER INFORMATION CONTACT:

Martha Girard, Special Projects
Unit, 523-5240.

SUPPLEMENTARY INFORMATION

is available at 1 CFR 18.12 (1977),
and 41 FR 56623, December 29, 1976.

All proposed and final rules received by the
FEDERAL REGISTER on or after April 1, 1977,
which do not comply with the new PREAMBLE
requirement will not be accepted.

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

Reservations for May and June are being accepted for
the free weekly workshops on how to use the FEDERAL
REGISTER. The sessions are held at 1100 L St. N.W.,
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Each session includes a brief history of the FEDERAL
REGISTER, the difference between legislation and regula-
tions, the relationship of the FEDERAL REGISTER to the
Code of Federal Regulations, the elements of a typical
FEDERAL REGISTER document, and an introduction to the
finding aids.

FOR RESERVATIONS call: Dean Smith, 202-523-5282.

OUT OF TOWN WORKSHOPS PREVIOUSLY ANNOUNCED

Honolulu, Hawaii, 4-6. For reservations call: Bernice
Wong, 808-948-8175.

(Details: 42 FR 13166, 3-9-77.)

Dallas, Fort Worth, Waco, and El Paso, Tex., 4-12, 4-13,
4-18.

(Details: 42 FR 14889, 3-17-77.)

Dallas, 4-12. For reservations call: Connie Burke,
214-749-3355.

Fort Worth, 4-12. Call: Chris Horton, 817-334-3285.

Waco, 4-13. Call: Basil Thomson, 817-755-2561.

El Paso, 4-18. Call: Lupe Romero, 915-543-7714.

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

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
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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Phone 523-5240

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

Rules Going Into Effect Today

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

Next Week's Deadlines for Comments On Proposed Rules

AGRICULTURE DEPARTMENT

- Farmers Home Administration—
Business and Industrial Loan Programs; comments by 4-4-77. 12145; 3-3-77
Fair housing affirmative marketing plan from builders, developers and contractors; comments by 4-8-77. 13116; 3-9-77
Rural Electrification Administration—
New specification for spring action type bonding connectors within buried plant housings; comments by 4-7-77. 13025; 3-8-77
Revised pages of specifications for two- and three-electrode gas tube protectors (2 documents); comments by 4-7-77. 13024; 3-8-77

CIVIL AERONAUTICS BOARD

- Exemption of air carriers for military transportation; statements of general policy; minimum rates; comments by 4-7-77. 15336; 3-21-77

COST ACCOUNTING STANDARDS BOARD

- Contract coverage; miscellaneous changes; comments by 4-8-77. 6591; 2-3-77

DEFENSE DEPARTMENT

- Air Force Department—
Air Force Discharge Review Board, revision; comments by 4-7-77. 13124; 3-9-77

ENVIRONMENTAL PROTECTION AGENCY

- Air quality implementation plans; sulfur content of fuel oil burned by large fuel burning sources, Fitchburg, Mass.; comments by 4-8-77. 13128; 3-9-77
Approval and promulgation of Arizona implementation plan; comments by 4-7-77. 13026; 3-8-77
Pesticides in or on raw agricultural commodities, proposed tolerance for dinoseb; comments by 4-6-77. 13129; 3-9-77

FEDERAL COMMUNICATIONS COMMISSION

- Availability of land mobile channels in 470-512 MHz band in thirteen urbanized areas of the United States; comments by 4-8-77. 13309; 3-10-77 [First published at 42 FR 8157, Feb. 9, 1977]
FM broadcast stations in Fargo and Mayville, N. Dak.; changes in table of assignments; reply comments by 4-4-77. 6854; 2-4-77

FEDERAL DEPOSIT INSURANCE CORPORATION

- Interest on deposits; noninsured banks in Massachusetts; comments by 4-4-77. 12188; 3-3-77

FEDERAL ENERGY ADMINISTRATION

- Oil import regulation; allocations for the period beginning 5-1-77; comments by 4-5-77. 15317; 3-21-77

FEDERAL POWER COMMISSION

- Filing of Federal rate schedules; comments extended to 4-4-77. 13561; 3-11-77
[First published at 42 FR 9032, Feb. 14, 1977]

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

- Food and Drug Administration—
Diagnostic X-Ray systems and their major components; image receptor supports; comments by 4-4-77. 12441; 3-4-77
FD&C Yellow No. 5; labeling in food and human drug use and restriction on use in certain human drugs; comments by 4-5-77. 6835; 2-4-77
Mozzarella cheeses; optional use of safe and suitable artificial coloring; comments by 4-4-77. 5983; 2-1-77
Nutrition labeling exemption for certain dairy products; comments by 4-5-77. 6834; 2-4-77

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

- Office of the Secretary—
Privacy Act of 1974, implementation; comments by 4-7-77. 13123; 3-9-77
Office of Assistant Secretary for Housing—Federal Housing Commissioner
Housing Assistance Payments Program, maximum total ACC commitment and project account; comments by 4-5-77. 15234; 3-18-77
Housing Assistance Payments Program, new construction; comments by 4-5-77. 15233; 3-18-77
Public housing agencies, tax exemption of obligations; comments by 4-5-77. 15232; 3-18-77

INTERIOR DEPARTMENT

- Fish and Wildlife Service—
Critical habitat determinations; six butterflies and two plants; comments by 4-8-77. 7972; 2-8-77
Endangered status and critical habitat; giant anole; comments by 4-7-77. 2101; 1-10-77
Endangered status and critical habitat; St. Croix ground lizard; comments by 4-8-77. 2102; 1-10-77

Indian Affairs Bureau—

- Grand River Ottawa Indians, preparation of role to be used to distribute judgement funds; comments by 4-8-77. 13123; 3-9-77

Land Management Bureau—

- Surface Management of public land under U.S. mining laws; procedures to minimize adverse environmental impacts; comments extended to 4-5-77. 9039; 2-14-77 [First published at 41 FR 53428, Dec. 6, 1976]
Surface management; environmental impacts from mining operations; meetings; comments by 4-5-77. 12071; 3-2-77
Surface management of public land under U.S. mining laws; comment period extended to 4-5-77. 13567; 3-11-77 [First published at 41 FR 53428, Dec. 6, 1976]

National Park Service—

- Single family noncommercial residential property; conveyance of freehold and leasehold interests on NPS system lands; comments by 4-3-77. 8386; 2-10-77 [First published at 42 FR 812, Jan. 4, 1977]

LABOR DEPARTMENT

- Occupational Safety and Health Administration—
Machinery and machine guarding; request for information and notice of public meetings; comments by 4-7-77. 1742; 1-7-77, 1806; 1-7-77

TRANSPORTATION DEPARTMENT

- Coast Guard—
Vessel traffic systems; proposed Prince William Sound Vessel Traffic Service; comments by 4-6-77. 7164; 2-7-77
Federal Aviation Administration—
Airworthiness directive for Messerschmitt-Bolkow-Blohm (MBB) helicopters; comments by 4-4-77. 9681; 2-17-77
Federal airway, Tenn.; alteration; comments by 4-4-77. 12190; 3-3-77
Federal airway segment, Fla.; designation; comments by 4-4-77. 12190; 3-3-77
Jet route, Calif.; alteration; comments by 4-4-77. 12191; 3-3-77
McDonnell Douglas Model DC-10-10F and -30F airplanes; airworthiness directives; comments by 4-6-77. 13302; 3-10-77
Regulatory review program; comments by 4-8-77. 14885; 3-17-77 [First published at 42 FR 3863, Jan. 21, 1977]
Transition area in Wilson, N.C.; comments by 4-4-77. 9683; 2-17-77

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National Highway Traffic Safety Administration—
1981-84 Passenger car; average fuel economy standards; comments by 4-7-77..... 10321; 2-22-77

VETERANS ADMINISTRATION

Fiduciary activities; competency determinations; due process; comments by 4-4-77..... 12202; 3-3-77

Next Week's Meetings

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—
Shippers Advisory Committee, Lakeland, Fla.: (open), 4-5-77.. 15356; 3-21-77
[First published at 42 FR 12897 Mar. 7, 1977]

Animal and Plant Health Inspection Service—
Pseudorabies Conference; Ames, Iowa (open), 4-4 and 4-5-77..... 14136; 3-15-77

Forest Service—
Grazing livestock on National Forest System lands, meeting, Salt Lake City, Utah (open), 4-8-77.. 13565; 3-11-77

ARTS AND HUMANITIES, NATIONAL FOUNDATION

Federal Graphics Evaluation Advisory Panel, Washington, D.C. (open with restrictions), 4-6-77..... 13868; 3-14-77

Literature Advisory Panel, Minneapolis, Minn. (partially closed), 4-7 thru 4-9-77..... 15981; 3-24-77

Public Programs Panel, Washington, D.C. (closed), 4-6-77 and 4-7-77.. 13359; 3-10-77

Research Grants Panel Advisory Committee, Washington, D.C. (closed), 4-4 and 4-5-77..... 13099; 3-8-77
[First published at 42 FR 10908, Feb. 24, 1977]

Theatres Advisory Panel, Washington, D.C. (closed), 4-3-77..... 13868; 3-14-77

Visual Arts Advisory Panel, Washington, D.C. (closed), 4-5-77..... 13869; 3-14-77

CIVIL RIGHTS COMMISSION

Colorado Advisory Committee, Denver, Colo. (open), 4-9-77..... 15943; 3-24-77

Connecticut Advisory Committee, Middletown, Conn. (open), 4-7-77.. 13573; 3-11-77

Delaware Advisory Committee, Wilmington, Del. (open), 4-8-77..... 14896; 3-17-77

Illinois Advisory Committee, Chicago, Ill. (open); 4-4-77.. 14896; 3-17-77

COMMERCE DEPARTMENT

Domestic and International Business Administration—
Commerce Technical Advisory Board, Washington, D.C. (open), 4-6 and 4-7-77..... 14765; 3-16-77

Electronic Instrumentation Technical Advisory Committee, Washington, D.C. (partially open), 4-5-77.. 14763; 3-16-77

Management-Labor Textile Advisory Committee, Washington, D.C. (open with restrictions), 4-7-77.. 15721; 3-23-77

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Numerically Controlled Machine Tool Technical Advisory Committee, Washington, D.C. (open), 4-6-77.. 14764; 3-16-77

National Oceanic and Atmospheric Administration—
Gulf of Mexico Fishery Management Council, Scientific and Statistical Committee, Biloxi, Miss. (open with restrictions), 4-5 thru 4-8-77.. 13859; 3-14-77

CONSUMER PRODUCT SAFETY COMMISSION

Miniature Christmas Tree Lights, Intent to Initiate Standards Development, Bethesda, Md. (open), 4-7-77.. 14765; 3-16-77

DEFENSE DEPARTMENT

Air Force Department—
Scientific Advisory Board, Eglin AFB, Fla. (closed), 4-6 and 4-7-77.. 14767; 3-16-77

Office of the Secretary—
Armed Forces Epidemiological Board, Subcommittee on Disease Control (polio), Washington, D.C. (open), 4-7-77..... 15456; 3-22-77

Chemical Propulsion Advisory Committee, John F. Kennedy Space Center, Fla. (open with restrictions), 4-5 thru 4-7-77..... 13338; 3-10-77

Defense Intelligence Agency Scientific Advisory Committee, Washington, D.C. (closed), 4-4 and 4-5-77.. 10886; 2-24-77

Defense Intelligence Agency Scientific Advisory Committee, Rosslyn, Va. (closed), 4-6-77.. 12246; 3-3-77

Defense Intelligence School Board of Visitors, Washington, D.C. (closed), 4-6 thru 4-8-77.. 13578; 3-11-77
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Electron Devices Advisory Group, New York, N.Y. (closed), 4-5-77.. 13340; 3-10-77

Wage Committee, Washington, D.C. (closed), 4-5-77.. 9200; 2-15-77

ELECTRONIC FUND TRANSFERS, NATIONAL COMMISSION

Meeting, Washington, D.C. (open with restrictions), 4-7-77..... 15761; 3-23-77

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Enhanced Oil Recovery Workshop, Bartlesville, Okla. (open), 4-5 and 4-6-77..... 13044; 3-8-77

Liquid Metal Fast Breeder Reactor (LMFBR) Steering Committee, Washington, D.C. (open with restrictions), 4-5 and 4-6-77..... 15360; 3-21-77

ENVIRONMENTAL PROTECTION AGENCY

Ad Hoc Study Group on Recombinant DNA Activities, Washington, D.C. (open), 4-5 and 4-6-77..... 14769; 3-16-77

Science Advisory Board's Environmental Health Advisory Committee; Arlington, Va. (open), 4-7-77.. 15123; 3-18-77

FEDERAL COMMUNICATIONS COMMISSION

Industry Advisory Committee, Washington, D.C. (open), 4-7-77..... 14770; 3-16-77

FEDERAL ENERGY ADMINISTRATION

Food Industry Advisory Committee, Washington, D.C. (open), 4-4-77.. 15113; 3-18-77

FEDERAL POWER COMMISSION

Gas Policy Advisory Council, Washington, D.C. (open), 4-7-77..... 13153; 3-9-77

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Meeting, Washington, D.C. (closed), 4-7-77..... 15755; 3-23-77

FEDERAL REGISTER OFFICE

"Federal Register—What it is and how to use it" Workshop, Honolulu, Hawaii (reservations required), 4-6-77.. 13166; 3-9-77

FINE ARTS COMMISSION

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FOREIGN CLAIMS SETTLEMENT COMMISSION

Hungarian Claims, Washington, D.C. (open), 4-7-77..... 14784; 3-16-77

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Alcohol, Drug Abuse and Mental Health Administration—

Biological Sciences Training Review Committee; Rockville, Md. (partially open), 4-3-77..... 11887; 3-1-77

Psychological Sciences Fellowship Review Committee; Rockville, Md. (partially open), 4-7 thru 4-9-77.. 11887; 3-1-77

Education Office—

Bilingual Education National Advisory Council; New Orleans, La. (open), 4-3 thru 4-6-77.. 15144; 3-18-77

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This is a continuing numerical listing of public bills which have become law, together with the law number, the title, the date of approval, and the U.S. Statutes citation. The list is kept current in the FEDERAL REGISTER and copies of the laws may be obtained from the U.S. Government Printing Office.

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presidential documents

Title 3—The President

PROCLAMATION 4494

National Farm Safety Week, 1977

By the President of the United States of America

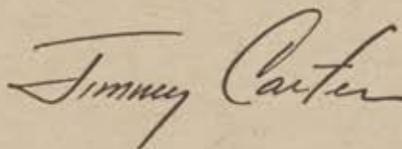
A Proclamation

Many of the men and women who founded our nation were farmers, and farmers were a major factor in turning this land from a wilderness to a great and productive nation. As we enter our third century, the majority of our people no longer live on farms, but each farmer and farm worker has a more vital role than ever before in our common welfare. Not only our own people in cities and towns, but millions of others around the world, depend on the food and fiber produced on America's farms.

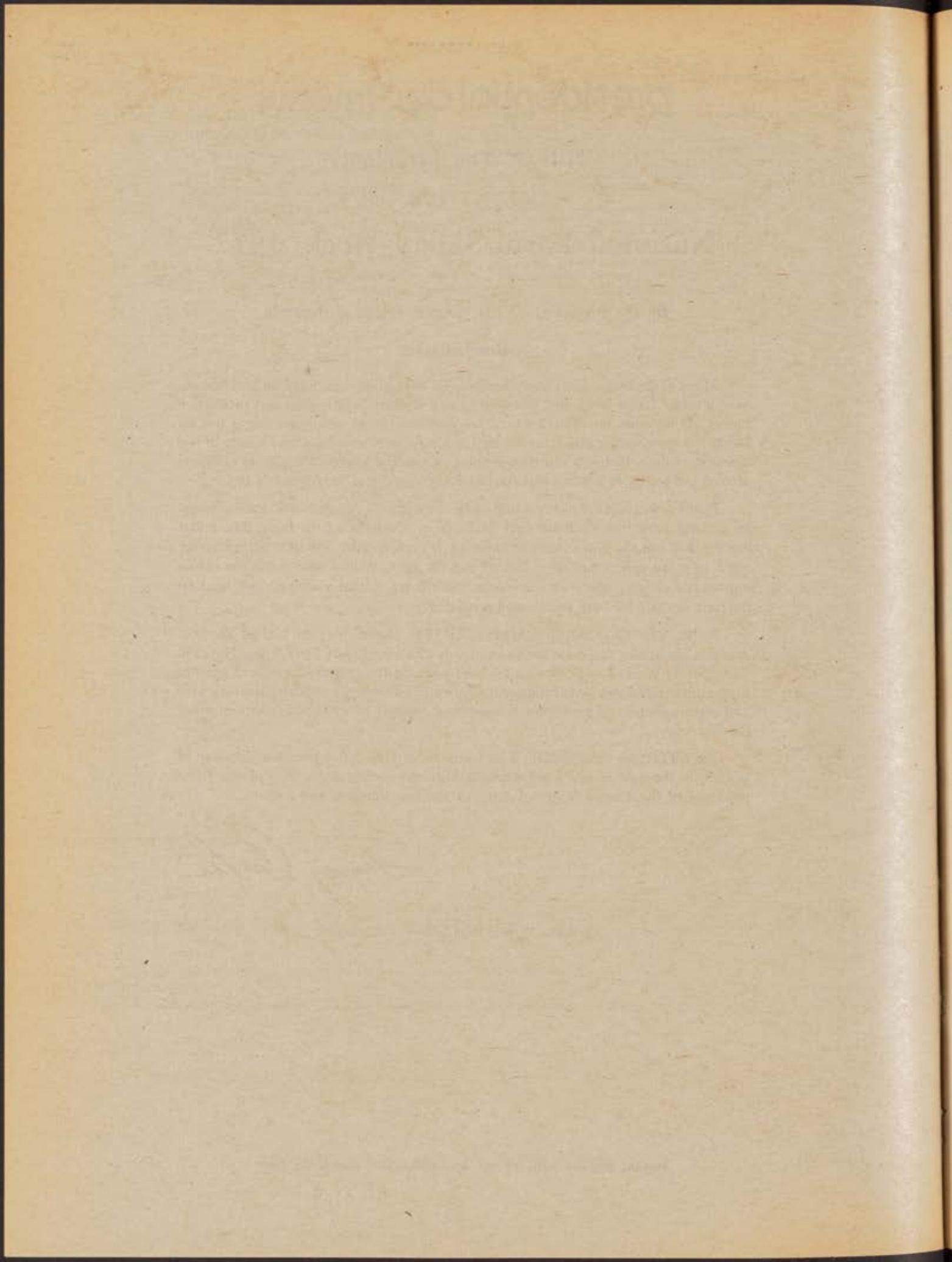
Every year hundreds of thousands of farm and ranch residents suffer unnecessary injury, and sometimes disability and death, from accidents on the farm. The dollar loss is great, but the cost in human suffering is even greater. We have already done much to make agriculture safer, but we can do more. With a new awareness of the importance of farm safety we can insure that the equipment and chemicals used on the farm are safe for both farmer and consumer.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate the week of July 25 through July 31, 1977, as National Farm Safety Week. I urge all who live and work on the nation's farms and ranches to commit themselves to safe conduct in all activities. Further, I urge all who work with and serve agricultural producers to assist and support them in this effort in every possible way.

IN WITNESS WHEREOF, I hereunto set my hand this twenty-eighth day of March, in the year of our Lord nineteen hundred seventy-seven, and of the Independence of the United States of America the two hundred and first.



[FR Doc.77-9624 Filed 3-28-77;3:07 pm]



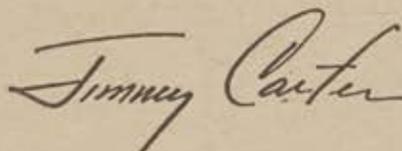
Executive Order 11979

March 28, 1977

National Commission on the Observance of International Women's Year, 1975

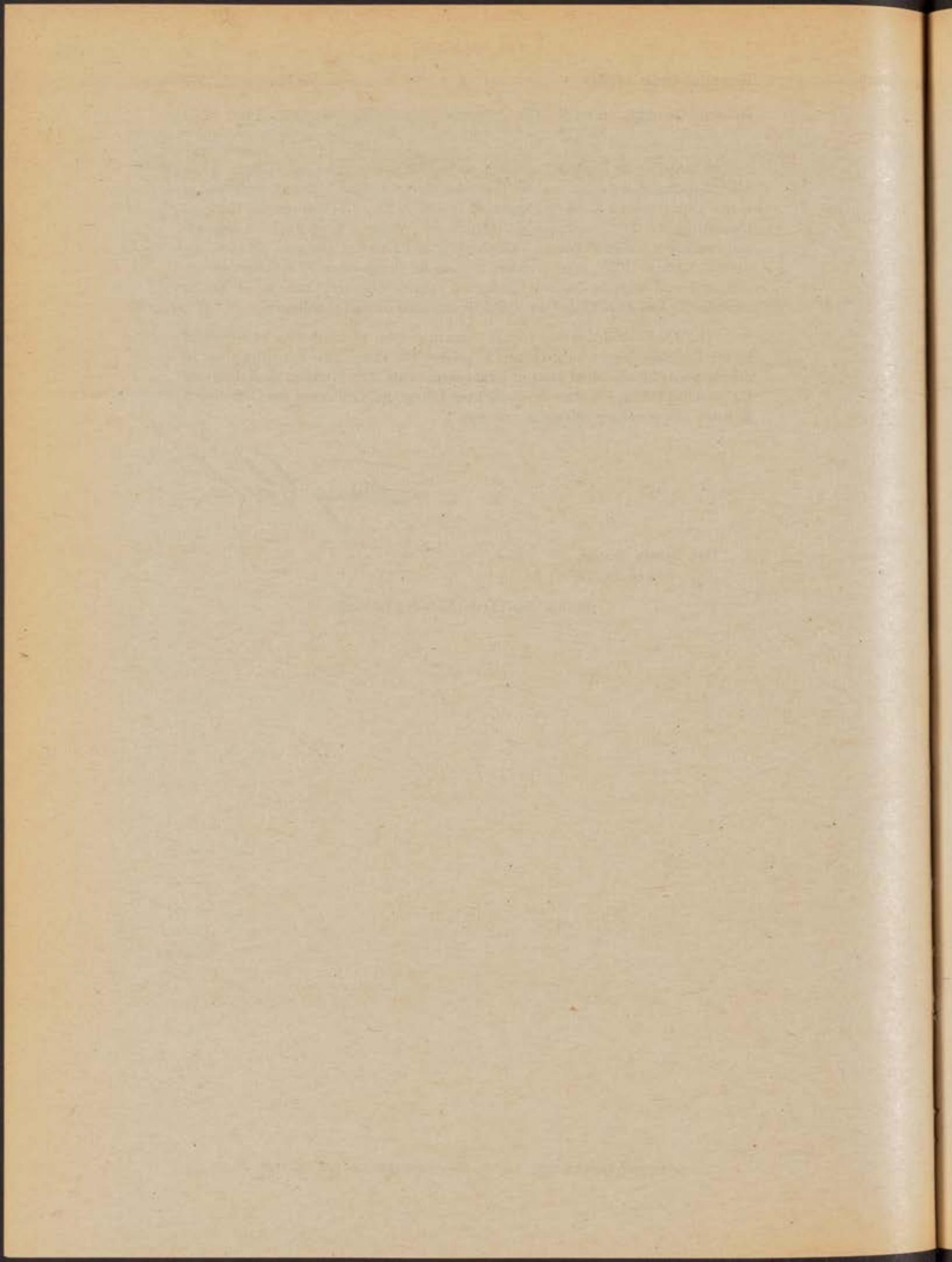
By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in accord with Section 2 of the Act approved December 23, 1975, to direct the National Commission on the Observance of International Women's Year, 1975, to organize and convene a National Women's Conference, and for other purposes (Public Law 94-167, 89 Stat. 1003), and in order to increase the number of members on the Commission, it is hereby ordered that Section 1(b) of Executive Order No. 11832, as amended by Executive Order No. 11889, is amended to read as follows:

"(b) The Commission shall consist of not more than 45 members to be appointed by the President from among citizens in private life, except that not more than 10 members may be officials of State or local governments. The President shall designate the presiding officer, who may designate from among the members of the Commission as many vice presiding officers as necessary."



THE WHITE HOUSE,
March 28, 1977.

[FR Doc. 77-9712 Filed 3-29-77; 11:58 am]

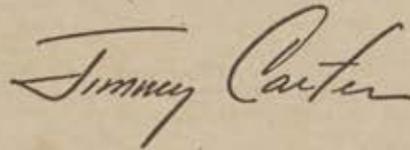


Executive Order 11980

March 29, 1977

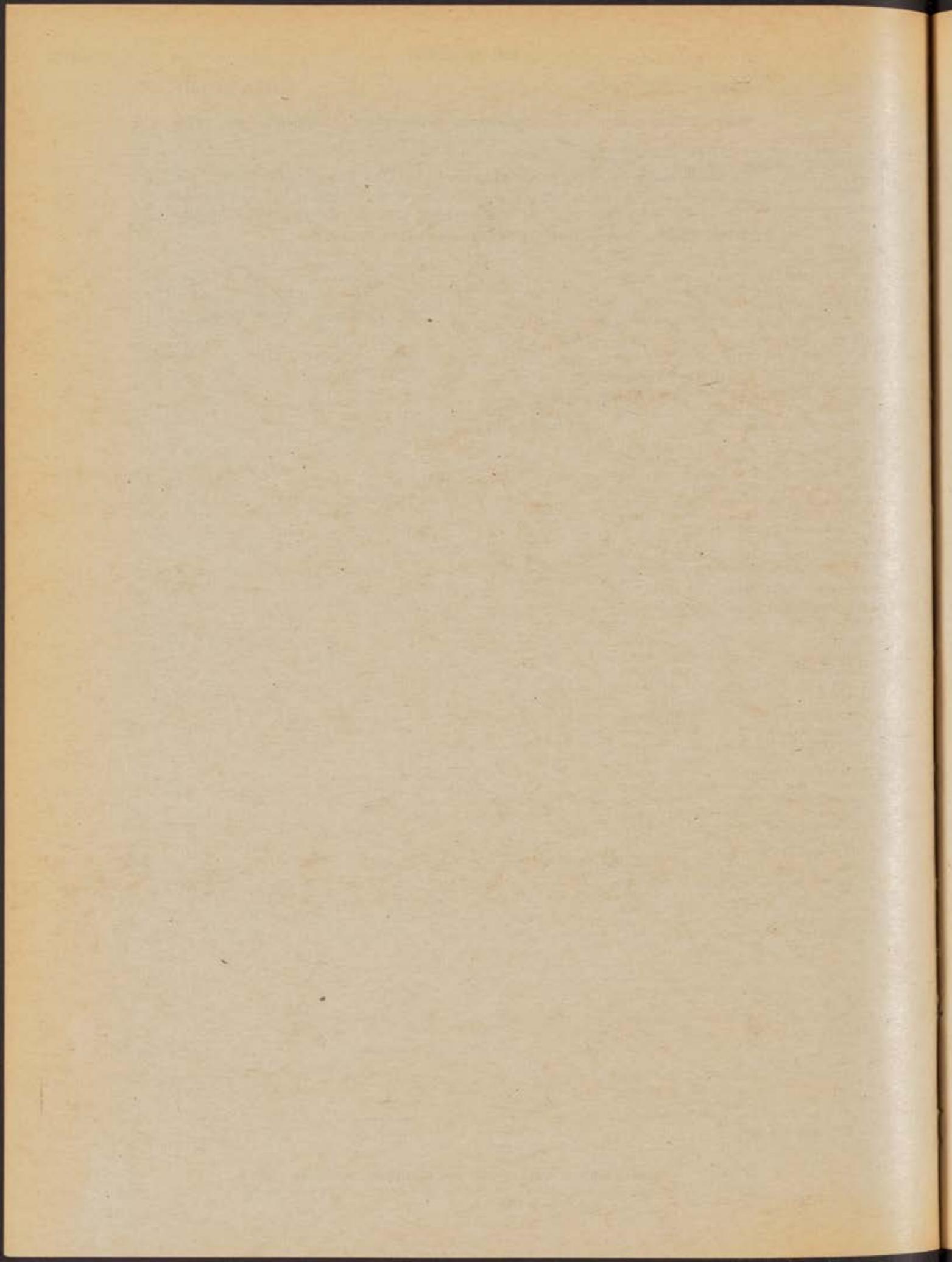
National Commission on the Observance of International Women's Year, 1975

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, Section 1(b) of Executive Order No. 11832, as amended, is further amended by substituting "42 members to be appointed" for "45 members to be appointed".



THE WHITE HOUSE,
March 29, 1977.

[FR Doc.77-9713 Filed 3-29-77;11:59 am]



rules and regulations

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

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

Title 7—Agriculture

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

[Amdt. 3]

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment relieves on March 27, 1977, the Sunday packaging prohibition. The further prospect of rain, reduced supplies, and good market demand have prompted the South Texas Lettuce Committee to request relief from the Sunday packaging prohibition to allow the industry sufficient operating time to satisfy existing and prospective orders for lettuce.

EFFECTIVE DATE: March 27, 1977.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 144 and Order No. 971 regulate the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The South Texas Lettuce Committee, established under the order, is responsible for local administration of the program.

The committee reports that the lettuce deal in the production area is nearing completion. There is the further prospect of rain, supplies are short, and market demand is good. For these reasons, the committee has requested relief from the regulation's prohibition against Sunday packaging of lettuce, in order to allow the industry sufficient packaging time to satisfy existing and prospective orders for lettuce.

Findings. (a) It is hereby found that this amendment to the handling regulation, as set forth, will tend to effectuate the declared policy of the act.

(b) It is hereby found that it is impractical and contrary to the public interest to give preliminary notice, or to engage in public rulemaking procedure, and that good cause exists for not post-

poning the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) this amendment must become effective immediately if producers are to derive any benefits therefrom, (2) compliance with this amendment will not require any special preparation on the part of handlers, and (3) this amendment relieves restrictions on the handling of lettuce grown in the production area.

REGULATION, AS AMENDED

In § 971.317 (41 FR 51388; 42 FR 3626, 8361) the introductory paragraph is hereby amended by adding the following thereto:

§ 971.317 Handling regulation.

,,*, and also except that the prohibition against the packing of lettuce on Sundays shall not apply on March 27, 1977.

(Secs. 1-49, 48 Stat. 31, as amended (7 U.S.C. 601-674).)

Effective date. Dated March 24, 1977, to become effective March 27, 1977.

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

[FR Doc. 77-9433 Filed 3-29-77; 8:45 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., 1976 Crop Corn Supplement, Amdt. 1]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1976 Crop Corn Loan and Purchase Program

Correction

In FR Doc. 77-5264 appearing at page 10301 in the issue for Tuesday, February 22, 1977, in § 1421.113 (a) in the listings under Iowa, Union County now reading "1.53" should read "1.51".

[CCC Grain Price Support Regulations, 1976 Crop Sorghum Supplement, Amdt. 1]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1976 Crop Sorghum Loan and Purchase Program, Correction

In FR Doc. 42-10306 of February 22, 1977, paragraph (a) of § 1421.237 for the

State of South Dakota is corrected by replacing the county loan rate appearing on page 10308 for Yankton with \$2.40 and by inserting \$2.36 for all other counties.

Effective date: March 30, 1977.

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

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

[FR Doc. 77-9528 Filed 3-29-77; 8:45 am]

Title 19—Customs Duties

CHAPTER II—INTERNATIONAL TRADE COMMISSION

PART 201—RULES OF GENERAL APPLICATION

Notification to Other Federal Agency of Matter Within Its Jurisdiction

AGENCY: United States International Trade Commission.

ACTION: Final rule.

SUMMARY: This rule establishes a standard procedure for the Commission to follow in determining whether to notify another Federal agency of a matter that may fall within the jurisdiction of that agency. At present no standard procedure exists and the Commission determines on a case-by-case basis whether to give such notification. The proposed procedure would provide for the routine handling of those determinations in an expeditious manner without disturbing existing investigations.

EFFECTIVE DATE: April 29, 1977.

FOR FURTHER INFORMATION CONTACT:

Jeffrey M. Lang, (202) 523-0321.

SUPPLEMENTARY INFORMATION: Several comments on the proposed rule were received and were considered in the decision to issue a rule in this matter. The comments filed make three relevant suggestions, as follows:

(1) Two commenters suggest that if the Commission has reason to believe that the subject matter of a Commission investigation falls within a statute that is under another agency's jurisdiction, the Commission should stop (or not start, as the case may be) its investigation.

(2) One commenter suggests that the proposed rule, if issued, clearly be made to apply before an investigation begins.

(3) One commenter suggests that when the "reason to believe" is the Commission's own idea (as opposed to a suggestion made by others), the "suggestion" process should be dispensed with,

and the Commission should simply notify the appropriate agency.¹

The Commission has decided not to accept the first of these suggestions. Neither of the statutory "notification" provisions requires cessation of Commission activity in any investigation.² These provisions, sections 201(b)(6) and 337(b)(3), require only notification. In a proper case the Commission is free to suspend a section 337 investigation (see sec. 337(b)(1)), but suspension should not be, and is not, required, nor should it be mentioned in this rule.³

The Commission has decided to apply the proposed rule before, as well as during, investigations to which it applies. This extension of the power to notify is reasonably necessary to carry out the functions prescribed by section 334 of the Tariff Act of 1930, to cooperate with other agencies of the government. Moreover, in some cases the need to notify will be obvious. In this situation, the Commission ought to be able to make notification on its own motion. Appropriate changes have been made in the final rule to implement these ideas. Various technical and minor changes have also been made in the final rule. This regulation is effective April 29, 1977.

Pursuant to section 335 of the Tariff Act of 1930, as amended (72 Stat. 680; 19 U.S.C. 1335), section 337(b)(3) of Tariff Act of 1930, as amended (88 Stat. 2054; 19 U.S.C. 1337(b)(3)), section 334 of the Tariff Act of 1930, and section 201(b)(6) of the Trade Act of 1974 (88 Stat. 2013; 19 U.S.C. 2251(b)(6)), the Commission proposes to amend Title 19, Part 201, of the Code of Federal Regulations by adding a new § 201.4(d), as follows:

§ 201.4 Performance of functions.

(d) *Presentation of matter that may come within the purview of other laws.* Whenever any party or person, including the Commission staff, has reason to believe that (1) a matter under investigation pursuant to section 337 of the Tariff Act of 1930, as amended, or (2) in the course of an investigation under section 201 of the Trade Act of 1974 (Pub. L. 93-618), circumstances causing increased imports may come within the purview of another remedial provision of law not

¹ The comment of the National Union Association was considered, even though it was received later than the deadline for comments set forth in the notice of proposed rulemaking. However, this comment concerns a number of general matters which do not relate to the proposed rule, and is not discussed further here.

² Investigation No. 337-TA-23, Certain Color Television Receivers (order denying motion to terminate issued November 8, 1976, and opinion re same, issued December 20, 1976). *Melco Sales, Inc. v. ITC*, Civil Action No. 76-1932, D.D.C. (decided by opinion from the bench, November 9, 1976).

³ The Federal Trade Commission asserts that the law also requires cessation of a sec. 201 investigations when "notification" is appropriate. See FTC letter-comment received Feb. 3, 1977, at footnote*, p. 1. The FTC provides no basis for this view, and the Commission finds none.

the basis of such investigation, including but not limited to the Antidumping Act, 1921, or sections 303 or 337 of the Tariff Act of 1930, as amended, then the party or person may file a suggestion of notification with the Commission that the appropriate agency be notified of such matter or circumstances, together with such information as the party or person has available. The Commission Secretary shall promptly thereafter publish notice of the filing of such suggestion and information, and make them available for inspection and copying to the extent permitted by law. Any person may comment on the suggestion within 10 days after the publication of said notice. Thereafter, the Commission shall determine whether notification is appropriate under the law and, if so, shall notify the appropriate agency of such matters or circumstances. The Commission may at any time make such notification in the absence of a suggestion under this rule when the Commission has reason to believe, on the basis of information before it, that notification is appropriate under law.

Issued: March 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-9389 Filed 3-29-77; 8:45 am]

Title 22—Foreign Relations

CHAPTER II—AGENCY FOR INTERNATIONAL DEVELOPMENT, DEPARTMENT OF STATE

PART 207—LIMITATION ON THE EMPLOYMENT OF THIRD COUNTRY NATIONALS FOR CONSTRUCTION WORK FINANCED FROM UNITED STATES FOREIGN ASSISTANCE FUNDS

Revocation

Pursuant to the Deputy Administrator's action of January 19, 1977, 22 CFR Part 207 is revoked.

Effective date. This change is effective March 21, 1977.

Dated: March 21, 1977.

JOHN F. OWENS,
Acting Assistant Administrator
for Program and Management
Services.

[FR Doc.77-9410 Filed 3-29-77; 8:45 am]

Title 37—Patents, Trademarks and Copyrights

CHAPTER II—COPYRIGHT OFFICE, LIBRARY OF CONGRESS

[Docket RM 76-1; Rules Doc. B]

PART 201—GENERAL PROVISIONS

Filing of Agreements Between Copyright Owners and Public Broadcasting Entities

AGENCY: Library of Congress, Copyright Office.

ACTION: Final Regulation.

SUMMARY: This regulation opens the public records of the Copyright Office to the filing of agreements between public

broadcasting entities and certain copyright owners, and establishes the formal requirements governing the nature of the document to be filed. The regulation is intended to implement sections 118(b)(2) and 118(e)(1) of Pub. L. 94-553 (90 Stat. 2541), the Act for General Revision of the Copyright Law.

EFFECTIVE DATE: This regulation takes effect on April 29, 1977.

FOR FURTHER INFORMATION CONTACT:

Larry M. Schultz, Information Specialist, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559 (703-557-8700).

SUPPLEMENTARY INFORMATION:

On November 15, 1976 a proposal was published in the FEDERAL REGISTER to adopt a new regulation § 201.9 pertaining to the filing of agreements between copyright owners and public broadcasting entities, 41 FR 50300. The proposed regulation was designed to implement: section 118(b)(2) of Pub. L. 94-553, under which license agreements between one or more owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works, and one or more public broadcasting entities, are to be given effect in lieu of any determination by the Copyright Royalty Tribunal established under the new law, provided that "copies of such agreements are filed in the Copyright Office within thirty days of execution in accordance with regulations that the Register of Copyrights shall prescribe"; and section 118(e)(1) of that law, under which terms and rates of royalty payments agreed to among owners of copyright in nondramatic literary works and public broadcasting entities are to be effective "upon filing in the Copyright Office, in accordance with regulations that the Register of Copyrights shall prescribe."

A number of comments were received in response to the proposed regulation. Several comments raised questions or made suggestions that warranted changes from the proposed regulation.

A discussion of the major substantive comments received follows:

1. The Authors League of America, Inc., the Association of American Publishers, and the Public Broadcasting Service all expressed concern that because proposed § 201.9(a) referred in general terms to "licenses and other agreements pertaining to terms and rates of royalty payments negotiated between one or more copyright owners and one or more public broadcasting entities," the regulation might be interpreted to require the recording of every individual license between a single owner of copyright in a nondramatic literary work and a single public broadcasting entity.

The parties asserted that section 118(e)(1) of the Act does not in language or in purpose require recordation of individual licenses for public broadcast use of nondramatic literary works, and that section 118(e)(1) was designed to provide a record of terms and rates

agreed to among groups of copyright owners in nondramatic literary works and public broadcasting entities for purposes of the antitrust exemption contained in that section. The parties also noted that proposed § 201.9(a) might encompass agreements related to subject matter (e.g., dramatic works) falling entirely outside of section 118 of the new law.

Proposed § 201.9 was intended only to open the records of the Copyright Office to the recording of documents, and to establish the formal requirements concerning the nature of the documents submitted. It was not intended to require the recording of any document, or to determine what documents are required to be filed under the conditions of the Act. These are matters established by section 118 of the Act itself. In consideration of the comments referred to, § 201.9(a) has been changed to replace the blanket reference to "licenses and other agreements * * *" quoted above with language conforming to paragraphs (b) and (c) (1) of section 118 of the Act. Whether any particular agreement must be recorded as a condition to its taking effect will remain a matter for application of the statute.

Together with this change, we have added a new paragraph (iv) to § 201.9 (a). This paragraph requires that documents submitted for recording under section 118 be so identified, in order to enable the Office to catalog these documents separate from other recorded papers.

2. Several comments urged deletion of the proposed requirements (§ 201.9(a) (i)) that the original instrument be submitted for recording unless it is "not available" and the submitted copy is accompanied by an "explanation" of the failure to supply an original. After further consideration of the reference to filing "copies" in section 118(b) (2) of the Act and the general recording provisions of section 205 we have decided to omit these requirements. However, where a copy is submitted in lieu of an original a certification that it is a true copy will still be required.

In a related vein, two comments suggested that as there may be multiple "originals" of a document, references to "the original" should be changed to "an original". The regulation has been modified to conform to this suggestion.

3. One comment raised the possibility of confusion arising from the Act's reference to "filing" and the regulation's reference to "recording". In order to avoid any such uncertainty, paragraphs (a) and (c) of the regulation have been revised to make it clear that submitted documents will be filed in the records of the Office upon their recordation.

4. One comment suggested that the Copyright Office establish a regulation under which remitters might obtain a formal receipt for documents submitted under proposed § 201.9 by accompanying the submission with a self-addressed postcard identifying the document. This suggestion warrants consideration. However, it has implications going beyond the subject matter of the proposed reg-

ulation and requires consideration of the in-process systems to be developed by the Office under the new Act. Accordingly, action on this suggestion will be deferred.

5. One comment suggested that the regulation expressly refer to agreements negotiated between the parties' "representatives". As section 118 of the Act itself makes several references to "copyright owners" and "public broadcasting entities" without expressly mentioning their "representatives", and as the regulation does refer to the signatures of the parties' representatives, this modification is considered unnecessary.

6. One comment suggested that proposed § 201.9(a) (iii), which required that the document submitted for recordation "include any schedules, appendixes, or other attachments referred to in the instrument as being a part of it", be modified "to the effect that * * * attachments may be incorporated by reference in the agreement so long as the attachments are clearly identified." This suggestion has not been adopted. Where a schedule, appendix or similar attachment is actually referred to in the document as being a part of it, the recorded document should include the schedule, appendix or attachment in order to provide a record that is complete according to its terms. However, where another instrument is merely "incorporated by reference" in the document submitted for recording, inclusion of that instrument is not required.

In consideration of the foregoing, Part 201 of 37 CFR Chapter II is amended by adding a new § 201.9 to read as follows:

§ 201.9 Recordation of agreements between copyright owners and public broadcasting entities.

(a) License agreements voluntarily negotiated between one or more owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works, and one or more public broadcasting entities, and terms and rates of royalty payments agreed to among owners of copyright in nondramatic literary works and public broadcasting entities, will be filed in the Copyright Office by recordation upon payment of the fee prescribed by this section. The document submitted for recordation shall meet the following requirements:

(1) It shall be an original instrument of agreement; or it shall be a legible photocopy or other full-size facsimile reproduction of an original, accompanied by a certification signed by at least one of the parties to the agreement, or an authorized representative of that party, that the reproduction is a true copy;

(2) It shall bear the signatures of all persons identified as parties to the agreement, or of their authorized agents or representatives;

(3) It shall be complete on its face, and shall include any schedules, appendixes, or other attachments referred to in the instrument as being part of it; and

(4) It shall be clearly identified, in its body or a covering transmittal letter, as being submitted for recordation under 17 U.S.C. 118.

(b) For a document consisting of six pages or less covering no more than one title, the basic recordation fee is \$5 if recorded before January 1, 1978 and \$10 if recorded after December 31, 1977; in either case an additional charge of 50 cents is made for each page over six and each title over one.

(c) The date of recordation is the date when all of the elements required for recordation, including the prescribed fee, have been received in the Copyright Office. A document is filed in the Copyright Office and a filing in the Copyright Office takes place on the date of recordation. After recordation the document is returned to the sender with a certificate of record.

(17 U.S.C. 207, and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-553: §§ 118; 702; 708(11).)

Dated: March 23, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

[FR Doc.77-9503 Filed 3-29-77;8:45 am]

Title 40—Protection of Environment
CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCY

SUBCHAPTER B—GRANTS AND OTHER
FEDERAL ASSISTANCE

[FRL 705-4]

PART 33—SUBAGREEMENTS

Minimum Standards for Procurement
Under EPA Grants

On February 8, 1977, the Environmental Protection Agency promulgated interim regulations to incorporate minimum standards for procurement under EPA grants with a proposed effective date of March 31, 1977 (42 FR 8089). By this action, the effective date of the interim Part 33 subagreement regulations is changed to May 1, 1977.

Dated: March 24, 1977.

DOUGLAS COSTLE,
Administrator.

[FR Doc.77-9400 Filed 3-29-77;8:45 am]

SUBCHAPTER C—AIR PROGRAMS

[FRL 706-4]

PART 60—STANDARDS OF PERFORMANCE
FOR NEW STATIONARY SOURCES

Region V Address; Correction

Section 60.4 paragraph (a) is corrected by changing Region V (Illinois, Indiana, Minnesota, Michigan, Ohio, Wisconsin), 1 North Wacker Drive, Chicago, Illinois 60606 to Region V (Illinois, Indiana, Minnesota, Michigan, Ohio, Wisconsin), 230 South Dearborn Street, Chicago, Illinois 60604.

Dated: March 21, 1977.

GEORGE R. ALEXANDER, Jr.,
Regional Administrator.

[FR Doc.77-9406 Filed 3-29-77;8:45 am]

[FRL 706-2]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**Delegation of Authority to the State of Wisconsin**

Pursuant to the delegation of authority for the standards of performance for new stationary sources (NSPS) to the State of Wisconsin on September 28, 1976, EPA is today amending 40 CFR 60.4, Address, to reflect this delegation. A Notice announcing this delegation is published today, March 30, 1977, at 42 FR 16845 in this FEDERAL REGISTER. The amended § 60.4, which adds the address of the Wisconsin Department of Natural Resources to which all reports, requests, applications, submittals, and communications to the Administrator pursuant to this part must also be addressed, is set forth below.

The Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. The delegation which is reflected by this administrative amendment was effective on September 28, 1976 and it serves no purpose to delay the technical change of this addition of the State address to the Code of Federal Regulations.

This rulemaking is effective immediately, and is issued under the authority of section 111 of the Clean Air Act, as amended, 42 U.S.C. 1857c-6.

Dated: March 21, 1977.

GEORGE R. ALEXANDER, JR.,
Regional Administrator.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 60.4 paragraph (b) is amended by revising subparagraph (YY), to read as follows:

§ 60.4 Address.

(b) * * *

(A)-(XX) * * *

(YY) Wisconsin—

Wisconsin Department of Natural Resources,
P.O. Box 7921, Madison, Wisconsin 53707.

[FR Doc. 77-9404 Filed 3-29-77; 8:45 am]

[FRL 706-5]

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**Region V Address; Correction**

Section 61.04 paragraph (a) is corrected by changing Region V (Illinois, Indiana, Minnesota, Michigan, Ohio, Wisconsin), 1 North Wacker Drive, Chicago, Illinois 60606 to Region V (Illinois, Indiana, Minnesota, Michigan, Ohio, Wisconsin), 230 South Dearborn Street, Chicago, Illinois 60604.

Dated: March 21, 1977.

GEORGE R. ALEXANDER,
Regional Administrator.

[FR Doc. 77-9407 Filed 3-29-77; 8:45 am]

[FRL 706-3]

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**Delegation of Authority to the State of Wisconsin**

Pursuant to the delegation of authority for national emission standards for hazardous air pollutants (NESHAPS) to the State of Wisconsin on September 28, 1976, EPA is today amending 40 CFR 61.04, Address, to reflect this delegation. A Notice announcing this delegation is published today March 30, 1977, at 42 FR 16845 in this FEDERAL REGISTER. The amended Section 61.04, which adds the address of the Wisconsin Department of Natural Resources to which all reports, requests, applications, submittals, and communications to the Administrator pursuant to this part must also be addressed, is set forth below.

The Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. The delegation which is reflected by this administrative amendment was effective on September 28, 1976, and it serves no purpose to delay the technical change of this addition of the State address to the Code of Federal Regulations.

This rulemaking is effective immediately, and is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 1857c-7.

Dated: March 21, 1977.

GEORGE R. ALEXANDER, JR.,
Regional Administrator.

Part 61 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 61.04 paragraph (b) is amended by revising subparagraph (YY) to read as follows:

§ 61.04 Address.

(b) * * *

(A)-(XX) * * *

(YY) Wisconsin—

Wisconsin Department of Natural Resources,
P.O. Box 7921, Madison, Wisconsin 53707.

[FR Doc. 77-9405 Filed 3-29-77; 8:45 am]

Title 41—Public Contracts and Property Management**CHAPTER 7—AGENCY FOR INTERNATIONAL DEVELOPMENT, DEPARTMENT OF STATE****PART 7-6—FOREIGN PURCHASES****Subpart 7-6.51—U.S. Source Restrictions—Services****CONTRACTOR EMPLOYEES**

Pursuant to the Deputy Administrator's action of January 19, 1977, § 7-6.5101 is amended to revoke paragraph VII. *Contractor Employees* in its entirety.

Effective date: This change is effective March 21, 1977.

March 21, 1977.

Dated: March 21, 1977.

JOHN F. OWENS,
Acting Assistant Administrator
for Program and Management Services.

[FR Doc. 77-9409 Filed 3-29-77; 8:45 am]

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS**SUBCHAPTER D—PUBLIC BUILDINGS AND SPACE**

[FPMR Amdt. D-58]

PART 101-17—ASSIGNMENT AND UTILIZATION OF SPACE**Subpart 101-17.2—Utilization of Space RELINQUISHING ASSIGNED SPACE**

This regulation increases the number of days' notice an agency must give GSA before relinquishing assigned space.

Section 101-17.204(a) is revised as follows:

§ 101-17.204 Notice to GSA of relinquishment of assigned space.

(a) GSA shall be notified by an agency occupying space assigned by GSA at least 120 days prior to the date on which the space, or portion thereof, will no longer be needed. In no event, however, shall such notice be given less than 30 days prior to the date on which a lease termination notice must be issued. Such notification shall be submitted in writing to the GSA regional office responsible for the geographical area in which the space is located, giving a description of the area involved, its location and the estimated date of release. When a portion of space is released, it must be consolidated and accessible for reassignment. Any alteration required to make such space consolidated and accessible will be borne by the agency before the space is assumed by GSA. The appropriate GSA regional office may reassign or dispose of the space.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

Effective date: This regulation is effective March 30, 1977.

NOTE: The General Services 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.

Dated: March 18, 1977.

ROBERT T. GRIFFIN,
Acting Administrator of
General Services.

[FR Doc. 77-9453 Filed 3-29-77; 8:45 am]

[FPMR Amdt. D-59]

PART 101-19—CONSTRUCTION AND ALTERATION OF PUBLIC BUILDINGS**Intergovernmental Cooperation**

This regulation amends the Public Buildings Service's procedures concern-

ing intergovernmental consultation on Federal projects.

Section 101-19.001 is revised to read as follows:

§ 101-19.001 Authority.

This Part 101-19 implements the applicable provisions of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended; the Public Buildings Act of 1959 (40 U.S.C. 601-615 as amended); Pub. L. 90-480, approved August 12, 1968, 82 Stat. 718 (42 U.S.C. 4151-4156); the Clean Air Act (42 U.S.C. 1857-1858); the Federal Water Pollution Control Act (33 U.S.C. 1151-1175); the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201-4244, 40 U.S.C. 531-535); Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects (Office of Management and Budget Circular A-95 Revised); Section 901(b) of the Agriculture Act of 1970, 84 Stat. 1383 as amended by section 601 of the Rural Development Act of 1972, 86 Stat. 674 (42 U.S.C. 1322(b)); Executive Order 11752 of December 17, 1973 (3A CFR, 1973 Comp., p. 240); Executive Order 11724 of June 25, 1973 (38 F.R. 16837); Executive Order 11512 of February 27, 1970 (35 FR 3979); and Pub. L. 92-313, approved June 16, 1972.

Subpart 101-19.1—General

Section 101-19.100 is amended to read as follows:

§ 101-19.100 Intergovernmental consultation on Federal projects.

(a)

(1) *Planning agencies.* Planning agencies are defined as the Governor of a State or, if there is one, the appropriate A-95 clearinghouse of the State, region, or metropolitan area, and the appropriate local, county, metropolitan, regional, and State planning and environmental authorities.

(b) GSA will consult with planning agencies, local elected officials, and appropriate Federal agencies to coordinate Federal projects with development plans and programs of the State, region, and locality in which the project is to be located to ensure that all national, regional, State, and local viewpoints are fully considered and taken into account to the extent possible in planning Federal projects. A written statement containing a clear justification for Federal actions that are inconsistent with local plans will be provided the appropriate planning agencies.

(c)

(1) The GSA Regional Administrator will notify the planning agencies at least 30 calendar days prior to the initiation of any survey conducted for the purpose of ascertaining the long range space needs of Federal agencies and formulating plans for the possible development of a Federal project to satisfy those needs. Notifications of less than 30 calendar days are authorized only in emergency situations. The notification will specify the approximate date(s) on

which the survey will be conducted and request that the GSA Regional Administrator be provided as soon as practicable with all pertinent planning and development information that will be considered in connection with the space plan for the community. This information will include city, county, State, and regional plans for land use and development, model cities and urban renewal, neighborhood revitalization, mass transit, highways, flood control, and air, water, solid waste, and other relevant environmental data.

(2) Within 30 calendar days following his approval of a proposed community plan, the GSA Regional Administrator will submit to the Commissioner, PBS, the proposed plan and a proposed letter that will inform the previously notified planning agencies of the results of the survey. Particular reference will be made to the need, if any, for a new Federal building within a 10-year period or a major lease consolidation which could result in new commercial construction in the community. The letter of notification, issued after approval of the project by the Office of Management and Budget, will request that the GSA Regional Administrator be advised of all changes or refinements in the planning information initially provided, and set forth the following minimum data relative to the proposed Federal project:

- (i) Area or city in which the project will be located;
- (ii) Type of building (office building, post office, courthouse, etc.);
- (iii) Approximate size of building;
- (iv) Specific site location requirements;
- (v) Estimated building population; and
- (vi) Estimated total project cost.

(3) In addition to (c) (2) of this section, major project designs should be made available to planning agencies at the conceptual design stage, and information received by GSA 2 or more years prior to commencement of action on a project shall be verified.

(4) When GSA is to conduct a site investigation, propose a significant change in the use of federally owned or leased property that may require a complete environmental assessment resulting in a negative declaration or an environmental impact statement, propose the renovation or extension of an existing federally owned building required to be authorized in accordance with the provisions of the Public Buildings Act of 1959, as amended, acquire property by exchange in connection with the construction of a public building, or issue a Solicitation for Offers in connection with a lease construction project as described in paragraph (a) (2) of this section, the GSA Regional Administrator will notify the planning agencies and the principal elected official(s) of the community where the proposed action will take place not less than 30 calendar days in advance of the initiation of such action. Only verbal notification of planning agencies is required if the site investigation is con-

ducted within 1 year of an announcement under paragraph (c) (1) of this section. The organizations and officials so notified will have the 30-day notice period in which to consult with the GSA Regional Administrator and provide him with data and comments pertinent to the proposed action. Notifications of less than 30 calendar days are authorized only in emergency situations.

(5) When GSA takes action pursuant to § 101-47.203-7 of this chapter for the transfer of federally owned real property for a direct project requirement which involves a substantial change in the character of its use, the views of the planning agencies and the principal elected official(s) will be obtained and considered by the GSA Regional Administrator, and these views will be included on GSA Form 1334, Request for Transfer of Excess Real Property and Related Personal Property.

(6) When property is transferred for exchange purposes, the views of the planning agencies and the principal elected official(s) will be considered prior to consummation of the exchange.

(f)

(2) Thereafter, GSA will submit copies of the draft environmental statement to the appropriate city mayor and to the Federal, State, and local planning agencies for comment. The allowable period for comment shall be 45 calendar days. If requests for extension are made a maximum period of 15 calendar days may be granted.

(3) Comments received from the Federal agencies, planning agencies, and others will be reconciled through coordination with the Federal and State agencies concerned. The environmental statement may be revised to reflect the additional data and comments obtained. A discussion of problems and objections by Federal agencies and State and local entities in the review process and the recommended disposition of the issues involved will be included in the final text of the environmental statement.

(4) Copies of the final environmental statement will be transmitted to the Council of Environmental Quality, the Environmental Protection Agency, and those who submitted substantive comments on the draft statement or requested copies of the final statement. Unless waived by CEQ, no irreversible or irretrievable action shall be taken on a project until 30 calendar days after submission of the final statement to CEQ.

(g) Through the appropriate planning agencies, Health System Agencies and State Health Planning and Development Agencies authorized to perform comprehensive health planning, pursuant to the National Health Planning and Resources Development Act of 1974, shall be provided adequate opportunity to review Federal projects for construction and/or equipment involving capital expenditures exceeding \$200,000 for modernization, conversion, and expansion of Federal inpatient care facilities that alter the bed capacity or modify the primary function of the facility, as well as plans

for provision of major new medical services. Projects to renovate or install mechanical systems, air-conditioning systems, or other similar internal system modifications are excluded. The comments of such agencies or a certification that the agencies were provided a reasonable time to comment and failed to do so shall accompany the plan and budget requests submitted by the Federal agency to the Office of Management and Budget.

(h) Planning agencies should advise GSA of projects which may present potential areas of joint cooperation by contacting the PBS Regional Commissioner for the region in which the project is located.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c).)

Effective date: This regulation is effective March 30, 1977.

NOTE.—The General Services 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.

Dated: March 18, 1977.

ROBERT T. GRIFFIN,
Acting Administrator of
General Services.

[FR Doc. 77-9452 Filed 3-29-77; 8:45 am]

Title 42—Public Health

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

PART 53—GRANTS, LOANS AND LOAN GUARANTEES FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND MEDICAL FACILITIES

Deletion of Durational Limitations on Community Service

Notice is given that the Assistant Secretary for Health, Office of the Secretary, with the approval of the Secretary of Health, Education, and Welfare, hereby amends Part 53 of Title 42, CFR, by deleting the durational limitations on the "community service" assurances given by recipients of, or to be given by applicants for, assistance under Title VI of the Public Health Service Act (42 U.S.C. 291 et seq.).

The purpose of the deletion of the "community service" durational requirements is to bring the "community service" regulations into accord with the March 12, 1975, order of the court in *Cook, et al. v. Ochsner Foundation Hospital, et al.*, Civil No. 70-1969 "G" (E.D. La., filed June 22, 1970), and the July 20, 1976, order of the court in *Lugo, et al. v. Simon, et al.*, Civil No. C74-345 (N.D. Ohio, filed August 26, 1974), invalidating such durational limitations.

When the regulation originally imposing the durational limitations was promulgated, the prior approval of the Federal Hospital Council was obtained pursuant to section 603 of the Public Health Service Act, 42 U.S.C. 291c. However, on January 4, 1975, the President signed into law the National Health Planning and Resources Development

Act of 1974 (Pub. L. 93-641), which made extensive amendments in the Public Health Service Act. Among those amendments was the addition of a new Title XVI thereto, authorizing a new program of Federal assistance for the construction and modernization of medical facilities. Section 1602(6) of the new Title XVI requires the Secretary to

[P]rescribe the general manner in which each entity which receives financial assistance under this Title or has received financial assistance under * * * Title VI shall be required to comply with the assurances required to be made at the time such assistance was received and the means by which such entity shall be required to demonstrate compliance with such assurances. (Emphasis added.)

Title XVI, which was effective upon enactment of Pub. L. 93-641, contains no requirement that the Federal Hospital Council, or any other body, approve regulations issued thereunder. Because this amendment implements Title XVI, the approval of the Federal Hospital Council has not been solicited.

Because the amendment set out below is necessary in order to bring the regulations into compliance with the court orders described above, the Secretary has concluded that notice and public comment thereon are unnecessary and has, therefore, found good cause for their omission.

Accordingly, 42 CFR Part 53 is amended in the manner set forth below, effective March 30, 1977.

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

Dated: December 2, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: March 18, 1977.

JOSEPH A. CALIFANO, JR.
Secretary.

1. Paragraph (a) of 42 CFR 53.113 is amended to read as follows:

§ 53.113 Community service.

(a) *Applicability.* The provisions of this section apply to every applicant which heretofore has given or hereafter will give a community service assurance.

AUTHORITY: Sec. 1602 of the Public Health Service Act (88 Stat. 2258; 42 U.S.C. 3000-1).

[FR Doc. 77-9448 Filed 3-29-77; 8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Amdt. No. 2 to Eighth Revised Service Order
No. 1234]

PART 1033—CAR SERVICE

Distribution of Freight Cars

MARCH 25, 1977.

At a Session of the Interstate Commerce Commission, Railroad Service

Board, held in Washington, D.C., on the 24th day of March 1977.

Upon further consideration of Eighth Revised Service Order No. 1234 (42 FR 5359 and 12056), and good cause appearing therefor:

It is ordered, That:

Eighth Revised Service Order No. 1234 be, and it is hereby, amended by substituting the following paragraph (k) for paragraph (k) thereof:

§ 1033.1234 Distribution of freight cars.

(k) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 31, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 31, 1977.

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

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment 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.

ROBERT L. OSWALD,
Secretary.

[FR Doc. 77-9522 Filed 3-29-77; 8:45 am]

[Service Order No. 1262]

PART 1033—CAR SERVICE

North Stratford Railroad Corporation Authorized To Operate Over Certain Tracks Owned by the State of New Hampshire

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 24th day of March 1977.

It appearing, That the Maine Central Railroad Company in Docket AB-83, has been authorized to abandon its line from North Stratford, New Hampshire, to Beecher Falls, Vermont, a distance of approximately 22.96 miles; that the State of New Hampshire has purchased this line and has entered into an agreement with the North Stratford Railroad Corporation (NS) for operation of this line; that the NS is preparing an application for submission to the Commission seeking permanent authority for operation of this line; that certain shippers are solely dependent upon continued operation of the aforementioned lines for es-

sential railroad service; that the operation by the NS over the aforementioned tracks owned by the State of New Hampshire is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1262 North Stratford Railroad Corporation authorized to operate over certain tracks owned by the State of New Hampshire.

(a) The North Stratford Railroad Corporation (NS) be, and it is hereby authorized to operate over tracks owned by the State of New Hampshire and acquired from the Maine Central Railroad Company (MEC) between a connection with the Canadian National Railway Company in the vicinity of former MEC milepost 131.75 at North Stratford, New Hampshire, and former MEC milepost 154.71 at Beecher Falls, Vermont, a distance of approximately 22.96 miles, together with all necessary interchange, industrial, public and other auxiliary tracks, pending disposition of the application of the NS seeking permanent authority.

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

(c) *Rates applicable.* Inasmuch as this operation by the NS over tracks presently operated by the MEC is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via the MEC, until tariffs naming rates and routes specifically applicable via the NS become effective.

(d) In transporting traffic over these lines the NS and all other common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(e) *Effective date.* This order shall become effective at 12:01 a.m., March 28, 1977.

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., August 31, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

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

It is further ordered, That 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.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-9521 Filed 3-29-77;8:45 am]

Title 39—Postal Service
CHAPTER I—UNITED STATES POSTAL SERVICE

PART 601—PROCUREMENT OF PROPERTY AND SERVICES

Miscellaneous Amendments to Postal Contracting Manual

The Postal Contracting Manual, which has been incorporated by reference in the FEDERAL REGISTER (see 39 CFR 601.-100), has been amended by the issuance of Transmittal Letter 23, dated March 21, 1977.

In accordance with 39 CFR 601.105 notice of these changes is hereby published in the FEDERAL REGISTER as an amendment to that section and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic Manual will receive these amendments from the Government Printing Office. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

Description of these amendments to the Postal Contracting Manual follows:

SECTION 1—GENERAL PROVISIONS

1. The maximum dollar limitation per transaction using cash imprest or fixed credit funds has been increased from \$250 to \$500. Regional Postmasters General have been delegated authority, as they see fit, to increase the dollar limitation per transaction using cash imprest or fixed credit funds up to \$500 for those postal officials listed in § 1-407.2(d).

2. The maximum dollar limitation per transaction using cash imprest funds has been increased from \$250 to \$500 for those postal officials listed in § 1-407.3(c) who are physically located in the field, but are not under the supervision of the Regional Postmaster General.

SECTION 6—INFORMAL PURCHASES

3. Section 6 has been revised to (i) increase the maximum dollar limitation per transaction utilizing cash imprest funds to \$500 and (ii) provide a less procedurally oriented PCM presentation on the subject of cash imprest funds (see 6-108).

4. The maximum dollar limitation per transaction utilizing informal purchase procedures and Form 7334, Order-Invoice-Voucher, has been increased from \$5,000 to \$10,000. Accordingly, the special conditions applicable to procurements exceeding \$5,000, but not in excess of \$10,000, have been deleted. In addition, appropriate portions of Sections 1, 3, 5, 7, 8, 9, and 16 have been revised to the extent necessary to reflect this change in the maximum dollar limitation per transaction utilizing informal purchase procedures.

In consideration of the foregoing, 39 CFR 601.105 is amended by adding the following to § 601.105, effective immediately:

§ 601.105 Amendments to the Postal Contracting Manual.

Amendments to postal contracting manual

Transmittal letter	Dated	FEDERAL REGISTER publication
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23..... Mar. 21, 1977 42 FR

(5 U.S.C. 552(a), (39 U.S.C. 401, 404, 410, 411, 2008))

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc.77-9495 Filed 3-29-77;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.

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 20418; RM-2346 and RM-2727; FCC 77-169]

TV BROADCAST STATIONS

Adding of New VHF Stations in the Top 100 Markets

Adopted: March 7, 1977.

Released: March 18, 1977.

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order and Notice of Proposed Rule-making.

SUMMARY: Four VHF TV assignments are proposed at shorter separations to other stations and assignments than required by FCC Rules ("drop-ins"). Separation waivers would be conditioned on equivalent protection to other stations so that no more interference could result than if the stations were at required separations. Equivalent protection may be provided by directional antennae, precise frequency offset, or terrain shielding. The four proposals, Charleston, West Virginia, Channel 11; Johnstown, Pennsylvania, Channel 8 (or Altoona, Pennsylvania, Channel 12); Knoxville, Tennessee, Channel 8; and Salt Lake City, Utah, Channel 13, are the result of a cost-benefit study conducted by the Commission after screening 96 proposals presented by the United Church of Christ, The Office of Telecommunications Policy, and the Group for the Advancement of Television Services.

DATES: Comments must be received on or before May 20, 1977, and Reply Comments must be received on or before June 20, 1977.

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

FOR FURTHER INFORMATION CONTACT:

James J. Gross, Policy and Rules Division, Broadcast Bureau, Federal Communications Commission, Washington, D.C. 20554 (202) 632-7792.

By the Commission: Chairman Wiley issuing a separate statement in which Commissioner Fogarty joins; Commissioner Lee dissenting and issuing a separate statement in which Commissioner Quello joins; Commissioner Hooks concurring in part and dissenting in part and issuing a statement; Commissioner Washburn concurring and issuing a statement; Commissioner White not participating.

1. The Commission now has before it the comments and reply comments responding to the Notice of Inquiry and Memorandum Opinion and Order, 52 F.C.C. 2d 618 (1975), in this proceeding commenced upon petitioning of May 7, 1974, by the Office of Communication of United Church of Christ, Geoffrey Cowan, Monroe Price, Charles Channel and Walter Baer (hereinafter "UCC"). Petitioners ask that the Commission revise its television separation standards to add as many new VHF channels to the Television Table of Assignments, Section 73.606(b) of the Commission's Rules and Regulations, as feasible.¹ Where appropriate, UCC asks that the Commission reserve such new channels for noncommercial television or assign them to applicants with substantial minority or women ownership and management.

THE PROPOSAL

2. UCC proposes that as many new VHF drop-ins² be assigned as technologically practical and in the public interest, and suggests for the Commission's consideration, drop-ins proposed by the Office of Telecommunications Policy ("OTP").³ UCC states that Section 303(g) of the Communications Act of 1934 encourages the larger and more effective use of the spectrum in the public interest, and that the Commission said in the Sixth Report and Order, supra, its principal reason for adopting an assignment table was to "approximate the mathematical optimum" number of stations. Additionally, UCC contends its plan will promote the Commission's goals of diversification of programming and

¹ Minimum separation requirements for VHF stations were established by the Sixth Report and Order, 41 F.C.C. 148 (1952), and are contained in Section 73.610 of the FCC Rules. Cochannel separations are 170 miles in Zone I, 190 miles in Zone II, and 220 miles in Zone III. Adjacent channel separations are 80 miles in all zones.

² VHF stations could be authorized at less than standard spacings by "grandfathering" of assignments prior to the Sixth Report and Order "move-ins" of existing stations closer to a population center when circumstances warranted; and "drop-ins," or new channel assignments at short-spacings, as proposed by petitioners.

³ OTP's October 1973 study was entitled "Broadcasting Assignment Criteria" and contained 62 drop-ins which were attached to UCC's petition for consideration. OTP submitted to the docket a "Further Evaluation" dated May 14, 1974, which deleted 10 of the drop-ins proposed in October and added 33 new drop-ins. Comments were addressed to both lists. The Commission will consider all the drop-ins listed in both studies. Drop-ins under consideration are listed in Attachment 1.

increase public access to divergent points of view. UCC notes that the Commission has emphasized the largest possible number of program choices and competing outlets of local expression. UCC urges that the newly created channels could also help to advance goals which the government has long found to be in the public interest, such as the development of public broadcasting and the increased participation of minority groups in television station ownership and management.

3. UCC proposes that Commission increase the availability of public television by reserving a VHF drop-in channel for a non-commercial television licensee in every community where there is presently no VHF non-commercial television reservation. UCC says that non-commercial television has emerged as a major cultural and educational force since drop-ins were last considered by the Commission in Docket 13340⁴ and PBS has now become the fourth major network. The Public Broadcasting Act is cited in support which requires:

[T]he Federal government to... [c]ompliment, assist, and support a national policy that will most effectively make non-commercial educational radio and television service available to all citizens of the United States. 47 USC 396(a) (5).

4. The petitioners propose that the Commission achieve equal opportunities for ownership and management of television by giving primary significance, in any comparative hearing resulting from the drop-ins, to substantial⁵ local ownership and management by members of minority groups⁶ where (1) there are already two or more television stations in the community, (2) such group or groups are not substantial owners or managers of the existing stations, and (3) such group or groups comprise a substantial portion of the population of the commu-

⁴ Interim Policy on VHF-TV Channel Assignments, 21 R.R. 1695 (1961). The Commission proposed that short-spaced VHF channels could feasibly be assigned to ten major markets which were considered to be in the greatest need of a third VHF service. Following passage of the All-Channel Receiver Act (Pub.L. 87-529 (87th Cong.)) the Commission ultimately denied all of the proposed drop-ins (except a move-in at Oklahoma City, Oklahoma) by Report and Order, Television Assignment-Third Service, 41 F.C.C. 1119 (1963). See paras. 38-46, infra.

⁵ Petitioner refers to *TV9, Inc. v. FCC*, 495 F. 2d 929 (D.C. 1973), for the definition of "substantial."

⁶ Negroes, Orientals, American Indians, Spanish-surnamed Americans, and Women. Section 73.125(c), FCC Rules and Regulations.

nity. UCC supports this proposal with the following: The Commission's Policy Statement on Comparative Broadcast Hearings, 1 F.C.C. 2d 393 (1965), stated that the principal goal of the comparative hearing process is to achieve a pattern of ownership which best assures maximum diversification of programming and viewpoints, as well as programming which meets the needs of the public in the area to be served; Executive Order No. 1165, October 15, 1971, requires each federal agency to foster and promote minority business enterprises; in *A.M. Freeze*, 26 R.R. 2d 1189, 1222 (1973), the Commission recognized that the promotion of minority group ownership of broadcast facilities was a socially desirable end; and the D.C. Circuit Court of Appeals in the TV 9 decision indicated that this type of proposal was both proper and constitutional.

5. UCC submits it is time to take a new look at VHF drop-ins, due to significant developments since the issue was last considered. Among those developments petitioners include: (a) the growth of public television and the enactment of the Public Broadcasting Act, (b) the rapid development of UHF since the All-Channel Receiver Act, (c) the continued growth of urban America, and (d) increased information about new spacing effects and the use of directional antennas. UCC finds in these developments reason to believe that a number of new VHF drop-ins could be assigned in major markets without causing significant interference to existing stations. UCC also asserts that since all-channel receivers are now capable of receiving UHF television in a high percentage of U.S. households, UHF can now be accorded co-equal status with VHF, and no longer requires protection of the Commission's UHF impact policy. Therefore, the Commission is urged to reexamine the application of its UHF impact policy to drop-in proposals.

NOTICE OF INQUIRY

6. On April 1, 1975, the Commission adopted the Notice of Inquiry and Memorandum Opinion and Order⁷ in this proceeding seeking comments on the possible re-examination of the subject of VHF drop-ins. While the Commission noted that no acceptable solution might result, it found sufficient merit in the proposals to reopen the matter, for the following reasons: the passage of time, the geographical movement of population, advanced technological understanding, the improvement in television programming capabilities, economic changes, a better understanding of viewer's needs, and other changes bearing upon the use and licensing of television channels.

7. Comments were requested on the potential economic viability of the drop-ins in order to attempt a determination of the threshold between technical and

economic adequacy. Comments were invited on the impact of VHF drop-ins in specified markets. Further, comments were invited on the issue raised by petitioner that UHF could now be accorded co-equal status with VHF and no longer requires the protection of the Commission's impact policy. Technical comments were requested on directional antennas, frequency offset, city-grade signal waivers, cross polarization of signals, and possible impact upon future television systems. The Commission also sought comments on specific educational drop-ins,⁸ preferences to be given in comparative hearings for substantial minority or women ownership and management, and the relationship of this proceeding to the New Jersey VHF proceeding.⁹

PROCEDURAL MATTERS

8. The markets under consideration in this proceeding were frozen on August 28, 1975, by Commission Order of Clarification, 40 Fed. Reg. 42775, as the top 100 markets according to the 1974 ARB television market audience ranking by prime time households.¹⁰ The OTP studies utilized ARB's net weekly circulation rankings from Television Factbook (1972-73), but these figures are no longer prepared by ARB. The following OTP drop-ins were not in the top 100 markets as defined by the Order of Clarification and therefore will not be considered in this instance:

Market:	Channel
Monroe, La.....	4, 11
Wilmington, N.C.....	8, 10
Binghamton, N.Y.....	4, 7
Salinas, Cal.....	10

While some parties have urged consideration of markets beyond the top 100, we have limited this proceeding to those named in the Order of Clarification so that all parties may know which drop-ins are under consideration, and so that the proposal is capable of administrative resolution.

9. The Group for the Advancement of Television Service (GATS), Johnstown, Pennsylvania, filed a petition for rulemaking (RM 2727) to drop in Channel 8 at Johnstown. The OTP studies listed Channels 5 and 12 as Johnstown drop-ins, and GATS filed comments in Docket 20418. The GATS petition was incorporated in this proceeding by Order, 41 Fed. Reg. 37154, adopted August 25, 1976. Parties were given additional opportunity to respond. Orders Extending

⁷ The Commission noted in the inquiry that the criteria for a noncommercial educational drop-in might be different from that required for a commercial drop-in.

⁸ This matter was considered in Docket 20350 by the Commission on November 4, 1976, and fully resolved by Third Report and Order, 41 Fed. Reg. 53170, December 3, 1976. See also Second Report and Order, 59 F.C.C. 2d 1386 (1976); First Report and Order and Further Notice of Proposed Rule Making, 40 Fed. Reg. 6513 (1976); and Notice of Inquiry and Notice of Proposed Rule Making, 40 Fed. Reg. 6513 (1975). Therefore, it is no longer an issue in this proceeding.

⁹ As reported in the ARB publication, *Television Market Analysis*.

Time, 41 Fed. Reg. 47097 and 41 Fed. Reg. 49193 (1976).

10. South Central Broadcasting Company, licensee of WTVK, Channel 26, Knoxville, Tennessee (WTVK), filed a petition for rulemaking on June 16, 1974, requesting the addition of Channel 8 to Knoxville and modification of WTVK's license to operate on Channel 8; the reassignment of Channel 26 as a non-commercial educational channel to Knoxville; and the reassignment of Channel 15 as a commercial channel to Knoxville. This petition was merged with the entire drop-in proposal in this docket on April 1, 1975, by the Notice of Inquiry and Memorandum Opinion and Order, supra. Action on Channels 15 and 26 will be deferred until the issues attached to Channel 8 have been fully resolved.

11. Various other pleadings were introduced into the record after the filing dates were closed.¹¹ These included a videotape from the Association of Maximum Service Telecasters, Inc. ("AMST") demonstrating co-channel interference, filed on June 30, 1976; and a motion by Holston Valley Broadcasting Corporation, licensee of WKPT-TV, Kingsport, Tennessee ("WKPT"), to establish procedures for examination and comment on the Institute of Telecommunication Sciences ("ITS") study.¹² Both pleadings are accepted and have been made a part of the record in this proceeding. Because of our disposition, parties will now have an opportunity to examine and comment on the ITS study. To that extent, WKPT's motion is granted. Prior requests by AMST and WKPT to view the interim ITS draft have been denied, but the final report will be placed in the docket and will therefore be available for review and comment. The docket record now also contains materials prepared by the Commission staff regarding the ITS study.¹³

THE COMMENTS

12. We shall briefly describe the main contentions made in comments and reply comments to this proceeding. A list of commenting parties is contained in Attachment 2. Attachment 3 indicates whether they supported or opposed the proposal, and the subject of their comments. In general, most broadcast organizations and licensees who commented in this proceeding oppose the proposal in its entirety. Basically, the main concerns were service losses that

¹¹ After several extensions, the deadline for comments was December 15, 1975, and the deadline for reply comments was February 9, 1976. Time was extended on RM-2727 only to October 20, 1976. See para. 9, supra.

¹² The Commission contracted the Institute of Telecommunication and Sciences, U.S. Department of Commerce, Boulder, Colorado, to study economic and technical factors involved in the drop-in proposal. The final report, which will be made a part of this docket record for comment, is entitled "Techniques for the Evaluation of Proposed VHF TV Drop-Ins" by George A. Hufford, dated December 1, 1976.

¹³ This request was made on August 23, 1976, by WKPT.

⁷ 52 F.C.C. 2d 618 (1975). The Memorandum Opinion and Order portion of the document made publicly available certain reports and studies by the Commission staff and other materials pertaining to the proceeding.

might result to the public from interference to existing stations, and the danger of a negative impact on existing UHF service and future UHF development.

13. Many of the stations that would be affected by short-spacing filed engineering comments directed toward predicting service losses in their particular market should a drop-in be assigned in a nearby market, and based on total populations and areas of interference. A comparison was then made to show that the proposed drop-in would itself be limited by interference from existing stations, and therefore provide service to a relatively small area and population.

14. AMST summarize predicted service losses on a nationwide basis. Other technical defects relative to individual drop-in proposals were noted. Some of the drop-ins would be located far from the city of license and fail to provide principal city coverage to the proposed community of license, as required by Section 73.685(a) of the FCC Rules. Antenna orientation problems were noted where drop-ins would be located in a different direction from the community than other stations. Availability of some transmitter sites was also raised as a problem. Comments also pointed out internal defects in OTP's list, such as conflicting proposals, excessive short-spacings, and short-spacings to Mexican and Canadian stations.

15. Several parties suggested that petitioners had failed to provide adequate information to support the proposal. These commentors stated that the proposal had been fully considered by the Commission in the past, and that no technical, legal, or social changes had occurred to warrant reexamination of earlier decisions. Many parties provided summaries of Commission and legislative histories on television allocation in the United States, in an attempt to show that precedent mitigates against the drop-in proposal.

16. Opponents of the drop-ins submitted economic market data to show that certain drop-ins could not be supported by existing market revenue, and that they might harm other stations in the market. Based on limited service areas, inferior principal city coverage, and antenna orientation problems, some drop-ins were said to be economically unviable. An economic study was submitted which predicted the number of viable stations in individual markets based on a model of market size and VHF allocations.

17. Comments opposed the drop-ins in markets where television service was considered to be adequate such as markets with three networks, an educational, and an independent station on the air, in addition to unused allocations. Several parties suggested that the better approach to additional service and diversity of ownership was utilization and development of vacant UHF channels, especially in view of petitioners' arguments that UHF could now be accorded an equal status with VHF television. This approach, they said, would offer more opportunity for the

expansion of educational and minority programming than a limited number of substandard drop-ins.

18. UHF impact was the subject of much discussion in the comments. Several parties objected to the drop-ins on the grounds that they might seriously harm or bring about the demise of an operational UHF station in some drop-in markets or adjacent markets. Some UHF licensees supported the drop-in and requested their licenses be modified to authorize operation of a drop-in in the same market. Others, however, opposed them as a threat to their commitment to and investment in UHF broadcasting. Commentors pointed out that the Commission rejected drop-ins in the past in favor of UHF television service, and that they saw no reason for a change in that policy. Many felt that further consideration of drop-ins would result in a psychological impact on future development efforts in UHF transmission and reception improvements, because UHF stations might be less attractive investments than VHF drop-ins.

19. Some parties objected that any derogation of allocation standards would result in a gradual shift from a table of assignments to a demand system as used in AM radio allocations. This, they said, would result in a surge of applications for waivers, and a costly and complex procedure for the Commission, the parties, and the public. Others pointed out that drop-ins should be distinguished from move-ins, because drop-ins would create new unexpected interference to existing stations. They also warned about pressures to move closer to the city of license once the drop-ins were allocated, creating even more interference.

20. Parties supporting the drop-ins did so on the basis of new service and diversity to be gained from them. The Department of Justice filed comments in support of drop-ins stating that they would increase competition in various major markets. The National Black Media Coalition and GATS saw the drop-ins as an opportunity to increase black ownership of the media. Some parties saw a possible increase in new service to be offered to communities in the form of a new VHF network, educational, or independent program source.

HISTORY

INTRODUCTION

21. The history of U.S. television allocations, as it relates to the VHF drop-in proposal, began with the adoption of Rules in 1941 establishing eighteen channels for commercial television. This was reduced in 1945 to 13 channels in the very high frequency band, but experimentation was allowed in the ultra high frequencies for the development of a nationwide television system. A freeze on new applications was issued in 1948 to resolve problems of interference. A Table of Assignments was established by the Sixth Report and Order, 41 F.C.C. 148 (1952), which set out priorities and engineering factors that became the basis of

our present system of separations and assignments. The Commission relaxed assignment standards, amended planning parameters, and began deintermixture in 1956, in order to eliminate obstacles to the priorities of the Sixth Report and Order. The Second Report and Order on Deintermixture in Docket No. 11532, 13 R.R. 1571 (1956), rejected VHF drop-ins, on the basis of new interference and UHF impact. VHF drop-ins were again considered in Docket 13340 as an interim solution to a need for a third network service in major markets. This solution was rejected, however, after passage of all-channel receiver legislation, in favor of a UHF commitment. While continuing its strong commitment to the use of UHF bands to meet the television needs of the U.S., the Commission has authorized short-spaced VHF stations where public benefits were found to outweigh interference and impact losses. A more detailed review of this history follows.

THE BEGINNINGS

22. The first experimental television broadcast license issued in 1927, and early stations could use almost any frequency above 1500 kHz. Frequency allocation was established for the first time in 1937 on the basis of nineteen channels, six MHz wide, in that portion of the spectrum between 44 and 294 MHz. Following further experimental broadcasting and public hearings, the FCC adopted video standards and commercial television operation was authorized for the first time, beginning July 1, 1941. Eighteen channels were assigned to this service, each six MHz wide, between 50 and 294 MHz. The state of technology did not advance significantly during World War II. The Radio Technical Planning Board reaffirmed the Commission's video standards in 1945 and they remain the same today. In 1948, Channel No. 1 was reallocated for fixed and mobile services and the remaining TV channels were cleared of all other shared services.

23. In 1945, the Commission considered comments concerning the establishment of a competitive nationwide television service and proposing up to 30 channels for this purpose. The Commission was convinced that a television system could be developed utilizing ultra high frequencies (UHF) above 400 MHz. It was decided, however, that implementation of nationwide television should not be held in abeyance pending the development of a UHF system. Therefore, the Commission assigned 12 channels (Nos. 2-13) in the very high frequency band (VHF) below 300 MHz. At the same time, the UHF band between 480 and 920 MHz was made available for experimental television in expectation of the development of a nationwide television system involving the use of that spectrum. In dedicating this portion of the spectrum, the Commission recognized that comprehensive and adequate experimentation in UHF service could not be overemphasized in establishing a truly nationwide competitive television system. Allocation of Frequencies, Docket No. 6651 (1945). At first, allocation stand-

ards were based on the ratios of desired to undesired signal strength, and did not take into account tropospheric propagation. Station separations were less than that required today, and as more stations came on the air, the Commission began receiving complaints of cochannel and adjacent channel interference. In 1948, a freeze on applications was issued until the interference problem could be resolved. Report and Order, FCC 48-2182 (1948).

SIXTH REPORT AND ORDER

24. The existing TV system was cast when the Commission adopted the Sixth Report and Order, 41 F.C.C. 148, in 1952, which set up a new nationwide assignment system utilizing 12 VHF and 70 UHF channels. The Commission's present television technical rules and standards concerning channel allocations and service concepts are based on this decision. The Sixth Report and Order established a Table of Assignments, allocation priorities and criteria and planning parameters for determination of service areas, interference, and separations. The Commission decided that nationwide service could best be achieved, consistent with the fair, efficient, and equitable standard of Sections 303, and 307(b) of the Communications Act, by a Table of Assignments in lieu of an application or demand system, for the following reasons:

(a) It would make for the most efficient technical use of the limited number of channels available for television;

(b) It would protect the interests of the smaller cities and rural areas more adequately than any other system for distribution of service and would provide the most effective mechanism for educational channel assignment; and

(c) It would administratively facilitate processing a backlog of applications.

25. The Commission set forth the following priorities underlying the preparation of the Table of Assignments:

Priority No. 1—to provide at least one television service to all parts of the United States.

Priority No. 2—to provide each community with at least one television station.

Priority No. 3—to provide a choice of at least two television services to all parts of the United States.

Priority No. 4—to provide each community with at least two television stations.

Priority No. 5—Any channels remaining unassigned under the foregoing priorities were to be assigned to the various communities on the basis of the size of the population of each city, its geographic location, and the number of TV services available from stations in other communities.

No single mechanical formula was employed in formulating the Table. Since geographic, economic, and population conditions vary from area to area, it was not possible to follow a rigid application of the priorities.

26. *Population.* In seeking to arrive at an equitable distribution of channels throughout the country, consideration

was given to population as one of the important criteria. The following Table reflects, generally, the number of assignments made to cities falling within the indicated population groupings:

Population of cities:	No. of channels (VHF and UHF)
1 million and above.....	6 to 10.
250,000 to 1,000,000.....	4 to 6.
50,000 to 25,000.....	2 to 4.
Under 50,000.....	1 or 2.

The Commission cautioned that there are many variations from this pattern in light of the many factors and circumstances that had to be considered in determining the exact number of assignments or any particular city.¹⁴ Also, the Commission felt it was more important for each of several cities in an area to have at least one channel than for the largest of cities to have the maximum number of channels indicated. The Commission assigned additional channels to some communities for educational purposes. An attempt was made, insofar as possible, to assign a VHF channel to "educational centers." 41 F.C.C. at 166.

27. *Educational Reservations.* The Commission reserved a channel for education in all communities having a total of three or more assignments, whether VHF or UHF. Where three or more VHF channels were assigned, a VHF channel was reserved, unless already licensed, in which case, a UHF channel was reserved.

28. *Prediction of Service Areas and Interference.* Curves showing signal strength varying with distance were used for predicting service areas and interference in formulating the Table. Since no one offered adequate data for establishing criteria for determining various degrees of terrain differences, no refinement in the curves was made. The Commission stated that it would consider rule making proceedings to amend the curves if future knowledge of propagation advanced to a sufficient degree.¹⁵

For purposes of the Table and rules to implement it, service areas of stations were described in terms of "iso-service contours" based on propagation charts. But the Commission cautioned that the service and interference computed by the use of these charts was not expected to prevail for any specific station but merely described the service and interference which would occur if the stations involved were all typical. The proposed methods for describing service areas and interference, the Commission explained, were only "assignment tools" expected to give a fairly good description of service on a large area basis but not necessarily on an individual basis.

29. *Minimum Signal Over City.* The Commission adopted rules requiring that transmitters be so located as to place minimum field intensities over the en-

¹⁴ The Dumont Plan, a proposal to assign four VHF channels in major markets, was rejected.

¹⁵ The curves were amended, most recently in *Field Strength Curves for FM and TV Broadcast Stations*, 34 R.R. 2d 361 (1975).

tire principal city to be served, as follows:

- Channels 2-6, 74 dBu.
- Channels 7-13, 77 dBu.
- Channels 14-83, 80 dBu.

30. *Station Separations.* The Table is based on a system of minimum station separations. (See n. 1, supra.) These separations, together with maximum allowable powers and antenna heights, established the protection from interference to be afforded to stations. The Dumont Plan (see n. 14, supra) proposed a greater number of VHF assignments by reducing separations, but the Commission decided that the public interest would not be served by adopting this plan.

31. *Terrain.* The Commission was requested to make co-channel assignments at less than minimum spacings where advantage could be taken of mountain ranges to form a natural protection between stations. The Commission concluded that although there is some evidence that intervening mountains may normally reduce the strength of TV signals, the propagation data then available was insufficient to determine the extent to which there may be significant deviations from the normal pattern. This request was therefore denied.

32. *Safety Factor.* Finally, the Commission felt that a safety factor in separations should be provided, noting that if at a later date it was found that the interference is greater than that predicted, there would be little impact on Grade A service.

33. *Maximum Power.* The Commission considered permitting community and rural stations but abandoned this concept. Maximum radiated power limitations were established for different television bands as follows:

Channels:	ERP (Video)
2 to 6.....	20 dBk (100 kW).
7 to 13.....	25 dBk (316 kW).
14 to 83.....	30 dBk (1,000 kW). ¹

¹ Now 5,000 kW except within 250 miles of the Canadian-U.S. border where the maximum power is still limited to 1,000 kW.

The Commission rejected proposals for channel assignments at substandard spacings on the basis of operation with less than maximum power. The Commission concluded that limited power stations should not be provided "at this time in order to squeeze-in additional assignments." The Commission also noted that as antenna heights of co-channel stations increased, the service area of the lower-powered stations would correspondingly decrease. Further, even though "objectionable interference" may not be caused within a Grade A or Grade B contour by such substandard minimum spacings, "an inevitable degradation of service" would occur.

34. *Antenna Heights.* The Commission found that the record supported the use of antenna elevations as high as possible to achieve maximum channel utilization. The record contained detailed engineering studies demonstrating that increased antenna heights were more advantageous than increased power. The ratio of

service area gained to service area lost by other stations increased with antenna height.

35. *Offset Carrier.* The Commission concluded that specifications with respect to the use of offset carrier should be the same both in VHF and UHF. Co-channel stations were to be offset from each other by plus or minus 10 kHz, with a 1 kHz tolerance specified. The separations adopted by the Commission were based on the employment of offset carrier operation.

FIRST CONSIDERATION OF DROP-INS

36. By 1955, over 90% of the population could receive service from at least one television station, but there were still obstacles to the priorities of the Sixth Report and Order, namely: a) the limitations of only 12 VHF Channels, b) UHF difficulties due to VHF only receivers, VHF program and revenue preferences, and UHF transmitter and receiver deficiencies. Several solutions had been proposed since the Sixth Report and Order. Docket No. 11532 was undertaken to compare and analyze the proposals. As a result, the Second Report and Order on Deintermixture, 13 R.R. 1571 (1956), adopted new planning parameters, relaxed assignment standards to allow calculation of separation distances from proposed transmitter locations rather than between cities of license, and initiated deintermixture of certain markets to establish all UHF markets. Deintermixture involved adding VHF channels to some communities and deleting VHF channels in other communities where UHF stations predominated.

37. Concerning drop-in proposals which were submitted in Docket No. 11532, the Commission had the following to say:

While this method appears to offer limited possibilities for meeting present needs for more stations in some areas, careful analysis of these proposals discloses difficulties which raise very serious doubt that this method would adequately serve our long range objectives. VHF stations at sub-standard spacings would reduce the service area of existing VHF stations and create new interference areas within which satisfactory signals might not be received either from existing stations or from the new stations.

The Commission said, that while it recognized interference problems might be limited to some extent by requiring the "squeezed-in" stations to employ lower heights and powers and directional antennas, and by the use of cross polarization, it did not believe that the creation of numerous small VHF stations with very limited service areas would further the objectives of our nationwide television system. The Commission noted its rejection of similar proposals in the Sixth Report and Order (see paras. 30-33, supra), and predicted that widespread VHF drop-ins would discourage the building of additional UHF stations, and in many instances would reduce the opportunity for successful operation of UHF stations on the air.

SECOND CONSIDERATION OF DROP-INS

38. In Docket 13340, the Commission again considered and proposed short-spaced drop-ins in a limited number of major markets as an interim measure to alleviate a "pressing urgency" for three network television services:

[J]ustifiable only insofar as it does not add to the burdens which already beset UHF operation and which it is our determined purpose to relieve wherever and however possible.

Interim Policy on VHF Television Assignments and Amendment of Part 3 of the Rules Concerning Television Engineering Standards, 21 R.R. 1695; Supplement, 21 R.R. 1709 (1961). The Commission rejected proposals for a more widespread use of drop-ins on the basis that a point of diminishing returns is eventually reached where service losses outweigh service gains, and it would not make sense to press for this theoretical point in light of the effort being made to foster UHF television.

39. The Report and Order, 21 R.R. 1695 (1961), stated that it would set the outermost limits for drop-ins, and would designate at one time all the markets selected so that no further requests would be made. The markets named were Baton Rouge, Louisiana; Dayton, Ohio; Birmingham, Alabama; Jacksonville, Florida; Knoxville, Tennessee; Johnstown, Pennsylvania; Charlotte, North Carolina; Oklahoma City, Oklahoma; Providence, Rhode Island, and Syracuse, New York. Notices of Proposed Rule Making were issued for each but Providence and Syracuse to which VHF assignments were made at standard spacings.

40. The following criteria for drop-in selection were set out:

- (1) That market be among the 75 major television markets in the country,
- (2) That two VHF stations were already operating in the market area,
- (3) That there be minimal dislocation to existing stations,
- (4) That the proposed assignment not have significant adverse effect on UHF stations assigned to other cities,
- (5) That the potential gains in service from the new assignment outweigh the potential service areas lost,
- (6) That no assignments were to be made at less than 120 miles co-channel and 40 miles adjacent channel,
- (7) That new assignments conform with international agreements.

The short spaced assignments were considered to be exceptional cases justified by extreme need, and would therefore be handled by waivers of the minimum spacing requirements rather than an overall reduction in co-channel or adjacent channel separations.

41. Equivalent protection was to be provided to existing stations by suppression of radiation using reduced effective radiated power, a reduced antenna height, a directional transmitting antenna, or various combinations of

those techniques. Equivalent protection simply means limiting the radiation so as to cause no more interference than would result between co-channel stations operating at standard minimum spacings with maximum height and power. The technical definition was that amount of suppression sufficient to maintain a 28 dB ratio between the estimated F(50,50) signal strength value of the desired signal and the estimated F(50,10) signal strength value of the undesired signal (45 dB in the case of nonoffset co-channel operation), at the same distance from the existing station as would occur if the stations were operating with the maximum permissible facilities at standard minimum separations. In other words, a drop-in could present no more interference than would a new station with full facilities and no short-spacing. No equivalent protection to adjacent channels was to be required.

42. By Supplement, 21 R.R. 1709 (1961), the Commission set out the procedure to be followed in determining equivalent protection. Since the UCC petition relies on this concept, which is still valid today, we shall repeat the procedure here:

(a) A straight line will be drawn between the proposed site of the new station and the site of the existing co-channel station which is to be afforded protection. This line will be extended beyond the location of the proposed new station to a distance from the existing station equal to the standard minimum separation which would apply to the Zone location of the actual proposed site.

(b) A hypothetical station will be assumed to be operating at a point on this line which is at the standard minimum separation determined in subparagraph (a) above. This hypothetical station will also be assumed to have a circular radiation pattern centered on the hypothetical site and to be operating with the following parameters:

- (1) Zone I, Channels 2 to 6 inclusive; 100 kW ERP and 1000 ft.
- (2) Zone I, Channel 7 to 13 inclusive; 316 kW ERP and 1000 ft.
- (3) Zones II and III, Channels 2 to 6 inclusive; 100kW ERP and 2000 ft.
- (4) Zones II and III, Channels 7 to 13 inclusive; 316 kW ERP and 3000 ft.

(c) Regardless of the actual power and antenna height employed by the existing station, it will be assumed to be operating with the maximum facilities for the Zone in which it is located as detailed in subparagraph (b) above, and it too will be assumed to have a perfectly circular radiation pattern centered on its transmitter site. Since there is no generally acceptable method of evaluating terrain effects, no consideration will be given to terrain anomalies. The "interference limited" contour resulting from the assumed operations may then be established as the line through all points where the estimated F(50,50) signal of the existing station is exactly 28 decibels higher than the estimated

F(50,50) signal of the hypothetical station.

(d) The Proposed new station will then be required to suppress radiation to the extent necessary so that its estimated F(50,10) signal is at least 28 decibels below the estimated F(50,50) signal of the existing station (45 decibels in the case of non-offset operation) at any point on or within the interference limited contour of the existing station, established as set forth in paragraph (c).

43. Regarding the techniques for achieving equivalent protection, the Report and Order limited directional antennas to a maximum to minimum ratio of 15 db, finding a possibility of unreliable and undesirable results for ratios in excess of that level. Precise frequency offset²⁴ was permitted to improve service, but practical considerations, such as licensee coordination and costly maintenance of complex equipment, persuaded the Commission not to require precise offset and not to utilize it to achieve equivalent protection. For computation of equivalent protection, the drop-in was assumed to operate with maximum permissible facilities and a circular service area, using the theoretical antenna radiation pattern. No procedures were set out for the directional antenna system, but the licensee would be required to assure the Commission that protection would be provided. Alternative methods for establishing equivalent protection were considered and rejected. The Commission said proposals for changes in services area prediction and adjacent channel separations would remain under review until such time as data was sufficient to justify a change. Proposals for drop-ins at cities other than those selected by the Commission were dismissed.

44. On reconsideration, the Commission by Memorandum Opinion and Order, 21 R.R. 1710a (1961), denied additional requests for short-spaced VHF assignments, and adhered to its original proposal of a limited number of drop-ins which were not expected to have an adverse impact on UHF development. The Commission altered the Report and Order to the extent of specifying the exact means which would be required to prove the performance of directional transmitting antennas. 21 R.R. at 1710 (g), para. 18.

45. AMST objected to the loss of existing service that would result from the proposal, but the Commission decided to proceed in light of its goal to provide a third service in major markets and because other services were available in the interference areas. The Commission stated that adjacent channel interference involves at the most a substitution of one service for another in the

²⁴ Offset is the difference in the visual carriers frequencies between two cochannel television stations. Non offset would mean they operate at the same, but unsynchronized frequency nominal offset is defined as 10,000 Hz ± 1000 Hz, precise offset is 10,010 Hz, and zero offset refers to synchronized carriers.

interference areas which would not, therefore, result in a net loss of service to the public and so equivalent protection to existing adjacent channels would not be provided. The Commission also concluded that it had provided adequate procedures to limit drop-in assignment.

46. Television Assignments—Third Service, 41 F.C.C. 1119 (1963), was the Report and Order by which the Commission denied seven of the proposed drop-ins and permitted a move-in at Oklahoma City. This decision was predicated on the enactment of the all-channel receiver authority (Public Law 87-529, 87th Congress, H.R. 8031) on July 10, 1962, which the Commission found to be a major change in circumstances. The all-channel legislation was viewed as a Congressional commitment to an intermixed VHF/UHF system, with the key goal of developing UHF stations. The balance between the short term interim drop-in proposal and the long range UHF goals was tipped in favor of UHF. The Commission was persuaded that the drop-in costs of dislocation of viewing service due to interference and the impact on UHF development could not now be outweighed by the benefits. The benefits of providing a third network source were mitigated by the all-channel legislation, the acquisition of third VHF stations at standard spacings in several major markets, and the improved competitive position of the third network. The Commission said that all new VHF assignments and applications would be scrutinized as to their likely effect upon UHF development. Petitions for reconsideration were denied by Memorandum Opinion and Order, FCC 63-1168 (1963).

UHF IMPACT POLICY

47. The Commission had cause for elaboration and application of the policies established in Docket 13340 in Greater Washington Educational Telecommunications Association (WETA), 53 F.C.C. 2d 910 (1975). WETA applied for authority to construct an experimental television station on VHF Channel 12 in Washington, D.C., at short-spacings of 24.6, 47, and 67.5 miles to existing stations. WETA proposed to determine interference reduction to be gained by equivalent protection and precise frequency offset. The Commission denied the application, finding that:

WETA's channel 12 proposal would result in interference and the result would be a substantial loss of service with no offsetting gains. That such a loss is not in the public interest is axiomatic.

The Commission distinguished prior short-spacings because they did not involve the degree of short-spacing requested by WETA, they were able to provide equivalent protection, precise offset was not required, and in each case the public interest was found to warrant the action taken. The Commission said WETA had not shown that gains would offset losses or that it could provide equivalent protection. Furthermore, the Com-

mission said that grant of the WETA shortspaced VHF proposal:

Would be completely contrary to our UHF policy, in which we have repeatedly asserted that full development of UHF is an integral part of a single, nationwide television service.

The Commission found support for the validity of its UHF policy in UHF growth over the past ten years, increased penetration of all-channel receivers, Congressional affirmation, and the approaching implementation of detent tuning.

48. Recently, the Commission re-examined its UHF impact policy in the context of comparative hearing issues in *WFMY-TV, Greensboro, North Carolina*, 59 F.C.C. 2d 1010 (1976), and *Capital Cities Communications, Inc.*, 59 F.C.C. 2d 435 (1976). In those cases the Commission said:

While we still believe that UHF represents the principal avenue for providing additional local television service, and that, where consistent with the public interest, struggling UHF stations should be protected against destructive competition from VHF stations, we also believe the time has come when we can more critically examine allegations of potential adverse impact and pursue a somewhat less restrictive approach to analyzing the benefits of proposals for expanded VHF service.

The Commission stated that UHF broadcasting had advanced to the point where a more substantial impact could be tolerated without derogation in service overall to the public interest. Therefore, regardless of the characterization of the impact on UHF, a VHF applicant may now demonstrate by countervailing evidence, that, overall, the weight of the public interest favors the grant of an application. Additionally, the Commission said the party alleging substantial adverse impact must demonstrate that realistic near-term potential exists for activation of allocated but vacant UHF channels.

EXISTING SHORT-SPACED STATIONS

49. While the Commission has consistently refused to alter its separation requirements since they were established in the Sixth Report and Order, there have been cases of short-spacing waivers in special circumstances where there was a large public benefit to be gained at minimal cost. In each case, the station was required to provide equivalent protection as defined in Docket 13340, as a condition of the waiver. The majority employ directionalized antennas to achieve the required protection and several have installed precision offset frequency control equipment.

50. A short-spacing waiver of 8.4 miles was granted WVEC-TV in *Peninsula Broadcasting Corporation*, 45 F.C.C. 1662 (1964), when it was shown that antenna height could be increased at the new location, free from aeronautical restrictions, thereby providing an additional TV service to more than 190,000 persons, and a third network to 33,000. KBMT was allowed to move in at Beaumont, Texas, in *Television Broadcasters, Inc.*

45 F.C.C. 1897 (1965), after showing that the short-spacing waiver would provide an additional competitive network service for the market. Two stations were allowed to move in with short-spacings at Albany, New York, because of low circulation in the home counties due to terrain limitations on service. *Capital Cities Broadcasting Corp.*, 24 R.R. 1067 (1963), and *Van Curler Broadcasting Corp.* 24 R.R. 1079.¹⁷

51. The Commission has also permitted short-spacings for aviation safety reasons. In *Antenna Farm Areas*, 8 F.C.C. 559, 566 (1967), the Commission said it could not emphasize too strongly its intention to maintain standard mileage separation requirements, however, if extraordinary reasons of aeronautical safety indicated that a particular antenna structure should be located within the farm, the Commission might authorize a short spacing waiver in individual cases and require equivalent protection.

52. Thus the Commission granted short-spaced waivers in *Midcontinent Broadcasting Co.*, 45 F.C.C. 1798 (1964); *Coral Television Corp.* (WCIX-TV), 6 F.C.C. 2d 749 (1967); *The Outlet Company*, 11 F.C.C. 2d 528 (1968); and *WTCN Television Inc.*, 14 F.C.C. 2d 870 (1968), for air navigation reasons, and required equivalent protection for existing stations. It was noted in the *Midcontinent* case that an additional public benefit would accrue from concentration of TV towers at a single location so that ease in receiver orientation would result.

53. The Commission has granted some educational television short-spacing waivers to accommodate the public interest. In *Charlotte Amalie, Virgin Islands*, 26 F.C.C. 2d 853 (1970), a channel was assigned at substantial cochannel spacing, but all of the interference was over water and therefore no service loss resulted. Also no UHF station was on the air or authorized. It is with this historical perspective on allocations objectives, drop-ins, UHF impact, and existing short-spacings, that we now turn to the technical aspects of the present proposal.

DISCUSSION OF TECHNICAL CONSIDERATIONS

PLANNING FACTORS

54. Petitioners propose that technical advances have now reached a stage where the Commission can comprehensively review the engineering basis for its allocation concepts of service areas, separation requirements, and interference levels. The engineering for these concepts is grounded on a number of technical parameters known as planning factors, established in the Sixth Report and Order, supra. The Commission's Office of Chief Engineer ("OCE") is currently conducting a comprehensive review of those planning factors and has determined that the values of some

¹⁷ Other attempts to move in for competitive equivalency have been denied. E.g. *West Michigan Telecaster, Inc.* (WZZM-TV), 22 F.C.C. 2d 943 (1970).

should be changed to more accurately reflect current knowledge. Other planning factors are also undergoing evaluation, but since the testing has not reached a sufficient stage to provide accurate new values for these factors, they will remain unchanged until sufficient data can be accumulated. It should be noted here that while the planning factors are used to derive required separations based on predictions of acceptable viewing and interference levels, the separation requirements are also a product of public policy considerations. The Commission has attempted to find a balance between the optimum number of stations possible through engineering factors, and the maximum number of stations that can provide wide coverage to substantial populations.

55. We have already adopted new field strength prediction curves, now contained in FCC Rule 73.699. Revision of this planning factor makes another, the time fading factor, different. Also we have determined, based on a 1974 CCIR recommendation, that the adjacent channel protection ratio of zero dB can be changed to -6 dB for a lower adjacent channel and -12 dB for an upper adjacent channel. We also have reevaluated the receiver noise figure, and have sufficient evidence that 6 or 7 dB is more representative of modern receivers than our previous planning factor of 12 dB.

56. Studies made since the adoption of the original assignment plan indicate that the effect of atmospheric and man-made noise should be taken into account in calculating service and interference ranges. A question has also developed as to whether the assumption of a nondirectional receiving antenna is valid under all circumstances. Our terrain roughness factor has been suspended for further study. (See paras. 63-66, infra.) A report containing a thorough discussion and documentation of the findings of the planning factor review and recommendations for specific changes is being prepared by the Office of Chief Engineer and will be released at a later date.

SEPARATION REQUIREMENTS

57. At this time, the reexamination of the planning factors has not established new values to a degree that would justify a reduction in the Commission's separation requirements. Until such time as we are convinced that they should be altered, and to what extent, we shall not reduce separations now provided for in § 73.610 of the Rules. That portion of the petition for rule making which seeks drop-ins through an overall general reduction in spacings is denied at this time. We shall consider drop-ins in this proceeding only on the basis of waiver of our present Rules, and the requirement of equivalent protection as discussed in the sections that follow.

EQUIVALENT PROTECTION

58. It is proposed that any new TV station authorized to operate at less than the minimum geographic cochannel separation from an existing station now required by § 73.610 of the Rules, be re-

quired to suppress radiation so as to avoid creating more interference to the existing station than would be caused by a new station operating with maximum facilities at the minimum separation with the nominal 10 kHz frequency offset between the stations. We are satisfied that the concept of equivalent protection and the procedure adopted in Docket 13340 is still valid when terrain anomalies are taken into consideration. See paras. 41-43, supra. Equivalent protection may be achieved by any one or any combination of the following means:

(a) Precise offset, permitting a desired-to-undesired signal ratio of 24 dB, 4 dB less than the 28 dB ratio assumed for the nominal 10 kHz offset.

(b) Directional transmitting antenna with a maximum suppression (maximum-to-minimum ratio) of 10 dB, or 15 dB on special showing of acceptability.

(c) Reduced power.

(d) Reduced antenna height.

(e) Terrain shielding, but only in a limited number of special situations where such shielding can be predicted with a high degree of confidence.

PRECISE OFFSET

59. Recently completed subjective viewing tests at the FCC Laboratory,¹⁸ involving 12 observers and 35 TV receivers, indicate that on the average a desired-to-undesired cochannel signal ratio of 22-24 dB with precise offset (10,010 Hz) results in a picture quality equivalent to our present standard of 28 dB with nominal 10 kHz offset. These results are comparable to those found in previous FCC Laboratory tests (Project No. 229-26, 1956), and by industry tests.¹⁹ Field tests conducted in Japan where precise offset has been used for many years show similar results. During these tests, data concerning the effect of a zero offset were also collected. These data do not indicate any advantage for zero offset over the 28 dB reference condition. Zero offset interference, when it was visible, resulted in outlines of the undesired picture rather than the "venetian blind" effect of nominal and precise offset conditions.

60. The FCC lab tests were conducted using one cochannel interfering signal. The lab report points out that more protection would be needed if additional cochannel signals were present. A drop-in could be subject to interference from more than one cochannel signal. Therefore, we shall accept a desired-to-undesired cochannel signal ratio of 24 dB for drop-ins when precise offset is employed. This ratio was used in calculating service areas and interference in our

¹⁸ "Comparison of TV Channel Offset Frequencies: Zero Offset and 10,010 Hz (Precise) Offset Project No. 229-73" Federal Communications Commission, Laboratory Division, June, 1976. This report will be attached as an Appendix to the OCE planning factors report to be issued later.

¹⁹ "The Application of Very Precise Frequency Control," Wedell C. Morrison, RCA, Broadcast News, 1958.

analysis of the drop-ins in this proceeding.

In the past, the cost and complexity of the equipment dictated against the use of the precise offset. Equipment is now available which greatly reduces the weight given to these factors.

DIRECTIONAL TRANSMITTER ANTENNAS

61. In considering the use of directional antennas, questions arose as to the maximum suppression ratio that could be reliably achieved and maintained under operational conditions, the effect of reflections of the signal back into the null from other directions, and the possibility of distortions in the null due to radiation pattern shifts as a function of frequency. After reviewing the Comments in this docket and other relevant material, we are persuaded that use of antennas with maximum-to-minimum ratios of 10 dB is practical under nearly all circumstances and that a ratio of 15 dB is practical in those cases where there are no tall buildings or mountains situated so as to cause reflected signals of an unacceptable level into the null from other directions. As a further precaution we propose to limit the rate of change in the azimuth pattern to a maximum of 2 dB per 10 degree change of azimuth. We note that under Section 73.685(e) of the Rules, VHF stations are presently permitted to employ directional antennas having suppression ratios up to 10 dB. For drop-in proposals, we shall consider those requiring antenna suppression ratios to 15 dB in cases where it can be shown that there will be no reflected signals of an unacceptable level into the null.

62. In arriving at the above decision we have reviewed the TASSO studies cited in the AMST comments opposing use of directional antennas. We note that the comments of Jampro Antenna Co. indicated that they have built antennas for Canadian stations with ratios as high as 23 dB, with no reports of operational problems. Perusal of the pertinent Canadian regulations and conversations with the staff of the Canadian Department of Communications indicate that they permit use of directional antennas for cochannel protection with ratios up to 20 dB. The ITS study also concluded that a 10 dB or even greater maximum-to-minimum ratio would be acceptable. This approach is also consistent with that adopted in Docket 13340. (See para. 43, supra.)

TERRAIN EFFECTS

63. Terrain can affect the minimum separation distance required for a given degree of protection between cochannel stations in two ways. First, generally rough terrain or a mountain ridge may severely limit the service range of a station to be protected (but in knife edge diffraction cases, the signal may be enhanced). Secondly, a mountain or mountain range located between the two stations may attenuate the interfering signal significantly. The Commission's Rules recognize these possibilities. Section 73.684(f) reads in part:

For example, a mountain ridge may indicate the practical limits of service although the prediction method may indicate otherwise. In such cases the prediction method should be followed, but a supplemental showing may be made concerning the contour distances as determined by means * * * In special cases, the Commission may require additional information as to terrain and coverage.

Such supplemental showings have been decisive in settling several cases involving common ownership and principal city coverage.

64. In adopting new field strength prediction curves (Report and Order Docket 16004/18052, May 1975), the Commission also adopted a terrain roughness correction factor for use with the curves. The use of this factor has been suspended while the Commission staff works out provisions for problems involving atypical terrain. In announcing its suspension, the Commission made clear its belief in the overall usefulness of this factor and its eventual adoption in the Rules.

65. In considering the terrain effects as part of the criteria for separation requirements for drop-ins, the Commission recognizes the uncertainty involved in the prediction of these effects. The general roughness correction factor involves predictions based on statistics and consequently a certain percentage of predicted values will always fall outside any given range of acceptable error. Predictions concerning the effect of mountains are more sophisticated and exact but still involve a degree of uncertainty and require more detailed input information. Cochannel interference normally depends on tropospheric scatter propagation and is therefore affected by meteorological phenomena and large scale terrain features, which determine the angular distance between transmitter and receiver. These calculations are very much dependent on the climates and geometry of a specific situation.

66. The Commission contracted with the Institute of Telecommunications Sciences to conduct a large scale computer study of topographical anomalies as they influence service and interference signal strengths, for use in analyzing drop-in proposals. (The ITS report will be placed in the docket record for comment. See n. 12, supra.) ITS developed a propagation model based on the Commission's F(50,50) and F(50,10) propagation curves²⁰ as modified by an attenuation factor. The attenuation factor was derived from signal attenuation for a particular path. While the confidence factor of the model is high, research is continuing on an accurate terrain roughness factor and progress has been made toward this end in the ITS study. Based on this and our own analysis the Commission proposes to permit the consideration of terrain effects on determining equivalent protection on a case by case basis, when proper allowance is made for prediction uncertainty.

²⁰ These curves describe statistically the variable field strengths of television signals as a percentage of locations and time.

ANALYSIS OF DROP-IN PROPOSALS

67. On the basis of the history of TV allocations, the comments in this proceeding, and the technical factors discussed in the previous sections, we have determined that it is in the public interest to analyze the costs and benefits of the proposed drop-ins. Many of the costs and benefits involved in such an analysis are social intangibles which do not lend themselves to monetary qualification or mathematical relationships. In this analysis, we shall consider both national impact factors and local market factors.

NATIONAL IMPACT

68. Before considering the costs and benefits of a specific drop-in, it is appropriate to consider some costs and benefits which are national in scope. Underlying any such analysis is the Commission's basic responsibility to encourage the larger and more effective use of the spectrum. Section 303(g), Communications Act of 1934, as amended. Since the Commission has determined that the basic allocation plan for television will not be changed at this time (para. 57, supra), the proposals will be considered within the context of the present allocation plan. We therefore seek to determine (1) what effect proposed drop-ins may have on efficient spectrum usage and (2) whether any proposed drop-in will be compatible with the full development of television service.

69. The Spectrum Allocation Staff of the Commission's Office of Chief Engineer recently predicted that increasing congestion below 10 GHz would present significant frequency reallocation problems. *An Investigation of Economic Factors in FCC Spectrum Management*, August, 1976. The report stated that the Commission's policy was to conserve the spectrum by more intensive use of this limited resource:

The Commission has fostered intensive development of the spectrum resource from its very inception. For example, the operation of additional AM-broadcast stations in the same amount of spectrum was made possible by the use of directional antennas. Other examples are the splitting of land mobile channels, and the inclusion of color information in the bandwidth originally established for black and white television transmission.

This matter was also addressed by Edward Bedrosian of the Rand Corporation in a paper on "Spectrum Conservation by Efficient Channel Utilization," January, 1976. Bedrosian states that the problem of maintaining mutual interference at acceptable levels is becoming a matter of increasing concern, and that a number of things can be done to improve the capability to satisfy the growing demand for communications. Among them he includes the use of efficient transmission techniques to make the best use of existing channels, and the development of additional channels.

70. If drop-ins are possible without creating unacceptable interference to

existing or allocated VHF television stations, they represent an opportunity to use the VHF portion of the spectrum more intensively. The social benefit to be derived from an additional source of television programming may be achieved at low cost in terms of spectrum usage. Instead of using a portion of the UHF spectrum for the new television service, it may be possible to use VHF space which would otherwise not be put to any use. The portion of the UHF spectrum thus saved remains available for use as still another television station.

71. The Commission is firmly committed to the full development of UHF television. No possible array of VHF drop-ins could provide even a significant part of the television service now provided or available for future use in the UHF band. Past efforts by the government and the television industry have brought us to the point where more than one-third of the nation's television stations are UHF, including nearly 200 commercial stations and some 60% of our television outlets. Over 92% of American households using television have sets equipped to receive UHF and, each week, there are better than 30 million UHF viewers. Commercial UHF station revenues now exceed 200 million dollars annually. We recognize there is more to do. Ongoing projects of the Commission are aimed at greater equality between UHF and VHF service through comparability of tuning, improvement of UHF signal quality and education of the public. The Commission has created a UHF Study Task Force to help identify and value all the present and potential demands for portions of the UHF spectrum. With that information, the Commission will then be in the best position to preserve an appropriate amount of spectrum space for television use.

72. In keeping with our commitment to foster UHF television, we shall not consider any drop-in which would be assigned to an all UHF market, or provide substantially the same service now being provided by an existing UHF station in the market. We are aware of the fact that some of the drop-ins proposed in this docket are those rejected in 1961 by the Report and Order in Docket 13340. (See paras. 38-46, *supra*.) Since that time, many conditions in the television industry have changed sufficiently to make it appropriate to take a new look. We have had experience with the All-Channel Receiver Act. A growing number of UHF stations have proven their ability to provide service to the public and be profitable. There is no longer the concern of providing a third commercial network to major communities. While we are convinced that drop-ins do not present the opportunity for a general strengthening of educational television service, we have shown our willingness to address the problems of educational television service and UHF service in general in a variety of ways. This proceeding is certainly not an indication that we have diminished our interest in or commitment to UHF service. A drop-in, however, which

has the potential to offer a new service to a significant population, where it appears improbable that a UHF station could offer that service within the next ten years, is a subject for study by this Commission, in the interest of serving the public.

73. Concern has been expressed by some parties that permitting even a few drop-ins would cause a deterioration in the integrity of the Commission's assignment standards that might eventually erode into a demand system similar to that in effect for AM assignments. That concern should be put to rest. We shall only consider drop-in proposals on the basis of waiver at this time. The party requesting waiver must show that it is in the public interest in each case. This approach is in accordance with the continued existence of a consistent allocation plan. It also follows Commission precedents which have allowed waiver of separation requirements when the costs were small and the benefits to the public large. We do no harm to the integrity of the Table of Assignments by making it flexible in the best interests of the public.

74. The petitioners have argued that one benefit of national scope which might be realized through approval of drop-ins is the increased participation by members of minority groups in television station ownership. (See para. 4, *supra*.) We first note that the Commission has before said that it would not serve the public interest to attempt to inject an affirmative action program into its allocations rules, because these variable social factors do not lend themselves to technical quantification and generalization, and cannot be appropriately incorporated into the engineering standards governing channel allocations. *AM Station Assignment Standards*, 56 F.C.C. 2d 6, 9-10 (1975). On the other hand, in *Garrett v. FCC*, 513 F. 2d 1056, 1063 (D.C. Cir. 1975), the D.C. Court of Appeals expressly required the consideration of minority programming, ownership, participation in management, and history of identification with minority listeners, as relevant factors in waiver requests. Inasmuch as we have decided to consider drop-in proposals only on the basis of waiver of our allocation standards, we intend to give minority waiver applications a "hard look" as defined in *WAIT Radio v. FCC*, 418 F. 2d 1153 (D.C. Cir. 1969), and weigh the possibility of increased minority participation and ownership as a potential national and local benefit. We also intend to give appropriate consideration and "merit" to minority applicants in any comparative hearings that may result from this proceeding in accordance with *Garrett, supra*, and *TV 9, Inc. v. FCC*, 495 F. 2d 929 (D.C. Cir. 1973).

75. If several drop-ins were to be permitted, we could envision possible increased administrative costs associated with increased complexity of application processing, increased activity for the Commission's Field Operations Bureau, more comparative hearings, and further petitions for drop-ins. Of course, the Commission would not close its doors

on a proposal which resulted in public gain, merely because of the difficulty of administrative tasks involved.

LOCAL FACTORS

76. A detailed examination of the local market factors in each of 96 cases appears to be prohibitively time consuming. Therefore, we have established a three step methodology for studying local market factors:

(a) A preliminary selection of those proposed drop-ins which have minimum technical difficulties;

(b) A selection from among those with minimum technical difficulties of drop-ins which have potential large scale benefits to the public; and

(c) A detailed study of the costs and benefits of the proposed drop-ins which survived the above selection process to determine which, if any, have benefits in excess of the costs.

77. The selection criteria applied in the first and second steps of our analysis were adopted for the purposes of the present study alone and are not intended as requirements for consideration of future drop-in proposals. Their purpose is to select for detailed cost-benefit analysis those proposed drop-ins most likely to result in a net positive benefit to the public.²² Our experience with the detailed analysis has indicated that even in that select group, only a few present the opportunity for a drop-in having net benefits in excess of costs. Because of that result, we are satisfied that it is appropriate to depend upon people outside the Commission to bring to our attention markets removed from consideration by the screening process which deserve detailed analysis. (See para. 207, *infra*.)

PRELIMINARY SELECTION CRITERIA

78. The starting point for our analysis is a total of 96 proposed drop-ins. This list (Attachment 1) was prepared from possible drop-ins suggested by OTP, UCC and GATS.²³ Application of the following criteria resulted in the selection of 18 proposed drop-ins which appeared to have minimum technical difficulties:

(a) The market is among the top 100 major TV markets in the United States according to the Commission's Order of Clarification which is ranked according to ARB's 1974 television prime time households.²⁴

(b) The proposed drop-in requires a waiver of minimum cochannel separation distances to existing stations or allocations not in excess of 17.65%.

(c) The proposed drop-in requires a waiver of minimum adjacent channel separation distances to existing stations or allocations not in excess of 15%.

(d) The proposed drop-in conforms to international agreements.

(e) Grade A or better service could be provided to the city of license (or at least one city in multiple city markets).

²² Petitioners state that the test for drop-ins should be a showing of "net gain and service to the public."

²³ See paras. 8-10, *supra*.

²⁴ See para. 8, *supra*.

(f) The assignment would not be to an all UHF television market.

(g) A reasonable antenna site would be available.

79. Two of the preliminary selection criteria, limiting cochannel and adjacent channel short-spacings, represent the maximum deviation from our present standards proposed by OTP in its studies. The 17.65% cochannel short-spacing was based upon an assumption that a 10% reduction could be accomplished without significant harm and that additional reductions would be possible by use of directional antennas (5%) and precise frequency offset (2.65%). The somewhat smaller reduction of spacing proposed by OTP for adjacent channel separation (15%) results from a similar analysis without a reduction for precise frequency offset which has no effect on adjacent channel interference. These criteria were applied to the proposed drop-ins using data from our existing Table of Assignments. Both operating stations and vacant channel allocations were considered. While there is no persuasive evidence before us at the moment which would lead us to delete from the Table those channels allocated but presently unoccupied, we would consider such evidence in any future proceeding.

80. Since this Commission is not empowered to waive provisions of international agreements, proposed drop-ins which are short-spaced to stations in Canada or Mexico could not be approved. For that reason, such drop-ins were removed from further consideration in the preliminary screening process.

81. Under present Commission rules, a television station is required to cover its entire community of license with a city grade signal. Section 73.685(a), F.C.C. Rules. Because of the need to locate some transmitter sites at a distance from the city of license and, in some cases, to suppress the signal in the direction of that city, many of the proposed drop-ins could not meet that standard. While the Commission considers it extremely important that a television station be able to deliver a high quality signal to its city of license, we did not want to exclude a large number of the proposed drop-ins from further consideration on the basis of the failure to deliver principal city coverage. We decided to relax the standard to Grade A service for purposes of preliminary screening. That level of signal would assure reliable and virtually universal service within the community of license, but not the same quality and intensity usually required by our Rules. Any deviation from the usual standard will be considered as a "cost" in the detailed cost-benefit analysis of a particular drop-in.

82. In two communities where drop-ins are proposed, the Commission has established all UHF markets in its Deintermixture proceedings. Petitioners have stated in their reply comments that these markets should not be intermixed absent compelling circumstances. We agree. We find no merit in any proposal to add a VHF assignment to the all UHF markets.

83. It was also decided that a preliminary check should be made of antenna sites using the OTP coordinates, to locate any obviously unsuitable locations such as airports or bodies of water. This check revealed unsuitable locations for drop-ins at Mobile, Alabama; (Eglin Air Force Base); Norfolk, Virginia (airport runway); and San Francisco, California (ocean). We then checked sites of existing television towers to see if they were reasonable alternatives to the OTP coordinates. Only the Channel 9 drop-in at Mobile had no alternative site readily apparent under this test. Final determinations on the availability of a transmitter site could only be considered in later proceedings, and would depend on many factors, such as FAA approval.

84. Our complete analysis of each drop-in under the preliminary selection criteria has been tabulated and made a part of the docket record in this proceeding. The result is the following list of 18 drop-ins with minimum technical difficulties selected for further analysis:

Charleston-Huntington, West Virginia, Channels 2 and 11.
Davenport, Iowa, Channel 11.
Evansville, Indiana, Channel 12.
Houston, Texas, Channel 5.
Jackson, Mississippi, Channel 5.
Johnstown-Altoona, Pennsylvania, Channel 12.
Knoxville, Tennessee, Channel 8.
Miami, Florida, Channel 13.
Milwaukee, Wisconsin, Channel 8.
Norfolk, Virginia, Channel 5.
Portland-Poland Spring, Maine, Channel 3.
Salt Lake City, Utah, Channel 13.
San Francisco, California, Channel 12.
Shreveport, Louisiana, Channel 11.
Sioux Falls, South Dakota, Channel 7.
Springfield, Illinois, Channel 6.
Wichita-Hutchinson, Kansas, Channel 5.

LARGE POTENTIAL BENEFIT ANALYSIS

85. Having selected 18 potential drop-ins for further analysis on the ground that they presented minimum technical difficulties, the next step in our analysis was to see which of those 18 present the opportunity for large scale public benefits. At this point we did not attempt to identify situations in which the benefits outweigh the costs. Our purpose was the more modest one of identifying those communities where a drop-in may be able to deliver a highly valued program service to a substantial population that does not now receive that service.

86. In considering whether the new service would reach a substantial population we concentrated on the same general market area presently served by the stations with which the drop-in would compete. Failure to consider this factor could lead to the selection for detailed analysis of drop-ins located far from their own city of license, drop-ins with a propagation pattern greatly skewed from that of other stations in the market, or drop-ins which would not provide significantly better coverage than an existing or hypothetical UHF station. Such drop-ins would inevitably face serious problems of market support and receiving antenna orientation. Thus, a drop-in having a pattern substantially

incongruent with the patterns of existing stations was not regarded as having the potential for the kind of large scale public benefit presented by those drop-ins which can provide a new service in the heart of the market area.

87. To be highly valued, the service which a drop-in could deliver to a substantial new population should be a network service, a first non-network service, or a second non-network service. This is not to say that additional services beyond the second non-network service are not valued by the public. In terms of setting priorities for the study of proposed drop-ins, though, there appeared to be good reason to suggest that the potential benefits of an additional service are of smaller scale if a market is already adequately served by three networks, an educational television station and an independent. The proposed drop-ins for Miami, Florida, and San Francisco, California, were removed from further analysis on the ground that each of those markets is presently served by that array of program services on VHF stations.

88. The potential to deliver network programming to a substantial new population is considered to be present in any market in which the present share of ADI homes watching television during an average quarter hour of the 9:00 a.m. to midnight time period is less than 15% for one network. At that level it would appear that something other than competitive programming factors impedes the distribution of one network service in that market (usually a UHF competing with VHF stations). The possibility that a drop-in might be able to overcome such difficulties creates the potential for large scale public benefits. Jackson, Mississippi; Johnstown-Altoona, Pennsylvania; and Knoxville, Tennessee, are three markets which present such opportunities.

89. Large potential benefits could be provided by a drop-in if it was the first non-network VHF assignment in a market and could serve a substantial new population. Charleston, West Virginia; Davenport, Iowa; Norfolk, Virginia; Portland, Maine; Shreveport, Louisiana; and Sioux Falls, South Dakota are markets with three network VHF stations presently and where a drop-in would be the fourth VHF assignment. The Norfolk drop-in, however, is predicted to not provide service to a substantial new population beyond that presently covered by an existing independent UHF station, as most of the drop-in's additional service area is over water. The Charleston Channel 2 drop-in and the Shreveport drop-in have predicted coverage areas that are greatly incongruent with existing stations in those markets, due to interference and required equivalent protection. The Charleston Channel 11, Davenport, Portland, and Sioux Falls drop-ins appear to offer the potential benefit of a first non-network program service to substantial new populations.

90. Large potential benefits could also be derived from a drop-in if it was a second non-network VHF assignment in

a market and could serve a substantial new population. Apparent opportunities for this large scale benefit are found in Milwaukee, Wisconsin; Salt Lake City, Utah; and Wichita, Kansas. A similar possibility in Evansville, Indiana, is removed from further analysis on the ground that the proposed drop-in service area is substantially incongruent with other station patterns in the market. The opportunity for large scale benefits in Evansville is also reduced by the possibility that a drop-in would unnecessarily disrupt the competitive situation in which one network VHF station and two network UHF stations presently exist. In Houston, Texas, the proposed drop-in would have a predicted service area which would cover only water beyond the area already served by a UHF station providing a similar service. In Springfield, Illinois, a comparison of the predicted coverage of the proposed drop-in with the coverage of an existing UHF station providing a similar program service indicates that only a very small number of people could get new service from the drop-in, while many people presently in the service area of the UHF station would not be within the predicted service area of the drop-in.

91. On the basis of the above analysis, we have selected ten drop-ins considered to possess both minimum technical difficulties and large potential public benefits for a detailed study of their predicted costs and benefits, and an assessment of net positive benefits. The selected drop-ins are:

Charleston-Huntington, West Virginia, Channel 11.
Davenport, Iowa, Channel 11.
Jackson, Mississippi, Channel 5.
Johnstown-Altoona, Pennsylvania, Channel 12.
Knoxville, Tennessee, Channel 8.
Milwaukee, Wisconsin, Channel 8.
Portland-Poland Spring, Maine, Channel 3.
Salt Lake City, Utah, Channel 13.
Sioux Falls, South Dakota, Channel 7.
Wichita-Hutchinson, Kansas, Channel 5.

COST-BENEFIT ANALYSIS

92. Each of the ten selected drop-ins has been studied to determine whether the benefits of making such a station available would exceed the costs. In the section which follows, we explain the general nature of the studies undertaken and then explain on a market-by-market basis the results and implications of those studies.

93. A major part of our effort has been addressed to trying to determine who would gain television service and who would lose television service if a drop-in was added to a market. Such calculations must be based on certain assumptions, estimates and probabilities. We have attempted to state in summary form here the way in which the service gains and losses were calculated. The detailed maps, work sheets and results will be added to the docket so any interested person can verify or challenge our studies.

94. Two sets of maps were prepared for each of the ten markets. The first set contains the interference-limited, Grade

B service contour of the proposed drop-in with a transmitter site at the OTP proposed coordinates or at the site of an existing station if an existing site appeared more favorable to the drop-in and still met the selection criteria. When an existing station's transmitter site was used for the drop-in coordinates, its antenna height above average terrain (HAAT) was also assumed for the drop-in. For drop-ins studied at OTP coordinates, an antenna HAAT similar to that of existing stations in the market was used. The power for the drop-in was then determined on the basis of equivalent protection (paras. 42 and 58, *supra*) to short-spaced stations, but ranging up to maximum power in other directions. An assumption was made that equivalent protection was to be provided by a directional antenna (in no case was a suppression ratio greater than 10 dB required) and precise frequency offset. The drop-in contours were drawn from these parameters, but without consideration of terrain factors. The total populations within these contours was determined in the manner described below. A complete description of the site and characteristics assumed for the drop-ins is attached to the maps and in the record.

95. For comparison, the Grade B service contour of a hypothetical UHF station operating from the site of an existing station in the market and operating with "reasonable" facilities was also added to the map and its service population determined. The concept of reasonable facilities was developed for these maps because an assumption of maximum permissible facilities created an obviously unrealistic situation in some markets where the antenna height or the cost of power would be prohibitive. Where appropriate, the facilities of an existing UHF station were used as the model for reasonable facilities. Where that was not appropriate, reasonable assumptions were made by our staff engineers and those assumptions are stated with the relevant maps.

96. All populations within coverage areas were determined from 1970 U.S. census maps showing populations of county subdivisions. An assumption was made that population is equally distributed within subdivisions except for indicated population centers. Visual estimations of percentage of population were made at the limits of the coverage areas where the service contour lines cut across subdivisions or population centers. Populations were then totaled for population centers, subdivisions and counties. While it is true that some people living within the Grade B contour of a television station do not receive an adequate signal, and some people living outside that contour do receive an adequate signal, no attempt was made to measure either of these groups.

97. A second set of maps was drawn to show the areas in which interference to existing stations would be caused by each of the selected drop-ins. These interference zones are areas now within the interference limited Grade B contour of existing stations, which would not be

within the interference limited Grade B contour of those stations if the drop-in goes on the air, due to interference from the drop-in. It should be noted that each proposed drop-in has been treated as providing equivalent protection to existing cochannel stations and will, therefore, cause only the same level of interference as would be caused by a station with full facilities operating at the minimum spacing permitted by our rules. It should also be noted that a prediction of interference is not an assertion that people within the interference zone will no longer receive the desired signal. By a variety of means, including favorable geographic conditions, improved receiving antennas, and improved television receivers, people in predicted interference zones may continue to receive the interfered-with signal. Our experience with new stations at both normal and short-spacings would indicate that the creation of such an interference zone does not automatically prevent reception of the desired signal in that area.²⁴ Nonetheless, the creation of such interference zones must be regarded as a cost associated with a drop-in.

98. Populations in the interference zones were determined in the manner described above. These population totals were then subjected to further analysis on the basis of statistical viewing data available from ARB. First, it could be expected that CATV subscribers in the interference zones would not be affected by the interference loss, and therefore county CATV percentages were used to determine noncable population in the interference zones. Next, the noncable population was multiplied by the off-air net weekly circulation percentage of the affected station, to arrive at that portion of the population within the interference zone which watches the affected station at least once a week. Finally, this viewing population figure was categorized by apportioning it into:

- (a) That portion which lived in counties where an alternate program source (or combination of sources) of the same category as the interfered-with station (educational, independent, or same network) was available with an off-air NWC at least as great as that of the interfered-with station;
- (b) That portion which lived in counties where an alternate like-program source (or combination of sources) was available with a lesser off-air NWC than the interfered with stations; and
- (c) That portion which lived in counties with no alternate like-program available off the air (zero NWC).

The calculations and maps for each market have been placed in the Docket of this proceeding.

99. We emphasize that this analysis does no more than indicate probable

²⁴ Even in zones predicted to receive interference from a short-spaced station, net weekly circulation (NWC) figures indicate that some viewers continue to watch the interfered-with station. Staff Study of Terre Haute, Indiana, and Shreveport, Louisiana, dated October 14, 1976, added to public docket of this proceeding.

viewing patterns, and does not predict service losses with scientific accuracy. The numbers involved are merely statistical estimates. The losses described above can be accorded different weight. Certainly the cost is higher if no alternative source of the same program service is available. Total populations in the interference zones are predicted to lose one station that is now available to them, but populations in the last two categories above are predicted to lose one type of programming. In the discussion which follows we have occasionally combined the figures from the last two categories (lower NWC and zero NWC) to refer to those who have no "acceptable alternative program source." In this connection, it should also be noted that no attempt is made to relate service gains and service losses on a one-to-one basis. In general, we would regard the loss of an existing service to one person as having somewhat greater weight than the gain of an additional program service to one person.

100. In the Notice of Inquiry we invited comments on the potential economic viability of a VHF station operating on a drop-in channel. During the course of our investigation of this issue, we recognized that the emphasis on the viability of the drop-in was too strong. To exclude a drop-in solely on the ground that economic models predict nonviability would be somewhat arbitrary. We consider the judgment of potential entrepreneurs to be more sensitive to market possibilities than any generalized model can be. If our decision leads to the allocation of a drop-in for which no applicant comes forward then neither the potential benefits nor the potential costs of that drop-in will have been realized.

101. The Commission is concerned with the viability in a broader sense. In our analysis of the benefits and costs resulting from a drop-in, we have attempted to consider the external economic consequences of the drop-in. If a drop-in poses a serious threat to the viability of an existing station, the loss of service to the public which would result from failure of that station must be regarded as one cost of the proposed drop-in. As is true of any other cost, it must be weighed against the potential benefits to the public of receiving service from the drop-in. Furthermore, a drop-in predicted to clearly add another station to the market would have more benefit than one economically predicted to replace an existing station. We have, therefore, chosen to address viability and economic impact as two components of the same question: what are the expected local economic consequences of a new VHF station operating on a drop-in channel?

102. Three studies have been made available to the FCC that address the general issue of station viability. Two developed mathematical models designed to estimate how many stations one could expect to find in markets of specified characteristics. The third de-

veloped mathematical equations designed to estimate the profitability of a station given some characteristics of the station and its competitors.

103. Stanley M. Besen and Paul J. Hanley of the Department of Economics, Rice University, submitted a study as part of the comments in this proceeding. The study, entitled "Market Size, VHF Allocations and the Viability of Television Stations" (December 1974 and an Appendix entitled "A Further Analysis of OTP Drop-in Plans" (July 1975) were supported by a National Science Foundation grant. The Besen-Hanley study develops an equation for estimating the total number of stations in a market from the known number of TV households in the Arbitron Area of Dominant Influence (ADI and the known number of VHF allocations in the market. This model can be used to project the total number of stations (UHF and VHF which could be supported in a market, given the number of VHF allocations and the number of households.

104. The Rand Corporation conducted a study under contract to the Commission and produced a report entitled: "Projecting the Growth of Television Broadcasting: Implications for Spectrum Use" (1976) by Rolla Edward Park, Leland L. Johnson and Barry Fishman. The Rand study developed a model to estimate the number of UHF stations that would be expected to operate in a market given the following parameters: the number of television households in the ADI, the number of VHF stations operating in the market, UHF set penetration, cable television penetration, average household income, a measure of the viewing lost to overlapping stations in other markets, indicators of the quality of off-the-air reception, whether the market was in the top 100, and whether the ETV service was only available on UHF.

105. A third model was developed by Broadcast Bureau staff economist Alexander Korn. Korn's model is a series of mathematical equations that estimate the expected level of profits of a commercial station not affiliated with a major network given its level of program expenditures relative to those of the affiliated stations in the market and other factors. The Korn study, entitled: "Economics of New Entry of Independent Stations into Television Markets" (1976), will become part of the record of this proceeding.

106. We note that the Rand and Besen-Hanley models were not designed to distinguish among VHF stations which deviate in location or other engineering characteristics from existing VHF stations. Therefore, our application of these models to the question of economic impact implicitly assumes that the drop-in is technically comparable to the existing stations. This is not generally the case. In fact, the drop-in is usually in a poorer position than the existing station, and therefore the injurious effect on existing UHF stations may be slightly overstated by these models. In addition, none of the models include factors to represent tech-

nical improvements in UHF service which are expected to be realized in the near future.

107. The Rand and Korn studies each used their respective models to make estimates of the future based on rates of growth of market characteristics obtained from the Bureau of Economic Analysis, U.S. Department of Commerce. We have used those predictions of the future for judging potential economic impact in the drop-in markets. The Besen-Hanley report did not make estimates beyond its base year, but we have extrapolated from the Besen-Hanley model by employing the same TV household growth factors that Rand used to project the number of TV households expected in each market by 1985.

108. Any model, as an abstraction of reality, is bound to have defects and we do not believe that these three models are exceptions. They are, however, what is available for use in this proceeding and we have concluded that they are sufficiently well developed to provide a rough indication of the number of commercial stations that a market would support. We have therefore used these models for the limited purpose of estimating the potential adverse effects on UHF stations in our detailed analysis of the drop-in proposals. We do not intend to impart validity to these models beyond the limited use made of them here.

109. What follows is a summary of the fact situation in each of ten markets under detailed consideration. At the end of each summary is a brief statement of the conclusions drawn from those facts. The conclusions are based on individual market situations and must also be interpreted in light of the discussion in this document concerning national impacts.

CHARLESTON-HUNTINGTON, WEST VIRGINIA;
CHANNEL 11

110. *Demographics.* This market is presently ranked 41st according to the 1975 ARB prime time household rankings (40th in the 1974 rankings). Charleston (1970 pop. 71,505) and Huntington (1970 pop. 74,315) are approximately 40 miles apart in a mountainous area near the western border of West Virginia. They are considered part of the same television market by the ARB rankings, with 434,200 TV households in the Charleston-Huntington ADI. Data from the U.S. Bureau of Economic Analysis indicates that per capita earnings are increasing steadily.

111. *Present television service.* There are three network affiliate VHF stations in this market, and one educational UHF station. They are:

WSAZ-TV, Huntington, W. Va. Channel 3, NBC; WCHS-TV, Charleston, W. Va. Channel 8, CBS; WOWK-TV, Huntington, W. Va. Channel 13, ABC; and, WMUL-TV, Huntington, W. Va. Channel 33, Educational.

112. *Short-spacings.* The proposed Channel 11 drop-in to Charleston-Huntington, if located at the OTP proposed site, would be short-spaced to and would cause new interference to:

WJHL-TV Johnson City, Tennessee, Channel 11, CBS; and WIIC-TV Pittsburgh, Pennsylvania, Channel 11, NBC.

In addition, although not short-spaced to the following station, the drop-in would cause new interference to:

WBOY-TV, Clarksburg, West Virginia, Channel 12, NBC.

113. *Service gain.* The drop-in would be the fourth VHF allocation in the Charleston-Huntington market. The proposed drop-in is predicted to have an interference-free Grade B service contour encompassing a population of 834,200. This can be compared to the expected coverage of a hypothetical UHF station operating with facilities similar to those of WMUL-TV, Channel 33, an educational station at Huntington, West Virginia. Such a station would have a Grade B service contour which covers an area containing 777,500 people. The proposed VHF drop-in would provide Grade A service to Charleston and Huntington, and city grade service to almost all of Charleston and part of Huntington.

114. *Service loss.* The drop-in is predicted to add a new source of objectionable interference to a total of 249,865 persons. Of these, 126,288 are not served by CATV and 43,295 watch an interfered-with station at least once a week, according to NWC statistics. 28,596 persons reside in counties where an alternative, like-program source is available which has an NWC equal to or greater than that of the interfered-with station. 12,945 live in counties where an alternative, like-program source has a lower NWC than the interfered-with station. Finally, 1,754 persons reside in counties where no alternative, like-program source is available, according to 1975 NWC figures. This figure is representative of those viewers who are predicted to lose their only source of CBS programming from WJHL-TV, Johnson City, Tennessee.

115. *Translator and frequency offset costs.* Two television translators operating in the area would be forced to change frequency if the proposed drop-in went on the air. Other VHF frequencies appear to be available for their use, so the resultant cost of such changes would be approximately \$1,000. Three existing stations would be required to exchange offset at an approximate cost of \$10,000 each.

116. *Economic impact.* The three models at our disposal indicate that given its present size and characteristics, the Charleston-Huntington market would support four commercial stations if they were all VHF. The models suggest that by 1988, the assumed changes in market characteristics (population growth and UHF set penetration primarily) would still support at most, four commercial stations. By that time a UHF station would probably be marginally feasible if there were only three VHF stations in the market. The models therefore indicate that a VHF drop-in would provide a new non-network program source more quickly than if that source were to be on the UHF band. The existence of the fourth VHF sta-

tion in the market does remove the possibility of a commercial UHF station for the market in the foreseeable future. However, the models also indicate that the feasibility of that UHF station would be doubtful for a significant period of time even in the absence of the drop-in.

117. *Comments.* Opposition to this drop-in has been filed by Cox Broadcasting Corporation and Roy H. Park Stations, licensee of WJHL-TV, Johnson City, Tennessee. Cox states that the Charleston transmitter site is 25 miles from Charleston and would fall to provide a city grade signal to that city. Additionally, Cox says that major obstructions are located between that site and Charleston. Further, interference to the drop-in from existing stations would severely limit its Grade B service area; and conversely, the drop-in would cause severe interference to existing stations. Cox notes that this proposal conflicts with the proposed OTP drop-in of Channel 11 at Dayton. Park objects to the interference which would be caused to WJHL-TV at Johnson City and urges that the Commission follow its UHF impact policy and deny this assignment. Park argues that drop-ins are not effective assignments from a competitive standpoint because of interference received, and that better alternative routes to added service are available. Lee Enterprises, Inc., WSAZ-TV, Channel 3, Huntington, West Virginia, opposes the Channel 2 drop-in at Charleston and states that many of its viewers have already resorted to cable because of heavy adjacent channel interference.

118. *Conclusion.* On the basis of the large benefits which may be derived from a Channel 11 drop-in assignment at Charleston and the relatively small costs involved, we conclude that this proposal should be considered further in rule making. The drop-in offers the opportunity to serve a large population (approximately 834,200 people) with a first commercial independent service. That service would not only reach substantially more people than a similar service offered on a hypothetical UHF station, but could provide the service many years earlier than it is expected to be provided on UHF. In reaching this conclusion we recognize that signal quality in the cities of Charleston and Huntington comes close to, but does not meet our normal standard. We also recognize that 1,754 people located in areas where no similar programming is available over the air are predicted to lose one program service if the drop-in is activated and that others may receive interference which may reduce the channel choices available to them with standard receiving equipment. The balance of benefits, in our view, justifies going forward with rule making in this instance. To reserve the station for non-commercial educational use would almost certainly mean that any use of the drop-in would be merely a substitute for the existing educational service. We would prefer to leave open the possibility that an additional program service

(commercial independent) may enter the market. It is, of course, true that an unreserved channel may be used for educational purposes.

DAVENPORT, IOWA, CHANNEL 11

119. *Demographics.* This is the 71st market according to the 1975 ARB prime time TV household rankings (66th in the 1974 ranking). Davenport (1970 pop. 98,469) is located on the eastern border of Iowa adjacent to Rock Island, Illinois (1970 pop. 50,166), Moline, Illinois (1970 pop. 46,237) and Bettendorf, Iowa (1970 pop. 22,126). All four towns compose the Quad City Market, and there are 295,400 TV households in the ADI. Population trends indicate a small steady increase, while earnings have shown some fluctuation in this market.

120. *Present television service.* There are three network affiliated VHF stations in this market and no UHF stations. They are:

WOC-TV, Davenport, Iowa, Channel 6, NBC; WHBF-TV, Rock Island, Illinois, Channel 4, CBS; and WQAD-TV, Moline, Illinois, Channel 8, ABC.

A UHF educational station has been proposed on Channel 24 at Moline, Illinois (BPET-509).

121. *Short-spacings.* The proposed Channel 11 drop-in at Davenport, if located at the existing transmitter site of WQAD-TV, would be short-spaced and cause new interference to:

WTTW, Chicago, Illinois, Channel 11, Educational; and KIIN-TV, Iowa City, Iowa, Channel 12, Educational.

In addition, although not short-spaced to the following stations, the drop-in would cause new interference to:

KDIN-TV, Des Moines, Iowa, Channel 11, Educational; and KPLR-TV, St. Louis, Missouri, Channel 11, Independent.

The site location of the drop-in, which was adjusted from OTP specified coordinates, was considered preferable for study purposes since (a) it would permit an antenna height of 1000 feet or better, and (b) it would collocate the drop-in with an existing television station.

122. *Service gain.* This drop-in represents the fourth VHF channel in the market, and has a predicted interference-free grade B contour which includes a population of 626,400 people. A UHF station assumed to have reasonable facilities (30 dBk, 1000' HAAT at the site of existing stations) could provide grade B service to 603,100 persons. The drop-in could provide city grade service to Davenport.

123. *Service loss.* Predicted objectionable interference to short-spaced stations encompasses a total population of 538,987. Of this figure, 425,137 are not served by CATV, and 111,806 watch the affected station at least once a week according to NWC statistics. 4,859 persons reside in counties where an alternative like-program source is available, but that source presently receives less NWC than the affected station. The remaining 106,947 persons reside in counties with no alternative like-program source.

63,610 of these viewers would be predicted to lose educational station KIIN-TV, Iowa City, Iowa, Channel 12, because of new adjacent channel interference. They would, however, reside in the area predicted to gain new service from the drop-in. The city of Davenport now receives grade B service from KIIN-TV.

124. *Translator and frequency offset costs.* This proposal would require no changes in translator frequency, but one operating station would have to change offset at an estimated cost of \$10,000.

125. *Economic impact.* It appears from two of the three models used in this analysis that the Davenport market may not at present support four commercial stations. The RAND model predicts that the fourth VHF station would be viable as a commercial operation in the present market. The RAND and Korn models predict that by 1988 a fourth commercial VHF station would be feasible as a non-network station. The Besen-Hanley model indicates that a successful 4th commercial VHF station is not likely. All three models also suggest that, given the assumed market growth rates, the Davenport market will not support a UHF commercial non-network station by the 1985-1988 period. Therefore, it appears that commercial UHF service would not arrive in this market, even in the absence of the drop-in, until a significant number of years have elapsed. It also appears, however, that the benefits from the commercial program service of the drop-in may not appear immediately and must therefore be counted as less certain.

126. *Comments.* The Iowa Educational Radio and Television Facility Board, licensee of educational stations KDIN-TV, Channel 11, Des Moines, and KIIN-TV, Channel 12, Iowa City, Iowa, opposes this drop-in. It argues that such a drop-in would interfere with the service provided by KIIN-TV and result in the loss of that station and the Iowa Educational Broadcasting network to the community of Davenport. The Board also objects to increased interference to KDIN-TV, Palmer Broadcasting Company, Davenport, opposes this proposal and states that petitioners have offered no basis for separation waivers. Palmer argues that the Commission has fully considered the drop-in technique and rejected it in Docket 13340. Mid-West Television, Inc., licensee of WMBD-TV, Peoria, Illinois, objects to the Davenport drop-in because it would impinge on WMBD-TV's service area. Quincy Broadcasting Company, WGEM-TV, Channel 10, Quincy, Illinois, and Southern Minnesota Broadcasting Company, KROC-TV, Rochester, Minnesota, both filed oppositions to the Channel 10 drop-in proposal at Davenport which failed to meet our minimum technical selection criteria.

127. *Conclusion.* The assignment of drop-in Channel 11 at Davenport, Iowa, would provide the fourth VHF allocation in the market, and a potential first non-network VHF service to 626,000 people in its Grade B contour. However,

increased interference is predicted to affect 112,000 people who do not have an acceptable alternative program source. The interference to 64,000 of these people would be adjacent channel interference to the educational station at Iowa City, which means they would receive substituted service from the drop-in. If the drop-in would provide an educational service, the substitution would be less objectionable. State educational administrators oppose the drop-in as an educator because it would disrupt the present state plan that provides educational service from Iowa City and Des Moines. Commercial service on the drop-in is not acceptable because of the large losses involved here to ETV viewers. We conclude that this drop-in does not offer sufficient net positive benefits to warrant rule making.

JACKSON, MISSISSIPPI, CHANNEL 5

128. *Demographics.* This is the 81st market according to the 1975 ARB prime time household rankings (82nd in the 1974 rankings). Jackson has a 1970 population of 153,968 and is located in southwestern Mississippi. There are 219,800 TV households in the Jackson ADI. The population trend has been relatively stagnant, but is predicted to steadily grow by the Bureau of Economic Analysis. Per capita earnings have been and are expected to continue steadily increasing.

129. *Present television service.* Jackson has two network VHF stations, a network UHF, and an educational UHF. They are:

WLBT, Jackson, Channel 3, NBC; WJTV, Jackson, Channel 12, CBS; WAPT, Jackson, Channel 16, ABC; and WMAA, Jackson, Channel 29, Educational.

130. *Short-spacings.* The proposed Channel 5 drop-in at Jackson, Mississippi, if located at the OTP proposed coordinates, would be short-spaced to:

KALB-TV, Alexandria, Louisiana, Channel 5, NBC; and WKRQ-TV, Mobile, Alabama, Channel 5, CBS.

In addition, although not short-spaced to the following stations, the drop-in would cause new interference to:

WMC-TV, Memphis, Tennessee, Channel 5, NBC; and WABG-TV, Greenwood, Mississippi, Channel 6, ABC.

131. *Service gain.* The proposed drop-in would be the third VHF assignment in the market and is predicted to have an interference-free Grade B contour encompassing 400,700 population. It could provide city grade service to Jackson. A hypothetical UHF with reasonable facilities similar to those of WAPT (30.1 dBK and 1170' HAAT) would have a predicted coverage of 424,800 people. This difference is largely attributable to the inability of the drop-in to cover Vicksburg, Mississippi, with a Grade B signal due to interference received from a cochannel station in Alexandria, Louisiana.

132. *Service loss.* The drop-in is predicted to add a new source of interference to a total of 186,376 persons. Of these, 163,830 are not served by CATV,

and 122,792 watch an affected station at least once a week, according to NWC statistics. 3,787 persons reside in counties where an alternative, like-program source (same program service category as the interfered-with station) is available which has an NWC equal to or greater than that of the interfered-with station. 94,013 live in counties where an alternative, like-program source has a lower NWC than the interfered-with station. Finally, 24,992 reside in counties where no alternative, like-program source is available, according to 1975 NWC figures. It is also noted here that the Jackson UHF station, WAPT, now covers 52,077 more persons (46,705 non-cable subscribers) with its Grade B contour who would not be within the Grade B contour of the drop-in. NWC figures indicate a viewing population of 22,544 for WAPT in this area.

133. *Translator and frequency offset costs.* No offset changes are required and no translator impact is expected in this market.

134. *Economic impact.* Two of the models used for this analysis indicate that the Jackson market will only support three commercial stations (VHF or UHF) over the next ten years. The RAND model suggests that a UHF commercial non-network station might be viable in the presence of three VHF network stations by 1985, but would be marginal now. This means that if the drop-in went on the air it would in all probability replace the existing UHF as the ABC network affiliate and that Jackson would remain a three commercial VHF market for many years. The economic impact in the case of Jackson is complicated by the presence of a VHF ABC affiliate in nearby Greenwood, Mississippi. That station achieves a small share of the audience in the Jackson ADI and would likely lose some, if not all, of those viewers to the new VHF affiliate in Jackson should the new channel be dropped in. Therefore, a complete assessment of the economic damage caused by the Jackson drop-in would have to consider whether the expected loss of audience by the Greenwood station would be severe enough to cause the station to reduce service to its remaining viewers.

135. *Comments.* WKRQ, Inc., licensee of WKRQ-TV, Channel 5, Mobile, Alabama, filed comments in opposition to the Channel 5 drop-in at Jackson, which would be short-spaced to it. WKRQ supports its comments with an engineering study and a brief on TV allocations history. Other parties objected to the Channel 10 drop-in at Jackson, which did not meet our minimum selection criteria.

136. *Conclusion.* Costs clearly outweigh benefits with regard to a Channel 5 drop-in assignment to Jackson, Mississippi. The predicted coverage of the drop-in is not as good as the predicted coverage of the existing UHF station largely because of the failure of the drop-in to reach Vicksburg. The potential loss of a program service by 119,000 people receiving interference from the drop-in and not having an acceptable alternative source is a strong negative factor. These costs

apply whether the drop-in is considered as an educational or commercial station. Without even reaching the questions of harm to the Greenwood station or the viability of other stations in the Jackson market, we conclude that rule making should not be proposed for Jackson, Mississippi.

JOHNSTOWN-ALTOONA, PENNSYLVANIA,
CHANNEL 12 OR CHANNEL 8

137. *Demographics.* This is presently the 73rd market according to the 1975 ARB prime time household rankings (70 in the 1974 rankings). Johnstown (1970 pop. 42,476) and Altoona (1970 pop. 62,900) are approximately 30 miles apart in a mountainous region of west central Pennsylvania. They are considered part of the same television market by the ARB ranking, with 284,500 TV households in the Johnstown-Altoona ADI. Earning trends in this market are fluctuating, but the population is expected to remain relatively constant over the next few years as it has in the past.

138. *Present television service.* There are two commercial network affiliated VHF stations in this market and two commercial network affiliated VHF stations. They are as follows:

WJAC-TV, Johnstown, Channel 6, NBC;
WTAJ-TV, Altoona, Channel 10, CBS;
WJNL-TV, Johnstown, Channel 19, CBS;
and WOPC-TV, Altoona, Channel 38, ABC.

Educational television service is available in the market from VHF stations in Clearfield, Pennsylvania, and Pittsburgh, Pennsylvania.

139. *Short-spacings.* The proposed Channel 12 drop-in at Johnstown-Altoona, if located at the OTP site, would be short-spaced and would cause new interference to:

WBNG-TV, Binghamton, N.Y., Channel 12, CBS; WHYI-TV, Wilmington, Del., Channel 12, Educational; WBOY-TV, Clarksburg, W.V., Channel 12, NBC; and WICU-TV, Erie, Pa., Channel 12, NBC.

140. *Service gain.* The proposed drop-in would represent the third VHF allocation in this market and is predicted to have an interference-free grade B service contour which includes a population of 593,500 persons. A UHF station could have a service area of 688,900 persons if located at the site of an existing UHF station in Altoona (WOPC) and operated at reasonable facilities (30 dBk, 1000' HAAT). WOPC operates with significantly less power and antenna height and therefore, its grade B service contour does not reach Johnstown. The hypothetical UHF station above would provide Grade B service to Johnstown, but the drop-in, at the OTP specified transmitter site, would not provide any service to Johnstown because of cochannel interference from WBOY-TV, Clarksburg, West Virginia. Thus, the inability of the drop-in to serve Johnstown accounts for the difference in population served. The drop-in would

provide principal city service to Altoona.

141. *Service loss.* The drop-in is predicted to add a new source of interference to 175,455 persons. Of these, 92,565 are not served by CATV, and 30,325 watch an affected station at least once a week, an alternative, like-program source (same program service category as the interfered-with station) is available which has an NWC equal to or greater than that of the interfered-with station. 10,123 live in counties where an alternative, like-program source has a lower NWC than the interfered-with station. Finally, only 2,262 reside in counties where no alternative, like-program source is available, according to 1975 NWC figures. It is also noted here that the Altoona UHF station, WOPC, has a predicted Grade B contour which now covers 10,456 persons (7,470 noncable subscribers) who would not be within the Grade B contour of the drop-in. WOPC presently obtains zero NWC in this area.

142. *Translator and frequency offset costs.* One existing translator station serving 450 persons would be required to switch to another VHF channel at an approximate conversion cost of \$500. No offset arrangement is completely workable for the Channel 12 drop-in, but the Commission has allowed some cochannels to be allocated less than 250 miles apart without requiring offset. Terrain may help eliminate interference between non-offset stations in this case.

143. *Economic impact.* It is likely that, given the present rather limited coverage of the ABC network in the market, the drop-in would receive the affiliation of that network. Under this assumption, the drop-in would be immediately viable. The results of three models available to us are strongly conditioned by the prevailing industry circumstance of only three network affiliates per market. The results of the Besen-Hanley and Korn models indicate that this market would not support three commercial VHF stations and one commercial UHF station by 1988 if the UHF station was not affiliated with a network. The RAND model indicates that a commercial UHF station may be viable in the presence of three VHF stations. None of the models indicate what would happen if one of the two existing UHF stations retained its affiliation. The drop-in would most likely obtain the network affiliation of the weak UHF (WOPC-ABC) in Altoona and thereby cause that station to cease operating. Since the UHF station in Johnstown (WJNL) has the same network affiliation (CBS) as an existing VHF station in Altoona, it is difficult to foresee what effect the drop-in would have on the Johnstown UHF station. The possibility of a UHF independent station surviving in the market by 1988 is, according to the three models used, not likely even without the presence of the drop-in. Therefore, it appears that the drop-in

would immediately replace one existing UHF network affiliate. The future of WJNL-TV, Johnstown, the other existing UHF network affiliate depends heavily upon the location of the drop-in and the resulting terrain shielding effects, and upon the decision of the licensee and CBS with respect to its future network affiliation.

144. *Comments.* This drop-in is supported by Cover Broadcasting, Inc., licensee of WJNL-TV, Channel 19, the CBS affiliate at Johnstown. Cover states that it has been unable to achieve audience and revenue parity with its VHF network competitors in the market and has sustained severe losses over the past two decades. Cover provides information to show that the market could sustain a third VHF station, and requests that its license be modified to operate on the drop-in channel. The Group for the Advancement of Television Service (GATS) petitioned for a Channel 8 drop-in, stating that a drop-in would add a competing local voice, would provide a third VHF network service, and could result in a Black controlled VHF station. GATS indicates that it would apply for the drop-in with Black supported financing. GATS also submits that Johnstown cannot receive the ABC station from Altoona because of mountainous terrain. 11,000 signatures in support of this proposal were submitted with the GATS petition. The Channel 8 proposal was opposed by Storer Broadcasting Company, and WGAL Television, Inc., WGAL-TV, Channel 8, Lancaster, Pennsylvania. Opposition to a Channel 5 drop-in at Johnstown was filed by several parties.

145. *Conclusion.* The assignment of drop-in Channel 12 at Johnstown-Altoona, Pennsylvania, could provide the third VHF channel and a potential new network VHF service to nearly 594,000 people in its Grade B contour. This drop-in is predicted to replace at least one of the present UHF network affiliates in this market. Prospects for commercial UHF non-network service in this market are not good even without the drop-in. New interference is predicted to affect 30,000 people, all but 12,000 of whom have an acceptable source of the same program service. We conclude that this drop-in has the potential to provide net positive benefits to the public with resultant losses of a relatively small magnitude, and we therefore propose its adoption without restricting it to non-commercial educational use.

146. We note that this proposed drop-in theoretically will not provide interference-free service to Johnstown. Therefore, comments shall be sought on alternative transmitter sites, from which service may be provided to Johnstown as well as Altoona and still afford equivalent protection to existing stations. GATS petitioned for the drop-in of Channel 8 at Johnstown based on ter-

rain shielding.¹⁴⁷ The application of our selection criteria which removed Channel 8 from detailed consideration in this document was done without study of the effects of terrain shielding. In light of the benefits found for a drop-in at Johnstown, it is possible that, after considering terrain shielding, the Channel 8 drop-in may provide even greater benefits than Channel 12 which we have analyzed. We shall propose Channel 12 and Channel 8 as alternatives to serve the Johnstown-Altoona market. While awaiting comments in the rule making proceeding, we shall study with the help of ITS the terrain shielding effects on both channels. Materials developed in that study will be added to the docket and an opportunity for comment on them will be provided.

KNOXVILLE, TENNESSEE, CHANNEL 8

147. *Demographics.* This is presently the 64th prime time household market according to the 1975 ARB rankings (68th in the 1974 rankings). Knoxville (1970 pop. 174,587) is located in east central Tennessee. It has an ADI of 350,300 TV households according to the ARB. Knoxville's population was constant from 1963-70, but is now in a steady growth phase which is expected to continue. Earnings also now show a steady growth.

148. *Present television service.* There are two network affiliated VHF stations and one network UHF station. They are:

WATE-TV, Knoxville, Tennessee, Channel 6, NBC; WBIR-TV, Knoxville, Tennessee, Channel 10, CBS; and, WTVK, Knoxville, Tennessee, Channel 26, ABC.

Educational Television service is received in the market from a VHF station in Sneedville, Tennessee.

149. *Short-spacings.* The proposed Channel 8 drop-in at Knoxville if located at the existing site of WBIR-TV, would be short-spaced to, and would cause new interference to:

WGTV, Athens, Georgia, Channel 8, Educational; and, WDCN-TV, Nashville, Tennessee, Channel 8, Educational.

In addition, although not short-spaced to the following stations, the drop-in would cause new interference to:

¹⁴⁷ The proposed Channel 8 would be short-spaced to and would cause new interference to: WJW-TV, Cleveland, Ohio, Channel 8, CBS; and WGAL-TV, Lancaster, Pa., Channel 8, NBC. In addition the Channel 8 drop-in, although not short-spaced to, would cause new interference to: WTRF-TV, Wheeling, W. Va. Channel 7, NBC; and WSTV-TV, Steubenville, Ohio, Channel 9, ABC, CBS. The Channel 8 drop-in would require only two stations to change offset. It would require six translators (serving 16,900 persons) to switch to other VHF channels at an approximate total cost of \$6,000. Materials submitted by GATS indicate that terrain shielding effects may reduce to acceptable levels the interference caused by the drop-in to existing television stations. Those materials also suggest that the Channel 8 drop-in could provide interference-free Grade B service to 831,203 persons, a number substantially larger than our figures for the service areas of either the hypothetical UHF station or the Channel 12 drop-in at the OTP proposed site.

WSPA-TV, Spartanburg, South Carolina, Channel 7, CBS; WGHP-TV, High Point, North Carolina, Channel 8, ABC; WCHS-TV, Charleston, West Virginia, Channel 8, CBS; and WTVC, Chattanooga, Tennessee, Channel 9, ABC.

The site location of the drop-in, which was adjusted from OTP specified coordinates was considered preferable for study purposes since (a) it would permit an almost 2000 foot antenna height, and (b) it would collocate the drop-in with an existing VHF station in the market.

150. *Service gain.* The proposed drop-in represents the third VHF assignment to Knoxville and is assumed to be the third network station, replacing WTVK, Knoxville, Tennessee, Channel 26, as the affiliate. The drop-in is predicted to serve a population of 1,000,400 persons within its interference-free Grade B contour. A comparable UHF station (facilities and site location of WTVK, 30 dBK and 1290' antenna height) serves an estimated 729,700 persons. At the WBIR-TV site, principal city service could be provided to Knoxville.

151. *Service loss.* Without considering the effects of terrain shielding, the drop-in is predicted to add a new source of interference to a total of 197,557 persons. Of these, 170,821 are not served by CATV and 60,238 watch an affected station at least once a week, according to NWC statistics. There are no counties where an alternative, like-program source is available which has an NWC equal to or greater than that of the interfered-with station. 14,973 people live in counties where an alternative, like-program source has a lesser NWC than the interfered-with station. Finally, 45,265 persons reside in counties where no alternative, like-program source is available, according to NWC figures. Of this figure, 23,674 persons would lose their source of CBS programming from WCHS-TV, Charleston, West Virginia, the station most affected in this case. It is also noted that WTVK, the Knoxville UHF, now covers 24,374 (23,119 non-cable subscribers) who would not be within the Grade B contour of the drop-in. 4,194 of those are counted in WTVK's NWC with all but 227 having an acceptable alternative program source.

152. After considering terrain shielding, the ITS Study (see paragraph 66, supra) found that almost 120,000 people would receive interference from a drop-in transmitting from the OTP proposed site. By moving the transmitting location, however, ITS suggests that a drop-in is feasible without creating any new objectionable interference. The terrain can shield all of those persons who depend on television service from other markets. ITS Report, p. 148.

153. *Translator and frequency offset costs.* We estimate that 18 translators will have to be switched to other VHF channels and nine UHF channels at an estimated total cost of \$104,000. We note that to the extent that people do not now have adequate UHF reception capacity these switches to UHF channels would also involve costs to the public. Offset

change would be necessary for three stations, were this drop-in to become operable, at approximately \$10,000 each.

154. *Economic impact.* WTVK, the UHF ABC affiliate in Knoxville currently achieves a relatively low share of the audience (12% of ADI hours, 9:00 a.m. to midnight, according to the February 1976 Arbitron Sweep). It is assumed therefore that the network would choose to affiliate with the new VHF station. With that assumption, the models available to us suggest that the UHF would presently have difficulty as a commercial independent station. However, by the 1985-1988 time period, two of the models suggest that Knoxville would support three commercial VHF affiliates and one commercial UHF independent. In the absence of the drop-in, the two models indicate that by 1985-1988 the market would probably support a commercial UHF independent. The Besen-Hanley model suggests that a commercial UHF independent would not be likely with or without the drop-in. On balance the models seem to suggest that the drop-in would be a VHF replacement for a UHF affiliate, but would not preclude the existence of a UHF independent in the future.

155. We have received comments directed at the economic impact of the Knoxville VHF drop-in on the commercial UHF station in the neighboring Kingsport-Johnson City-Bristol market. The thrust of the argument was that the VHF drop-in station would become the ABC affiliate in the Knoxville market. The proposed drop-in location would result in substantial signal overlap with WKPT a UHF station and the ABC affiliate in Kingsport. The party objected on the ground that the overlap represented a significant proportion of their audience and, assuming all viewers preferred VHF to UHF, WKPT could lose 42% of its audience. A loss of that magnitude would, according to the comments, result in the demise of that station with a consequent loss to those viewers unable to receive the Knoxville ABC signal.

156. We are concerned by this scenario and would indeed weigh it heavily in the loss column. However, the objection is based on an analysis of expected losses which treats the whole ADI as a unit. A more thorough examination using county by county viewing data (from the 1975 Arbitron County Share Study) indicates that the expected loss to WKPT from a drop-in at the OTP specified site would be significantly less, in the neighborhood of 12 percent. Our analysis (which has been added to the docket in this proceeding) proceeded county by county in the signal overlap area and assumed that if the county was all or partly within a superior VHF contour relative to the UHF contour (a county within the A contour of the VHF and within the B of the UHF, for example) or if it was all or partly within equal contours (within both B contours, for example), all viewing hours presently logged for the UHF (WKPT) would be lost to the VHF. In those counties, which are covered or partially covered by a superior UHF con-

tour, 25% of the WKPT viewing hours were assumed lost to the VHF. These losses, when totaled, represent 12% of the total viewing hours of WKPT. A loss of 12% of viewing hours is not insignificant. However, in view of the fact that WKPT appears to have a substantial base of local advertising, the loss is not expected to translate directly into reduced rates or revenues. WKPT appears from our rough analysis to be in no danger of going off the air in these circumstances. The impact could be further diminished if the drop-in affiliated with a network other than ABC. The drop-in has greater coverage in the direction of Kingsport than the other Knoxville VHF stations. If the drop-in carried NBC or CBS programming, the direct impact would be on existing VHF stations in the Kingsport-Johnson City-Bristol market rather than on the only UHF station. We recognize that the analysis is rough and would welcome a stronger analysis, including consideration of terrain factors, in any further proceeding resulting from this one.

157. *Comments.* South Central Broadcasting Corporation, licensee of WTVK, Channel 26, Knoxville, Tennessee, petitioned for this drop-in and modification of its license to operate on same. The proposal was opposed by Holston Valley Broadcasting Corporation, licensee of WKPT, Channel 19, Kingsport, Tennessee as explained in the preceding paragraphs. Reply comments were filed in support of Holston Valley's objections by Appalachian Broadcasting Corporation, WCYB-TV, Channel 5, Bristol, Virginia; Nationwide Communications, Inc., WATE-TV, Knoxville, Tennessee; and Edward Johnson, of WCPT-TV, a new UHF commercial station at Crossville, Tennessee. Johnson states all interested parties should be allowed to apply for Channel 8 if it is assigned to Knoxville.²⁸ UCC points out that the Knoxville drop-in proposal has parties on both sides developing a full record.

158. *Conclusion.* As the third VHF allocation, the Channel 8 drop-in at Knoxville, Tennessee, could be predicted to replace the relatively weak UHF ABC affiliate. The drop-in could provide Grade B coverage to over 1,000,000 people. This compares to an estimated 730,000 people within the Grade B signal of the UHF station. While increased interference was predicted to occur in areas where more than 60,000 people do not have an acceptable alternative program source, the ITS study indicates that terrain shielding would reduce interference drastically. Our analysis indicates that Knoxville could support a commercial UHF independent station within the next ten years, but that its operation

²⁸ WCPT-TV, Inc. was granted a construction permit for a UHF station at Crossville, Tennessee, on January 14, 1976. Program Test Authority was granted December 10, 1976. An application for increased power is now pending before the Commission. Crossville is located some 60 miles from Knoxville. The Commission will accept comments on the impact of a Knoxville drop-in on the new Crossville UHF station.

would remain marginal until 1985-1988 in the presence of a drop-in. Audience impact of the drop-in on the neighboring Kingsport UHF ABC affiliate depends upon the ultimate location and network affiliation of the drop-in, but our models indicate that even the worst situation would not cause the demise of the Kingsport station. The drop-in would require the shift of frequency of a number of translators. In consideration of all these factors, we have concluded that the potential for a network service to a substantial new population, balanced against the cost involved, merits further study as a proposal for rule making in this market. We shall also consider comments addressing the ITS study of this market and terrain shielding effects.

MILWAUKEE, WISCONSIN, CHANNEL 8

159. *Demographics.* This is presently the 25th prime time TV household market according to the 1975 ARB rankings (23rd in the 1974 rankings). Milwaukee (1970 pop. of 717,099) is located on Lake Michigan, in southeastern Wisconsin, and has an ADI of 639,900 TV households. Market trends indicate a slow but steady increase in population, and a somewhat faster increase in earnings.

160. *Present television service.* There are six operating stations assigned to Milwaukee, three VHF network affiliates, one VHF educational, one UHF educational, and one UHF independent. They are:

WTMJ-TV, Channel 4, NBC; WISN-TV, Channel 12, CBS; WTTI-TV, Channel 6, ABC; WMVS, Channel 10, Educational; WMVT, Channel 38, Educational; and WVTV, Channel 18, Independent.

WCGV holds a construction permit for UHF Channel 24; UHF Channel 30 is assigned, but vacant at Milwaukee.

161. *Short spacings.* The proposed Channel 8 drop-in at Milwaukee if located at the OTP proposed site would be short-spaced and would cause new interference to:

WOTV, Grand Rapids, Michigan, Channel 8, NBC; WQAD-TV, Moline, Illinois, Channel 8, ABC; and, WKBT, La Crosse, Wisconsin, Channel 8, CBS.

In addition, although not short-spaced to the following station, the drop-in would cause new interference to:

WGN-TV, Chicago, Illinois, Channel 9, Independent.

Finally, the drop-in is also short-spaced to a vacant Channel 8 allocation at Iron Mountain, Michigan.

162. *Service gain.* This proposal would represent the fifth VHF assignment to Milwaukee and is predicted to have an interference-free, Grade B service contour which would provide a new signal to an estimated population of 2,141,700. The drop-in could provide city grade service to Milwaukee. For comparison purposes, a UHF station with reasonable technical facilities (30 dBk, 1000' HATT, transmitter site near existing Milwaukee stations) would reach an estimated 1,785,900 persons. WVTV, Channel 18, presently operates at greater than 30 dBk facilities (530' tower).

163. *Service loss.* The drop-in is predicted to add a new source of objectionable interference to a sum total of 274,058 persons. Of these, 243,349 are not served by CATV, and 194,080 watch an affected station at least once a week, according to NWC statistics. 20,966 persons reside in counties where an alternative, like-program source is available which has an NWC equal to or greater than that of the interfered-with station. 57,570 live in counties where an alternative, like-program source has a lesser NWC than the interfered-with stations. Finally, 115,544 persons reside in counties where no alternative, like-program source is available, according to 1975 NWC figures. 115,055 of those are within the present Grade B service area of WOTV, Grand Rapids, Michigan, which are predicted to lose their only NBC source through new interference. In addition, 17,500 persons (17,467 noncable subscribers) reside within a region that would theoretically receive cochannel interference from this drop-in if the Channel 8 assignment at Iron Mountain, Michigan was activated. We note that WVTV, Milwaukee Channel 18, covers 97,398 people (all noncable) with its Grade B contour who would not be within the Grade B contour of the drop-in. According to NWC figures, however, only 18,242 people in the extra coverage area watch WVTV and all but 451 have an acceptable alternative program sources.

164. *Translator and frequency offset costs.* No translators would be affected, but offset modification would be necessary for four stations at a cost of about \$10,000 each.

165. *Economic impact.* Two of the three models we are using indicate that Milwaukee could support four commercial VHF stations and one marginal commercial UHF independent under present market conditions. These same two models (RAND and Korn) predict that by 1985-1988 the market should be able to support four commercial VHF stations plus one commercial UHF. The Besen-Hanley model predicts that Milwaukee could only support four commercial stations now and in 1985, regardless of whether the fourth was VHF or UHF. Thus, it appears that the VHF independent would compete heavily with the existing UHF independent for present audiences and may force that operation into a marginal financial position for a substantial number of years. The models also indicate that, with the drop-in and a UHF station in the market, the UHF which has a current construction permit would probably not be economically feasible as an independent commercial station in the foreseeable future. We note that the permittee for Channel 24 has been granted authorization for subscription television. Since STV relies on a different source of income than regular television, the impact on that operation may be minimal.

166. *Comments.* This drop-in is opposed by Gross Telecasting of Wisconsin; WTMJ, Inc., licensee of WTMJ-TV, Channel 4, NBC, Milwaukee; and Gaylord Broadcasting Company, licensee of

WVTV, Channel 18, Independent, Milwaukee. Gaylord states that Milwaukee has adequate TV service and unused UHF allocations for which interested parties could apply. It says its years of investment in UHF would be jeopardized by this drop-in proposal. Gaylord also urges that no sex or race preferences be given in licensing or ownership should the drop-in be assigned.

167. *Conclusion.* A Channel 8 drop-in allocated to Milwaukee would have costs well in excess of its potential benefits. The most significant cost would be the interference caused to approximately 173,000 people who would have no acceptable alternative source of like program service. The economic models indicate that a drop-in could seriously threaten the continued existence of the present independent UHF station in Milwaukee. Against these costs, the potential benefits to be derived from a drop-in appear to be quite small. There appears to be little to gain and much to lose. Our conclusion is not to proceed with rule making for a Milwaukee drop-in.

PORTLAND-POLAND SPRING, MAINE,
CHANNEL 3

168. *Demographics.* This is the 77th prime time household market according to 1975 ARB rankings (74th in 1974). Portland (1970 pop. 65,116) is located on the southern coast of Maine, and has an ADI of 252,100 TV households. Fluctuating but increasing per capita earnings are projected for this market, even though population is predicted to decline.

Channel 3, Woodstock, New Brunswick, vacant allocation; and CBVAT, St. Pamphile, Quebec, Channel 3 (interference over U.S.).

171. *Service gain.* The proposed drop-in would be the fourth VHF assignment in the market and potentially the first non-network service. City grade service could be provided to Portland. It is predicted to have an interference-free Grade B contour of 542,800 people, compared to 448,700 people within the Grade B of a hypothetical UHF station at reasonable facilities. (30 dBK and 1000' HAAT.)

172. *Service loss.* This drop-in is predicted to add a new source of interference to a total of 114,174 people in Canada and the United States. Of the 99,774 who live in the United States, 67,971 are not served by CATV, and 49,122 watch the affected station at least once a week, according to NWC statistics. 2,603 live in counties where an alternative, like-program source is available which has an NWC equal to or greater than that of the interfered-with station. 45,370 live in counties where an alternative, like-program source has a lower NWC than the interfered-with station. Finally, 1,149 reside in counties where no alternative, like-program source is available. These people would be predicted to lose their only source of CBS through cochannel interference from the drop-in to WCAX-TV, Burlington, Vermont.

173. *Translator and frequency offset costs.* No translator changes would be

required. Offset changes may be made by the Canadian stations, and Canadian concurrence would be required for this drop-in.

174. *Economic impact.* The three models in this instance indicate that a commercial independent UHF station is not likely to be viable in this market by 1988 even without the drop-in. Indeed, the models are not clear as to whether the VHF drop-in would be viable as an independent by that time. The Rand model indicates that it would probably be viable, but the other two models give contrary indications. It does appear from the models that a drop-in in Portland would at least improve the possibility of that market receiving a commercial independent station within the next ten years.

175. *Comments.* The Portland Channel 3 drop-in is opposed by Mt. Mansfield Television, Inc., licensee of WCAX-TV, Channel 3, Burlington, Vermont. WCAX objects that service gains would be offset by interference losses from the drop-in. WCAX also believes that a fourth commercial VHF station would not be viable in the Portland market. If the drop-in takes service from an underserved area and provides it to a better served area, argues WCAX, it would be in violation of the Communications Act and the public interest.

176. *Conclusion.* We conclude that the balance of benefits and costs weighs against proposing allocation of a Channel 3 drop-in to Portland. The possibility of delivering a first commercial independent service to more than 500,000 people is a substantial benefit, but it must be tempered by the indications that a commercial independent may not be viable even on a VHF channel, and it must be weighed against interference caused to more than 46,500 people who would have no acceptable alternative source of similar programming. If the drop-in were to be proposed as reserved for educational use, the same interference costs would weigh against it and the potential benefit would be smaller. As an educational channel the drop-in would provide a benefit only to the limited number of people within its service area who are not within the present service areas of the Biddeford and Augusta educational stations. For these reasons we shall not propose Portland, Maine, for rule making.

SALT LAKE CITY, UTAH, CHANNEL 13

177. *Demographics.* This is presently the 51st prime time TV household market according to the 1975 ARB rankings (48th in the 1974 rankings). Salt Lake City (1970 pop. 178,885) is located in a mountainous area of north central Utah between Ogden (1970 pop. 69,478) and Provo (1970 pop. 53,131). The ADI contains 396,500 TV households. Population growth is steady and earnings show steady growth.

178. *Present television service.* There are four VHF stations serving the market, three network affiliated and one educational:

KUTV, Salt Lake City, Channel 2, NBC;
KTVX, Salt Lake City, Channel 4, ABC;
KSL-TV, Salt Lake City, Channel 5, CBS;
and KUED, Salt Lake City, Channel 7, Educational.

Salt Lake City also receives service from KBYU, Provo, Channel 11, Educational, and has three vacant UHF assignments, two commercial and one educational.

179. *Short-spacings.* This proposed drop-in is short-spaced only to vacant allocations and not to any existing stations. The allocations are:

Channel 13, Rock Springs, Wyoming; Channel 13, McGill, Nevada; and Channel 13, Twin Falls, Idaho.

In addition, the drop-in is not short-spaced to the following vacant allocation, but would be predicted to receive interference from it if activated:

Channel 12, Logan, Utah.

Of these, the Rock Springs, Wyoming channel has a construction permit application pending, BPCT-4939 (for less than maximum power). The site location of the drop-in, which was adjusted from OTP specified coordinates, was considered preferable for study purposes since (a) it permitted an antenna height of nearly 3000', (b) it located the drop-in within five miles of all local TV transmitter sites, and (c) it eliminated a major terrain obstruction between the OTP site and Salt Lake City.

180. *Service gain.* The drop-in would be the fifth VHF assigned to Salt Lake City and the sixth for the market. There is presently no independent commercial station in the market. This drop-in could provide city grade service to Salt Lake City. Should the four vacant VHF channels be activated at maximum facilities, the interference-free Grade B contour of the drop-in would be predicted to encompass 772,100 people. A comparable UHF station (reasonable facilities of 30 dBK, 3000' HAAT, and site near existing stations) would cover a population of 860,600 people with its Grade B contour. If none of the vacant allocations were activated, the drop-in's predicted coverage would be slightly more than that of the hypothetical UHF.

181. *Service loss.* No present interference is predicted, but the drop-in causes theoretical interference to 5,650 persons (4,811 noncable) living within the predicted Grade B contours of the vacant allocations, were they to be activated at maximum facilities.

182. *Translator and frequency offset costs.* There are 19 VHF translators that would be affected by this drop-in. The translators serve an estimated population of 114,000. Nine of these could change to other VHF channels, but ten (encompassing a population of 70,000) would have to switch to UHF in a non-UHF market. The cost of these changes is estimated at \$119,500 plus the cost of UHF receiving equipment for many viewers. No offset changes are required.

183. *Economic impact.* All three models predict that a commercial non-network VHF could be supported in the Salt Lake City market under present conditions. There are no UHF stations in this market

and the models suggest that by the 1985-1988 period it is likely that any commercial non-network UHF station would be a marginal operation even in the presence of only three VHF stations. These results suggest that a VHF drop-in would most likely provide a new program service quickly. The VHF commercial service would take the place of potential UHF commercial service which has been forecast as only a marginal possibility in the foreseeable future.

184. *Comments.* KUTV, Inc., licensee of KUTV, Channel 2, Salt Lake City, opposes this drop-in and states that it would be disruptive to that portion of the Utah population which receives service via translators. KUTV argues that vacant commercial UHF channels are available in the market, and this fact indicates that the market's economic base would not support another station. KUTV urges that efforts for added television service be redirected toward UHF improvement. KSL, Inc. KSL-TV, Channel 5, Salt Lake City, Utah, opposes the drop-in on the grounds of increased interference, UHF curtailment, and translator disruption. Eastern Idaho Television Corporation, licensee of KTVI, Channel 6, Poocatello, Idaho objects to a Channel 6 drop-in proposal at Salt Lake City because it would create new interference to reception of KTVI.

185. *Conclusion.* A Channel 13 drop-in assignment at Salt Lake City, Utah, could provide the fifth VHF station assigned to that community, and a potential first commercial non-network service to 772,000 people in its Grade B contour. There are no operating VHF stations that would receive new interference in this market, but if existing allocations were to be activated at maximum facilities, approximately 4,800 persons would be affected by interference from the drop-in. The major impact of the drop-in would be to the 19 VHF translators that would have to switch to other channels, ten of them to UHF. There are no operating UHF stations in this market and the advent of a commercial non-network UHF over the next ten years is unlikely even without the drop-in. Weighing the potential benefit of an independent commercial station, as a viewing choice for a substantial population, against the translator impact and potential for future interference, we conclude that net positive benefits could be derived from this proposal and it should be accorded further study in rule making.

SIoux FALLS, SOUTH DAKOTA, CHANNEL 7

186. *Demographics.* This is presently the 89th prime time TV household market according to the 1975 ARB rankings (90th in the 1974 rankings). The market, Sioux Falls (1970 pop. 72,488), and Mitchell, South Dakota (1970 pop. 13,425) is located in southeastern South Dakota and has an ADI of 208,100 TV households. Economic forecasts predict the population of this market will stay about the same, while earnings will show relative growth.

187. *Present television service.* There are three VHF network affiliated stations in the market. They are:

KSPY-TV, Sioux Falls, Channel 13, NBC;
KELO-TV, Sioux Falls, Channel 11, CBS;
and, KXON-TV, Mitchell, Channel 5, ABC.

Educational television service is received from KUSD-TV, Vermillion, South Dakota, Channel 2.

188. *Short-spacings.* The proposed Channel 7 drop-in at Sioux Falls, if located at the existing transmitter site of KELO-TV and KSPY-TV, would be short-spaced and would cause new interference to:

KMNE-TV, Bassett, Nebraska, Channel 7, Educational; KCMT, Alexandria, Minnesota, Channel 7, NBC; and KETV, Omaha, Nebraska, Channel 7, ABC.

In addition, although not short-spaced to the following station, the drop-in would cause new interference to:

KESD-TV, Brookings, South Dakota, Channel 8, Educational.

The site location of the drop-in, which was adjusted from OTP specified coordinates, was considered preferable for study purposes since (a) it would permit a 2000 foot antenna height, and (b) it would collocate the drop-in with two existing television stations.

189. *Service gain.* The proposed drop-in represents the fourth VHF assignment in the market and could potentially be the first non-network service. City grade service can be provided to Sioux Falls. It is predicted to have an interference-free Grade B contour of 281,100 population, compared to a hypothetical UHF station at reasonable facilities (30 dBK and 2000' HAAT) which would have a predicted coverage of 276,900 people.

190. *Service loss.* The drop-in is predicted to add a new source of interference to a total of 85,331 persons. Of these, 75,439 are not served by CATV, and 34,950 watch an affected station at least once a week according to NWC statistics. 5,764 persons reside in counties where an alternative, like-program source is available which has an NWC equal to or greater than that of the interfered-with station. 25,683 live in counties where an alternative, like-program source has a lesser NWC than the interfered-with station. Finally, 3,403 reside in counties where no alternative, like-program source is available, and are therefore, predicted to lose a program choice. About half of this loss (1,508) would be to viewers of KESD, Channel 8, Educational, at Brookings, South Dakota, however, some of these viewers would be expected to gain a new service from the drop-in.

191. *Translator and frequency offset costs.* No translators would be affected by this proposal. Six stations would have to change offset for this drop-in at a cost of \$10,000 each.

192. *Economic impact.* All three models suggest that commercial UHF non-network service is not likely to be successful by the 1985-1988 period regardless of whether there is additional VHF commercial service in the market or not.

However, two of the three models indicate that a 4th VHF in that market would also not be likely to succeed as a commercial operation. The Rand model does indicate the success of a fourth VHF as a commercial independent station in Sioux Falls. Thus, we would expect little commercial UHF development in this market for a number of years with or without the drop-in and even the success of the drop-in as a commercial venture is uncertain.

193. *Comments.* Midcontinent Broadcasting Company, licensee of stations in South Dakota states that the Commission has already considered and rejected drop-ins in Docket 13340, and the Sioux Falls drop-in should be rejected for the same reasons. It argues that UCC has offered no support for changing the present separation requirements. Forward Communications Corporation, licensee of VHF stations in Iowa, Wisconsin, and West Virginia, opposes the Sioux Falls drop-in because of interference and loss of service. Forward adds that drop-ins are inconsistent with Commission policy and will have an adverse impact on UHF development. Forward argues that the drop-ins will not be able to compete with existing stations, should be distinguished from prior "move-ins", and there is no demand for additional service in Sioux Falls. Buford Television, Inc., licensee of KXON, Channel 5, Mitchell, South Dakota, opposes this drop-in for the same reasons, and urges use of the vacant UHF channels at Sioux Falls. Channel 7 Corporation, KETV, Omaha, Nebraska, objects to the short-spacing interference that would be caused to its signal by the drop-in. Chronicle Broadcasting Company, licensee of WOWT (TV), Omaha, Nebraska, and Minnesota-Iowa Television Company, licensee of KAAL (TV), Channel 6, Austin, Minnesota, objected to a Channel 6 drop-in at Sioux Falls, which failed to meet our minimum technical selection criteria.

194. *Conclusion.* The costs associated with a Channel 7 drop-in at Sioux Falls appear to outweigh the benefits. Our analysis indicates that more than 29,000 people would receive interference from the drop-in and would have no acceptable alternative source of similar programming. In relationship to the total number of people in the market and in relationship to the potential benefits of the drop-in, that amount of interference is unacceptable. The potential benefits are limited by the small amount of coverage that the drop-in could provide beyond that of a hypothetical UHF station. If considered as a channel reserved for educational use, the potential benefits are small because the market presently receives such service from stations in Vermillion and Brookings. As a commercial independent, it is questionable whether the drop-in would have the economic base to permit it to provide service to anyone. We conclude that the potential benefits are not large enough to offset the costs and we shall not propose this drop-in for rule making.

WICHITA-HUTCHINSON, KANSAS, CHANNEL 5

195. *Demographics.* This is presently the 55th prime time TV household market according to the 1975 ARB rankings (55th in the 1974 rankings). Wichita (1970 pop. 276,554) and Hutchinson (1970 pop. 36,885) are separated by approximately 40 miles in the south central region of Kansas. They are considered part of the same television market by the ARB rankings, with 377,800 TV households in the Wichita ADI. Population is expected to steadily decrease in this market, while earnings per capita will level off from an early surge to a small growth in the next few years.

196. *Present television service.* There are three network affiliated VHF stations, one educational VHF, and seven satellite stations operating in this market. The primary stations are:

KARD-TV, Wichita, Kansas, Channel 3, NBC; KAKE-TV, Wichita, Kansas, Channel 10, ABC; KTVH, Hutchinson-Wichita, Kansas, Channel 12, CBS; and, KPYS, Hutchinson, Kansas, Channel 8, Educational.

Although a total of five UHF channels have been assigned to Wichita and Hutchinson, all are presently vacant.

197. *Short-spacings.* The proposed channel 5 drop-in at Wichita-Hutchinson, if located at the existing site of KTVH, would be short-spaced to and would cause new interference to:

KCMO-TV, Kansas City, Missouri, Channel 5, CBS; KHAS-TV, Hastings, Nebraska, Channel 5, NBC; and KOCO-TV, Oklahoma City, Oklahoma, Channel 5, ABC.

The site location of the drop-in, which was adjusted from OTP specified coordinates was considered preferable for study purposes since (a) it would permit an almost 1500 foot antenna height, and (b) it would co-locate the drop-in with an existing VHF station in the market.

198. *Service gain.* The proposed drop-in represents the fifth VHF assignment in the market, and could potentially be the first commercial non-network service. It is predicted to have an interference-free, Grade B contour encompassing a population of 606,900. A comparable UHF station (reasonable facilities of 30 dBk, 1500 HAAT, and site near existing stations) would reach an estimated 520,400 persons. This drop-in could provide city grade service to Hutchinson and Grade A service to Wichita.

199. *Service loss.* The drop-in is predicted to add a new source of objectionable interference to a total of 263,811 persons. Of these, 252,903 are not served by CATV, and 187,338 watch an affected station at least once a week, according to NWC statistics. 100,307 persons reside in counties where an alternative, like program source is available which has an NWC equal to or greater than that of the interfered-with station. 20,366 live in counties where an alternative, like-program source has a lesser NWC than the interfered-with stations. Finally, 66,665 persons reside in counties where no alternative, like-program source is available, according to 1975 NWC figures. Of this last figure, 55,922 persons would be predicted to lose their only source of ABC

network programming from KOCO-TV, Oklahoma City, Oklahoma.

200. *Translator and frequency offset costs.* No translators are predicted to be affected by interference from the drop-in. Three stations would have to change offset at an estimated cost of \$10,000 each.

201. *Economic impact.* The three models applied in this instance suggest that a VHF drop-in would be successful now as a commercial independent station. Commercial UHF service is uncertain by the 1985-88 period in the presence of three VHF affiliates. The models all indicate that no commercial UHF service could be expected in the presence of four commercial VHF stations.

202. *Comments.* Combined Communications Corporation of Oklahoma, Inc., KOCO-TV, Channel 5, Oklahoma City, Oklahoma opposes the drop-in predicting that it will cause significant co-channel interference to KOCO's signal. KOCO says development of the four unused UHF channels at Wichita will be adversely affected by the drop-in.

203. *Conclusion.* The large interference losses attributable to a Channel 5 drop-in at Wichita, Kansas, make it an unattractive possibility. It would cause objectionable interference to more than 187,000 people who presently watch an affected station at least once a week. More than 87,000 of those people would have no acceptable alternative source of similar programming. Against such a large source of interference to existing service, even the possibility of an immediate commercial independent service to a large market cannot overcome the costs involved. UHF channels remain available to provide commercial independent programming to the Wichita-Hutchinson market. We shall not propose this drop-in for rule making.

DECISIONAL MATTERS

204. Our detailed analysis of ten markets combined with our assessment of the national impact factors has led us to propose adoption of four new channel allocations. We base this decision on our study of precedent, the comments, our engineering report, and the cost-benefit analysis, all set out above in detail. While the weight of the comments opposed the proposal of any drop-ins, the Commission's study of national and local factors resulted in findings of facts, which, when considered with the comments, indicated that some drop-ins had the potential for public benefit at relatively small cost. Except the matters denied or granted in paras. 11 and 57, this entire analysis may be considered as a proposal only. We are therefore, inviting comment on the whole analysis, as well as individual conclusions, and no petitions for reconsideration will be entertained until a final order issues. We now turn to certain other matters that must be addressed at this time.

205. *UHF license modifications.* Concerning proposals to modify UHF licenses to operation on the VHF drop-ins, we shall refuse to issue show cause

orders to modify where other interested persons would be foreclosed from application for the drop-in. *WBUF-TV, Inc.*, 12 R.R. 218(a) (1955). We shall, however, consider practicable service and past performance in any comparative hearing that may result. Also, should no other interested party seek a license for the drop-in assignment, we would consider a request to modify the license of a UHF applicant to avoid needless expense and delay. This procedure is analogous to the policy set forth for FM channel assignments in *Mitchell, South Dakota*, 41 Fed. Reg. 49101 (November 8, 1976), and *Crestview, Florida*, 41 Fed. Reg. 49097 (November 8, 1976).

206. *Reimbursement for translator and frequency offset costs.* If any stations are required to change offset or implement precise offset due to a drop-in assignment, we shall expect reimbursement from the drop-in permittee. See *Booneville, Mississippi*, 40 F.C.C. 2d 629 (1973). Our assumption of frequency offset costs for each drop-in was based on offset changes utilizing precise offset equipment. Not all offset changes will require precise offset and some stations may be required to use precise offset without an offset change. The costs of these modifications will depend on the method employed by drop-in permittees to obtain equivalent protection and should be addressed in comments. Likewise, the drop-in permittee would be expected to provide reimbursement for any required changes in translator frequencies.

207. *Future consideration of drop-in proposals.* Our examination of 96 proposals in the top 100 markets has led to our conclusion that only four possess sufficient potential benefits in excess of costs to cause this Commission to propose them for rulemaking. The ultimate analysis of any drop-in proposal is the cost-benefit study and a determination that a substantial public interest would be benefited by the proposal. The preliminary selection criteria and the large potential benefit study were administrative tools used to narrow our examination to the most promising drop-ins. While we have found those procedures helpful in this instance, we do not consider them tests which must be passed by any future proposal. Although it is conceivable that other drop-ins may present substantial net positive benefits in excess of costs, we consider that possibility to be unlikely in light of the results of the Commission's study. Future proposals for drop-ins will be considered only when the requesting party submits a persuasive showing of public benefit in excess of costs. The burden is on the requesting party to convince the Commission that it is in the public interest to consider a waiver of our existing television allocation Rules.

208. Accordingly, under the authority of Sections 4(i), 5(d)(1), 303(f, g, r) and 307(b) of the Communications Act of 1934, as amended, it is proposed to amend the Television Table of Assign-

PROPOSED RULES

ments (Section 73.606(b) of the Commission's Rules and Regulations) as follows:

City	Channel Nos.	
	Present	Proposed
Charleston, W. Va. ¹	8+, 23, 29, *49-	8+, 11+, 23, 29, *49-, 3
Johnstown, Pa. ²	6, 19+, *28+	6, 8-, 19+, *28+, *57+
Altoona, Pa.	10-, 38-, 47, *57+	10-, 12, 38-, 47, *57+, 4
Knoxville, Tenn.	6, 10+, *15-, 20-, 43+	6, 8, 10+, *15-, 20-, 43+, 3
Salt Lake City, Utah	2-, 4-, 5+, *7-, 14-, 20+, *26-	2-, 4-, 5+, *7-, 13+, 14-, 20+, *26-, 2

¹ The ARB market of Charleston-Huntington, W. Va., was considered for market analysis of a drop-in assigned to Charleston on the basis of site proximity and signal coverage.

² The Charleston channel 11+ proposal would require the following offset changes: Louisville, Ky., 11+ to 11; Lexington, Tenn., 11 to 11+; Little Rock, Ark., 11+ to 11.

³ Our analysis of the Johnstown-Altoona ARB market indicated a channel 8 drop-in assignment for Johnstown or a channel 12 drop-in assignment for Altoona, based on site proximity and signal coverage.

⁴ The Johnstown channel 8 proposal would require the following offset changes: Lancaster Pa., 8- to 8+; New Haven, Conn., 8+ to 8.

⁵ The Knoxville channel 8 proposal would require the following offset changes: Athens, Ga., 8 to 8-; Selma, Ala., 8- to 8; New Orleans, La., 8 to 8-.

Any allocations added to the Table as a result of this proceeding will be specially indicated to show that they are subject to certain technical limitations and were added on the basis of waivers.

209. The Commission's authority to institute rule making proceedings; showings required; cut-off procedures; and filing requirements are contained in Appendix 4 and are incorporated herein.

210. Interested parties may file comments on or before May 20, 1977, and reply comments on or before June 20, 1977.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

ATTACHMENT 1

Index no., market no.	Channel
1. Albany, N.Y. (34)	4
2. Albuquerque, N.M. (80)	12
3.	9
4.	11
5. Atlanta, Ga. (17)	4
6. Binghamton, N.Y. (94)	4
7.	7
8. Birmingham, Ala. (46)	3
9.	8
10. Charleston-Huntington, W. Va. (40)	2
11.	11
12. Chattanooga, Tenn. (75)	7
13. Chicago, Ill. (3)	4
14. Cleveland, Oh. (8)	12
15. Columbia, S.C. (100)	8
16. Dallas, Tex. (11)	2
17.	9
18. Davenport, Io. (66)	10
19.	11
20. Dayton, Oh. (42)	11
21. Denver, Co. (28)	12
22. Des Moines, Io. (63)	24
23. Evansville, Ind. (88)	5
24.	12
25. Fresno, Cal. (78)	2
26.	4

Index no., market no.	Channel
27.	5
28.	7
29.	9
30.	10
31.	13
32. Grand Rapids, Mich. (41)	11
33. Green Bay, Wis. (61)	8
34. Greenville, S.C. (37)	2
35. Houston, Tex. (13)	5
36. Indianapolis, Ind. (18)	3
37. Jackson, Miss (82)	5
38.	8
39.	10
40. Johnstown-Altoona, Pa. (70)	5
42.	83, 12
43. Kansas City, Mo. (22)	8
44.	12
45. Knoxville, Tenn. (68)	8
46. Little Rock, Ark. (57)	6
47.	8
48.	9
49.	13
50. Louisville, Ky. (39)	6
51.	10
52. Memphis, Tenn. (33)	12
53. Miami, Fla. (15)	3
54.	9
55.	13
56. Milwaukee, Wis. (23)	8
57. Mobile, Ala. (64)	8
58.	9
59. Monroe, La. (100)	4
60.	11
61. Nashville, Tenn. (29)	10
62. Norfolk, Va. (44)	5
63. Paducah, Ky. (68)	10
64.	13
65. Phoenix, Ar. (38)	7
66. Pittsburgh, Pa. (10)	8
67. Portland, Mn. (74)	3
68. Portland, Ore. (27)	4
69. Sallnas, Cal. (67)	10
70. Salt Lake City, Ut. (48)	3
71.	6
72.	8
73.	10
74.	12
75.	13
76. San Diego, Cal. (43)	2
77.	4
78. San Francisco, Cal. (7)	12
79. Seattle, Wash. (19)	3
80.	10
81. Shreveport, La. (58)	12
82.	11
83. Sioux Falls, S.D. (90)	6
84.	7
85.	12
86. South Bend, Ind. (76)	4
87.	12
88. Spokane, Wash. (76)	9
89.	13
90. Springfield, Ill. (73)	6
91.	13
92. Springfield, Mo. (86)	9
93.	11
94. Wichita, Kan. (55)	5
95. Wilmington, N.C. (95)	8
96.	10

¹ Added by May 14 OTP Study.

² Omitted by May 14 OTP Study.

³ Added by Commission Order (GATS petition, RM-2727).

ATTACHMENT 2

COMMENTS

Ablene Radio and Television Company (KRBC-TV).
Advisory Council of National Organizations.
A. Earl Cullum, Jr. and Associates.
American Broadcasting Companies, Inc.
American Public Life Broadcasting Co. (WAPT).
Association of Independent Television Stations, Inc.

Association of Maximum Service Telecasters, Inc.
Bensen and Handley Report.
Buford Television, Inc. (KXON).
Capital Cities Communications, Inc. (KFSN-TV).
Channel Two Television Company (KPRC-TV).
Chronicle Broadcasting Company (KRON-TV, WOWT).
Columbia Broadcasting Company, Inc.
Columbus Broadcasting Company, Inc. (WRBL-TV).
Combined Communications Corporations (KARK-TV).
Combined Communications Corporations of Kentucky, Inc. (WLKY-TV).
Consumer Electronics Group of the Electronics Industries Associations.
Corinthian Broadcasting Corporation.
Corporation for Public Broadcasting.
Cosmos Broadcasting Corporation.
Council for UHF Broadcasting.
Cover Brocasting Inc. (WJNL-TV).
Cox Broadcasting Corporation.
Eastern Idaho Television Corporation (KPVI).
Evening News Association (WWJ-TV).
Fetzer Television Corporation (WKZO-TV).
Fisher's Blend Station, Inc. (KOMO-TV).
Florida West Coast Public Broadcasting, Inc. (WEDU).
Forward Communication's Corporation (WSAU-TV, KCAU-TV, WTRF-TV).
Gaylor Broadcasting Company (KSTW, KHTV, WVTV).
General Electric Broadcasting Company, Inc.
Gill Industries, Inc. (KNVT).
Gilmore Broadcasting Corporation EHT, WREX-TV, WSVA-TV, KODE-TV).
Gray Communications Systems, Inc.
Great Lakes Communications, Inc. (WICU).
Gross Telecasting of Wisconsin, Inc.
Group for the Advancement of Television Service.
Harriscope Broadcasting Corporation (KBAK-TV).
Harte Hanks (KENS-TV).
Hirsch Broadcasting Company (KFVS-TV).
Holston Valley Broadcasting Corporation.
Independent Broadcasting Company (KOLR).
Iowa Educational Radio and Television Facility Board.
Jampro Antenna Company.
Joint Council on Educational Telecommunications.
Kaiser Broadcasting Company (WKDB-TV, WKBS-TV, WLVI-TV, WFLD-TV, KBHK-TV).
Kittros, John M., Ph. D., Professor of Communications and Associate Dean, Temple University.
KQED, Inc.
KSLA-TV, Inc.
KTBS, Inc.
KUTV, Inc.
Leake, TV, Inc. (KATV).
Lee Enterprises, Inc. (WSAZ-TV).
Lin Broadcasting Corporation (KXAS-TV, WAVY-TV, WAND).
Louisiana Television Broadcasting Corporation (WBRZ).
Manhattan Cable Television, Inc. (WOTV).
McClatchy Newspapers
McGraw-Hill Broadcasting Company, Inc.
Metromedia, Inc.
Michiana Public Broadcasting Corporation (WNIT-TV).
Michiana Telecasting Corporation (WNDU-TV).
Midcontinent Broadcasting Company and Palmer Broadcasting Company.
Midwest Television, Inc. (WMBD-TV and WICA).
Minnesota-Iowa Television Company (KAAL).
Mohawk-Hudson Council on Education Television (WMHT).

Mt. Mansfield Television, Inc. (WCAAX-TV).
 Multimedia, Inc.
 National Association of Broadcasters.
 National Association of Education Broadcasters.
 National Black Media Coalition.
 National Broadcasting Company, Inc.
 New York Times Broadcasting Service, Inc. (WREG-TV).
 Newhouse Broadcasting Corporation (WSYR-TV).
 Noe Enterprises, Inc. (KNOE-TV).
 Oakland Media.
 Office of Communication of the United Church of Christ.
 Office of Telecommunications Policy.
 Orion Broadcasting, Inc. (WAVE-TV).
 Palmetto Radio Corporation (WNOK-TV).
 Pappas Television, Inc. (KMPH).
 PEC Communications, Inc. (WPEC-TV).
 Pittsburgh Telecasting, Inc. (WPGH-TV).
 Plains Television Corporation (WICS and WICD).
 Poole Broadcasting Company (WTEN).
 Post-Newsweek Stations, Connecticut, Inc. (WFSB-TV).
 Quincy Broadcasting Company (WGEM-TV).
 Retlaw Enterprises, Inc. (KJEO).
 RKO General, Inc. (WHBQ-TV).
 Rock Island Broadcasting Co. (WHBF-TV).
 Roy H. Parks Station's (WBMG, WUTR, WNCT-TV, WJHL-TV, WTVR-TV, WSLSTV).
 Rush Broadcasting Co. (WRBT).
 Sarkes Tarzian, Inc. (WTTV).
 Sonderling Broadcasting Corporation (WAST-TV).
 South Bend Tribune (WSBT-TV).
 South Central Broadcasting Corporation.
 Southern Broadcasting Company.
 Southern Minnesota Broadcasting Company (KROC-TV).
 Southern Television Corporation (WTOK-TV).
 Spanish International Communications Corporation.
 Spartan Radiocasting Company (WSPA-TV).
 State Telecasting Company, Inc. (WCBD-TV).
 Storer Broadcasting Company.
 Taft Broadcasting Company (WKRC-TV).
 Turner-Farrar Associations (WSIL-TV and KPOB-TV).
 United States Department of Justice.
 Universal Communications Corporation (WALA-TV).
 University of Nebraska (KUON-TV).
 Video 44 (Harriscope of Chicago, Inc., Words Amusement Corporation and Riverdale Drive-In, Inc.) (WSNS-TV).
 Washington State Association of Broadcasters.
 WBEN, Inc.
 WBNS-TV, Inc.
 Westport Television Company (KBMA).
 WPMY-TV Corp., Greensboro, N.C.
 WGN Continental Broadcasting Company (WGN-TV).
 WHAS, Inc.
 Withers Broadcasting Company of West Virginia (WDTV).
 JAC, Incorporated.
 WKRG-TV, Inc. (KRG-TV).
 WLAC-TV, Inc. (WTVF).
 Wometco Enterprises, Inc. (WTVJ).
 WPTA-TV, Inc.
 WRFY.
 WSM, Incorporated.
 WTMJ, Inc.
 WUAB, Inc.

REPLY COMMENTS

American Broadcasting Companies, Inc.
 American Farm Bureau Federation.
 Association of Maximum Service Telecasters, Inc.
 Buford Television, Inc. (KXON).
 Combined Communications Corporation of Kentucky, Inc. (WLKY-TV).

Combined Communications Corporation of Oklahoma, Inc. (KOCO-TV).
 Eastern Idaho Television Corporation.
 Forum/Communications Company (KFSY-TV, KABY-TV, KPRY-TV).
 Forward Communications Corporation (WSAU-TV, KCAU-TV, WTRF-TV).
 Gaylord Broadcasting (WVTV and KHTV).
 General Electric Broadcasting Co., Inc.
 KOAT Television, Inc.
 KSD/KSD-TV, Inc.
 KSL, Inc.
 Mohawk-Hudson Council on Educational Television.
 National Association of Business and Educational Radio, Inc.

National Grange.
 Plains Television Corporation (WICS).
 Retlaw Enterprises, Inc. (KJEO).
 Roy H. Parks Stations.
 Rust Craft Broadcasting Company.
 Southern Television Corporation (WTOK-TV).
 Spanish International Communications Corporation.
 Springfield Television Broadcasting Corporation.
 Studio Broadcasting System Division (KTSB).
 Turner-Farrar Association.
 WGAL Television Co.
 WKRG-TV, Inc.

ATTACHMENT 3.—Comments

Party	Supports/opposes	Drop In	
		City	Channel No.
1. John M. Kittross Ph. D., Temple University School of Communications Theater.	S		(9)
2. The Advisory Council of National Organizations to the Corporation for Public Broadcasting (ACNO).	S		(7)
3. Roland C. Rautenstrauss, president, University of Colorado.	O	Boulder, Colo.	12
4. WPMY-TV Corp., Greensboro, N.C.	O	Greenville, S.C.	2
5. Stanley M. Besen, professor of economics, and Paul J. Hanley, Rice University, Houston, Tex.	O		(7)
6. Jampro Antenna Co., Sacramento, Calif.	O		(7)
7. South Central Broadcasting Corp., WTVK (channel 26), S. Knoxville, Tenn.	S	Knoxville, Tenn.	8
8. Washington State Association of Broadcasters, Seattle, Wash.	O		(9)
9. Consumer Electronics Group of the Electronic Industries Association.	O		(9)
10. Michigan Public Broadcasting Corp. (WNIT-TV), channel 34, South Bend, Ind.	O	South Bend, Ind.	4
11. WRFY-FM, Reading, Pa.	S	Reading, Pa.	5
12. The South Bend Tribune, (WSB-TV), channel 22, South Bend, Ind.	O	South Bend, Ind.	4
13. Combined Communications Corp. of Kentucky, Inc., channel 32 (WLKY-TV), Louisville, Ky.	O	Louisville, Ky.	6, 10
14. University of Nebraska (KUON-TV), Lincoln, Neb.	O	Kansas City, Mo.	21
15. Quincy Broadcasting Co. (WGEM-TV), channel 10 (ABC), Quincy, Ill.	O	Davenport, Iowa	10
16. Iowa Educational Radio and Television Facility Board, Des Moines and Iowa City, Iowa.	O	Davenport, Iowa-Rock Island, Ill.	11
17. KUTV, Inc., KUTV, channel 2, Salt Lake City, Utah	O	Salt Lake City, Utah	3, 6, 8, 10, 13
18. Lee Enterprises, Inc. (WSAZ-TV) Huntington-Charleston, W. Va.	O	Charleston, W. Va.	2
19. Sonderling Broadcasting Corp. (WAST-TV), Albany, N.Y.	O		(7)
20. Pittsburgh Telecasting, Inc. (WPGH-TV), Pittsburgh, Pa.	O	Pittsburgh, Pa.	8
21. Gaylord Broadcasting Co. (KSTW-TV), Tacoma, Wash.	O	Seattle, Wash.	10
22. Universal Communications Corp. (WALA-TV), Mobile, Ala.	O	Jackson, Miss.	10
23. Evening News Association (WWJ-TV), Detroit, Mich.	O	Mobile, Ala.	9
24. RKO General, Inc. (WHBQ-TV), channel 13, Memphis, Tenn.	O	South Bend, Ind.	4
25. KSLA-TV, Inc. (KSLA-TV), Shreveport, La.	O	Memphis, Tenn.	12
26. Minnesota-Iowa Television Co. (KAAL-TV), channel 6, Austin, Minn.	O	Shreveport, La.	11
27. Gross Telecasting of Wisconsin, Inc.	O	Sioux Falls, S. Dak.	6
28. Metromedia, Inc. (WAVE-TV).	O	Green Bay and Milwaukee, Wis.	8
29. Orion Broadcasting, Inc. (WAVE-TV), Louisville, Ky. and (WFIE-TV), Evansville, Ind.	O	Kansas City, Mo.	8, 12
30. Columbus Broadcasting Co. Inc. (WRBL-TV), Columbus, Ga.	O	Louisville, Ky.	6, 10
31. Hirsch Broadcasting Co. (KFVS-TV), channel 12, Cape Girardeau, Mo.	O	Indianapolis, Ind.	3
32. The New York Times Broadcasting Service, Inc. (WREG-TV) Memphis, Tenn.	O	Evansville, Ind.	5, 12
33. Post-Newsweek Stations, Connecticut, Inc. (WFSB-TV), Hartford, Conn.	O	Green Bay, Wis.	8
34. Corinthian Broadcasting Corp. (KOTV, WISH-TV, KXTV, WANE-TV, KNOU).	O	Birmingham, Ala.	3
35. Midwest Television, Inc. (WBBD-TV and WCIA), Peoria and Champaign, Ill.	O	Memphis, Tenn.	12
36. KQED, Inc. (KQED-TV), channel 9, San Francisco, Calif.	O	Evansville, Ind.	12
37. Rush Broadcasting Corp. (WRBT), Baton Rouge, La.	O	Birmingham, Ala.	3
38. McClatchy Newspapers.	O	Columbia, S.C.	8
39. Metromedia, Inc.	O	Salinas, Calif., Fresno, Calif., Houston, Tex., Indianapolis, Ind.	
40. Pappas Television, Inc. (KMPH), channel 26, Fresno, Calif.	O	Indianapolis, Ind.	3
41. Capital Cities Communications, Inc. (KFSN-TV), Fresno, Calif.	O	Springfield, Ill.	3, 6
42. Midcontinent Broadcasting Co. and Palmer Broadcasting Co.	O	Davenport, Iowa	11
43. McGraw-Hill Broadcasting Co., Inc. (WRTV), Indianapolis, Ind.	O	Fresno, Calif.	9
44. Noe Enterprises, Inc. (KNOE-TV), channel 8, Monroe, La.	O	Baton Rouge, La.	
45. American Public Life Broadcasting Co. (WAPT), Jackson, Miss.	O	Fresno, Calif.	2, 4, 5, 7, 9, 10
46. Video 44 (WSNS-TV), Chicago, Ill.	O	Johnstown, Pa.	5
47. Palmetto Radio Corp. (WNOK-TV), channel 19, Columbia, S.C.	O	Fresno, Calif.	2, 4, 5, 7, 9, 10, 13
48. Abilene Radio and Television Co. (KRBC-TV), Abilene, Tex.	O	Fresno, Calif.	2, 4, 5, 7, 9, 10, 13
		Davenport, Iowa	10
		Sioux Falls, S. Dak.	6
		Springfield, Ill.	6
		Louisville, Ky.	9
			(9)
			(9)
		Chicago, Ill.	4
		Columbia, S.C.	8
		Dallas, Tex.	9

PROPOSED RULES

Party	Supports/ opposes	Drop in	
		City	Channel No.
49. Leake TV, Inc. (KATV), Little Rock, Ark.	O	Little Rock, Ark.	6, 8, 9, 13
50. Gaylord Broadcasting Co. (WVTV), Tampa, Fla.	O	Miami, Fla.	13
51. Southern Broadcasting Co.	O	Columbia, S.C., and Wilmington, N.C.	8
52. Sarkes Tarzian, Inc. (WTTV), Bloomington and Indianapolis, Ind.	O		(1)
53. WPTA-TV, Inc. (WPTA), channel 21, Roanoke, Ind.	O	South Bend, Ind.	4
54. Gray Communications Systems, Inc.	O	Monroe, La.	4, 11
		Jackson, Miss.	10
55. WSM, Inc. (WSM-TV), channel 4, Nashville, Tenn.	O	Nashville, Tenn.	10
		Paducah and Louis- ville, Ky., Clarks- ville, Tenn.	10
56. Combined Communications Corp. (KARK-TV), Little Rock, Ark.	O	Monroe, La.	4
57. WJAC, Inc. (WJAC-TV), Johnstown, Pa.	O	Little Rock, Ark.	6, 9
58. Harsco Broadcasting Corp. (KBAK-TV), Bakersfield, Calif.	O	Johnstown, Pa.	5
59. Wometco Enterprises, Inc. (WTVJ), Miami, Fla.	O	Fremont, Calif.	2, 4, 5, 7, 9, 10, 13
60. Mount Mansfield Television, Inc. (WCAX-TV), Burlington, Vt.	O	Miami, Fla.	3
61. Gaylord Broadcasting Co. (WVTV and KHTV), Milwaukee, Wis., and Houston, Tex.	O	Portland, Maine	3
62. WBEN, Inc. (WBEN-TV), Buffalo, N.Y.	O	Milwaukee, Wis.	8
63. CFP Communications, Inc. (WPEC-TV), West Palm Beach, Fla.	O	Houston, Tex.	5
64. National Association of Broadcasters	O	Highamton, N.Y.	4
65. Chronicle Broadcasting Co. (WOWT), Omaha, Nebr.	O	Miami, Fla.	13
66. Gill Industries, Inc. (KNTV), San Jose, Calif.	O		(1)
		Sioux Falls, S. Dak.	6
67. Channel Two Television Co. (KPRC-TV), Houston, Tex.	O	San Francisco, Calif.	1
68. Cover Broadcasting, Inc. (WJNL-TV), Johnstown, Pa.	S	Salinas, Calif.	10
69. Kaiser Broadcasting Co. (WKBD-TV, WKBS-TV, WJNL-TV, WFLD-TV, KBHK-TV)	O	Fremont, Calif.	10
70. Louisiana Television Broadcasting Corp. (WBRZ), Baton Rouge, La.	O	Dallas-Fort Worth, Tex.	2
71. Poole Broadcasting Co. (WTEN-TV), Albany, N.Y.	O	Johnstown, Pa.	5, 12
72. Lia Broadcasting Corp. (KXAS-TV, WAVY-TV, WAND), Texas, Virginia, Illinois	O	San Francisco, Calif.	12
73. Sarkes Tarzian, Inc. (WTTV), Bloomington-Indianapolis, Ind.	O		(1)
74. Multimedia, Inc.	O		(1)
		Albany, N.Y.	4
75. WLAV-TV, Inc. (WTVF), Nashville, Tenn.	O	Springfield-Cham- paign-Decatur, Ill.	(1)
76. WUAB, Inc. (WUAB), Lorain-Cleveland, Ohio.	O	Indianapolis, Ind.	3
77. National Broadcasting Co., Inc.	O	South Bend and/or Chicago, Ill.	4
		Atlanta, Ga.	4
78. State Telecasting Co., Inc. (WCDB-TV), Charleston, S.C.	O	Nashville, Tenn.	10
79. American Broadcasting Co's, Inc.	O	Louisville, Ky.	10
80. Association of Maximum Service Telecasters, Inc.	O	Evansville, Ind.	5, 12
81. Chronicle Broadcasting Co. (KRON-TV), San Francisco, Calif.	O	Cleveland, Ohio	12
82. Storer Broadcasting Co., Cleveland, Ohio, Lancaster, Pa.	O	Albany, N.Y.	4
83. Taft Broadcasting Company (WKRC-TV), Cincinnati, Ohio.	O	San Diego, Calif.	4
84. Westport Television, Inc. (KBMA), Kansas City, Mo.	O	Chicago, Ill.	4
85. CBS Inc., KNXT, Los Angeles, Calif.	O	Cleveland, Ohio	2
86. WHAS, Inc., WHAS-TV Louisville, Ky.	O	Greenville, S.C.	2
87. Spanish International Communications Corp.	O		(1)
88. Southern Television Corp. (WTOK-TV), Meridian, Miss.	O		(1)
89. Redlaw Enterprises, Inc. (KJEO), Fresno, Calif.	O	San Francisco, Calif.	12
90. Great Lakes Communications, Inc. (WICU), Erie, Pa.	O	Fresno, Calif.	4
91. Fischer's Blend Station, Inc. (KOMO-TV), Seattle, Wash.	O	Pittsburgh, Pa.	8
92. WBNS-TV, Inc.	O	Dayton, Ohio	11
93. Forward Communications Corporations (WSAU-TV, KCAU-TV, WTRF-TV), Wisconsin, Iowa, West Virginia.	O	Kansas City, Mo.	8, 12
94. Buford Television, Inc. (KXON), Mitchell, S. Dak.	O	San Diego, Calif.	2
95. Turner-Farrar Association (WHL-TV, KPOB-TV), Harrisburg, Ill., Poplar Bluff, Mo.	O	Dayton, Ohio	11
96. WKRG-TV, Inc. (WKRG-TV), Mobile, Ala.	O	Louisville, Ky.	10
97. Plains Television Corp. (WICS and WICD), Springfield and Champaign, Ill.	O		(1)
98. The Group for the Advancement of Television Service, Johnstown, Pa.	S	Monroe, La.	11
99. General Electric Broadcasting Co., Inc., New York, Tennessee, Colorado.	O	Jackson, Miss.	10
100. Cosmo Broadcasting Corp. (WTOL-TV; WIS-TV), Toledo, Ohio, Columbia, S.C.	O	Fresno, Calif.	2, 4, 5, 7, 9, 10, 13
101. Eastern Idaho Television Corp. (KTVI), Pocatello, Idaho.	O		(1)
102. WGAL Television, Inc. (WGAL-TV)	O	Seattle, Wash.	3
103. Southern Minnesota Broadcasting Co. (KROC-TV), Rochester, Minn.	O	Portland, Oreg.	4
104. Cox Broadcasting Corp.	O	Dayton, Ohio	11
		Green Bay, Wis.	8
105. The Council for UHF Broadcasting	O	Sioux Falls, S. Dak.	6, 7, 12
106. Independent Broadcasting Co. (KOLR), Springfield, Mo.	O	Pittsburgh, Pa.	8
107. Michiana Telecasting Corp. (WNDU-TV), South Bend, Ind.	O	Sioux Falls, S. Dak.	6, 7, 12
108. Florida West Coast Public Broadcasting, Inc. (educational, WEDU), Tampa, Fla.	O	Paducah, Ky.	10
109. Harle Hanks (KENS-TV), San Antonio, Tex.	O		(1)
		Jackson, Miss.	5
		Mobile, Ala.	9
		Springfield, Ill.	6, 13
		Johnstown, Pa.	8
		Albany, N.Y.	4
		Nashville, Tenn.	10
		Denver, Colo.	12
		Dayton, Ohio	11
		Grand Rapids, Mich.	11
		Wilmington, N.C.	6
		Salt Lake City, Utah.	8
		Pittsburgh, Pa.	8
		Davenport, Iowa.	10
		Greenville, S.C.	2
		Charleston, W. Va.	11
		Fresno, Calif.	2
			(1)
		Springfield, Mo.	3, 11
		South Bend, Ind.	4, 12
		Miami, Fla.	3
			(1)

Party	Supports/ opposes	Drop in	
		City	Channel No.
110. WGN Continental Broadcasting Co. (WGN-TV), Chicago, Ill.	O	Chicago, Ill.	4
111. Gilmore Broadcasting Corp. (WEHT, WREX-TV, WSWA-TV, KODE-TV)	O	Denver, Colo.	12
112. National Association of Educational Broadcasters	O	Evansville, Ind.	5, 12
113. The Mohawk-Hudson Council on Educational Television (educational, WMHT), Schenectady, N.Y.	S	Springfield, Ill.	13
114. Rock Island Broadcasting Co. (WHBF-TV), Rock Island, Ill.	O	Albany, N.Y.	(1) 4
115. Fetzer Television Corp. (WKZO-TV), Kalamazoo, Mich.	O	Chicago, Ill.	4
116. KTBS, Inc. (KTBS-TV), Shreveport, La.	O	Indianapolis, Ind.	3
117. Association of Independent Television Stations, Inc.	O	Shreveport, La.	2
118. Withers Broadcasting Company of West Virginia (WDTV), Weston, W. Va.	O	Johnstown-Altoona, Pa.	5
119. Roy H. Parks Stations (WBMG, WUTR, WNCT-TV, WJHL-TV, WDEF-TV, WTVR-TV, WSLs-TV)	O	Albany, N.Y.	4
		Birmingham, Ala.	3
		Chattanooga, Tenn.	7
		Wilmington, N.C.	10
		Charleston, W. Va.	11
		Charleston, W. Va.	2
		Norfolk, Va.	5
120. Corporation for Public Broadcasting	5	Chicago, Ill. and South Bend, Ind., Green Bay and Milwaukee, Wis., Binghamton, N.Y.	4, 8
121. WTMJ, Inc.	5		(1) 4
122. Newhouse Broadcasting Corp. (WSYR-TV), Syracuse, N.Y.	O		(1) 4
123. U.S. Department of Justice	S		(1) 4
124. National Black Media Coalition	S		(1) 4
125. Joint Council on Educational Telecommunications	S		(1) 4
126. Holston Valley Broadcasting Corporation (WKPT-TV), Kingsport, Tenn.	O	Knoxville, Tenn.	8
127. A. Earl Cullum, Jr., and Associates	O		(1) 4
128. The Office of Telecommunications	S		(1) 4
129. United Church of Christ	S		(1) 4

¹ General.

ATTACHMENT 4

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Assignments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only re-submits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rulemaking to which this Appendix is attached. All submissions by parties to this proceeding or persons acting

on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

SEPARATE STATEMENT OF CHAIRMAN RICHARD E. WILEY IN WHICH COMMISSIONER JOSEPH R. FOGARTY JOINS

VHF DROP-INS, DOCKET 20418

Without prejudging the ultimate outcome of this proceeding, I want to indicate my support for the Commission's action today in inviting comment on the possibility of so-called VHF drop-ins for some four markets. In so doing, however, let me reiterate my determination to bring about—through government action and the encouragement of private sector initiatives—the full comparability of UHF to VHF. In this regard, I invite attention to my recent speech before the Association of Independent Television Stations (January 9, 1977) setting forth a "master plan" for the further development of UHF television.

In my opinion, the Commission's decision today is not inconsistent with this important objective. Despite the euphoria and overstatement which has attended this docket from its very outset, I am advised that the potential for VHF drop-ins is very limited. Based on present engineering standards, there seems to be no real possibility of a large multiplicity of new VHF stations. Accordingly, the hope on the part of some for a fourth network, for new minority-owned

stations, or for the further growth of public television must lie primarily in the UHF band.

Where (and if) VHF drop-ins are technically feasible, I think that the FCC's statutory mandate requires their approval. However, such feasibility remains to be proven on this record. In this connection, I trust that my colleagues will review carefully the material submitted by the parties prior to making any final determination or granting any final station approval.

DISSENTING STATEMENT OF COMMISSIONER ROBERT E. LEE IN WHICH COMMISSIONER JAMES H. QUELLO JOINS VHF DROP-INS, DOCKET 20418

The Stench

I thought we had laid VHF drop-ins to rest at Congress' insistence back in 1963 when then Chairman E. William Henry cast what he considered to be the most important vote of his career, the deciding vote against drop-ins for Knoxville, Johnstown and a few other markets. It was a hard decision then. Former Chairman Minow had earlier called denying drop-ins the hardest vote of his career because the survival of the ABC network was claimed to be at issue.¹ But no network's survival is at issue here; ABC has done well with a large number of UHF affiliates, and well-managed UHF stations with good facilities have brought the industry a long way. It shouldn't be a hard decision today.

Some say this is just a rulemaking notice, a bone, perhaps, tossed to forces unknown to me. Others see this as a real blow to UHF, and I agree. In spite of my colleague's strong statements of commitment to UHF, I don't see how any UHF commitment is renewed in this Notice. Two markets were picked for study because a VHF drop-in might replace UHF service! A third was picked for comment in part because VHF might develop faster than UHF and remove the chance for a UHF station in that market!

Indeed, this may be just the beginning of a serious erosion of UHF service. With the criteria used in this Notice, it may be extremely difficult to limit drop-in interest to the four proposed markets. We have seen but the tip of the iceberg. An engineer has already promised UHF licenses a 50% chance of a VHF "drop-in" in exchange for \$1,200 a month and a \$100,000 finders fee. The lawyers and engineers will prosper, and the Commission will struggle with petitions for "drop-ins" all over the land.

This Notice is also a blow to our television standards. I have tried with little success to explain that television interference is subtle and pernicious. Like pollution it builds up slowly until it permeates the atmosphere. Interference does not stop or start at the service contours—it is everywhere, and our engineers accepted this fact of life when they set the standards that said "No more." Now some seek to say "Just a little bit more." The late T. A. M. Craven, a distinguished engineer and Commissioner, referred to the substandard VHF drop-in as "an island of service in a sea of interference."

What information will this proceeding give us that we do not already have—in abundance? I know of no competent engineer who will not answer this question in the negative, including almost the entire engineering staff of the F.C.C.

This Notice would be less of a blow to UHF and our technical standards if it proposed moving some VHF channels. By taking VHF channels out of markets with only one

¹ Concurring statement of Newton N. Minow, Television Assignments—Third Service, 41 FCC 1119, 1126 (1963), reconsideration denied FCC 63-1168.

VHF channel and moving them to markets such as those proposed in this Notice, the Commission could increase competition in a larger number of markets—and preserve the integrity of its standards.

We have all heard the story of UHF, but it is worth repeating again to remind us why UHF is important and why UHF has had so many problems in the past.

Back in the early 1940's, when the FCC authorized the first commercial VHF station, it had a vision of a nationwide competitive television system. The VHF band was too crowded and UHF technology was in its infancy. But the FCC believed technological advances would soon make an all-UHF television system possible.

This was obviously a controversial position. More VHF stations were being built in large cities. The public was buying VHF receivers. The vested interests didn't want to give up their investments.

In the years up until about 1952, the Commission repeatedly restated its all-UHF television goal, but, by the time it finally adopted its master allocations plan with the Sixth Report and Order in 1952, it had abandoned this idea. The vested interests were simply too strong and, in 1952, UHF still had a long way to go technically. Rather than disturb existing VHF stations, or even suggest that they would be disturbed at some future time, the Commission built a Table of Assignments around those stations. VHF was to be the backbone of the United States' television system and UHF was to fill in the gaps to provide the nationwide competitive service.

At the time the Commission set forth two basic objectives: distribution of VHF channels to as many communities as possible and wide area service so that people in remote areas could receive television service. These objectives were inconsistent: There could certainly be more stations in cities if higher levels of interference were accepted, but there could be service to rural areas if interference was restricted by limiting the number of stations. The balance was reached in the technical standards. By prescribing antenna height and power restrictions and protecting the Grade B contour against interference, the Commission insured service to rural areas which have as much right to television service as more densely populated areas and the Commission was able to allocate a reasonably large number of VHF channels.

The Commission has never deviated from these technical standards or the public interest basis for them to drop-in inferior channels. From the perspective of VHF television service these standards have worked well to achieve the desired objective.

However, from the perspective of UHF television service and the FCC's goal of a nationwide competitive television service, the Sixth Report and Order was a disaster. As a direct result of that decision, the fourth television network went out of business, UHF development was stifled, and the maximum number of possible stations has never been reached. The DuMont television network, which was weaker than ABC, CBS, and NBC, was left with no viable outlets in almost every major market. UHF, in its early stage of development, couldn't compete on equal terms with VHF. VHF had advertiser support, network affiliations, and access to millions of VHF-only receivers. Advertisers, networks, and receiver manufacturers weren't interested in speculating in UHF, and they didn't.

The few gamblers who tried to build UHF stations found the obstacles overwhelming. They couldn't gain access to audiences in VHF dominated markets and they couldn't attract the advertiser support or network affiliations which depended on that access. Most gave up in the early years.

In retrospect, many people concluded the Commission's 1952 decision to rely on VHF was really a judgment that UHF would never be adequate. It created a long-lasting pessimism about UHF.

The Commission tried a number of remedies. It increased the ownership ceiling to create an investment incentive. It adopted the satellite policy to encourage construction. It increased power and antenna height limits to create technical parity. It limited network exclusivity practices to make more programming sources available. It funded construction of a UHF station in New York City (WUHF) to prove UHF could serve the city. In desperation it proposed to deintermix some markets and, in response to pro-VHF pressure, it proposed to drop some of those VHF channels into Knoxville, Johnstown, and six other markets. It even revived the all-UHF idea for a short time, but, again, found the vested interest problem overwhelming.

Finally, the Commission asked Congress to deal with the heart of the problem, access to audiences, through tuner legislation. Congress quickly agreed. However, when it passed the All-Channel Bill in 1962, it insisted that the Commission not tamper further with the Table of Allocations. If the public was to pay for all-channel tuners, the public was to have UHF.

In response to Congress' direction, the Commission dismissed its pending deintermixture proceedings, including the VHF drop-in proceedings for Knoxville and Johnstown. At the same time it made a strong commitment to UHF.

The All-Channel Act did not resolve the access problem overnight. Manufacturers needed time to sell existing television sets, design new tuners, and tool up for the manufacturing process. The Commission allowed them to convert to comparable tuners in a number of steps, the last of which was not required until the summer of 1976. Even with the present standard, however, comparable tuning won't be achieved until receivers meeting this standard are in the majority of homes—another five to seven years.

During the past few years UHF has made remarkable strides. More stations are in operation than ever before. More are profitable. More programming has become available. More advertisers are using UHF. Most important, UHF stations are offering more diversity to the public with independent, foreign language, and other specialty programming.

Rather than undermine this progress, the Commission should encourage UHF stations with inferior facilities to upgrade them. It should help to develop an improved receiver. It should remove once and for all the spectre of inferiority.

If the public is to have a nationwide competitive television service, we need UHF. We don't need protracted comparative proceedings for a few inferior VHF drop-ins. We don't need drop-in standards which may be applied to markets not studied here. We don't need to encourage an exodus from UHF. If the Commission is serious about UHF development, it must build confidence in UHF, not officially declare UHF to be so inadequate it will breach good technical standards to drop-in second-rate VHF channels in response to political pressure. We have an excellent television system in this country; we should be working to make it better.

I have but one parting comment. Some proponents may be operating under the illusion that, if this appalling exercise succeeds, they will somehow be the ultimate winner for what they regard as their bounty. No way—they have no leg up and will have to compete with all comers for the "prize": educators, minority groups, etc.

Quelle perte de temps. Or, as Shakespeare said: "Oh what a tangled web we weave when first we practice to deceive."

STATEMENT OF COMMISSIONER BENJAMIN L. HOOKS CONCURRING IN PART—DISSENTING IN PART

NEW VHF STATION IN THE TOP 10 MARKETS

Docket No. 20418

To the extent that the Commission here proposes to receive comment on the addition of VHF assignments in four (4) cities, including one city (Johnstown, Pa.) where a minority group has demonstrated a very active interest, I concur.

But, to the degree that the document reflects a very conservative approach to additional assignments based on an economic analysis of a hypothetically optimum number of stations supportable in a given market rather than on chiefly technical considerations, I must dissent.

In its most succinct distillation, the principal mission of this agency, as I perceive it, is to provide all possible spectrum space to potential users where the public interest might benefit from the use of the spectrum in the manner proposed; we are Congressionally charged to "generally encourage the larger and more effective use of radio in the public interest" (47 U.S.C. Section 303(g)). There is no room for doubt that the general demand for VHF frequencies far exceeds the supply. There is, however, some considerable question as to whether the Commission has heretofore attempted to establish the largest number of VHF stations technically possible¹ so as to create the opportunity for the expression of the widest possible social, political artistic and moral viewpoints.² That question is reinforced by the OTP study and the United Church of Christ petition which stimulated this proceeding.

Given the fact that our system of broadcasting is uniquely founded upon the precepts of private entrepreneurial capitalism, the ultimate commercial success or failure of a licensed broadcast facility is generally left to the natural interplay of the competitive market by this agency.³ There is nothing in

¹ By "technically possible" I mean to embrace only those new assignments where the increased coverage materially exceeds the coverage that would be lost to existing stations by electronic interference from new stations.

² We have recently been abruptly reminded of the primacy of the goal of diversity of broadcast station ownership by the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, the Hon. David Bazelon, in his opinion remanding our newspaper/broadcast cross-ownership rules (Docket No. 18110). See *N.C.C.B. v. FCC*, D.C. Cir. No. 75-1064 (slip opinion released March 1, 1977). Without necessarily agreeing with all of the broad dicta espoused in that opinion or, at this point, with the sweeping result, the Chief Judge does ultimately seize upon a valid point: if as the FCC has consistently maintained for years, there is a compelling presumption that the greatest diversity of broadcast voices is good, there must of logical necessity be a corresponding presumption of equal strength that a lack of diversity is bad. As the legal dilutant on the TV commercial chirps, "ipso facto."

³ See, e.g., *Carroll Broadcasting Co. v. FCC*, 258 F. 2d 440 (1958) (burden on existing licensees to demonstrate injury to the public from competition). I am not here urging unalloyed "Darwinism" in the media jungle. But, those who seek protectionism have the affirmative burden of demonstrating a loss to the public rather than a loss solely to the holder of a privilege. Cf. *Specialized Common Carriers*, 29 FCC 2d 870 (1971) (intro-

the Communications Act which warrants that a broadcast license contains economic guarantees and any exclusivity aspects of a license are limited to electronic, not commercial, interference.⁴ Indeed, broadcast licenses fall all the time and station bankruptcy is far from unknown in this Commission's experience.

Hence, the Commission's undue concern with speculative economic forecasts which focus on the commercial feasibility of nascent VHF stations appears largely inconsistent with its statutory mandate and our previously articulated attitudes on competition. (See note 2.) Ours is not to structure or to attempt to allocate broadcast station revenues; ours is to structure the spectrum, with diversity and plenitude as guiding principles. And emphatically, we have nothing legally to do with the apportionment of private financial risk in the broadcast industry.

Not that I join entirely in the premature euphoria of some that a mere increase in VHF broadcast stations creates any media utopia. VHF drop-ins are decidedly no eternal panacea for all the shortcomings of our present broadcast system, including the dearth of minority ownership. At the end of the rainbow, alas, one ordinarily finds puddles, not gold. Recognizing our present systems of program production and distribution, and in view of the fact that audiences, talent and advertising revenues are far from infinite commodities, I note that the likelihood of success for new television entrants in established video markets is highly suppositional. That is a grim fact of life. But, as I have stressed, that is not, strictly speaking, our business. Our business is to provide the greatest number of opportunities; after that—from the standpoint of the marketplace—its benign neglect all the far as far as I'm concerned. Let them have at it and may the virtuous prevail and the ungodly perish.

On the other hand, I am not totally out of sympathy with the Commission's desire to foster (yes, nurture) the growth of UHF broadcasting. There is undeniable merit in the points raised in the well reasoned statement of Commissioner Robert E. Lee—that redoubtable Don Quixote of the UHF brotherhood—that our off-again, on-again machinations have engendered an uncertainty which has played a large part in poisoning the UHF spectrum. UHF is hugely an unfulfilled promise—for minorities as well—which in many cases should be more alluring than the promise (perhaps mirage) presented by a few short-spaced, second-string VHF drop-ins. Let's face it, the name of the broadcasting game is "eyeballs,"⁵ which turns of course

ducing competition in the communications common carrier marketplace over the fiery objections of the monopoly carriers as to the consequences to the public of market fragmentation).

The heavy presumptive burden in favor of competition and the onus of persuasion otherwise frequently relied upon by our precedents has not been overcome in this document. It has simply taken a conceptual shift with an insufficient explanation, in my judgment, as to why this is so.

⁴This discussion is limited to the possible effects of VHF drop-ins on existing television stations. While many of these arguments can and have been made in the context of discussions of cable television, the nature of the two media compels a different frame of reference. Not completely, but significantly.

⁵Frequently the game is played to wretched excess, and nothing here is to suggest a condonation of the ratings rat race now pursued with a rapaciousness that makes our nineteenth century robber barons appear meek by contrast.

on the availability of desirable programming; and, there is anything but certitude that the proposed VHF drop-ins will have anything more to offer in that respect than an unaffiliated UHF station. Nor will the signal quality or coverage area of a finessed VHF facility necessarily exceed that of the more technically advanced UHF stations. I renew my pledge to press for UHF-VHF comparability in every lawful way while I remain on the Commission.

Moreover, like my colleague Robert E. Lee, I believe there can be peaceful co-existence between UHF and VHF, particularly if the remaining technical handicaps are overcome by joint government-industry cooperation and if (big "if") the current programming market institutions expand to fill the voids.

To my good friends in the public interest sector who frequently set their sights on goals of idealistic purity and—in all good humor—whose perceptions like my own sometimes lack what has been called "a stranglehold on reality," let me point out not always a matter of megahertz: it is a soberly that success or failure is assuredly matter of enterprise, free enterprise.

Thus, to the extent that the Commission's action here in some cases subordinates free enterprise and the fundamental policy of enlarging opportunity and possible diversity to a misplaced and rather paternalistic reliance on theoretical marketplace models, I must respectfully dissent.

CONCURRING STATEMENT OF COMMISSIONER WASHBURN ON VHF DROP-INS, DOCKET 20418, MEMORANDUM OPINION AND ORDER AND NOTICE OF PROPOSED RULE-MAKING

MARCH 7, 1977.

Of the possibilities outlined in this NRP, the most potentially useful is the Channel 8 drop-in in the Johnstown-Altoona, Pa., market. It holds the potential to:

- (1) Provide interference-free Grade B service to 831,000 persons (237,000 more than would be served by the proposed Channel 12 drop-in);
- (2) Provide a third VHF network service (the proposed Channel 12 drop-in would also provide a third VHF network service, but it would not give interference-free service to Johnstown); and
- (3) Become the first Black-controlled VHF station in the United States.

Much depends upon the field measurements of the terrain-shielding effects, submitted by GATS, which show acceptable protection to existing television stations. It was my hope that the Commission could evaluate these figures, by means of an ITS survey, prior to the issuance of the NPRM. In this way the public would have had more information and the Commission, from the outset, could have received comments on this ITS survey. However, it was decided that the ITS survey will be conducted simultaneously with the rule-making. Thus, to this extent, the document is incomplete. It is for this reason that I am concurring in, rather than approving, the NPRM.

I join with those of my fellow Commissioners who have expressed their conviction, in connection with this proceeding, that the future growth of television in the U.S. must rely on the UHF band. Comparability with VHF has been, and must continue to be, the Commission's goal for UHF. This is absolutely essential since new television stations in the future must be virtually all UHF. This proceeding clearly reveals that VHF drop-ins may be technically feasible in only a tiny number of locations.

[FR Doc. 77-9162 Filed 3-29-77; 8:45 am]

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 211]

POST-EXEMPTION MONITORING OF MIDDLE DISTILLATE PRICES

Proposed Rulemaking and Public Hearing

I. INTRODUCTION

A. *Index prices exceeded.* At the time of the July 1, 1976 exemption of middle distillates from FEA's price and allocation regulations, FEA adopted a procedure for monitoring prices of middle distillates; actual prices were to be compared to the prices projected to remain in effect if controls had continued ("index" or "trigger" prices), nationally and regionally, as described in section I.B. below.

Recalculation of FEA's weekly middle distillate monitoring system figures to include final monthly information received in March for January on actual prices for all sales to ultimate consumers indicates that FEA's "trigger" price was exceeded by 4 of a cent in the North Central region during January. Preliminary indications are that the weekly "trigger" prices were exceeded in March, after the weekly survey prices were updated to include January statistics.

The index price has not been exceeded nationwide, nor in any region other than the North Central. Except for the North Central Region, survey prices were from 0.6 in the Northeast and South to 3.6 cents per gallon in the West below index values for the week ending March 19, 1977.

Therefore, in order to fulfill the commitments described in section I.B. below, FEA hereby issues a notice of proposed rulemaking and public hearing.

B. *Background.* On June 15, 1976 FEA issued and submitted to the Congress two separate amendment which provided for the exemption of middle distillates from allocation and price controls. The first amendment related to the exemption of No. 2 heating oil and No. 2-D diesel fuel and the second amendment provided for the exemption of No. 1 heating oil, No. 1-D diesel fuel, and kerosene. Since neither of these amendments was disapproved by either house of Congress pursuant to the review procedures set forth in section 551 of the Energy Policy and Conservation Act, the amendments became effective July 1, 1976.

In its discussions with members of Congress regarding these amendments, and in response to concerns expressed by these members, FEA committed to take certain actions following the effectiveness of the exemption to assure that no unwarranted price increases would occur once controls were removed.

More specifically, FEA at that time stated that it would adopt a procedure for monitoring prices of middle distillates with the following three main elements:

1. A quick-response price monitoring system on a weekly basis during the heating season and monthly at other times (based on FEA's current reporting system and telephone surveys) that will compare actual

prices with projections of what prices would have been if regulatory controls were still in effect ("controlled" prices). (41 FR 30281, July 22, 1976.)

FEA had earlier stated that the projection in the preceding paragraph would be generated by taking into account three principal factors:

(a) The current level and projected increase in the cost of crude oil under the provisions of the Energy Policy and Conservation Act and incorporating projections of the increased dependence on imports and imported crude prices.

(b) An index that best reflects the increased cost of doing business for refiners and marketers. The specific index to be used will be selected after an evaluation of comments as to the appropriateness of alternative indices to be considered at the public hearings.

(c) A seasonal pattern of price variations derived from an analysis of the years 1968 to 1972 inclusive. This will provide a long enough period of reasonable market conditions to establish an appropriate pattern of seasonal variations to be expected without controls. (Letters from Frank Zarb to Senator Henry M. Jackson and to Senator Edward M. Kennedy, June 25, 1976.)

The other main elements of the procedure were stated by FEA to be:

2. Establishment of two cents per gallon as the maximum amount by which average actual prices could exceed "controlled" prices on a national basis and still be deemed reasonable. In addition, since the foregoing index price or standard could be met by offsetting excessive price increases in one region by price reductions in another, FEA also agreed to establish appropriate regional index prices by which to judge the reasonableness of price increases in excess of "controlled" price on a region-by-region basis.

3. Specific FEA obligations to take certain actions if actual prices are found to exceed the foregoing index price limits—i.e., (a) to hold public hearings within ten days to determine the causes of the excessive price levels and to solicit comments on actions necessary to return actual prices to levels at or below the index price level, and (b) to take within ten days of completion of hearings such action as may be required to restore prices to those levels within one month. (41 FR 30281, July 22, 1976.)

II. PRICE MONITORING SYSTEM ADOPTED

Pursuant to its commitments to members of Congress, as indicated above, on September 15, 1976 FEA adopted the following price monitoring system. (41 FR 41155, September 21, 1976.)

A. *National Index Price.* In general, two separate national index prices are computed (each month through September 1976 and each week from October 1976 through March 1977) based on actual average June 1976 prices for No. 2 heating oil and No. 2-D diesel fuel, adjusted to take into account (1) seasonal price variations of both products during 1960-1967, (2) actual increases/decreases in the price of imported and domestically produced crude oil, (3) actual increases/decreases in the prices of imported middle distillates (weighted by their monthly relative volumes in 1972, the last normal import year before the embargo), (4) increases in non-product costs of refiners, as defined and limited under FEA cost passthrough regulations, and estimated increases in operat-

ing costs of resellers and retailers, and (5) the two cents/gallon flexibility factor.

Only prices for No. 2 heating oil and No. 2-D diesel fuel are included in computing the indices. However, prices for No. 1-D diesel fuel, kerosene, and other middle distillates not included in the index are periodically monitored by FEA using sales price data reported to FEA by refiners and large resellers. If price increases for such products not in the index differ significantly from price increases for products in the index, FEA undertook to investigate and take appropriate action.

B. *National Monitoring.* Actual average national prices for No. 2 heating oil and No. 2-D diesel fuel at the retail level (i.e., prices to all end users, including residential, commercial, and industrial) were to be determined by FEA on a monthly basis through September 1976 and on a weekly basis from October 1976 through March 1977. These retail prices are compared with the national index prices for the corresponding period. FEA also monitors prices at the refiner and reseller levels to determine relative price changes for refiners, resellers, and retailers.

C. *Remedial Process.* FEA stated that if it determined that actual average national prices had exceeded the national index prices, the remedial process outlined in Section I.B.3. above would commence, beginning with public hearings within ten days to determine the causes and appropriate remedies for the pricing excess.

Options available to FEA to restore prices to levels at or below the national index price were stated to include: (1) reimposition of complete price and allocation controls over the entire industry, (2) imposition of partial price/allocation controls over the entire industry, (3) imposition of full or partial controls over certain segments or distribution levels of the industry, and (4) modification of FEA's entitlements program to reduce the cost of imported middle distillates.

D. *Regional Index Prices and Monitoring.* A system of regional index prices was adopted to protect against unduly disproportionate price increases in one or more regions even though actual average national prices did not exceed the national index prices.

Regional index prices are computed and monitored on essentially the same basis as the national index prices, except that the June 1976 price basis and some of the adjustment factors are related to the region concerned rather than the nation. FEA noted that regional index prices would appropriately differ from the national index prices due to variances among the regions in June 1976 average middle distillate prices, differences in percentages of sales by non-refiners, and differences in the adjustment for imports.

Actual regional price data would be determined in a manner similar to that described for monitoring actual national price levels. FEA, however, also monitors "rack" prices by state.

If actual average regional retail prices

were to exceed the index prices for the region concerned, FEA undertook to initiate remedial action in accordance with the same procedures outlined above in section II.C. for national prices.

Four regions were adopted: Northeast, North Central, South, and West.

E. *Two-Month Lag in Cost Reflection Replaced by One-Month Lag.* The index originally operated so that the factors for increased crude oil costs, increased prices for imported middle distillates and refiners' increased non-product costs were included with a two-month lag. The two-month lag was adopted so that these costs could be based on actual data reported to the FEA. Under continued controls, these costs could actually have been passed through with a one-month lag. FEA specifically recognized the additional one-month lag problem in its September 15, 1976 notice and decided to continue to consider alternative methods for projections with a one-month lag.

The computation of the index value in accordance with the procedures outlined in the September 15, 1976 notice did not permit the index price to reflect OPEC price increases until the close of the second month following the month in which they occurred. Thus, for example, under the September 15 procedure, an increase in OPEC prices during December 1976 would not have been reflected in the index price until the end of February 1977.

Thus, except to the extent that actual increases in middle distillate prices resulting from an increase in OPEC prices, import prices, or refiners' increased non-product costs were absorbed by the two-cent per gallon flexibility factor, the index prices assume that refiners absorb the increased costs rise for two months. Under continued controls, on the other hand, refiners would have been required to absorb the increase for only one month before passing it through. Such a result was not consistent with the intent of the index value mechanism.

Therefore, effective February 1, 1977, the FEA adopted a revision to the index methodology outlined in the September 15, 1976 notice. (42 FR 9415, February 16, 1977.) The revised procedure reduced the two-month lag to one month.

F. *Special Rule No. 8.* On February 10, 1977, FEA adopted Special Rule No. 8, extending entitlement benefits to imports of No. 1 and No. 2 heating oil, No. 1-D and No. 2-D diesel fuel, and kerosene into PAD Districts I through IV in the months of February and March 1977. The action was prompted by the extremely high level of demand for home heating oil in the North Central and Northeast regions caused by the continuing unusually severe weather. FEA believed that the extension of entitlement benefits to such imports would alleviate potentially severe supply problems by inducing increased importation of the products.

III. REQUIREMENT TO HOLD PUBLIC HEARING

A. NORTH CENTRAL REGIONAL INDEX PRICES EXCEEDED BY ACTUAL PRICES

Recalculation of FEA's weekly middle distillate monitoring system figures to

include final information received in March for January on actual prices for all sales to ultimate consumers indicates that FEA's "trigger" price was exceeded by .4 of a cent in the North Central region during January. Preliminary indications are that the weekly "trigger" prices were exceeded in March, after the weekly survey prices were updated to include January statistics.

The index price has not been exceeded nationwide, nor in any region other than the North Central. Except for the North Central Region, survey prices were from 0.6 in the Northeast and South to 3.6 cents per gallon in the West below index values for the week ending March 19, 1977. A comparison of index figures and survey prices is included in Table I.

FEA uses residential heating oil prices collected by telephone to make preliminary calculations for the weekly heating oil survey prices in the absence of weekly price figures on different categories of sales (industrial, utility, and other bulk). It should be noted that residential prices usually go up more in a given month than bulk prices, and FEA has, therefore, previously concluded that use of residential price figures will usually provide the highest survey price.

In the case of the North Central region during January, however, industrial and other bulk sales prices appear to have increased more than residential prices. Also it appears that residential prices compiled from the monthly statistics were somewhat higher than those compiled from weekly statistics. By using preliminary residential price figures, FEA came out with a lower weekly survey price than actually existed. A change in business practices by a large supplier also caused a slight increase in those monthly survey prices not reflected in the index. Previous adjustments from weekly data to monthly data have caused overall survey price shifts of up to 0.5 cents up or down.

The survey price dropped back down below the index in February, due to imported crude oil price increases, and remained below the index until March for the week ending March 5 when it exceeded the index and for all weeks thereafter.

Table I
Heating Oil Survey Price/Index Price
(Figures in cents per gallon)

Date	Northeast	South	North Central	West	U.S.
Jun 76	38.2/40.2	34.3/36.3	35.0/37.0	38.2/40.2	36.6/38.6
Jul 76	38.1/39.6	34.1/35.9	35.2/36.6	38.1/39.8	36.5/38.1
Aug 76	38.6/40.7	34.4/36.7	35.4/37.3	38.7/40.5	36.9/38.9
Sep 76	39.1/41.0	34.7/37.0	35.7/37.7	39.5/40.9	37.3/39.3
Oct 76	39.6/41.5	35.0/36.9	36.0/37.6	39.6/41.0	37.7/39.4
Nov 76	40.7/42.0	36.3/37.9	37.1/38.6	39.7/41.8	38.7/40.2
Dec 76	41.9/42.9	37.3/38.8	38.6/39.5	39.4/42.8	39.8/41.1
Jan 77	43.2/43.5	38.6/39.3	40.4/40.0	40.2/43.3	41.2/41.7
Feb 5	43.5/45.4	38.8/40.9	40.6/41.5	40.4/44.8	41.4/43.4
Feb 12	43.8/45.4	39.1/40.9	40.9/41.5	40.6/44.8	41.7/43.4
Feb 19	44.0/45.4	39.3/40.9	41.1/41.5	40.8/44.8	41.9/43.4
Feb 26	44.3/45.4	39.4/40.9	41.3/41.5	41.9/44.8	42.1/43.4
Mar 5	44.4/45.1	39.6/40.6	41.5/41.3	41.0/44.6	42.3/43.1
Mar 12	44.6/45.2	39.8/40.7	41.7/41.4	41.1/44.7	42.5/43.2
Mar 19	44.7/45.3	40.2/40.8	41.8/41.5	41.2/44.8	42.6/43.3

Table I shows the results of the FEA's system for post-exemption monitoring of middle distillate prices. The "index price" (right of the slash) is FEA's best estimate of what average prices would have been under controls plus a two cents per gallon flexibility factor to account for statistical error and factors not otherwise included in the index equation that could have affected prices under controls. The "survey price" (left of the slash) for heating oil is a four-week moving average price for all sales to ultimate consumers calculated from an FEA survey of refiners and heating oil marketers. Weekly estimates of survey prices are revised each month when the monthly survey statistics become available. The weekly index values are revised to the monthly index values as soon as the actual costs data used in the calculation of the monthly index value become available to the FEA. A detailed explanation of the monitoring system is provided in the September 21, 1976, Federal Register notice, in which it was indicated that FEA might subsequently shift to a one-month lag for including crude oil prices in the index. The method of calculating crude costs in the index was changed from a two-month lag to a one-month lag on February 5, 1977. For further details, see February 16, 1977, Federal Register.

As noted above, the survey price represents the average price for all sales to ultimate consumers. To establish the level of the survey price in each region each month, the FEA collects directly from heating oil suppliers certified statistics indicating their sales volumes and prices for all categories of sales to ultimate consumers. Respondents are permitted 20 days after the end of the month for which the statistics pertain (reference month) to compile the statistics and mail the certified results on Form P-112 to the FEA. The FEA requires another four weeks to receive and process and validate the reported statistics, so that normally seven weeks after the end of the reference month, the comprehensive actual monthly data become available to the FEA.

To gather the statistics upon which the weekly survey prices are based, each Tuesday the FEA collects by telephone from the respondents their average residential price for the week ending on the previous Saturday. The FEA computes an average residential price for each week by weighting individual company prices by total sales volumes compiled from the latest monthly survey available to the FEA up to that week. To determine average weekly survey prices, which represent all sales to ultimate consumers, not just residential sales, the FEA computes the increase in the average residential prices derived from the telephone survey and adds this increase to the latest monthly average price for all sales to ultimate consumers then available to the FEA.

By using this procedure, the FEA estimates the weekly survey price normally seven weeks before the comprehensive actual monthly statistics become available. The weekly estimates are replaced by the comprehensive monthly statistics that include the weeks when the data become available.

The weekly survey prices for January 8, 15, 22, and 29, computed by the FEA on March 15 were based on December monthly statistics. These weekly survey prices were below index values in all regions and the U.S. The survey price for the week ending January 29 in the North Central Region was 2.0 cent below the index price. When the FEA replaced the January weekly survey prices on March 23 with the January comprehensive actual monthly statistics, the monthly survey price for No. 2 heating oil in the North Central Region was 0.6 cent above the weekly survey price for January 29, and 0.4 cent above the index price level.

Based on preliminary investigations the FEA has identified three factors which may account for the increase in the survey price for January:

(1) Prices for sales to nonresidential users (reported on the monthly survey but not collected on the weekly survey) rose by more than residential prices on the weekly survey, accounting for an estimated 0.2 cent of the total increase. As noted above, such prices usually lag behind residential prices.

(2) Changes in business practices of firms not reflected in the index accounted for a 0.1 cent increase.

(3) Average residential prices reported on the monthly survey were 0.3 cent higher than average residential prices computed from the weekly surveys. FEA has not yet concluded whether errors occurred in the weekly or monthly reports.

Therefore, in order to fulfill the commitments described in section I above, FEA hereby issues a notice of proposed rulemaking and public hearing.

B. Comments and data requested. As noted above, FEA's commitments regarding post-exemption monitoring of middle distillates expires March 31, 1977. In light of the expiration of the commitment on March 31 and the end of the peak demand period for middle distillates, FEA requests comments to determine the causes of the excess price levels and comments regarding what actions, if any, are necessary to restore prices to appropriate levels.

Options available to FEA to restore prices to levels at or below the index prices were stated in the September 15, 1976 notice to include: (1) Reimposition of complete price and allocation controls over the entire industry, (2) imposition of partial price/allocation controls over the entire industry, (3) imposition of full or partial controls over certain segments or distribution levels of the industry, and (4) modification of FEA's entitlements program to reduce the cost of imported middle distillates.

FEA requests comments on the causes of the actual price levels for No. 2 heating oil in the North Central region and on the feasibility of using any or all of the four options set forth above in restoring actual prices to levels at or below the index.

FEA particularly requests comments on the following questions:

1. Are FEA's conclusions regarding the tentative reasons that monthly prices in the North Central Region exceeded the index for No. 2 heating oil in January accurate?

2. Are one or more identifiable sectors of the petroleum industry increasing their margins on sales of No. 2 heating oil sales, particularly in the North Central region?

3. Are sellers of No. 2 heating oil increasing their margins on sales to one or more identifiable classes of purchaser, particularly in the North Central region?

4. Have changes in business practices not reflected in the FEA index computation occurred which might tend to understate the index?

5. Is there any other factor or deficiency not reflected in the FEA index computation system which might tend to understate the index?

6. Is the data base used in computing the FEA indexes adequate?

7. Should the monitoring system be extended beyond April 30, 1977?

8. Is the Index an adequate mechanism to monitor market price responses within the limited area of FEA's statutory authority over middle distillates—

e.g., how could FEA have better responded to an extended cold season requiring greater supplies of both middle distillates (subject to FEA regulation) and natural gas (not subject to FEA regulation)?

9. What corrective action by FEA is appropriate, including reimposition of price controls, allocation controls, or both on all or certain segments of the industry in the North Central region or nationwide?

10. Should any action undertaken by FEA be confined to the North Central region or extended nationwide?

11. Should any actions be undertaken with respect to middle distillates other than No. 2 heating oil?

It should be noted that the program for post-exemption monitoring of middle distillate prices and Special Rule No. 8 expire on March 31, 1977. Because of the timing of FEA's final determination that January monthly index prices were exceeded in the North Central region, the public hearing and comments provided for in this notice do not take place until after March 31, 1977. FEA hereby undertakes to continue the price monitoring system until at least April 30, 1977 but does not at this time undertake to extend Special Rule No. 8.

IV. COMMENT PROCEDURES

Interested persons are invited to participate in this matter by submitting data, views or arguments with respect to the proposals set forth in this notice to Executive Communications, Room 3309, Federal Energy Administration, Box LO, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to FEA Executive Communications with the designation "Middle Distillate Price Monitoring." Fifteen copies should be submitted. All comments received by Monday, April 11, 1977, before 4:30 p.m., e.s.t., will be considered by the Federal Energy Administration before final action is taken in this matter.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

A public hearing in this proceeding will be held in Chicago, Illinois, beginning at 9:30 a.m., local time, on Monday, April 4, 1977 in order to comply with FEA's commitment to hold a public hearing within ten days as set forth in section I. above. However, because of the expedited time scheduled, in order to allow persons wishing to make oral presentations more time to prepare such presentations, a hearing will also be held in Chicago on Tuesday, April 12, 1977. The April 4 hearing will be held in Room 1903 of the Everett McKinley Dirksen Building, 219 South Dearborn Street, and the April 12 hearing, in Room 2503 of the same building.

Any person who has an interest in this matter, or who is a representative of

a group or class of persons that has an interest in this matter, may make written request for an opportunity to make oral presentation. Persons requesting to testify at the April 4 hearing should direct requests to FEA, Region V, Room A333, 175 West Jackson Boulevard, Chicago, Illinois; requests must be received before 4:30 p.m., local time, on Tuesday, April 1, 1977. Persons requesting to testify at the April 12 hearing should direct requests to the same address; requests must be received before 4:30, local time, on Thursday, April 7. Such a request may be hand delivered to between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

The person making the request should be prepared to describe the interest concerned, if appropriate, to state why he or she is a proper representative of a group or class of persons that has such an interest, and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through the day before the hearing concerned. Each person selected to be heard at the April 4 or 12 hearings will be so notified by the FEA before 4:30 p.m., local time, Wednesday, April 2, 1977 or Friday, April 8, 1977 respectively and must submit 100 copies of his or her statement to FEA, Region V, Room A333, 175 West Jackson Boulevard, Chicago, Illinois before 4:30 p.m., local time, the day before the hearing concerned.

The FEA reserves the right to select the persons to be heard at these hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearings. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. Any decision made by the FEA with respect to the subject matter of the hearings will be based on all information available to the FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the April 4 or 12 hearings, to FEA, Region V, Room A333, 175 West Jackson Boulevard, Chicago, Illinois, before 4:30 p.m., local time, two days before the hearing concerned. Any person who wishes to ask a question at the hearings may submit the question, in writing, to the presiding officer. The FEA or the presiding officer, if the question is submitted at the hearings, will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made and the entire record of the hearings, including the transcript, will be retained by the FEA and made available for inspection at the Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

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

In consideration of the foregoing, it is proposed to amend Part 212 of Chapter II of Title 10 of the Code of Federal Regulations, as appropriate, in accordance with the information to be developed as set forth above.

Issued in Washington, D.C., March 28, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

[FR Doc. 77-9678 Filed 3-28-77; 4:52 pm.]

[10 CFR Part 214]

MANDATORY CANADIAN CRUDE OIL ALLOCATION PROGRAM

Change in Date of Public Hearing and Extension of Time for Submission of Written Comments

On March 10, 1977 the Federal Energy Administration (FEA) issued a notice of proposed rulemaking and Public Hearing (42 FR 14116, March 15, 1977) proposing alternative amendments to the Mandatory Canadian Crude Oil Allocation Regulations set forth in 10 CFR Part 214. The notice stated that written comments were to be received by March 25, 1977, and that the public hearing was to be held on March 29, 1977.

FEA has received several requests for a change in the date for the public hearing and for an extension in the filing deadline for written comments to avoid a conflict with the National Petroleum Refiners Association Annual Meeting to be held in San Francisco, California, on March 27 through 29.

Accordingly, in order to facilitate full participation in this proceeding, FEA hereby gives notice that the public hearing will be held at 9:30 a.m., e.s.t., on Tuesday, April 5, 1977, in Room 2105, 2000 M Street, NW., Washington, D.C. 20461.

Data, views or arguments with respect to the proposal should be submitted to Executive Communications, Room 3309, Federal Energy Administration, Box KZ, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to FEA Executive Communications with the designation "Amendments to Canadian Allocation Program." Fifteen copies should be submitted. All comments received before 4:30 p.m. on Tuesday, April 5, 1977, will be considered by the Federal Energy Administration before final action is taken on the proposed regulations.

Written requests for an opportunity to make oral presentations should be directed to Executive Communications, FEA, and must be received before 4:30 p.m. on Thursday, March 31, 1977. Such a request may be hand delivered to Room 3309, Federal Building, 12th and Pennsylvania, NW, Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. The person making the request should give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through Monday, April 4, 1977. Each person selected to be heard will be so notified by the FEA before 4:30 p.m., Friday, April 1, 1977 and must submit 50 copies of his or her statement to FEA, Regulations Management, Room 2214, 2000 M Street, NW, Washington, D.C. 20461, before 4:30 p.m. on Monday, April 4, 1977.

Any interested person may submit questions to be asked of any person making a statement at the hearing, to Executive Communications, FEA, before 4:30 p.m., Monday, April 4, 1977.

Issued in Washington, D.C., March 24, 1977.

ERIC J. FYGI,
Acting General Counsel.

[FR Doc. 77-9423 Filed 3-25-77; 10:26 am]

[10 CFR Part 430]

ENERGY CONSERVATION PROGRAM FOR APPLIANCES

Extension of Time for Submission of Written Comments and Further Public Hearing Regarding Test Procedures for Room Air Conditioners

AGENCY: Federal Energy Administration.

ACTION: Proposed rule; extension of written comment period and further public hearing.

SUMMARY: By notice issued July 22, 1976 (41 FR 31237, July 27, 1976), the Federal Energy Administration (FEA) proposed to amend Chapter II of Title 10, Code of Federal Regulations, in order to prescribe test procedures for room air conditioners pursuant to section 323 (42 U.S.C. 6293) of the Energy Policy and Conservation Act (Act) (Pub. L. 94-163).

Included in the proposed test procedures was a provision (section 430.23) intended to establish the number of units of a basic model to be tested when testing of room air conditioners is required by the Act or by program regulations. As explained in detail below, this section has been clarified to give more precise meaning to the language originally pro-

posed. FEA has decided to extend the written comment period on the July 27 notice and to hold a further public hearing in order to receive comments on this clarification before final regulations on room air conditioners are prescribed.

Only § 430.23 of the original proposal is affected by today's action. A final rule prescribing test procedures for room air conditioners will be issued after the comments to the original proposals, any comment received with respect to the clarification published today and all other relevant information available to FEA are evaluated.

DATES: Comments must be received on or before April 15, 1977.

Hearing: April 15, 1977

Requests to speak by: April 6, 1977

ADDRESSES: Comments address: Executive Communications, Room 3309, Federal Energy Administration, Box LL, Washington, D.C. 20461. Hearing address: Room 2105, 2000 M Street, NW Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

James A. Smith (202) 566-4635

SUPPLEMENTARY INFORMATION:

A. BACKGROUND AND MAJOR ISSUES INVOLVED

By notice issued July 22, 1976 (41 FR 32237, July 27, 1976), FEA proposed an amendment to proposed Part 430 to add a Subpart B. This subpart is intended to contain the appliance test procedures to be prescribed pursuant to section 323 of the Act. Test procedures for room air conditioners were proposed at that time. The test procedures proposed for room air conditioners included specific procedures by which various measures of energy consumption could be determined.

An important consideration in the development of test procedures under section 323 of the Act is that the procedures provide assurance that the test results are representative of the basic model as a whole. Further, test procedures must be designed so that test results from various makes and models of air conditioners can be meaningfully compared. To this end, § 430.23 of the proposed regulations provided that:

(a) Sufficient units of each basic model of each covered product, that are representative of manufactured units, shall be tested to provide a valid basis for the measurement of energy consumption pursuant to § 430.22.

(b) Basic models having dual ratings shall be separately tested at each design voltage.

The Agency specifically requested comment with regard to the number of units to be tested, and it intended to analyze these comments before finalizing the provision. While one comment generally addressed the need to account for production and test variability, none of the comments specifically discussed the number of units which should be tested.

The Agency has reviewed comments submitted in response to the original proposal and is near completion of final test procedures for room air conditioners.

Before prescribing these test procedures, however, the Agency recognizes the need to define more precisely the term "sufficient units." Such clarification falls within the ambit of the original proposal and would merely refine the original intent of proposed § 430.23. While section 430.23 could, perhaps, be clarified by post enactment interpretations or rulings, FEA believes that prescription of a clear sampling mechanism as part of the test procedures is preferable. FEA has also decided that comment should be allowed on the refined language.

Under the refined sampling provision, "sufficient units" is defined in statistical terms. A sufficient number of units will be deemed to have been tested if a sample of sufficient size of each basic model is tested to assure that, for each measure of energy consumption described in § 430.22(f), there is a 95 percent probability that the mean of the values of these measures of the sample is within five percent of the true mean of these measures of the basic model. The size of the sample of a particular basic model will depend upon the following factors:

(a) The level of confidence required (set at 95 percent in the proposed regulations);

(b) The maximum allowable difference between the sample mean and the mean of the basic model (expressed in the proposal as a percent of the true mean and set at five percent); and

(c) The relationship of the mean and standard deviation of the basic model.

The relationship of the mean and standard deviation of the basic model can be determined from data available to manufacturers. With this information and using standard statistical techniques, manufacturers can determine the number of units required to be tested. In any case, no fewer than three units of each basic model must be tested. Sample units would be selected randomly from the production stream.

Manufacturers and other interested persons are encouraged to comment on the sampling approach. Manufacturers are especially encouraged to submit any data which relates to the size of the samples which the provision would require to be tested. Any comments alleging that the sampling provision is burdensome should include a full discussion of the facts upon which such allegation is based.

B. PUBLIC COMMENT AND HEARING PROCEDURES

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the sampling provision set forth in this notice to Executive Communications, Room 3309, Federal Energy Administration, Box LL, Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on documents submitted to FEA with the designation "Room Air Conditioners—Sampling Provision." Fifteen copies should be submitted. All comments received by April 15, 1977, before 4:30 p.m., e.s.t., and all other relevant information will be considered by FEA before final action is taken on the original proposal.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

A public hearing in this proceeding will be held at 9:30 a.m., e.s.t., on April 15, 1977 at Room 2105, 2000 M Street, NW., Washington, D.C. 20461, in order to receive comments from interested persons on the clarified sampling provision.

Any person who has an interest in the clarification published today, or who is a representative of a group or class of persons that has an interest in today's action must make a written request for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, and must be received before 4:30 p.m., e.s.t., on April 6, 1977. Such a request may be hand delivered to Room 3309, Federal Building, 12th Street and Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. The person making the request should be prepared to describe the interest concerned, if appropriate, to state why she or he is a proper representative of a group or class of persons that has such an interest, and to give a concise summary of the proposed oral presentation and a telephone number where he or she may be contacted through April 14, 1977. Each person selected to be heard will be so notified by FEA before 4:30 p.m., e.s.t., April 8, 1977, and must submit 50 copies of his or her statement to Regulations Management, FEA, Room 2214, 2000 M Street, NW., Washington, D.C. 20461, before 4:30 p.m., e.s.t., April 14, 1977. In the event any person wishing to testify cannot meet the 50 copy requirement, alternative arrangements can be made with the Office of Regulations Management in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling the Office of Regulations Management at (202) 254-5201.

Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by FEA and made available for inspection at the FEA Freedom of Information Office, Room 2107, Federal Building, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

FEA reserves the right to select the persons to be heard at this hearing, to

schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by FEA with respect to the subject matter of the hearing will be based on all information available to FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearing to Executive Communications, FEA, before 4:30 p.m., e.s.t., April 13, 1977. FEA will determine whether the question is relevant and whether the time limitations permit it to be presented for answer.

The original proposal of July 27, 1976 was evaluated for environmental and inflationary impacts. See 41 FR 31239. These evaluations obtained for the original proposal are applicable to the clarified provision set forth today.

(Energy Policy and Conservation Act, Pub. L. 94-163, as amended by Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended by Pub. L. 94-385; E.O. 11790, 39 FR 23185.)

In consideration of the foregoing, section 430.23 of the proposed regulations published in the July 27, 1976 issue of the FEDERAL REGISTER (41 FR 31237) would be clarified as set forth below.

Issued in Washington, D.C., March 24, 1977.

Eric J. Fygi,
Acting General Counsel,
Federal Energy Administration.

Section 430.23 as proposed in 41 FR 31237, 31239, would be clarified to read as follows:

§ 430.23 Units to be tested.

(f) *Room air conditioners.* (1) When testing of room air conditioners is required for a measure or measures of energy consumption described in § 430.22 (f), a sample of sufficient size of each basic model shall be tested to ensure that, for each such measure of energy consumption, there is a 95 percent probability that the mean of the sample is within five percent of the true mean of such measures of the basic model, except that no fewer than three units of each basic model shall be tested.

(2) The sample selected for paragraph (f) (1) of this section shall be a simple random sample drawing from the production stream of the basic model being tested.

(3) A basic model having dual voltage ratings shall be separately tested

at each design voltage such that the requirements of paragraph (f) (1) of this section are satisfied at each rating.

[FR Doc.77-9386 Filed 3-25-77;8:47 am]

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

[12 CFR Part 10]

MUNICIPAL SECURITIES DEALERS

Proposed Rulemaking

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a new 12 CFR Part 10, prescribing the forms and method to be used by national and District of Columbia bank municipal securities dealers and their associated persons in complying with the professional qualification rules of the Municipal Securities Rulemaking Board. The Comptroller of the Currency has statutory enforcement responsibility for such professional qualifications rules, among others. This proposal will, through creation of a detailed system of records, allow the Comptroller to effectively monitor compliance with such rules.

DATES: The proposed effective date is September 1, 1977. Comments must be received on or before May 2, 1977.

ADDRESSES: Written comments should be addressed to John E. Shockey, Chief Counsel, Comptroller of the Currency, Washington, D.C. 20219.

FOR FURTHER INFORMATION CONTACT:

R. Michael Hagen, Attorney, Securities Disclosure Division, Comptroller of the Currency, Washington, D.C. 20219. (202-447-1954). Mr. Hagen is the primary author of the preamble and §§ 10.1 to 10.4 of this proposal. The forms and instructions are the result of a cooperative effort of the Federal banking agencies involving several individuals.

SUPPLEMENTARY INFORMATION: The Comptroller of the Currency ("Comptroller") proposes to amend Chapter I of Title 12 of the Code of Federal Regulations by establishing a new Part 10 to be designated as "Municipal Securities Dealers."

The Comptroller is proposing to issue regulations under Part 10 in order to carry out the purposes of certain portions of Pub. L. 94-29, commonly called the Securities Acts Amendments of 1975 ("the 1975 Amendments"). The 1975 Amendments, among other things, amended the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq. ("the Act"), to provide for the creation of the Municipal Securities Rulemaking Board ("MSRB"), a self-regulatory organization empowered to formulate rules regulating the activities of municipal securities dealers and associated persons, as those terms are defined in the Act.

The MSRB has no authority under the Act to enforce its rules. Rather, this

authority is distributed among the Securities and Exchange Commission, the Comptroller of the currency, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System, depending upon which of these agencies is the appropriate regulatory agency as defined in section 3(a) (34) of the Act, for a given class of municipal securities dealers. As set forth in the Act, the Comptroller of the Currency is the appropriate regulatory agency for those municipal securities dealers which are national banks, banks operating under the Code of Law for the District of Columbia, or subsidiaries, departments or divisions of such banks (hereafter in this preamble referred to as "national bank dealers").

One of the areas in which the MSRB has formulated rules in the qualification of persons associated or to be associated with municipal securities dealers in the capacities of municipal securities principals and municipal securities representatives, terms which are defined in MSRB Rule G-3. On November 3, 1976, the Securities and Exchange Commission approved for issuance MSRB Rule G-7, "Information Concerning Associated Persons." Rule G-7 requires each municipal securities dealer to obtain information concerning the identity, the personal, educational and employment history, and the disciplinary and criminal record, if any, of each principal and representative who is, or who is to be, associated with such dealers. Paragraph (b) of MSRB Rule G-7, after detailing the specific information to be obtained by the municipal securities dealers, states that:

* * * a completed Form U-4 or similar form prescribed * * * in the case of a bank dealer, by the appropriate regulatory agency for such bank dealer, containing the foregoing information, shall satisfy the requirements of this paragraph.

The Comptroller proposes hereby to prescribe Form MSD-4, "Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Dealer," for purposes of paragraph (b) of MSRB Rule G-7 for national bank dealers and their associated persons. Form MSD-4 is substantially similar to the Form U-4 referred to in Rule G-7(b), which is a form in general use in the securities industry.

Proposed Form MSD-4 is designed to elicit the detailed information required by MSRB Rule G-7 about each person seeking qualification as a municipal securities principal or representative associated with a national bank dealer. Detailed instructions governing its preparation and use are included as part of the Form. The person seeking qualification will prepare and sign the Form MSD-4 and submit it to the national bank dealer. Such dealer will check the form for completeness and, to the extent feasible, for accuracy, and will forward the original and two copies to the Comptroller for filing, retaining a copy for the dealer's own records.

To maintain the accuracy of the information reported on Form MSD-4, the

Comptroller also proposes to require that national bank dealers file copies of corrective statements which they receive from associated persons who have a Form MSD-4 on file. Paragraph (c) of MSRB Rule G-7 requires such corrective statements to be provided to the dealer whenever any information reported pursuant to Rule G-7(b) becomes materially inaccurate or incomplete. There is no particular form or format for these corrective statements. As proposed in § 10.4(b), it is expected that national bank dealers will forward an original and two copies of all corrective statements to the Comptroller for filing with a cover letter containing certain identifying information, retaining a copy of each filed document for their own records.

The Comptroller further proposes to prescribe a second form, designated as Form MSD-5, to aid in carrying out the purposes of the Act and the MSRB Rule G-7. Form MSD-5 is intended to be used by a national bank dealer to notify the Comptroller that the association of a municipal securities principal or representative with such dealer has ended. As proposed in § 10.4(c), an original and two copies of Form MSD-5, signed by a municipal securities principal of the national bank dealer, must be filed within thirty days after the fact of termination.

Proposed Form MSD-4 and Form MSD-5 are identical to forms being proposed by the two other Federal bank regulatory agencies. The Comptroller, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System, in a joint effort, plan to forward to the National Association of Securities Dealers ("NASD") for computer processing all Forms MSD-4 and MSD-5, and all corrective statements, which have been filed by dealer banks under their respective jurisdictions. The NASD presently maintains and updates information and personnel in the securities industry similar to the information which would be disclosed on the proposed forms. Certain identifying information disclosed in the forms will be used to gain access to the NASD computer data bank. This procedure will give the Comptroller and the other Federal bank agencies access to disciplinary, qualification and employment information concerning the person named in the proposed forms, if such person has had prior contact with the securities industry. A person's movement between banking institutions, general securities firms, and non-bank municipal securities firms would be traceable, thereby aiding the Comptroller and the other Federal bank agencies in determining whether that person is disqualified from being or becoming associated with a bank dealer as a municipal securities principal or representative. The Comptroller for its part will provide any disqualifying information received from the NASD data bank to the national bank dealer with which the person is or seeks to be associated.

As proposed in § 10.4(d), filings under proposed Part 10 would constitute filings with the Securities and Exchange Com-

mission for purposes of section 17(c) (1) of the Act. Section 17(c) (1) requires in effect that national bank dealers filing documents with the Comptroller pursuant to this Part 10 file a copy of each document with the Securities and Exchange Commission. The Comptroller will arrange for timely transmittal of one copy of all documents filed hereunder to the Securities and Exchange Commission. This procedure will avoid the undue burden of having national bank dealers file the same documents with two different regulatory agencies, while still satisfying the intent of section 17(c) (1) of the Act.

Finally, a filing pursuant to proposed Part 10 would be deemed to be a "report", "application", or "document" within the meaning of section 32(a) of the Act, which imposes severe penalties for, among other things, making a knowingly false or misleading statement of any material fact in such a filing.

PRIVACY ACT

The filing requirements of this proposed Part 10 would create a system of records which may be subject to the Privacy Act of 1974, 5 U.S.C. 552a. Accordingly, the Comptroller is publishing for comment, concurrently with this notice of proposed rulemaking, a separate FEDERAL REGISTER notice which describes the system of records to be maintained as a result of the proposed Part 10 filing requirements, and which lists the routine uses to be made of the information supplied in such filings. Interested persons are urged to read the full text of this document elsewhere in this issue of the FEDERAL REGISTER.

PUBLIC AVAILABILITY OF COMMENTS

All written views and comments will be made available to the public for inspection and copying upon request, except as provided in 12 CFR Part 4.

Proposed 12 CFR Part 10 reads as follows:

PART 10—MUNICIPAL SECURITIES DEALERS

REGULATIONS

Sec.	
10.1	Scope of part.
10.2	Definitions.
10.3	Filing of materials.
10.4	Application on Form MSD-4 for municipal securities principals and representatives; amendments; notice of termination on Form MSD-5.

FORMS

10.41	Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Dealer (Form MSD-4).
10.42	Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Dealer (Form MSD-5).

AUTHORITY: 15 U.S.C. 78o-4(c) (5), 78q, 78w.

REGULATIONS

§ 10.1 Scope of part.

This part is issued by the Comptroller of the Currency and shall apply to:

(a) All national banks and banks operating under the Code of Law for the

District of Columbia, or their subsidiaries or separately identifiable departments or divisions, which act as municipal securities dealers, as that term is defined in section 3(a) of the Securities Exchange Act of 1934; and

(b) All persons associated or to be associated with any such bank, subsidiary, department or division in the capacity of municipal securities principal or municipal securities representative, as those terms are defined in Rule G-3 of the Municipal Securities Rulemaking Board.

§ 10.2 Definitions.

For the purposes of the part, including all forms and instructions promulgated in connection herewith, unless the context otherwise requires:

(a) The term "Act" shall mean the Securities Exchange Act of 1934, 15 U.S.C. 78 et seq.;

(b) The term "Board" shall mean the Municipal Securities Rulemaking Board;

(c) The term "Commission" shall mean the Securities and Exchange Commission;

(d) The term "bank dealer" shall mean any bank or subsidiary, department, or division thereof referred to in § 10.1(a);

(e) All other terms used in this Part shall have the meanings set forth in the Act, in the rules and regulations of the Commission, and in the rules of the Board, to the extent such terms are defined therein.

§ 10.3 Filing of documents.

(a) All documents required to be filed with the Comptroller of the Currency pursuant to this part shall be filed at the Office of the Comptroller of the Currency, Washington, D.C. 20219.

(b) Filing may be accomplished by direct delivery, through the mails, or otherwise. The date on which documents are actually received by the Comptroller of the Currency shall be the date of filing, but documents which are not prepared and executed in accordance with the applicable requirements may be returned as unacceptable for filing.

(c) Acceptance of any document for filing pursuant to this Part shall not constitute any finding by the Comptroller of the Currency that such document has been completed in accordance with the applicable requirements, or that any information contained therein is true, current, complete, or not misleading.

§ 10.4 Application on Form MSD-4 for municipal securities principals and representatives; amendments; notice of termination on Form MSD-5.

(a) *Application requirement.* (1) The Form MSD-4 referred to in this Part is prescribed by the Comptroller of the Currency as an appropriate means of carrying out the purposes of paragraph (b) of Rule G-7 of the Board, "Information Concerning Associated Persons."

(2) On and after September 1, 1977, no bank dealer shall permit a person to be associated with it as a municipal securities principal or municipal securities representative unless:

(i) An application on Form MSD-4, "Uniform Application for Municipal

Securities Principal or Municipal Securities Representative Associated with a Bank Dealer," has been completed and signed in accordance with the instructions contained therein and has been submitted to the bank dealer by such person; and

(ii) The bank dealer has filed the original and two copies of such Form MSD-4 with the Comptroller of the Currency.

(b) *Amendments.* (1) The information reported on Form MSD-4 shall be true, current, complete, and not misleading at the time and in light of the circumstances under which it is reported. Intentional misstatements or omissions of fact may be violations of Federal criminal law.

(2) (i) If any information reported on a Form MSD-4 becomes materially inaccurate or incomplete, the person who signed the Form MSD-4 shall provide the bank dealer with a statement containing corrective information in accordance with paragraph (c) of Rule G-7 of the Board.

(ii) The bank dealer, within ten days after receiving such a corrective statement, shall file three copies of the statement with the Comptroller of the Currency, accompanied by an original and two copies of a transmittal letter which identifies the bank dealer, the affected person, and the corrective statements transmitted therewith, and which is signed by a municipal securities principal associated with the bank dealer.

(c) *Notice of termination of association with a bank dealer.* (1) Within thirty days after any person's association with a bank dealer as a municipal securities principal or municipal securities representative is terminated, the bank dealer shall prepare and file with the Comptroller of the Currency an original and two copies of a notice of such termination on Form MSD-5, "Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Dealer," in accordance with the instructions contained therein.

(2) A Form MSD-5 filed pursuant to this paragraph shall include such details as may be necessary to make the information contained therein true, current, complete, and not misleading. Intentional misstatements or omissions of fact on Form MSD-5 may be violations of Federal criminal law.

(d) *Record retention; filings under the Act.* (1) Bank dealers shall retain for their own records a copy of every Form MSD-4, MSD-5, amendment, and related document filed by them pursuant to this part.

(2) Every Form MSD-4, Form MSD-5, amendment, and related document filed with the Comptroller of the Currency pursuant to this part shall constitute a filing with the Commission for purposes of section 17(c)(1) of the Act and a "report", "application", or "document" within the meaning of section 32(a) of the Act.

FORMS

§ 10.41 Uniform application for municipal securities principal or municipal securities representative associated with a bank dealer (Form MSD-4).

INSTRUCTIONS FOR COMPLETING AND FILING FORM MSD-4

GENERAL INSTRUCTIONS

1. Form MSD-4 is to be used by bank and bank holding company municipal securities dealers and persons who are or seek to be associated with such dealers as municipal securities principals or municipal securities representatives to comply with Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons," and rules and regulations of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation which require the filing of Form MSD-4.

A person who is or seeks to be associated as a municipal securities principal or municipal securities representative is referred to in the instructions and in Form MSD-4 as an applicant.

2. Bank and bank holding company municipal securities dealers are required to file Form MSD-4 with the appropriate regulatory agency as set forth below:

a. A municipal securities dealer which is a State member bank of the Federal Reserve System, a subsidiary or department or division of any such bank, a bank holding company, a subsidiary of a bank holding company which is a bank (other than (i) a national bank or a bank operating under the Code of Law for the District of Columbia or (ii) a bank insured by the Federal Deposit Insurance Corporation which is not a member of the Federal Reserve System) or a subsidiary or a department or division of such subsidiary is required to file with the Board of Governors of the Federal Reserve System.

b. A municipal securities dealer which is a bank insured by the Federal Deposit Insurance Corporation (other than a bank which is a member of the Federal Reserve System) or a subsidiary or department or division of any such bank is required to file with the Federal Deposit Insurance Corporation.

c. A municipal securities dealer which is a national bank or bank operating under the Code of Law for the District of Columbia or a subsidiary or a department or division of any such bank is required to file with the Comptroller of the Currency.

3. Copies of Form MSD-4 may be obtained from the agencies listed in Instruction 2.

4. An original and two copies of Form MSD-4 and any attachments are to be filed with the appropriate regulatory agency listed in Instruction 2. Municipal securities dealers filing Form MSD-4 shall retain an exact copy for their records.

5. If more space is needed to complete an answer, an appropriate designation shall be entered in the answer space provided, and one or more attachment sheets shall be used to complete the response. All attachments shall be submitted in the same format as the items to which response is made and should be typed on white 8½ by 11 inch paper. Answers to more than one question may appear on an attachment sheet if the questions are clearly identified. Attachments should be paginated and the name of both the applicant and the municipal securities dealer should appear on every attachment sheet.

6. Form MSD-4 and any attachments may be duplicated by any method which produces legible copies of type size identical to that of the Form MSD-4 on white 8½ by 11 inch paper.

7. Form MSD-4 shall be signed on page one by a municipal securities principal of the employing bank or bank holding company municipal securities dealer and on page

three by the applicant. Each copy submitted shall be manually signed.

8. All items on Form MSD-4 are to be completed, except that disclosure of social security number is not mandatory. The date on which the Form MSD-4 is received by the appropriate regulatory agency shall be the date of filing. A Form MSD-4 which is not prepared and executed in accordance with the applicable requirements may be returned as unacceptable for filing. Acceptance for filing shall not constitute any finding that a Form MSD-4 has been completed in accordance with those requirements or that any information contained therein is true, current, complete, or not misleading.

9. Section 17(c)(1) of the Securities Exchange Act of 1934 requires every municipal securities dealer which files any application, notice, report, or document with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation to file a copy of such application, notice, report, or document with the Securities and Exchange Commission. The Securities and Exchange Commission and the federal bank regulatory agencies have developed procedures pursuant to which the federal bank agencies will transmit a copy of any application, notice, report, or document filed with them by a municipal securities dealer to the Securities and Exchange Commission. Accordingly, when this form is filed with the appropriate regulatory agency as set forth in Instruction 2, it shall be deemed to have been filed with the Securities and Exchange Commission.

INSTRUCTIONS TO SPECIFIC ITEMS ON FORM MSD-4

10. Items 2 through 10 are to be completed by the municipal securities dealer employing or proposing to employ the applicant named in item 1. All other items are to be completed by the applicant.

11. Items 2, 3, and 5: Give the information requested with respect to the registered bank holding company municipal securities dealer, or bank municipal securities dealer which may be either a bank or a separately identifiable department or division of a bank.

12. Item 3: Give the Securities and Exchange Commission registration number of the bank or bank holding company municipal securities dealer.

13. Item 6: Give the address of the office of the municipal securities dealer in which the applicant is or will be employed.

14. Item 7: Indicate the appropriate regulatory agency as set forth in Instruction 2.

15. Item 8: Municipal Securities Rulemaking Board Rule G-3, "Classification of Principals and Representatives; Numerical Requirements; Testing", provides a description of the functions performed by a municipal securities principal or municipal securities representative.

16. Item 10: This item need not be completed if the applicant was employed by the bank dealer named in Item 2 on December 3, 1976, and continuously thereafter as either a municipal securities principal or municipal securities representative.

17. Item 19: All time periods must be accounted for.

18. Item 28: (a) Although this item relates only to convictions during the past ten years, it should be noted that section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) prohibits any insured bank from employing, except with the written consent of the Federal Deposit Insurance Corporation any person who has ever been convicted of a criminal offense involving dishonesty or breach of trust. (b) Paragraph (iv) of this item relates only to convictions within the past ten years under sections 152, 1341, 1342, or 1343 of Title 18 or Chapters 25 or 47 of Title 28, United States Code.

PROPOSED RULES

PERSONAL HISTORY

11. _____ 12. _____
 Last Name First Middle Social Security Number
 (Completion is not mandatory)
13. _____ 14. _____
 Resident Street Address City State Zip
15. ____/____/____ 16. _____ 17. _____
 Date of Birth Place of Birth Any other name ever used or
 by which known

18. EDUCATION

The following is a statement of all educational institutions attended starting with high school:

Name and Address of Institution (Street, City, State, Zip Code)	From Mo. Yr.	TO Mo. Yr.	Did You Graduate?	Degree

19. EMPLOYMENT HISTORY

The following is a complete, consecutive statement of all my business connections for the past ten years starting with my current position:

NAME OF EMPLOYER, COMPLETE ADDRESS AND TYPE OF BUSINESS	FROM Mo. Yr.	TO Mo. Yr.	POSITION HELD	REASON FOR LEAVING	FULL OR PART TIME

20. RESIDENTIAL HISTORY

The following is a complete, consecutive statement of all my residential addresses for the past ten years starting with my current residential address:

ADDRESS (Street, City, State, Zip Code)	FROM Mo. Yr.	TO Mo. Yr.

21. A. Have you ever taken a qualification examination for municipal securities principals or municipal securities representatives or financial and operations principals prescribed by the Municipal Securities Rulemaking Board? If so, state below the type of examination and the approximate date taken.

Yes ___ No ___

 Type of Examination Approximate Date

 Type of Examination Approximate Date

- B. Have you ever been exempt from or received a waiver of the requirement to take and pass an examination of the nature specified in question 21A? If so, state below the type of examination, the basis for such exemption or waiver, and, in the case of a waiver, the approximate date.

Yes ___ No ___

 Type of Examination Basis for Exemption or Waiver Approximate Date

 Type of Examination Basis for Exemption or Waiver Approximate Date

22. Are you currently bonded? Yes ___ No ___

IF THE ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS YES, ATTACH COMPLETE DETAILS:

23. Have you ever been refused coverage under a fidelity bond or has any surety company paid out any funds on your coverage or cancelled such coverage? Yes ___ No ___

PROPOSED RULES

24. Have you ever been denied membership, registration, license, permit, or certification by any federal or state securities or federal or state bank regulatory agency, any national securities exchange, registered securities association, or registered clearing agency? Yes ___ No ___
25. Has any disciplinary action ever been taken against you, or any sanction imposed upon you, including any finding that you were a cause of any disciplinary action or violated any law, rule or regulation or were an aider, abettor, or co-conspirator in any such violation, by any federal or state securities or federal or state bank regulatory agency, any national securities exchange, registered securities association, or registered clearing agency? Yes ___ No ___
26. While you were associated in any capacity with any broker, dealer or municipal securities dealer:
- A. was its registration denied, suspended or revoked? Yes ___ No ___
- B. was its membership in any national securities exchange, registered securities association, or registered clearing agency denied, suspended, or revoked, or was it expelled from any such organization? Yes ___ No ___
27. Has any permanent or temporary injunction (including a cease and desist order) ever been entered against you or against any broker, dealer, or municipal securities dealer with which you were associated in any capacity when such injunction was entered enjoining conduct as an investment adviser, underwriter, broker, dealer or municipal securities dealer or as an affiliated person of any investment company, bank or insurance company, or any conduct related to such activities or any transactions in any security? Yes ___ No ___
28. Have you been convicted within the past ten years of any felony or misdemeanor: (i) involving the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense; (ii) arising out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, or fiduciary; (iii) involving larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; (iv) involving crimes of concealment of assets, false oaths or claims or bribery in a bankruptcy proceeding, mail fraud, fraud by wire including telephone, telegraph, radio, or television, fraud or false statements? Yes ___ No ___

Date _____ Signature of Applicant _____

ACKNOWLEDGMENT OF MSD-4 APPLICATION

29. Applicant Name _____
30. Bank Dealer Name _____
31. Bank Dealer Address _____

32. Attention: _____

Receipt Stamp

WHEN THE FORM MSD-4 IS RECEIVED BY THE APPROPRIATE REGULATORY AGENCY, THIS ACKNOWLEDGMENT WILL BE STAMPED TO SHOW RECEIPT AND RETURNED TO THE PERSON NAMED IN ITEM 32. THE STAMPED ACKNOWLEDGMENT SHOULD BE RETAINED TO SUBSTANTIATE FILING.

THIS ACKNOWLEDGMENT OF FORM MSD-4 DOES NOT CONSTITUTE APPROVAL OF THE APPLICANT'S PROFESSIONAL QUALIFICATIONS NOR DOES IT ATTEST TO THE ACCURACY OF THE INFORMATION SUPPLIED.

§ 10.42 Uniform termination notice for municipal securities principal or municipal securities representative associated with a bank dealer (Form MSD-5).

INSTRUCTIONS FOR COMPLETING AND FILING FORM MSD-5

1. Form MSD-5 is intended for use by bank and bank holding company municipal dealers in reporting the termination of a municipal securities principal's or municipal securities representative's association with such a dealer.

2. Bank and bank holding company municipal securities dealers are required to file Form MSD-5 with the appropriate regulatory agency as set forth below:

a. A municipal securities dealer which is a State member bank of the Federal Reserve System, or a subsidiary or department or division of any such bank, a bank holding company, a subsidiary of a bank holding company which is a bank (other than (i) a national bank or a bank operating under the Code of Law for the District of Columbia or (ii) a bank insured by the Federal Deposit Insurance Corporation which is not a member of the Federal Reserve System) or a subsidiary or a department or division of such subsidiary is required to file with the Board of Governors of the Federal Reserve System.

b. A municipal securities dealer which is a bank insured by the Federal Deposit Insurance Corporation (other than a bank which is a member of the Federal Reserve System) or a subsidiary or department or division of any such bank is required to file with the Federal Deposit Insurance Corporation.

c. A municipal securities dealer which is a national bank or bank operating under the Code of Law for the District of Columbia or a subsidiary or a department or division of any such bank is required to file with the Comptroller of the Currency.

3. Copies of Form MSD-5 may be obtained from the agencies listed in Instruction 2.

4. An original and two copies of Form MSD-5 and any attachments are to be filed with the appropriate regulatory agency listed in Instruction 2 within 30 days after termination. Municipal securities dealers filing Form MSD-5 shall retain an exact copy for their records.

5. If more space is needed to complete an answer, an appropriate designation shall be entered in the answer space provided, and

one or more attachment sheets shall be used to complete the response. All attachments shall be submitted in the same format as the items to which response is made and should be typed on white 8½ by 11 inch paper. Answers to more than one question may appear on an attachment sheet if the questions are clearly identified. Attachments should be paginated and the name of both the person terminated and the municipal securities dealer should appear on every attachment sheet.

6. Form MSD-5 and any attachments may be duplicated by any method which produces legible copies of type size identical to that of the Form MSD-5 on white 8½ by 11 inch paper.

7. Form MSD-5 shall be signed by a municipal securities principal of the employing bank or bank holding company municipal securities dealer.

All items on Form MSD-5 are to be completed, except that disclosure of social security number is not required if that information is unavailable. The date on which the Form MSD-5 is received by the appropriate regulatory agency shall be the date of filing. A Form MSD-5 which is not prepared and executed in accordance with the applicable requirements may be returned as unacceptable for filing. Acceptance for filing shall not constitute any finding that a Form MSD-5 has been completed in accordance with the applicable requirements or that any information contained therein is true, current, complete, or not misleading.

9. Section 17(c)(1) of the Securities Exchange Act of 1934 requires every municipal securities dealer which file any application, notice, report, or document with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation to file a copy of such application, notice, report, or document with the Securities and Exchange Commission. The Securities and Exchange Commission and the federal bank regulatory agencies have developed procedures pursuant to which the federal bank agencies will transmit a copy of any application, notice, report, or document filed with them by a municipal securities dealer to the Securities and Exchange Commission. Accordingly, when this form is filed with the appropriate regulatory agency as set forth in Instruction 2, it shall be deemed to have been filed with the Securities and Exchange Commission.

NOTE.—The Comptroller of the Currency 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. Executive Order 11821 was extended by Executive Order 11949.

Dated: March 23, 1977.

ROBERT BLOOM,
Acting Comptroller of the Currency.
[FR Doc. 77-9360 Filed 3-29-77; 8:45 am]

FEDERAL RESERVE SYSTEM

[12 CFR Parts 208, 225]

[Docket No. R-0090; Reg. H and Reg. Y]

STATE MEMBER BANKS AND BANK HOLDING COMPANIES AND CERTAIN OF THEIR SUBSIDIARIES, DEPARTMENTS, AND DIVISIONS WHICH ARE MUNICIPAL SECURITIES DEALERS

Proposed Rulemaking

The Board of Governors of the Federal Reserve System is proposing amendments to its Regulation H (12 CFR Part 208) and Regulation Y (12 CFR Part 225) to require State member banks and bank holding companies, and certain of their subsidiaries, departments, and divisions, as specified in section 3(a)(34)(A)(ii) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) (the "Act"), which are municipal securities dealers, as defined in section 3(a)(30) of the Act, to file with the Board information about persons who are associated with them as municipal securities principals or municipal securities representatives. The Board believes that these proposed requirements are necessary to facilitate compliance by those dealers with Municipal Securities Rulemaking Board ("MSRB") rules concerning the qualification of municipal securities principals and municipal securities representatives.

The Securities Acts Amendments of 1975 (Pub. L. 94-29) amended the Act to provide for the creation of the MSRB and delegated responsibility to it to formulate rules regulating the activities of municipal securities dealers. Under the Act, the MSRB does not have authority to enforce its rules. Rather, such authority is distributed between the Securities and Exchange Commission, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve Board, which section 3(a)(34) of the Act designates as the appropriate regulatory agencies for various municipal securities dealers. Under section 3(a)(34)(A)(ii) of the Act, the Federal Reserve Board is the appropriate regulatory agency for a State member bank, a subsidiary or a department or a division thereof, a bank holding company, a subsidiary of a bank holding company which is a bank (other than a national bank or a bank operating under the Code of Law for the District of Columbia or a bank insured by the Federal Deposit Insurance Corporation which is not a member of the Federal Reserve System) or a subsidiary or a department or a division of such subsidiary, which is a municipal securities

dealer (hereinafter referred to as "State member bank and bank holding company municipal securities dealers").

One of the areas in which the Act directs the MSRB to promulgate rules is the qualification of persons associated with municipal securities dealers as municipal securities principals or municipal securities representatives as those positions are defined in MSRB Rule G-3. Paragraph (b) of MSRB Rule G-7, "Information Concerning Associated Persons," requires the disclosure of certain information about persons who are or seek to be associated with municipal securities dealers as municipal securities principals or municipal securities representatives. Generally, the information required to be disclosed relates to employment history and professional background including any disciplinary sanctions and any claimed bases for exemption from MSRB examination requirements.

Paragraph (b) of MSRB Rule G-7 provides that a "completed Form U-4 or similar form prescribed * * * in the case of a bank dealer, by the appropriate regulatory agency, containing the foregoing information, shall satisfy the requirements of this paragraph." The Board proposes to prescribe Form MSD-4¹ for purposes of paragraph (b) of MSRB Rule G-7 for State member bank and bank holding company municipal securities dealers and to require that each such municipal securities dealer file Form MSD-4 with the Board for each person associated with the dealer as a municipal securities principal or municipal securities representative. Form MSD-4 contains detailed instructions governing its preparation and use.

To maintain the accuracy of the information proposed to be filed on Form MSD-4, the Board further proposes to require that State member bank and bank holding company municipal securities dealers file with the Board copies of statements such dealers receive pursuant to paragraph (c) of MSRB Rule G-7 and proposed Form MSD-5¹ for municipal securities principals and municipal securities representatives whose association with such dealers terminates. Under paragraph (c) of MSRB Rule G-7 a person who is or seeks to be associated with a municipal securities dealer is required to furnish the dealer with a statement correcting information furnished under paragraph (b) of MSRB Rule G-7 to the extent that such information becomes materially inaccurate or incomplete. Proposed Form MSD-5 is a notification by a municipal securities dealer that a municipal securities principal's or a municipal securities representative's association with the dealer has terminated and the reasons for such termination.

¹ A copy of Form MSD-4 and a copy of Form MSD-5 are published in FR Doc. 77-9356, appearing elsewhere in this issue, and are filed as part of the original document. Copies are available on request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to any Federal Reserve Bank.

The Federal Deposit Insurance Corporation and the Comptroller of the Currency are also proposing to require municipal securities dealers for which they are the appropriate regulatory agency to file with them Form MSD-4s, MSRB Rule G-7(c) statements, and Form MSD-5s. The three federal bank regulatory agencies plan to forward the Form MSD-4s, MSRB Rule G-7(c) statements, and Form MSD-5s that they receive to the National Association of Securities Dealers (the "NASD") for computer processing. For many years the NASD has maintained data on personnel in the securities industry similar to the information to be disclosed about municipal securities principals and municipal securities representatives. It is expected that disciplinary and qualification data disclosed on Form MSD-4s, MSRB Rule G-7(c) statements, and Form MSD-5s will be interfaced with the securities personnel data bank already maintained by the NASD.

Under such a system, the Board would have access to disciplinary qualification, and employment information on individuals who have moved between banking institutions or between banking institutions and general securities firms or non-bank municipal securities firms. Access to such information would assist the Board in determining if a person is qualified to act as a municipal securities principal or municipal securities representative. The Board would undertake to provide a municipal securities dealer for which it is the appropriate regulatory agency with any disqualifying information it obtains from the NASD data bank about a person who is or seeks to be associated with such a dealer as a municipal securities principal or municipal securities representative.

As proposed, the filing of Form MSD-4s, MSRB Rule G-7(c) statements, and Form MSD-5s with the Board would constitute "reports," "applications," or "documents" within the meaning of section 32(a) of the Act and would constitute filings with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act. Section 17(c)(1) of the Act requires every municipal securities dealer which files an application, notice, report, or document with the Board to file a copy of such application, notice, report, or document with the Securities and Exchange Commission. The Securities and Exchange Commission and the Board have developed procedures pursuant to which the Board will transmit a copy of any application, notice, report, or document filed with the Board to the Securities and Exchange Commission.

The filing requirements proposed herein would create a system of records which may be subject to the Privacy Act of 1974 (5 U.S.C. 552a). In accordance with the requirements of the Privacy Act, the Board is publishing for comment, concurrently with this notice of proposed rulemaking, a separate FEDERAL REGISTER notice describing the system of records and the Board's routine uses of the information which would be contained in the system.

It is anticipated that the effective date of the requirements proposed herein will be September 12, 1977. MSRB Rule G-7 is scheduled to become effective September 1, 1977.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. Pursuant to sections 15B(c)(5), 17, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(5), 78q, and 78w) and section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)), the Board proposes to amend Regulation H (12 CFR Part 208) by adding a paragraph (h) to § 208.8 as set forth below:

§ 208.8 Banking practices.

(h) *State member banks, and subsidiaries, departments, and divisions thereof, which are municipal securities dealers.*

(1) For purposes of this paragraph, the terms herein have the meanings given them in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) and the rules of the Municipal Securities Rulemaking Board. The term Act shall mean the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) and the rules of the Municipal Securities Rulemaking Board. The term Act shall mean the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(2) On and after _____, a State member bank of the Federal Reserve System, or a subsidiary or a department or a division thereof, which is a municipal securities dealer shall not permit a person to be associated with it as a municipal securities principal or municipal securities representative unless it has filed with the Board an original and two copies of Form MSD-4, "Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Dealer," completed in accordance with the instructions contained therein, for that person. Form MSD-4 is prescribed by the Board for purposes of paragraph (b) of Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons."

(3) Whenever a municipal securities dealer receives a statement pursuant to paragraph (c) of Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons," from a person for whom it has filed a Form MSD-4 with the Board pursuant to subparagraph (2) of this paragraph, such dealer shall, within ten days thereafter, file three copies of that statement with the Board accompanied by an original and two copies of a transmittal letter which includes the name of the dealer and a reference to the material transmitted identifying the person involved and is signed by a municipal securities principal associated with the dealer.

(4) Within thirty days after the termination of the association of a municipal securities principal or municipal securities representative with a municipal securities dealer which has filed a Form MSD-4 with the Board for that person pursuant to subparagraph (2) of this

paragraph, such dealer shall file an original and two copies of a notification of termination with the Board on Form MSD-5, "Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Dealer," completed in accordance with the instructions contained therein.

(5) A municipal securities dealer which files a Form MSD-4, Form MSD-5, or statement with the Board under this paragraph shall retain a copy of each such Form MSD-4, Form MSD-5, or statement.

(6) The date that the Board receives a Form MSD-4, Form MSD-5, or statement filed with the Board under this paragraph shall be the date of filing. Such a Form MSD-4, Form MSD-5, or statement which is not prepared and executed in accordance with the applicable requirements may be returned as unacceptable for filing. Acceptance for filing shall not constitute any finding that a Form MSD-4, Form MSD-5 or statement has been completed in accordance with the applicable requirements or that any information contained therein is true, current, complete, or not misleading. Every Form MSD-4, Form MSD-5, or statement filed with the Board under this paragraph shall constitute a filing with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act (15 U.S.C. 78q(c)(1)) and a "report," "application," or "document" within the meaning of section 32(a) of the Act (15 U.S.C. 78ff(a)).

PART 225—BANK HOLDING COMPANIES

2. Pursuant to sections 15B(c)(5), 17, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(5), 78q, and 78w), the Board proposes to amend its Regulation Y (12 CFR 225) by adding a paragraph (e) to § 225.5 as set forth below:

§ 225.5 Administration.

(e) *Bank holding companies, certain of their subsidiaries, and subsidiaries, departments or divisions of such subsidiaries, which are municipal securities dealers.* (1) For purposes of this paragraph, the terms herein have the meanings given them in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) and the rules of the Municipal Securities Rulemaking Board. The term Act shall mean the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(2) On and after _____, a bank holding company, or a subsidiary of a bank holding company which is a bank (other than a national bank or a bank operating under the Code of Law for the District of Columbia or a bank insured by the Federal Deposit Insurance Corporation), or a subsidiary or a department or a division of such a subsidiary, which is a municipal securities dealer shall not permit a person to be associated with it as a municipal securities principal or municipal securities repre-

sentative unless it has filed with the Board an original and two copies of Form MSD-4, "Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Dealer," completed in accordance with the instructions contained therein, for that person. Form MSD-4 is prescribed by the Board for purposes of paragraph (b) of Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons."

(3) Whenever a municipal securities dealer receives a statement pursuant to paragraph (c) of Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons," from a person for whom it has filed a Form MSD-4 with the Board pursuant to subparagraph (2) of this paragraph, such dealer shall, within ten days thereafter, file three copies of that statement with the Board accompanied by an original and two copies of a transmittal letter which includes the name of the dealer and a reference to the material transmitted identifying the person involved and is signed by a municipal securities principal associated with the dealer.

(4) Within thirty days after the termination of the association of a municipal securities principal or municipal securities representative with a municipal securities dealer which has filed a Form MSD-4 with the Board for that person pursuant to subparagraph (2) of this paragraph, such dealer shall file an original and two copies of a notification of termination with the Board on Form MSD-5, "Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Dealer," completed in accordance with the instructions contained therein.

(5) A municipal securities dealer which files a Form MSD-4, Form MSD-5, or statement with the Board under this paragraph shall retain a copy of each such Form MSD-4, Form MSD-5, or statement.

(6) The date that the Board receives a Form MSD-4, Form MSD-5, or statement filed with the Board under this paragraph shall be the date of filing. Such a Form MSD-4, Form MSD-5, or statement which is not prepared and executed in accordance with the applicable requirements may be returned as unacceptable for filing. Acceptance for filing shall not constitute any finding that a Form MSD-4, Form MSD-5, or statement has been completed in accordance with the applicable requirements or that any information contained therein is true, current, complete, or not misleading. Every Form MSD-4, Form MSD-5, or statement filed with the Board under this paragraph shall constitute a filing with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act (15 U.S.C. 78q(c)(1)) and a "report," "application," or "document" within the meaning of section 32(a) of the Act (15 U.S.C. 78ff(a)).

To aid the Board in its consideration of these matters, interested persons are

invited to submit relevant data, views, comments, or arguments on or before May 2, 1977, to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution NW., Washington, D.C. 20551. All material submitted should be in writing and should contain the docket number R-0090. All written documents will be made available for public inspection during the regular hours of the Office of the Secretary at the above address.

This notice is published pursuant to section 553(b) of Title 5 of the United States Code and § 262.2(a) of the Board's rules of procedure (12 CFR 262.2(a)).

By order of the Board of Governors, March 11, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 77-9359 Filed 3-29-77; 8:45 am]

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 343]

INSURED STATE NONMEMBER BANKS, AND CERTAIN OF THEIR SUBSIDIARIES, DEPARTMENTS, AND DIVISIONS, WHICH ARE MUNICIPAL SECURITIES DEALERS

Proposed Rulemaking

The Federal Deposit Insurance Corporation is proposing to amend Chapter III of Title 12 of the Code of Federal Regulations by adoption of a new Part 343 (12 CFR Part 343). Part 343 will require insured State nonmember banks and certain of their subsidiaries, departments, and divisions, as specified in section 3(a)(34)(A)(iii) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) (the "Act"), which are municipal securities dealers, as defined in section 3(a)(30) of the Act, to file with FDIC information about persons who are associated with them as municipal securities principals or municipal securities representatives. FDIC believes that these proposed requirements are necessary to facilitate compliance with Municipal Securities Rulemaking Board ("MSRB") rules concerning the qualification of municipal securities principals and municipal securities representatives by those dealers.

The Securities Acts Amendments of 1975 (Pub. L. 95-29) amended the Act to provide for the creation of the MSRB and delegated responsibility to it to formulate rules regulating the activities of municipal securities dealers. Under the Act, the MSRB does not have authority to enforce its rules. The Act distributes authority to enforce MSRB rules between the Securities and Exchange Commission, the Comptroller of the Currency, the Federal Reserve Board and FDIC. As specified in section 3(a)(34)(A)(iii) of the Act, FDIC is authorized to enforce compliance with MSRB rules by an insured State nonmember bank, a subsidiary or a department or a division thereof, which is a municipal securities dealer (hereinafter referred to as "State non-

member bank municipal securities dealer").

One of the areas in which the Act directs the MSRB to promulgate rules is the qualification of persons associated with municipal securities dealers as municipal securities principals and municipal securities representatives as those positions are defined in MSRB Rule G-3, Paragraph (b) of MSRB Rule G-7 "Information Concerning Associated Persons," requires persons who are or seek to be associated with municipal securities dealers as municipal securities principals or municipal securities representatives to provide certain background information and conversely, requires the municipal securities dealers to obtain the information from such persons. Generally, the information required to be disclosed relates to employment history and professional background including any disciplinary sanctions and any claimed bases for exemption from MSRB examination requirements.

Paragraph (b) of MSRB Rule G-7 provides that a "completed Form U-4 or similar form prescribed * * * in the case of a bank dealer, by the appropriate regulatory agency, containing the foregoing information, shall satisfy the requirements of this paragraph." FDIC proposes to prescribe Form MSD-4 for purposes of paragraph (b) of MSRB Rule G-7 for State nonmember bank municipal securities dealers and to require that each such municipal securities dealer file Form MSD-4 with FDIC for each person associated with the dealer as a municipal securities principal or municipal securities representative.

To maintain the accuracy of the information proposed to be filed on Form MSD-4, FDIC further proposes to require that State nonmember bank municipal securities dealers file with the FDIC copies of statements such dealers receive pursuant to paragraph (c) of MSRB Rule G-7 and proposed Form MSD-5s for municipal securities principals and municipal securities representatives whose association with such dealers terminates. Under paragraph (c) of MSRB Rule G-7 a person who is or seeks to be associated with a municipal securities dealer is required to furnish the dealer with a statement correcting information furnished under paragraph (b) of MSRB Rule G-7 to the extent that such information becomes materially inaccurate or incomplete. Proposed Form MSD-5 is a notification by a municipal securities dealer that a municipal securities principal's or a municipal securities representative's association with the dealer has terminated and the reasons for such termination.

FDIC and the two other federal bank regulatory agencies, the Comptroller of the Currency, and the Federal Reserve Board, plan to forward the Form MSD-4s, MSRB Rule G-7(c) statements, and Form MSD-5s that they receive to the National Association of Securities Dealers (the "NASD") for computer processing. For many years the NASD has maintained data on personnel in the securities industry similar to the information to be disclosed about municipal securi-

ties principals and municipal securities representatives. It is expected that disciplinary and qualification data disclosed on Form MSD-4s, MSRB Rule G-7(c) statements, and Form MSD-5s will be interfaced with the securities personnel data bank already maintained by the NASD.

Under such system, FDIC would have access to disciplinary, qualification, and employment information on individuals who have moved between banking institutions or between banking institutions and general securities firms or non-bank municipal securities firms. Access to such information would assist FDIC in determining if a person is qualified under MSRB rules to act as a municipal securities principal or municipal securities representative. FDIC would undertake to provide a municipal securities dealer for which it is the appropriate regulatory agency with any disqualifying information it obtains from the NASD data bank about a person who is or seeks to be associated with such a dealer as a municipal securities principal or municipal securities representative.

As proposed, the filing of Form MSD-4s, MSRB Rule G-7(c) statements, and Form MSD-5s with FDIC would constitute "reports," "applications," or "documents" within the meaning of section 32(a) of the Act and would constitute filings with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act. Section 17(c)(1) of the Act requires every municipal securities dealer which files an application, notice, report, or document with FDIC to file a copy of such application, notice, report, or document with the Securities and Exchange Commission. The Securities and Exchange Commission and FDIC have developed procedures pursuant to which FDIC will transmit a copy of any application, notice, report, or document filed with FDIC to the Securities and Exchange Commission.

The filing requirements proposed herein would create a system of records which may be subject to the Privacy Act of 1975 (5 U.S.C. 552a). In accordance with the requirements of the Privacy Act, FDIC is publishing for comment a separate FEDERAL REGISTER notice describing the system of records and FDIC's routine uses of the information which would be contained in the system.

The proposed effective date of the requirements proposed herein is September 10, 1977, which is 10 days after the date that MSRB Rule G-7 becomes effective.

The Board of Governors of the Federal Reserve System and the Comptroller of the Currency are simultaneously publishing for comment proposed regulations which, though not identical in language, will have the same effect as proposed Part 343.

Pursuant to sections 15B(c)(5), 17, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(5), 78q and 78w), FDIC proposes to amend Chapter III of Title 12 of the Code of Federal Regulations by adoption of new Part 343 (12 CFR Part 343) as set forth below:

PART 343—INSURED STATE NONMEMBER BANKS WHICH ARE MUNICIPAL SECURITIES DEALERS

Sec.	
343.1	Scope of part.
343.2	Definitions.
343.3	Filing of Form MSD-4, Amending Statements, and Form MSD-5.
343.4	[Reserved]
343.5	[Reserved]
343.6	[Reserved]
343.7	[Reserved]
343.8	[Reserved]
343.9	[Reserved]

FORMS

- 343.10 Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer (Form MSD-4).
- 343.11 Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer (Form MSD-5).

AUTHORITY: Secs. 15B(c)(5), 17 and 23, Securities Exchange Act of 1934 (15 U.S.C. 78c-4(c)(5), 78q and 78w).

§ 343.1 Scope of part.

(a) This part is issued by the Federal Deposit Insurance Corporation (the "Corporation") pursuant to those provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) which provide for the regulation of the municipal securities dealers and their activities.

(b) This part shall apply to all State banks insured by the Federal Deposit Insurance Corporation and not a member of the Federal Reserve System, or separately identifiable departments or divisions of such banks, which act as municipal securities dealers.

§ 343.2 Definitions.

For purposes of this paragraph, the terms herein have the meanings given them in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) and the rules of the Municipal Securities Rulemaking Board. The term Act shall mean the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

§ 343.3 Filing of Form MSD-4, Amending Statements, and Form MSD-5.

(a) On and after September 11, 1977, an insured State nonmember bank, or a subsidiary or a department or a division thereof, which is a municipal securities dealer shall not permit a person to be associated with it is a municipal securities principal or municipal securities representative unless it has filed with the Corporation an original and two copies of Form MSD-4, "Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Dealer", completed in accordance with the instructions contained therein, for that person. Form MSD-4 is prescribed by the Corporation for purposes of para-

graph (b) of Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons".

(b) Whenever a municipal securities dealer receives a statement pursuant to paragraph (c) of Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons," ("amending statement") from a person for whom it has filed a Form MSD-4 with the Corporation pursuant to subparagraph (a) of this § 343.3, such dealer shall, within ten days thereafter, file three copies of the amending statement with the Corporation accompanied by an original and two copies of a transmittal letter which includes the name of the dealer and a reference to the material transmitted, identifying the person involved, and is signed by a municipal securities principal associated with the dealer.

(c) Within thirty days after the termination of the association of a municipal securities principal or municipal securities representative with a municipal securities dealer which has filed a Form MSD-4 with the Corporation for that person pursuant to paragraph (a) of this § 343.3, such dealer shall file an original and two copies of a notification of termination with the Corporation on Form MSD-5, "Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Dealer", completed in accordance with the instructions contained therein.

(d) A municipal securities dealer which files a Form MSD-4, Form MSD-5, or an amending statement with the Corporation under this part shall retain a copy of each such Form MSD-4, Form MSD-5, or amending statement.

(e) Forms MSD-4, Forms MSD-5 and amending statements are to be filed with Director, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, D.C. 20429. The date that the Corporation receives a Form MSD-4, Form MSD-5, or amending statement shall be the date of filing. A Form MSD-4, Form MSD-5, or amending statement which is not prepared and executed in accordance with the applicable requirements may be returned as unacceptable for filing. Acceptance for filing shall not constitute any finding that a Form MSD-4, Form MSD-5 or amending statement has been completed in accordance with the applicable requirements or that any information contained therein is true, current, complete, or not misleading. Every Form MSD-4, Form MSD-5, or amending statement filed with the Corporation under this Part shall constitute a filing with the Securities and Exchange Commission for purposes of section 17(c)(1) of the Act (15 U.S.C. 78q(c)(1)) and a "report", "application", or "document" within the meaning of section 32(a) of the Act (15 U.S.C. 78ff(a)).

§§ 343.4 through 343.9 [Reserved]

FORMS

§ 343.10 Uniform application for municipal securities principal or municipal securities representative associated with a bank municipal securities dealer (Form MSD-4).

INSTRUCTIONS FOR COMPLETING AND FILING FORM MSD-4

GENERAL INSTRUCTIONS

1. Form MSD-4 is to be used by bank and bank holding company municipal securities dealers and persons who are or seek to be associated with such dealers as municipal securities principals or municipal securities representatives to comply with Municipal Securities Rulemaking Board Rule G-7, "Information Concerning Associated Persons," and rules and regulations of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation which require the filing of Form MSD-4.

A person who is or seeks to be associated as a municipal securities principal or municipal securities representative is referred to in the instructions and in Form MSD-4 as an applicant.

2. Bank and bank holding company municipal securities dealers are required to file Form MSD-4 with the appropriate regulatory agency as set forth below:

a. A municipal securities dealer which is a State member bank of the Federal Reserve System, a subsidiary or department or division of any such bank, a bank holding company, a subsidiary of a bank holding company which is a bank (other than (1) a national bank or a bank operating under the Code of Law for the District of Columbia or (2) a bank insured by the Federal Deposit Insurance Corporation which is not a member of the Federal Reserve System) or a subsidiary or a department or division of such subsidiary is required to file with the Board of Governors of the Federal Reserve System.

b. A municipal securities dealer which is a bank insured by the Federal Deposit Insurance Corporation (other than a bank which is a member of the Federal Reserve System) or a subsidiary or department or division of any such bank is required to file with the Federal Deposit Insurance Corporation.

c. A municipal securities dealer which is a national bank or bank operating under the Code of Law for the District of Columbia or a subsidiary or a department or division of any such bank is required to file with the Comptroller of the Currency.

3. Copies of Form MSD-4 may be obtained from the agencies listed in Instruction 2.

4. An original and two copies of Form MSD-4 and any attachments are to be filed with the appropriate regulatory agency listed in Instruction 2. Municipal securities dealers filing Form MSD-4 shall retain an exact copy for their records.

5. If more space is needed to complete an answer, an appropriate designation shall be entered in the answer space provided, and one or more attachment sheets shall be used to complete the response. All attachments shall be submitted in the same format as the items to which response is made and should be typed on white 8½

by 11 inch paper. Answers to more than one question may appear on an attachment sheet if the questions are clearly identified. Attachments should be paginated and the name of both the applicant and the municipal securities dealer should appear on every attachment sheet.

6. Form MSD-4 and any attachments may be duplicated by any method which produces legible copies of type size identical to that of the Form MSD-4 on white 8½ by 11 inch paper.

7. Form MSD-4 shall be signed on page one by a municipal securities principal of the employing bank or bank holding company municipal securities dealer and on page three by the applicant. Each copy submitted shall be manually signed.

8. All items on Form MSD-4 are to be completed, except that disclosure of social security number is not mandatory. The date on which the Form MSD-4 is received by the appropriate regulatory agency shall be the date of filing. A Form MSD-4 which is not prepared and executed in accordance with the applicable requirements may be returned as unacceptable for filing. Acceptance for filing shall not constitute any finding that a Form MSD-4 has been completed in accordance with those requirements or that any information contained therein is true, current, complete, or not misleading.

9. Section 17(c)(1) of the Securities Exchange Act of 1934 requires every municipal securities dealer which files any application, notice, report, or document with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation to file a copy of such application, notice, report, or document with the Securities and Exchange Commission. The Securities and Exchange Commission and the federal bank regulatory agencies have developed procedures pursuant to which the federal bank agencies will transmit a copy of any application, notice, report, or document filed with them by a municipal securities dealer to the Securities and Exchange Commission. Accordingly, when this form is filed with the appropriate regulatory agency as set forth in Instruction 2, it shall be deemed to have been filed with the Securities and Exchange Commission.

INSTRUCTIONS TO SPECIFIC ITEMS ON
FORM MSD-4

10. Items 2 through 10 are to be completed by the municipal securities dealer employing or proposing to employ the applicant named in Item 1. All other items are to be completed by the applicant.

11. Items 2, 3, and 5: Give the information requested with respect to the registered bank holding company municipal securities dealer, or bank municipal securities dealer which may be either a bank or a separately identifiable department or division of a bank.

12. Item 3: Give the Securities and Exchange Commission registration number of the bank or bank holding company municipal securities dealer.

13. Item 6: Give the address of the office of the municipal securities dealer in which the applicant is or will be employed.

14. Item 7: Indicate the appropriate regulatory agency as set forth in Instruction 2.

15. Item 8: Municipal Securities Rule-making Board Rule G-3, "Classification of Principals and Representatives; Numerical Requirements; Testing", provides a description of the functions performed by a municipal securities principal or municipal securities representative.

16. Item 10: This item need not be completed if the applicant was employed by the bank dealer named in Item 2 on December 3, 1976 and continuously thereafter as either a municipal securities principal or municipal securities representative.

17. Item 19: All time periods must be accounted for.

18. Item 28: (a) Although this item relates only to convictions during the past ten years, it should be noted that section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) prohibits any insured bank from employing, except with the written consent of the Federal Deposit Insurance Corporation, any person who has ever been convicted of a criminal offense involving dishonesty or breach of trust. (b) Paragraph (iv) of this item relates only to convictions within the past ten years under sections 152, 1341, 1342, or 1343 of Title 18 or Chapters 25 or 47 of Title 28, United States Code.

PROPOSED RULES

Form MSD-4

UNIFORM APPLICATION FOR MUNICIPAL SECURITIES
PRINCIPAL OR MUNICIPAL SECURITIES REPRESENTATIVE
ASSOCIATED WITH A BANK DEALER

- 1. APPLICANT NAME _____
LAST FIRST MIDDLE (If none, so specify)
- 2. BANK DEALER NAME _____
- 3. BANK DEALER REGISTRATION NUMBER _____ 4. DATE OF EMPLOYMENT _____
- 5. BANK DEALER MAIN ADDRESS _____

- 6. OFFICE OF EMPLOYMENT OF APPLICANT _____

- 7. TO BE FILED WITH THE FOLLOWING (Indicate One):
Board of Governors of the Federal Reserve System
Comptroller of the Currency
Federal Deposit Insurance Corporation

- 8. TYPE OF QUALIFICATION REQUESTED:
Municipal Securities Representative
Municipal Securities Principal

9. It is anticipated that the individual seeking qualification will perform the following functions in the capacity indicated:

	Capacity	
	Supervisory	Non-Supervisory
A. Underwriting, trading or sales of municipal securities:	<input type="checkbox"/>	<input type="checkbox"/>
B. Financial advisory or consultant services for issuers in connection with the issuance of municipal securities:	<input type="checkbox"/>	<input type="checkbox"/>
C. Research or investment advice with respect to municipal securities in connection with the activities enumerated in (A) and (B) above:	<input type="checkbox"/>	<input type="checkbox"/>
D. Activities other than those specifically enumerated above which involve communication directly or indirectly, with public investors in municipal securities in connection with the activities enumerated in (A) and (B) above:	<input type="checkbox"/>	<input type="checkbox"/>

10. For the purpose of verifying the information furnished herein by the individual named in Item 1 above, this institution has made inquiry of all employers of such person during the immediately preceding three years, as set forth below, concerning the accuracy and completeness of such information as well as the person's record and reputation as related to the person's ability to perform the duties for which employed or to be employed.

EMPLOYER	NAME AND POSITION OF PERSON CONTACTED

Date _____ Print Name of Municipal Securities Principal _____ Signature of Municipal Securities Principal _____

DO NOT WRITE BELOW

Experience _____ Clearance _____
 Further Training Required _____ Exam Taken: Date _____
 Exam Required _____ Grade _____
 Issue _____ Date Approved: Cond. _____
 Exam Grade OK _____ Final _____

ACCEPTANCE OF THIS FORM FOR FILING SHALL NOT CONSTITUTE ANY FINDING THAT THE INFORMATION SUBMITTED HEREIN IS TRUE, CURRENT, COMPLETE, OR NOT MISLEADING. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT MAY CONSTITUTE FEDERAL CRIMINAL VIOLATIONS. (See 18 U.S.C. 1001, 1005, and 1007 and 15 U.S.C. 78ff.)

PERSONAL HISTORY

11. Last Name First Middle
12. Social Security Number (Completion is not mandatory)
13. Resident Street Address
14. City State Zip
15. Date of Birth
16. Place of Birth
17. Any other name ever used or by which known

18. EDUCATION

The following is a statement of all educational institutions attended starting with high school:

Name and Address of Institution (Street, City, State, Zip Code)	From Mo. Yr.	TO Mo. Yr.	Did You Graduate?	Degree

19. EMPLOYMENT HISTORY

The following is a complete, consecutive statement of all my business connections for the past ten years starting with my current position:

NAME OF EMPLOYER, COMPLETE ADDRESS AND TYPE OF BUSINESS	FROM Mo. Yr.	TO Mo. Yr.	POSITION HELD	REASON FOR LEAVING	FULL OR PART TIME

20. RESIDENTIAL HISTORY

The following is a complete, consecutive statement of all my residential addresses for the past ten years starting with my current residential address:

ADDRESS (Street, City, State, Zip Code)	FROM Mo. Yr.	TO Mo. Yr.

21. A. Have you ever taken a qualification examination for municipal securities principals or municipal securities representatives or financial and operations principals prescribed by the Municipal Securities Rulemaking Board? If so, state below the type of examination and the approximate date taken.

Yes ___ No ___

Type of Examination _____ Approximate Date _____

Type of Examination _____ Approximate Date _____

- B. Have you ever been exempt from or received a waiver of the requirement to take and pass an examination of the nature specified in question 21A? If so, state below the type of examination, the basis for such exemption or waiver, and, in the case of a waiver, the approximate date.

Yes ___ No ___

Type of Examination _____ Basis for Exemption or Waiver _____ Approximate Date _____

Type of Examination _____ Basis for Exemption or Waiver _____ Approximate Date _____

22. Are you currently bonded?

Yes ___ No ___

IF THE ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS YES, ATTACH COMPLETE DETAILS:

23. Have you ever been refused coverage under a fidelity bond or has any surety company paid out any funds on your coverage or cancelled such coverage?

Yes ___ No ___

PROPOSED RULES

- 24. Have you ever been denied membership, registration, license, permit, or certification by any federal or state securities or federal or state bank regulatory agency, any national securities exchange, registered securities association, or registered clearing agency? Yes ___ No ___

- 25. Has any disciplinary action every been taken against you, or any sanction imposed upon you, including any finding that you were a cause of any disciplinary action or violated any law, rule or regulation or were an aider, abettor, or co-conspirator in any such violation, by any federal or state securities or federal or state bank regulatory agency, any national securities exchange, registered securities association, or registered clearing agency? Yes ___ No ___

- 26. While you were associated in any capacity with any broker, dealer or municipal securities dealer:
 - A. was its registration denied, suspended or revoked? Yes ___ No ___
 - B. was its membership in any national securities exchange, registered securities association, or registered clearing agency denied, suspended, or revoked, or was it expelled from any such organization? Yes ___ No ___

- 27. Has any permanent or temporary injunction (including a cease and desist order) ever been entered against you or against any broker, dealer, or municipal securities dealer with which you were associated in any capacity when such injunction was entered enjoining conduct as an investment adviser, underwriter, broker, dealer or municipal securities dealer or as an affiliated person of any investment company, bank or insurance company, or any conduct related to such activities or any transactions in any security? Yes ___ No ___

- 28. Have you been convicted within the past ten years of any felony or misdemeanor: (i) involving the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense; (ii) arising out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, or fiduciary; (iii) involving larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; (iv) involving crimes of concealment of assets, false oaths or claims or bribery in a bankruptcy proceeding, mail fraud, fraud by wire including telephone, telegraph, radio, or television, fraud or false statements? Yes ___ No ___

Date _____ Signature of Applicant _____

ACKNOWLEDGMENT OF MSD-4 APPLICATION

- 29. Applicant Name _____
- 30. Bank Dealer Name _____
- 31. Bank Dealer Address _____
- 32. Attention: _____

Receipt Stamp

WHEN THE FORM MSD-4 IS RECEIVED BY THE APPROPRIATE REGULATORY AGENCY, THIS ACKNOWLEDGMENT WILL BE STAMPED TO SHOW RECEIPT AND RETURNED TO THE PERSON NAMED IN ITEM 32. THE STAMPED ACKNOWLEDGMENT SHOULD BE RETAINED TO SUBSTANTIATE FILING.

THIS ACKNOWLEDGMENT OF FORM MSD-4 DOES NOT CONSTITUTE APPROVAL OF THE APPLICANT'S PROFESSIONAL QUALIFICATIONS NOR DOES IT ATTEST TO THE ACCURACY OF THE INFORMATION SUPPLIED.

§ 343.11 Uniform termination notice for municipal securities principal or municipal securities representative associated with a bank municipal securities dealer (Form MSD-5).

INSTRUCTIONS FOR COMPLETING AND FILING FORM MSD-5

1. Form MSD-5 is intended for use by bank and bank holding company municipal securities dealers in reporting the termination of a municipal securities principal's or municipal securities representative's association with such a dealer.

2. Bank and bank holding company municipal securities dealers are required to file Form MSD-5 with the appropriate regulatory agency as set forth below:

a. A municipal securities dealer which is a State member bank of the Federal Reserve System, or a subsidiary or department or division of any such bank, a bank holding company, a subsidiary of a bank holding company which is a bank (other than (i) a national bank or a bank operating under the Code of Law for the District of Columbia or (ii) a bank insured by the Federal Deposit Insurance Corporation which is not a member of the Federal Reserve System) or a subsidiary or a department or division of such subsidiary is required to file with the Board of Governors of the Federal Reserve System.

b. A municipal securities dealer which is a bank insured by the Federal Deposit Insurance Corporation (other than a bank which is a member of the Federal Reserve System) or a subsidiary or department or division of

any such bank is required to file with the Federal Deposit Insurance Corporation.

c. A municipal securities dealer which is a national bank or bank operating under the Code of Law for the District of Columbia or a subsidiary or a department or division of any such bank is required to file with the Comptroller of the Currency.

3. Copies of Form MSD-5 may be obtained from the agencies listed in Instruction 2.

4. An original and two copies of Form MSD-5 and any attachments are to be filed with the appropriate regulatory agency listed in Instruction 2 within 30 days after termination. Municipal securities dealers filing Form MSD-5 shall retain an exact copy for their records.

5. If more space is needed to complete an answer, an appropriate designation shall be entered in the answer space provided, and one or more attachment sheets shall be used to complete the response. All attachments shall be submitted in the same format as the items to which response is made and should be typed on white 8½ by 11 inch paper. Answers to more than one question may appear on an attachment sheet if the questions are clearly identified. Attachments should be paginated and the name of both the person terminated and the municipal securities dealer should appear on every attachment sheet.

6. Form MSD-5 and any attachments may be duplicated by any method which produces legible copies of type size identical to that of the Form MSD-5 on white 8½ by 11 inch paper.

7. Form MSD-5 shall be signed by a municipal securities principal of the employing

bank or bank holding company municipal securities dealer.

8. All items on Form MSD-5 are to be completed, except that disclosure of social security number is not required if that information is unavailable. The date on which the Form MSD-5 is received by the appropriate regulatory agency shall be the date of filing. A Form MSD-5 which is not prepared and executed in accordance with the applicable requirements may be returned as unacceptable for filing. Acceptance for filing shall not constitute any finding that a Form MSD-5 has been completed in accordance with the applicable requirements or that any information contained therein is true, current, complete, or not misleading.

9. Section 17(c)(1) of the Securities Exchange Act of 1934 requires every municipal securities dealer which files any application, notice, report, or document with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation to file a copy of such application, notice, report, or document with the Securities and Exchange Commission. The Securities and Exchange Commission and the federal bank regulatory agencies have developed procedures pursuant to which the federal bank agencies will transmit a copy of any application, notice, report, or document filed with them by a municipal securities dealer to the Securities and Exchange Commission. Accordingly, when this form is filed with the appropriate regulatory agency as set forth in Instruction 2, it shall be deemed to have been filed with the Securities and Exchange Commission.

PROPOSED RULES

FORM MSD-5

UNIFORM TERMINATION NOTICE
FOR MUNICIPAL SECURITIES PRINCIPAL OR MUNICIPAL SECURITIES
REPRESENTATIVE ASSOCIATED WITH A BANK DEALER

- 1. INDIVIDUAL'S NAME _____
 LAST FIRST MIDDLE (If none, so specify)
- 2. CAPACITY: _____ PRINCIPAL _____ REPRESENTATIVE
- 3. SOCIAL SECURITY NUMBER _____
- 4. BANK DEALER NAME AND REGISTRATION NUMBER _____
- 5. BANK DEALER MAIN ADDRESS _____
- 6. OFFICE OF EMPLOYMENT ADDRESS _____
- 7. DATE TERMINATED _____
- 8. REASON FOR TERMINATION - CHECK ONE:
 Voluntary _____ Deceased _____
 Permitted to resign _____ * Discharged _____ * Other _____ *

9. While employed by your bank, was the individual the subject of any investigation, proceeding or disciplinary action by any governmental agency or self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934) involving conduct set forth in Rules G-4 and G-5 of the Municipal Securities Rulemaking Board? _____
 *YES NO

*FURNISH FULL DETAILS ON ATTACHED SHEET.

Date Type Name of Municipal Securities Principal Signature of Municipal Securities Principal

PERSON TO CONTACT FOR FURTHER INFORMATION _____

ACCEPTANCE OF THIS FORM FOR FILING SHALL NOT CONSTITUTE ANY FINDING THAT THE INFORMATION SUBMITTED HEREIN IS TRUE, CURRENT, COMPLETE, OR NOT MISLEADING. INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT MAY CONSTITUTE FEDERAL CRIMINAL VIOLATIONS. (See 18 U.S.C. 1001 and 1005, and 15 U.S.C. 78ff.)

FORM MSD-5 ACKNOWLEDGMENT

Receipt Stamp

- 10. NAME OF PERSON TERMINATED _____
- 11. BANK DEALER NAME _____
- 12. BANK DEALER ADDRESS _____
- 13. ATTENTION _____

WHEN THE FORM MSD-5 IS RECEIVED BY THE APPROPRIATE REGULATORY AGENCY, THIS ACKNOWLEDGMENT WILL BE STAMPED TO SHOW RECEIPT AND RETURNED TO THE PERSON NAMED IN ITEM 13. THE STAMPED ACKNOWLEDGMENT SHOULD BE RETAINED TO SUBSTANTIATE FILING.

Interested persons are invited to submit comments in writing on proposed Part 343 on or before May 2, 1977, to Alan R. Miller, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th St. NW., Washington, D.C. 20429. All such comments will be made available to the public for inspection and copying during regular business hours at the Office of the Executive Secretary, Room 6108, at the above address.

This notice is published pursuant to section 553(b) of Title 5 of the United States Code and § 262.2(a) of the Corporation's Procedure and rules of practice (12 CFR 302.1).

Dated: March 11, 1977.

By order of the Board of Directors.

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

[FR Doc. 77-9356 Filed 3-29-77; 8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 240, 249]

[Release No. 34-13396; File No. S7-687]

REPORTING BY INSTITUTIONAL INVESTMENT MANAGERS OF INFORMATION WITH RESPECT TO ACCOUNTS OVER WHICH INVESTMENT DISCRETION IS EXERCISED

Proposed Rulemaking

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and form.

SUMMARY: The Commission is authorized to collect information about the securities portfolios of major institutional investors and managers. The proposed rule and form would require institutional investors which manage accounts having in the aggregate more than \$100,000,000 in stock exchange listed or NASDAQ quoted securities to report to the Commission on a quarterly basis such holdings, giving the aggregate market value of various types of securities broken out by type of account.

FOR FURTHER INFORMATION CONTACT:

Paul Haaga, 202-755-0233.

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

ADDRESSES: George A. Fitzsimmons Secretary, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

The Securities and Exchange Commission (the "Commission") today released for public comment proposed Securities Exchange Act Rule 13f-1 (17 CFR 240.13f-1) and related Form 13F (17 CFR 249.325), pursuant to section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq. as amended by Pub. L. No. 94-29 (June 4, 1975)) (the "Act"). Proposed Rule 13f-1 and Form

13F generally require that large institutional investment managers report on a quarterly basis their holdings of certain equity securities, as well as their voting authority with respect to those securities, and are designed as the first step in fulfilling the Commission's responsibilities under Section 13(f) (15 U.S.C. 78m(f)) of the Act which was enacted as part of the Securities Acts Amendments of 1975 (Pub. L. No. 94-29, June 4, 1975).

BACKGROUND

In July 1968, the Congress directed the Commission to make a study and investigation of the purchase, sale, and holding of securities by institutional investors of all types, in order to determine the effect of those activities upon the maintenance of fair and orderly securities markets, the stability of those markets, and the interests of issuers of securities and of the public.¹ In its letter transmitting the Institutional Investor Study Report² to Congress in April 1971, the Commission cited "gaps in information about the purchase, sale and holdings of securities by major classes of institutional investors," and recommended that the Act be amended to provide the Commission with general authority to require, on a continuous basis, reports and disclosure of securities holdings and transactions from all types of institutional investors. Other calls for improved disclosure were made by the President's Commission on Financial Structure and Regulation (1971) and by the Senate Subcommittee on Securities in its 1973 "Securities Industry Study."³

In 1975, as part of the Securities Act Amendments of 1975, Congress adopted section 13(f) of the Act. The reporting system called for by section 13(f) is designed to create in the Commission a central depository of historical and current data about the investment activities of institutional investment managers, and thereby to advance asserted objectives. First, the reporting system would substantially improve the body of factual data available and thus facilitate consideration of the influence and impact of institutional investment managers on the securities markets and the public policy implications of that influence. Second, making the Commission responsible for all gathering, processing, and dissemination of the data would permit establishment of uniform reporting standards and a uniform centralized data base.⁴

PROPOSED RULE 13f-1

The proposed rule provides that institutional investment managers which exercise investment discretion over accounts holding in the aggregate at least

\$100,000,000 of certain equity securities designated "Section 13(f) securities" must file a Form 13F on a quarterly basis to report certain information regarding those accounts. "Section 13(f) securities" are defined to include all classes of securities described in section 13(d)(1) of the Act (15 U.S.C. 78m(d)(1)) that are listed on a national securities exchange or quoted on the automated quotation system of a registered association (e.g., the NASDAQ system) and that are contained in the most recent list of section 13(f) securities published by the Commission.⁵

The rule also provides that an institutional investment manager shall be deemed to exercise investment discretion over an account not only when it has the power described in section 3(a)(35) of the Act (which defines investment discretion) (§15 U.S.C. 78c(a)(35)) but also where it is deemed to be the "beneficial owner" of the securities in the account under section 13(d) of the Act.⁶ This is an attempt to ease the burden on institutions in that they should have to make fewer distinctions in deciding which securities they are "beneficial owner" of for purposes of section 13(d) and which they exercise investment discretion with respect to for purposes of section 13(f). Of course, filing a report under section 13(f) does not relieve institutions of any obligation they may have to file under section 13(d). In addition, the proposed rule deems an institutional investment manager to exercise investment discretion over all accounts over which any person under its control exercises investment discretion.

Proposed Form 13F consists of a facing page and two schedules. Schedule A would require a statement in chart form of the aggregate fair market value of all types of securities including exempted securities, held by the accounts over which the manager exercises discretion, broken down by type of account. Schedule B would require information in chart form as to the number of shares, and fair market value, of each issue of section 13(f) securities held by each type

¹ Pursuant to section 13(f)(3) of the act (15 U.S.C. 78m(f)(3)), the Commission will publish quarterly a list of those issues of equity securities of a class described in section 13(d) of the act to which the \$100,000,000 jurisdictional test under the proposed rule, and the reporting requirements of Schedule B of the proposed form, will apply (the "Commission's list"). The proposed rule exempts from this list and the requirements of the rule all section 13(d) securities which are not either listed on a national securities exchange or reported on the NASDAQ system. Investment managers would be able to rely on the Commission's list in determining the applicability of the reporting requirements. The Commission believes that narrowing the definition of securities covered by section 13(f) in this way is consistent with the purposes of the statute and the protection of investors and that it is desirable at this time to avoid disproportionate expense in compiling and maintaining a list of section 13(d)(1) securities.

⁶ Rule 13d-3 defines beneficial owner for purposes of section 13(d).

¹ The study was conducted pursuant to section 19(a) of the act (Pub. L. 90-438, 91-410).

² H.R. Doc. No. 64, 92d Cong., 1st sess. 1971.

³ Report of the Senate Subcommittee on Securities, Committee on Banking, Housing, and Urban Affairs, 93d Cong., 1st sess. (Comm. Print 1973).

⁴ See, Report of the Senate Committee on Banking, Housing and Urban Affairs (Senate Report No. 75, 94th Cong., 1st sess. 85 (1975)).

of account, as well as the institutional investment manager's voting authority with respect to such securities. Information about holdings of less than 10,000 shares or \$200,000 would not have to be reported except in aggregate form on Schedule A.

Although section 13(f) of the Act empowers the Commission to adopt rules which would require reporting of detailed information with respect to both holdings and transactions of institutional investment managers, the Commission is also obligated to take such steps as are within its power and consistent with the objectives set forth in section 13(f), to avoid unnecessarily duplicative reporting and to minimize the compliance burden on institutional managers. In view of these objectives, proposed Rule 13f-1 has been designed as only the first step in implementing a basic disclosure program. Thus, the proposed Rule would require reporting of only limited information with respect to holdings of certain equity securities.

In this regard, the Commission has attempted, within the limitations imposed by the statute, to structure the reporting requirements under section 13(f) of the Act in a manner which would facilitate the maintenance by reporting managers of a single data base in which information required by various reports may be collected. Thus, banks filing the Trust Department Report Form with the federal banking agencies, or subject to the Comptroller of the Currency's reporting requirements set forth in § 9.102 of Regulation 9 (12 CFR 9.102, 39 FR 28144), should be able to complete Form 13F using data maintained to satisfy those reporting requirements. The Commission's staff is also considering the content and format of its own Forms N-1R and N-1Q for registered investment companies, with a view toward coordinating those reports with Form 13F wherever possible. As noted below (question 5), the Commission invites comments from interested persons on ways to avoid duplication and minimize the compliance burden on institutional investment managers filing reports, consistent with effectuating the broad purposes of section 13(f). In addition during the public comment period and prior to adoption of a final rule and form, the Commission, as required by section 13(f)(4), will consult with

* See section 13(f)(4) of the act. The legislative history reflects a strong concern with coordinating reporting requirements and minimizing the burdens of compliance. The act clearly establishes the Commission as the central collection and dissemination point for the data, and vests in the Commission the ultimate authority and responsibility for the institutional disclosure program partly in order to eliminate duplicate reporting and reduce the compliance burden. The impact and extent of the program is limited initially. It is, however, anticipated that, once the program is more fully implemented, the reports required by the Commission will be sufficiently detailed to meet the regulatory needs of the Comptroller of the Currency and other state and federal regulatory agencies.

the appropriate state and federal authorities, national securities exchanges, and registered securities associations regarding these issues.

As proposed, the requirements of Rule 13f-1 would apply to institutional investment managers exercising investment discretion outside the United States with respect to accounts held outside the United States, provided the other jurisdictional requirements of the Rule are fulfilled. However, the Conference Committee Report accompanying the legislation enacting section 13(f) stated the Conferees' understanding that the Commission could exercise its exemptive power, under section 13(f)(2) of the Act, to exempt such activities from the reporting requirements if such were determined to be consistent with the purposes of section 13(f).

IMPLEMENTATION OF SECTION 13(f)

The Commission has determined that, pursuant to section 13(f) of the Act, it is appropriate in the public interest and for the protection of investors and maintenance of fair and orderly markets to propose Rule 13f-1 for public comment as the first step in implementing the reporting system envisioned by section 13(f). The Commission also recognizes that such a reporting system may involve significant costs to institutional investors as well as unforeseen complications. Thus, the Commission welcomes comments not only on the specific proposals set forth, but also on how the Commission can best implement section 13(f). Specifically, the Commission seeks comment on the following areas:

(1) Should the Commission collect additional information permitted under section 13(f) of the Act, including the following:

(a) Detailed information about equity securities not listed on an exchange or reported on NASDAQ and corporate debt securities (other than exempted securities);

(b) Aggregate purchases and aggregate sales during the reporting period of either each security (other than an exempted security), or of each equity security included on the Commission's list, effected by or for such accounts;

(c) Some or all of the information specified in section 13(f)(1)(E) with respect to any transaction or series of transactions having a market value of at least \$500,000 (or some other amount) effected during the reporting period by or for such accounts in any equity security included on the Commission's list?

(2) Should holdings of section 13(d) equity securities included on the Commission's list be reported by type of account, as currently provided in Schedule B, or in aggregate?

(3) Should institutional investment managers exercising investment discretion over accounts holding less than \$100 million of section 13(d)(1) equity securities included on the Commission's list be required to file Form 13F? What would be an appropriate amount?

(4) Should reports be filed at less frequent intervals than quarterly?

(5) What further steps may be Commission take, consistent with the objective of achieving uniform centralized reporting, to avoid unnecessary duplicative reporting by, and minimize the compliance burden on, institutional investment managers?

(6) Would it be consistent with the purposes of section 13(f) of the Act for the Commission to exempt from the requirements of that section institutional investment managers exercising investment discretion outside the United States with respect to accounts held outside the United States?

(7) The Commission is considering a requirement that reports on Form 13F be filed in a machine processable form, such as computer cards. What particular costs (both initial and continuing) would be imposed, or benefits derived, from such a requirement?

(8) What method or methods of public dissemination would be most useful to investors, issuers, and other institutional investment managers?

(9) Section 13(f) requires the Commission to consult with, among others, federal and state authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by section 13(f). It would be helpful to the Commission if institutional investment managers commenting would indicate with which such agencies such reports are required to be filed.

AUTHORIZATION

The Commission proposes Rule 13f-1 and Form 13F for comment pursuant to section 13(f) of the Act.

All interested parties are invited to submit their views and comments, in triplicate, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before June 1, 1977. All such communications should refer to File No. S7-687 and will be available for public inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW, Washington, D.C. The text of the proposed rule and forms discussed is set forth below.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 22, 1977.

The text of proposed Rule 13f-1 (17 CFR 240.13f-1), which the Commission proposes to adopt pursuant to section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is as follows:

§ 240.13f-1 Reporting by institutional investment managers of information with respect to accounts over which investment discretion is exercised.

(a) Every institutional investment manager which exercises investment discretion with respect to accounts holding section 13(f) securities having an aggregate fair market value on the last trading day of any of the preceding twelve months of at least \$100,000,000 shall file a report on Form 13F (§ 249.325 of this

chapter) with the Commission within 30 days after the last day of the calendar quarter.

(b) For the purposes of this section, an institutional investment manager exercises "investment discretion" with respect to an account if, directly or indirectly, such manager (1) is authorized to determine what securities or other property shall be purchased or sold by or for the account; (2) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions; or (3) is deemed to be the "beneficial owner" of securities held by the account pursuant to rules or regulations defining beneficial ownership for purposes of section 13(d) of the Act (15 U.S.C. 78m(d)). An institutional investment manager shall also be deemed to exercise "investment discretion" with respect to all accounts over which any person under its control exercises investment discretion.

(c) For purposes of this section "Section 13(f) securities" shall mean equity securities of a class described in section 13(d)(1) of the Act that are admitted to trading on a national securities exchange or quoted on the automated quotation system of a registered securities association. In determining what classes of securities are section 13(f) securities, an institutional investment manager may rely on the most recent list of such securities published by the Commission pursuant to section 13(f)(3) of the Act (15 U.S.C. 78m(f)(3)). Only classes of securities on such list need be counted in determining whether an institutional investment manager must file a report under this section (§ 240.13f-1(a) and need to be reported on Schedule B. Where a person controls the issuer of a class of equity securities described in section 13(d)(1) of the Act, that security shall be deemed not to be a "Section 13(f) security" with respect to the controlling person.

§ 249.325 Form 13F, report of institutional investment manager pursuant to section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) and Rule 13f-1 thereunder (§ 240.13f-1 of this chapter).

This form shall be used by institutional investment managers which are required to furnish reports pursuant to section 13(f) of the Securities Exchange of 1934

(15 U.S.C. 78m(f)) and Rule 13f-1 thereunder (§ 240.13f-1 of this chapter).

FORM 13F FOR REPORTS OF INSTITUTIONAL INVESTMENT MANAGERS PURSUANT TO SECTION 13(f) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 13f-1 THEREUNDER

GENERAL INSTRUCTIONS

A. *Rule as to Use of Form 13F.* Form 13F shall be used for reports of institutional investment managers required to be filed by section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) and Rule 13f-1 (17 CFR 240.13f-1) thereunder.

B. *Rules to Prevent Duplicative Reporting.* As set forth in Rule 13f-1, an institutional investment manager is deemed to exercise investment discretion with respect to all accounts with respect to which it or any person under its control exercises investment discretion. Where two or more institutional investment managers, each of which is required by Rule 13f-1 to file a report on Form 13F for the reporting period, are deemed to exercise investment discretion with respect to the same account or accounts, only one such manager shall include information regarding such account or accounts in its reports on Form 13F, naming any other institutional investment manager on whose behalf the filing is made.

C. *Filing of Form 13F.* Five copies of Form 13F shall be filed with the Commission within 30 days after the end of each calendar quarter. As required by section 13(f)(4) of the Act an institutional investment manager which is a bank, the deposits of which are insured in accordance with the Federal Deposit Insurance Act, shall file with the appropriate regulatory agency a copy of every report filed with the Commission pursuant to this subsection.

D. *Confidentiality.* Pursuant to section 13(f)(3) of the Act (15 U.S.C. 78m(f)(3)), the Commission shall not disclose to the public information identifying the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company). Therefore, an institutional investment manager filing a report on Form 13F which includes such information shall submit a separate statement clearly identifying that information with reference to the appropriate Schedule, Line, Item and name of issuer, title, class and CUSIP number.

In addition, the Commission may, as it determines necessary or appropriate in the public interest, delay or prevent public disclosure of any information filed under section 13(f) of the Act, in accordance with section 552 of Title 5, United States Code (5 U.S.C. 552). Requests for delay or prevention of public disclosure should identify clearly the information for which the request is made, as well as the provision(s) of section 552 of Title 5, United States Code, upon which the request is based.

FORM
13FINFORMATION REQUIRED OF INSTITUTIONAL INVESTMENT
MANAGERS PURSUANT TO SECTION 13(f) OF THE SECURITIES
EXCHANGE ACT OF 1934 AND RULES THEREUNDERSecurities and Exchange Commission
Washington, D.C. 20549

Report for the Calendar Quarter Ended _____ 19____

(Please read instructions before preparing form)

Name of Institutional Investment Manager: (Exact Name of Person or Firm)

Name and Title of Sole Proprietor, General Partner or Principal Officer:

ATTENTION -- Intentional misstatements or omissions of facts constitute
Federal Criminal Violations. See U.S.C. 1001 and 15 U.S.C. 78ff(a).

The institutional investment manager submitting this Form and its attachments and the person by whom it is signed represent hereby that all information contained therein is true, correct and complete. It is understood that all required items, statements and schedules are considered integral parts of this Form and that the submission of any amendment represents that all unamended items, statements and schedules remain true, correct and complete as previously submitted.

Pursuant to the requirements of Securities Exchange Act of 1934, the undersigned institutional investment manager has caused this report to be signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 19____.

(Name of Institutional Investment Manager)_____
(Manual Signature of Sole Proprietor, General
Partner or Principal Officer)

Names of ALL Institutional Investment Managers on whose behalf these schedules are filed:

SCHEDULE A: AGGREGATE FAIR MARKET VALUE OF SECURITIES HELD BY ACCOUNTS OVER WHICH INVESTMENT DISCRETION IS EXERCISED

NAME AND FILE NUMBER OF INSTITUTIONAL INVESTMENT MANAGER:

Item 1	Item 2	Item 3	Item 4	Item 5	Item 6	Item 7	Item 8
EMPLOYEE BENEFIT FUNDS	PERSONAL TRUSTS AND ESTATES	AGENCY ACCOUNTS	REGISTERED INVESTMENT COMPANIES	INSURANCE COMPANY GENERAL ACCOUNT	INSURANCE COMPANY SEPARATE ACCOUNTS	OTHER ACCOUNTS	ALL ACCOUNTS (TOTAL ITEMS 1-7)
LINE 1. REGISTERED INVESTMENT COMPANY SHARES							
2. COMMON STOCKS							
3. PREFERRED STOCKS							
4. CONVERTIBLE DEBT SECURITIES							
5. OTHER EQUITY SECURITIES							
6. MUNICIPAL SECURITIES U.S. GOVERNMENT OR GOVERNMENT-GUARANTEED SECURITIES							
8. OTHER EXEMPTED SECURITIES							
9. OTHER SECURITIES							
10. ALL SECURITIES (TOTAL LINES 1-8)							
11. APPROXIMATE NUMBER OF ACCOUNTS							

INSTRUCTIONS:

Aggregate fair market value or principal amount and each specified type of security should be set forth for each type of account. In calculating aggregate fair market value, use the value on the last business day of the reporting period.

REPORT FOR THE CHAPTER BOXES

Section 13(f) Securities Held by Accounts over which Investment Discretion is Exercised

FORM 13F

NAME AND TITLE NYSER OF INSTITUTIONAL INVESTMENT MANAGER:

Item 1, 2 NAME OF ISSUER, TITLE, CLASS	Item 3 CUSIP NUMBER	Item 4 ENCLAVE NUMBER PINGS	Item 5 PERSONAL TRUSTS AND ESTATES	Item 6 AGENCY ACCOUNTS	Item 7 REGISTERED INVESTMENT COMPANY	Item 8 INSURANCE CLIENT GENERAL ACCOUNT	Item 9 INSURANCE COMPANY SEPARATE ACCOUNT	Item 10 OTHER ACCOUNTS	Item 11 TOTAL	Item 12 VOTING AUTHORITY (SHARES)
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Shares	Shares	Shares	Shares	Shares	Shares	Shares	Shares	Shares	Shares	Shares	SHARED	SIZE
GRAND TOTALS												

INSTRUCTIONS:

1. The Institutional Investor manager filing the report must report holdings of all classes of securities appearing in the most recently published Commission list of Section 13(f) securities, except that aggregate holdings of fewer than 10,000 shares or less than \$200,000 principal amount or fair market value need not be reported. See Schedule A instructions for determining fair market value.
2. In responding to Item 12, include number of shares, in aggregate, for which the manager possesses sole, shared, or no voting authority. Where the manager exercises sole voting authority over specified "voting" shares, and no authority to vote shares in "non-voting" issues, he is deemed to exercise "shared" authority.

[FR Doc. 77-9176 Filed 3-29-77; 8:45 am]

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 201]

[Docket RM 77-3]

COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

Advance Notice of Proposed Rulemaking
AGENCY: Library of Congress, Copyright Office.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This advance notice of proposed rulemaking is issued to advise the public that the Copyright Office of the Library of Congress is considering adoption of new regulations designed to implement a section of Pub. L. 94-553 (90 Stat. 2541), the Act for General Revision of the Copyright Law, pertaining to the making and distribution of phonorecords of nondramatic musical works under a compulsory license. This notice announces and invites participation in a public hearing intended to elicit views, comment and information from interested members of the public which will assist the Copyright Office in considering alternatives and formulating tentative regulations to be later issued as proposed rules for additional comment.

DATES: The hearing will be held on April 26 and 27, 1977, commencing at 9:30 a.m. on April 26.

Members of the public desiring to testify should submit written requests to present testimony before April 11, 1977 to the address set forth below. The request should clearly identify the individual or group requesting to testify and the amount of time desired.

ADDRESS: The hearing will be held in Room 910, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia. Requests to present testimony should be addressed to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559.

FOR FURTHER INFORMATION, CONTACT:

Jon Baumgarten, General Counsel,
Copyright Office, Library of Congress,
Washington, D.C. 20559. (703-557-8731).

SUPPLEMENTARY INFORMATION: Section 115 of the first section of Pub. L. 94-553 provides that "[w]hen phonorecords of a nondramatic musical work have been distributed to the public in the United States under authority of the copyright owner, any other person may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work" for certain purposes. A compulsory license permits the use of a copyrighted work without the consent of the copyright owner if certain conditions are met and royalties paid.

Paragraph (b) (1) of section 115 provides that a condition of the compulsory license for making and distributing

phonorecords is the service or filing of a notice of intention:

(b) *Notice of intention to obtain compulsory license.*—(1) Any person who wishes to obtain a compulsory license under this section shall, before or within thirty days after making, and before distributing any phonorecords of the work, serve notice of intention to do so on the copyright owner. If the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served, it shall be sufficient to file the notice of intention in the Copyright Office. The notice shall comply, in form, content and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

Paragraph (c) of section 115 deals with the statutory royalties to be paid to copyright owners by persons exercising the compulsory license; it provides in relevant part:

(2) * * * the royalty under a compulsory license shall be payable for every phonorecord made and distributed in accordance with the license. For this purpose, a phonorecord is considered "distributed" if the person exercising the compulsory license has voluntarily and permanently parted with its possession. With respect to each work embodied in the phonorecord, the royalty shall be either two and three-fourths cents, or one-half of one cent per minute of playing time or fraction thereof, whichever amount is larger.

(3) Royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding. Each monthly payment shall be made under oath and shall comply with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall also prescribe regulations under which detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for every compulsory license under this section. The regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed.

Paragraph (c) (2) of section 115 states that statutory royalties are payable for every phonorecord made and distributed under the license; it defines distribution as occurring when "the person exercising the compulsory license has voluntarily and permanently parted" with possession of the phonorecord. In discussing the issue of "permanent" disposal for these purposes, the relevant Report of the Judiciary Committee of the House of Representatives states (H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. at 110-111):

Under existing practices in the record industry, phonorecords are distributed to wholesalers and retailers with the privilege of returning unsold copies for credit or exchange. As a result, the number of recordings that have been "permanently" distributed will not usually be known until some time—six or seven months on the average—after the initial distribution. In recognition of this problem, it has become a well-established industry practice, under negotiated licenses, for record companies to maintain reasonable reserves of the mechanical royalties due the copyright owners, against which royalties on the returns can

be offset. The Committee recognizes that this practice may be consistent with the statutory requirements for monthly compulsory license accounting reports, but recognizes the possibility that, without proper safeguards, the maintenance of such reserves could be manipulated to avoid making payments of the full amounts owing to copyright owners. Under these circumstances, the regulations prescribed by the Register of Copyrights should contain detailed provisions ensuring that the ultimate disposition of every phonorecord made under a compulsory license is accounted for, and that payment is made for every phonorecord "voluntarily and permanently" distributed. In particular, the Register should prescribe a point in time when, for accounting purposes under section 115, a phonorecord will be considered "permanently distributed," and should prescribe the situations in which a compulsory licensee is barred from maintaining reserves (e.g., situations in which the compulsory licensee has frequently failed to make payments in the past.)

After considering these regulatory responsibilities, the Copyright Office has determined that it would be desirable to secure information, data, and public comment before adopting proposed regulations, and that public hearing is the appropriate forum.

The Office is interested in receiving testimony on all substantive considerations relevant to:

1. The formulation of regulations prescribing the form, content and manner of service of notices of intention to obtain a compulsory license under section 115(b) (1);

2. The formulation of regulations prescribing the form, content and manner of certification of monthly and annual statements of account under section 115(c) (3); and

3. The determination of a point in time when phonorecords distributed under section 115 shall be considered "permanently distributed", and of circumstances calling for special variations or conditions barring the maintenance of reserves against statutory royalties. Testimony pertaining to practices and problems which have arisen with respect to reserves, payments, and accountings under negotiated and compulsory licenses for phonorecords is specifically requested.

WRITTEN STATEMENTS

All witnesses are requested to provide 10 copies of a written statement of their testimony to the Office of the General Counsel by April 18, 1977.

The record of the proceedings will be kept open until May 13, 1977 for receipt of written supplemental statements.

(17 U.S.C. 207; and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-553: sections 115, 702.)

Dated: March 23, 1977.

BARBARA A. RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

[FR Doc. 77-9504 Filed 3-29-77; 8:45 am]

[37 CFR Part 201]

[Docket RM 77-4]

RECORDATION AND CERTIFICATION OF COIN-OPERATED PHONORECORD PLAYERS**Advance Notice of Proposed Rulemaking**

AGENCY: Library of Congress, Copyright Office.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This notice of proposed rulemaking is issued to advise the public that the Copyright Office of the Library of Congress is considering adoption of a new regulation designed to implement a section of Pub. L. 94-553 (90 Stat. 2541), the Act for General Revision of the Copyright Law, pertaining to recordation and certification of coin-operated phonorecord players. This notice is intended to elicit public comment, views, and information which will assist the Copyright Office in considering alternatives and formulating a tentative regulation to be later issued as a proposed rule for additional comment. Specific areas of inquiry are noted below.

DATES: Initial comments should be received on or before April 29, 1977. Reply comments on or before May 16, 1977.

ADDRESS: Interested persons should submit five copies of their written comments to: Office of the General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559.

FOR FURTHER INFORMATION, CONTACT:

Jon Baumgarten, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559. (703-557-8731).

SUPPLEMENTARY INFORMATION: Section 116 of the first section of Pub. L. 94-553 establishes circumstances under which operators of coin-operated phonorecord players—commonly referred to as "jukeboxes"—may obtain a compulsory license for the public performance of nondramatic musical works.

A compulsory license permits the use of a copyrighted work without the consent of the copyright owner, if certain conditions are met and royalties paid. Conditions of the compulsory license for coin-operated phonorecord players are set forth in section 116(b) (1) as follows:

(A) Before or within one month after such performances are made available on a particular phonorecord player, and during the month of January in each succeeding year that such performances are made available on that particular phonorecord player, the operator shall file in the Copyright Office, in accordance with requirements that the Register of Copyrights, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), shall prescribe by regulation, an application containing the name and address of the operator of the phonorecord player and the manufacturer and serial number or other explicit identification of the phonorecord player, and deposit with the Register of Copyrights a royalty fee for the current calendar year of \$8 for that particular phonorecord player. If such performances are made avail-

able on a particular phonorecord player for the first time after July 1 of any year, the royalty fee to be deposited for the remainder of that year shall be \$4.

(B) Within twenty days of receipt of an application and a royalty fee pursuant to subclause (A), the Register of Copyrights shall issue to the applicant a certificate for the phonorecord player.

(C) On or before March 1 of the year in which the certificate prescribed by subclause (B) of this clause is issued, or within ten days after the date of issue of the certificate, the operator shall affix to the particular phonorecord player, in a position where it can be readily examined by the public, the certificate, issued by the Register of Copyrights under subclause (B), of the latest application made by such operator under subclause (A) of this clause with respect to that phonorecord player.

Section 116(b) (1) thus requires the Register of Copyrights to prescribe regulations governing the compulsory license application, and to develop a form of certificate to be affixed to licensed coin-operated phonorecord players. We have determined that it is desirable to secure public comment on these matters before adopting a proposed regulation or form of certificate. Comment is specifically invited upon the following issues:

(1) What information should be included in the application for a compulsory license under section 116(b) (1)(A)? What specific requirements should be made with respect to (a) identification of the name and address of the operator of the phonorecord player; and (b) means of identification of the phonorecord player other than its manufacturer and serial number?

(2) Should a single application from a particular operator be permitted to cover more than one phonorecord player?

(3) What information should be included in the certificate to be issued by the Copyright Office under section 116(b) (1)(B)?

(4) What should be the form and format of applications and certificates under section 116(b) (1) (A) and (B)?

(5) What records of applications and certificates should be made and maintained in the Copyright Office?

(6) Should the Copyright Office make provisions for replacement certificates in the event of loss, destruction, or the like? If so, under what circumstances and with what safeguards should replacement certificates be issued? Should a fee be imposed under section 708 (a) (11) for replacement certificates?

(7) Should the Copyright Office, upon request and payment of a fee under section 708(a) (11), provide operators with a separate document evidencing or acknowledging certification of their phonorecord players which may be kept with their business records?

(8) What provisions, if any, should be made by the Copyright Office in the event of (a) sale or other transfer of a licensed phonorecord player during the period for which the certificate has been issued; (b) applications accompanied by checks or the like which prove uncollectable; and (c) multiple applications from a single operator, or (if permitted)

a single application from a particular operator pertaining to more than one phonorecord player, accompanied by less than the total required fee?

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

(17 U.S.C. 207, and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-553; §§ 116; 702; 708.)

Dated: March 23, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

[FR Doc. 77-9505 Filed 3-29-77; 8:45 am]

[37 CFR Part 201]

[Docket RM 77-5]

WARNING OF COPYRIGHT FOR USE BY LIBRARIES AND ARCHIVES**Advance Notice of Proposed Rulemaking**

AGENCY: Library of Congress, Copyright Office.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This advance notice of proposed rulemaking is issued to advise the public that the Copyright Office of the Library of Congress is considering adoption of a new regulation designed to implement a section of Pub. L. 94-553 (90 Stat. 2541), the Act for General Revision of the Copyright Law, pertaining to the use and display by libraries and archives of certain warnings of copyright in connection with their photoduplication and related activities. This notice is intended to elicit public comment, views, and information which will assist the Copyright Office in considering alternatives and formulating a tentative regulation to be later issued as a proposed rule for additional comment.

DATES: Initial comments should be received on or before May 6, 1977. Reply comments on or before May 23, 1977.

ADDRESS: Interested persons should submit five copies of their written comments to: Office of the General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559.

FOR FURTHER INFORMATION, CONTACT:

Jon Baumgarten, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559. (703-557-8731).

SUPPLEMENTARY INFORMATION: Sections 108(d) and 108(e) of the first section of Pub. L. 94-553 set forth conditions under which specified libraries and archives, or their employees acting

within the scope of their employment, may make and distribute single copies and phonorecords of certain copyrighted works, or parts of works, without the consent of the copyright owner. Among other conditions specified in the Act, the library or archive must "display prominently, at the place where orders (for copies or phonorecords) are accepted, and include on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation."

We have determined that it is desirable to secure information and views from the public before adopting a proposed regulation governing library and archive warnings of copyright. All comments relevant to the content, use, and manner of display of these warnings will be considered by the Copyright Office in developing a proposed regulation. In addition, information and examples are specifically requested with respect to: (a) the kinds of order forms currently used by libraries and archives in relation to their photoduplication and similar activities; and (b) the kinds of copyright legends, warnings, and the like currently in use on order forms and photocopying machines, and displayed in connection with photocopying and similar activities.

Copies of all comments will be available for inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, in the Public Information Office of the Copyright Office, Room No. 101, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

(17 U.S.C. 207, and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-553; §§ 108; 702.)

Dated: March 23, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

[FR Doc.77-9506 Filed 3-29-77;8:45 am]

VETERANS ADMINISTRATION

[38 CFR Part 3]

BURIAL BENEFITS

Hearse Charges for Transporting Bodies

The Administrator of Veterans Affairs proposes regulatory changes to Part 3, of Title 38, Code of Federal Regulations relating to hearse charges for transporting a body to place of burial.

When a person dies in a Veterans Administration facility to which he or she was properly admitted for hospital, nursing home or domiciliary care under 38 U.S.C. 610 or 611(a) the Veterans Administration is usually required to pay the cost of transporting the body to the place of burial. (38 U.S.C. 903) The Veterans Administration is also directed to pay the cost of transporting the body of certain veterans who die outside of a Veterans Administration facility when burial will be made in a National Cemetery. (38 U.S.C. 908)

Section 3.1606 of Title 38, Code of Federal Regulations provides that transportation costs may include charges for shipment by common carrier or transportation by hearse. This regulation, however, does not specifically limit payment of hearse charges to common carrier rates for shipment of a body over long distances. Claims have been received for payment of charges for transporting a body by hearse over quite long distances when common carrier service was readily available. In these claims the hearse charges greatly exceeded the common carrier rate.

It is therefore proposed to amend § 3.1606 to provide that payment of hearse charges for transporting a body over long distances will be limited to prevailing common carrier rates where it is reasonable and customary for shipment to be made by common carrier. This limitation will not be for application where common carrier service is unavailable or where use of a common carrier would clearly be impractical. When a common carrier is used to transport a body, charges for use of a hearse to deliver the body to and from the carrier will be paid.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before April 29, 1977 will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays), during the mentioned 30-day period and for 10 days thereafter. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Notice is given that this change will be effective date of final approval.

NOTE.—The Veterans 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.

Approved: March 23, 1977.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

In § 3.1606, paragraph (b) (3) is added to read as follows:

§ 3.1606 Transportation items.

The transportation costs of those persons who come within the provisions of §§ 3.1600(g) and 3.1605 (a), (b), (c) and (d) may include the following:

(b) Transported by hearse. * * *

(3) Payment of hearse charges for transporting the remains over long dis-

tances are limited to prevailing common carrier rates when common carrier service is available and can be easily and effectively utilized.

[FR Doc.77-9496 Filed 3-29-77;8:45 am]

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE**

Public Health Service

[42 CFR Part 101]

**PROFESSIONAL STANDARDS REVIEW
AREAS**

State of Ohio; Boundaries Change

Notice is hereby given that the Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposes to amend § 101.39 of Title 42, Code of Federal Regulations (CFR). The proposed amendment will change the boundaries of Professional Standards Review Organization (PSRO) areas within the State of Ohio.

On March 18, 1974, the Department published regulations designating 12 PSRO areas within Ohio. Area VI consists of the counties of Summit, Portage, Stark, Trumbull, Mahoning, and Columbiana.

Guidelines for the designation of PSRO areas are established in 42 CFR 101.2. That section also provides that the Secretary may revise area designations, as may in his judgment be necessary, taking the guidelines into consideration. The purpose of the present proposal is to redesignate the existing PSRO Area VI in Ohio so that Area VI would include only the counties of Summit and Portage; while a newly established PSRO Area XIII will include the counties of Stark, Trumbull, Mahoning, and Columbiana.

Based upon his consideration of the guidelines and new information he has received, the Secretary has concluded that it is necessary to revise the Ohio PSRO Area VI designation for several reasons. First, the proposed redesignated PSRO Area VI would be congruent with the recently established Ohio Health Service Area (HSA) VIII under the National Health Planning and Resources Development Act of 1974 (Pub. L. 93-641). In addition, both the proposed redesignated PSRO Area VI and the newly established PSRO Area XIII would more nearly reflect the existing local medical service areas, as is indicated by data regarding patient flow and referral patterns in northeast Ohio.

It is anticipated that this redesignation will significantly improve coordination between the local PSRO and other health related activities in the northeast region of Ohio.

Interested persons are invited to submit written comments, suggestions or objections concerning this proposed amendment to Dr. Michael J. Goran, Director, Bureau of Quality Assurance, Health Services Administration, Room 16A-55, 5600 Fishers Lane, Rockville, Maryland 20857 (301-443-3880), on or

PROPOSED RULES

before May 16, 1977. All comments received in timely response to this Notice will be considered and will be available for public inspection in the above named office during regular business hours.

It is therefore proposed to amend § 101.39 of Subpart A, Part 101, of Title 42 to read as follows:

§ 101.39 Ohio.

Thirteen Professional Standards Review Organization Areas are designated in Ohio composed of the following counties:

	AREA I
Butler	Clermont
Warren	Brown
Clinton	Highland
Hamilton	Adams
	AREA II
Darke	Clark
Shelby	Preble
Champaign	Montgomery
Miami	Green
	AREA III
Van Wert	Hardin
Allen	Logan
Hancock	Wyandot
Seneca	Crawford
Mercer	Marion
Auglaize	
	AREA IV
Williams	Henry
Fulton	Wood
Lucas	Sandusky
Ottawa	Paulding
Defiance	Putnam
	AREA V
Lake	Ashtabula
Geauga	
	AREA VI
Summit	Portage
	AREA VII
Coshocton	Harrison
Tuscarawas	Belmont
Carroll	Monroe
Jefferson	

Licking	Morgan
Muskingum	Noble
Guernsey	Athens
Fairfield	Washington
Perry	
	AREA IX
Hocking	Jackson
Vinton	Galla
Meigs	Scioto
Pike	Lawrence
	AREA X
Morrow	Franklin
Knox	Fayette
Union	Pickaway
Delaware	Ross
Madison	
	AREA XI
Erie	Richland
Lorain	Ashland
Huron	Wayne
Medina	Holmes
	AREA XII
Cuyahoga	
	AREA XIII
Stark	Mahoning
Trumbull	Columbiana

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

Dated: December 15, 1976.

THEODORE COOPER,
*Assistant Secretary for
Health.*

Approved: March 21, 1977.

JOSEPH A. CALIFANO, JR.,
Secretary.

[FR Doc.77-9449 Filed 3-29-77;8:45 am]

notices

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Marketing Order No. 918]

DISTRIBUTORS' ADVISORY COMMITTEE MEETING

Public Meeting

Pursuant to the provisions of § 10(a) (2) of the Federal Advisory Committee Act (86 Stat. 770), notice is hereby given of a meeting of the Distributors' Advisory Committee established under Marketing Order No. 918 (7 CFR Part 918). This order regulates the handling of fresh peaches grown in Georgia and is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The committee will meet in the USDA's Southeastern Tree Fruit and Nut Laboratory, Byron, Georgia, at 2:00 p.m., local time, on April 14, 1977.

The meeting will be open to the public and a brief period will be set aside for public comments and questions. The agenda of the committee includes analysis of current information concerning market supply and demand factors, and consideration of recommendations for regulation of shipments of fresh Georgia peaches by grade, size, or maturity.

The names of committee members, agenda, summary of the meeting, and other information pertaining to the meeting may be obtained from J. T. Scruggs, Manager, Industry Committee, P.O. Box 6704, Orlando, Florida 32803; telephone 305-894-9512.

Dated: March 28, 1977.

WILLIAM T. MANLEY,
Acting Administrator.

[FR Doc. 77-9606 Filed 3-29-77; 8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 30641]

AEROVIAS NACIONALES DE
COLOMBIA, S.A. (AVIANCA)

Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge Alexander N. Argerakis. Future communications should be addressed to Judge Argerakis.

Dated at Washington, D.C., March 24, 1977.

HENRY M. SWITKAY,
*Acting Chief
Administrative Law Judge.*

[FR Doc. 77-9447 Filed 3-29-77; 8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business
Administration

BRIGHAM YOUNG UNIVERSITY, ET AL.

Notice of 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 19, 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: 77-00140. Applicant: Brigham Young University, Provo, Utah 84602. Article: Picker Dynamic Flow Microcalorimeter, complete with heat of mixing and specific heat options. Manufacturer: Technurop, Inc. Canada. Intended use of article: The article will be used for precise physical-chemical measurements of liquid non-electrolytes to determine heat of mixing and heat capacities. In addition, the article is intended to be used in the courses Chemistry 697 and 797 Masters and Doctoral Candidates Research. Application received by Commissioner of Customs: March 1, 1977.

Docket Number: 77-00144. Applicant: University of Colorado, Department of Buying and Contracting, Willard Administrative Center 160, Boulder, Colorado 80309. Article: Electron Microscope, Model JEM 100C with side entry goniometer and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article will be used to study the structure of biological cells and tissues. Included among these will be nerve tissues and phenomena associated with neurological diseases; tumors and com-

parable normal tissues; and various forms of plant cells especially valuable in displaying fundamental features of cell division. The experiments and materials studied which will vary greatly will include observing changes with macromolecular composition of the plasma membrane of nerves following the cross innervation of different muscles, comparing the membranes of nerves from dystrophic animals with those of normals, morphology of the cytoplasmic ground substance and the differences apparent between normal and malignant cells. The article will also be used in courses entitled "MCDB 490/590: Workshop in Electron Microscopy" which introduces students to standard preparative techniques for both scanning and transmission electron microscopy. In addition, numerous students (undergraduate and graduate) staff, postdoctoral students and faculty members will be taught to use the machine for various research projects, particularly those requiring highest resolution. Application received by Commissioner of Customs: March 3, 1977.

Docket number: 77-00145. Applicant: The George Washington University, Lab for Virus and Cancer Research, Department of Medicine, Ross Hall, Room 526, 2300 I St. N.W., Washington, D.C. 20037. Article: Tachophor (LKB-2127-001) complete, with Power Supply Unit, Analyzer Unit and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used for the elucidation of the roles of various substances on a molecular level in disease states, particularly in regard to cancer, and to provide information necessary to design separatory systems capable of recovering such substances from complex mixtures of substances in sufficient quantity and integrity to allow for their use in diagnostic systems and for further immunological and biochemical analyses. The article will also be used to quantitate subtle alterations in the materials used in experiments and to monitor experiments in other systems. Application received by Commissioner of Customs: March 3, 1977.

Docket number: 77-00146. Applicant: University of Texas System Cancer Center, M.D. Anderson Hospital, Department of Clinical Chemistry and Laboratory Medicine, 6723 Bertner, Houston, Texas 77030. Article: Electron Microscope, Model Elmiskop 102 and RO-75 Haskris Water Condenser and Recirculation unit. Manufacturer: Siemens A.G., West Germany. Intended use of article: The arti-

cle will be used to study human hematopoietic samples; this includes bone marrow and peripheral blood specimens. Investigations will include ultrastructural examination on normal and pathological hematopoietic tissues for: (a) diagnostic purposes and (b) the study of disease and therapy related morphological alterations in cells. These investigations will be widely varied from gross organelle organization to the molecular rearrangement of mitochondrial elementary particles. The objectives of these investigations will be to precisely identify and more accurately diagnose pathological hematopoietic specimens as well as recognize disease and drug related subcellular alteration in these tissues and to detect and evaluate pathological changes which will assist in the earlier, accurate diagnosis of patients. Application received by Commissioner of Customs: March 3, 1977.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

BERNARD ASCHER,
Director,
Office of Import Programs.

[FR Doc. 77-9492 Filed 3-29-77; 8:45 am]

HARVARD UNIVERSITY

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 Part 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: 76-00485. Applicant: Harvard University, Purchasing Department, 75 Mt. Auburn Street, Cambridge, Mass. 02138. Article: Mass Spectrometer, Model DMS1073. Manufacturer: AEI Scientific Apparatus Ltd., United Kingdom. Intended use of article: The article is intended to be used as an analytical tool in many phases of organic, inorganic, biochemical, and biological research. Research projects to be carried out will include the following:

1. Product Identification Problems.
2. Characterization of Biologically Active Molecules.
3. Structural studies on important natural products using very small (unweighable) amounts.
4. Studies on the biosynthesis of prostaglandins and isoprenoids.
5. Projects involving the total synthesis of complex natural products.
6. Mechanistic studies.
7. Organometallic Chemistry.
8. VPC-Mass Spectra.
9. Organic Synthesis.

10. Aspects of organoboron chemistry.

11. The Metabolism of Pyrrolic Compounds.

12. An Analytical Method for Detecting Tetrachlorodibenzo-p-Dioxin.

13. A search among extracts of insect resistant plants for anti-juvenile hormones or anti-ecdysone activities.

14. Investigation of the carcinogenic hydrocarbons occurring in carbon black.

15. Study of the presence of chlorinated hydrocarbons in drinking water (as a result of chlorination).

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: This application is a resubmission of Docket Number 74-00494-33-77040 which was denied without prejudice to resubmission on April 16, 1976 for informational deficiencies. The foreign article provides a double beam/double collector feature. The Department of Health, Education, and Welfare (HEW) and the National Bureau of Standards (NBS) advise in their memoranda dated January 7, 1976 and February 7, 1976 respectively that the feature 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.)

BERNARD ASCHER,
Director,
Office of Import Programs.

[FR Doc. 77-9491 Filed 3-29-77; 8:45 am]

UNIVERSITY OF CALIFORNIA AND WAYNE STATE UNIVERSITY

Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

The following is a consolidated decision on applications for duty-free entry of accessories for foreign instruments 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 Part 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket number: 77-00041. Applicant: University of California, San Francisco, 1438 South Tenth Street, Richmond, CA 94804. Article: Cryokit, Model LKB 14801-1 and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended

use of article: The article is an accessory to existing equipment which will be used in studies of the biochemical and ultrastructural changes occurring in subcellular organelles of mammalian cells, under normal, experimental and pathological conditions. Cell components are defined, proteins chemically characterized and ultrastructural changes occurring in the nuclei of epidermal cell types during keratinization are investigated. In addition, the article will be used in the training of post and predoctoral candidates for dermatological research. Application received by Commissioner of Customs: November 15, 1976. Advice submitted by the Department of Health, Education, and Welfare on: February 23, 1977.

Docket number: 77-00043. Applicant: Wayne State University, Kresge Eye Institute, 540 E. Canfield, Detroit, Michigan 48201. Article: Goniometer Stage for Philips 301 Electron Microscope. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used in a number of research projects on the eye. Various tissues of the eye from experimental animals as well as some from human sources will be studied. Both normal and pathologic structure will be analyzed. Investigations will be conducted to gain a better understanding of the effects of age and related factors on the normal and cataract lens; the elucidation of membrane structure and related secretory functions in lens, pigment epithelium and colon; and the implementation of freeze-etch technology and stereo microscopy which will aid in the understanding of ultrastructure in all areas of ongoing eye research. Application received by Commissioner of Customs: November 15, 1976. Advice submitted by the Department of Health, Education, and Welfare on: February 25, 1977.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, is being manufactured in the United States. REASONS: The applications relate to compatible accessories for instruments that have been previously imported for the use of the applicant institutions. The articles are being manufactured by the manufacturers which produced the instruments with which they are intended to be used. We are advised by the Department of Health, Education, and Welfare in the respectively cited memoranda that the accessories are pertinent to the applicants' intended uses and that it knows of no comparable domestic articles.

The Department of Commerce knows of no similar accessories manufactured in the United States which are interchangeable with or can be readily adapted to the instruments with which the foreign articles are intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

BERNARD ASCHER,
Director,
Office of Import Programs.

[FR Doc. 77-9493 Filed 3-29-77; 8:45 am]

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY, ET AL.

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 19, 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: 77-00137. Applicant: Virginia Polytechnic Institute and State University, Department of Geological Sciences, 4044 Derring Hall, Blacksburg, VA 24061. Article: Automatic sequential x-ray spectrometer, Model PW145/80 ASP and accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used to analyze samples of naturally occurring rocks and minerals. These samples are to be analyzed for elemental constituents for understanding the origin of these rocks. There will be a careful study of the redistribution of the original elements of rocks along the eastern U.S. Also, correlation of elemental abundances determined by the XRF will be made with uranium and thorium concentrations to provide information on heat production of rocks and its relation to rock chemistry. Application received by Commissioner of Customs: February 28, 1977.

Docket Number: 77-00138. Applicant: HEW/FDA National Center for Toxicological Research, Jefferson, Arkansas 72079. Article: Tachophor complete, with Power Supply Unit, Analyzer Unit equipped with Perspex Electrode Houses, Lamps and Filter. Manufacturer: LKB-Produkt AB, Sweden. Intended use of article: The article is intended to be used for studies of biological molecules including proteins, peptides, and metabolites from plant and animal tissue. Investigations will include studies on in

vitro and/or in vivo reactions between biological molecules following increase, decrease, or absence of one or all of the reacting molecules. The objective pursued in the course of these investigations is to understand the interrelationship between biological molecules and to correlate these changes with chemical alterations seen in human diseases. Application received by Commissioner of Customs: February 28, 1977.

Docket number: 77-00139. Applicant: Texas A&M University, Oilseed Products, College Station, Texas 77843. Article: Automatic Nitrogen Analyzer. Manufacturer: Foss America, Inc. Denmark. Intended use of article: The article is intended to be used in research in which protein extracts from soybean, peanut and glandless cottonseed flours will be membrane processed using industrial sem-permeable membranes to fractionate the constituents of the liquid extracts into a high protein product and a secondary product composed of sugars and salts, and small molecular-sized compounds. The investigations will be conducted to explore and demonstrate the feasibility of recovering the solubilized protein by ultrafiltering it from the liquid extracts instead of separating it from non-protein constituents by conventional acid precipitation methods. Specifically, the article will be used to assay samples of liquid extract going into ultrafiltration membranes and samples of UF permeates coming from the UF membranes. It will likewise be used to monitor nitrogen contents of samples to and from the second stage of membrane processing where reverse osmosis (RO) membranes are employed. The article will also be used by graduate students, cooperative education students and project technicians for assaying samples pertaining to the research and other research projects when not in use for the purposes as stated. Application received by Commissioner of Customs: March 1, 1977.

Docket number: 77-00141. Applicant: National Radio Astronomy Observatory Associated Universities, Inc., 2010 N. Forbes, Suite 100, Tucson, Arizona 85705. Article: Klystron, Model VRT-2123A14 SN70320. Manufacturer: Varian Associates of Canada, Ltd., Canada. Intended use of article: The article will be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver used in conjunction with a microwave antenna to measure the intensity, polarization, frequency and direction of cosmic radiation. Application received by Commissioner of Customs: March 1, 1977.

Docket number: 77-00142. Applicant: University of Miami, Rosenstiel School of Marine & Atm Science, 4600 Rickenbacker Causeway, Miami, Florida 33149. Article: Flow Vibrating Densimeter, Model 01D. Manufacturer: Sodev, Inc., Canada. Intended use of article: The article will be used to measure the density of as little as 2 cm³ of a solution (relative to pure water or standard seawater) to a precision of ± 1 ppm and an accuracy of at least 10 ppm. Also, the article will be used to give densities on natural

water than can be used to check the reliability of the equation ± 3 ppm and examine the excess densities in deep ocean water of ~ 20 ppm due to the increase of dissolved nutrients. In addition, the article will be used as a salinometer, which is a device that measures a physical property of seawater (or any electrolyte solution) that is directly related to concentration. Application received by Commissioner of Customs: March 1, 1977.

Docket number: 77-00143. Applicant: Mass. Inst. of Tech., Room E18-360, Cambridge, Mass. 02139. Article: (4) Recording Current Meters, Model 5 (RCM5) and 2 (two) release transponders, Model 325. Manufacturer: Aanderaa Instruments Co., Norway. Intended use of article: The article will be used for studies of low frequency current variability in two different configurations: near bottom in great depths of water (5000+m) and in conjunction with pressure sensors set on equatorial islands in order to understand the nature of ocean currents in near-equatorial islands. Application received by Commissioner of Customs: March 1, 1977.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

BERNARD ASCHER,
Director,
Office of Import Programs.

[FR Doc. 77-9494 Filed 3-29-77; 8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

**ADVISORY COMMITTEE APPLICATIONS
Extended Deadline**

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of deadline for Advisory Committee application to May 2, 1977.

SUMMARY: In the March 8, 1977 FEDERAL REGISTER (42 FR 13042), the Commission announced that it was seeking applications to fill vacancies on its three advisory committees: the Product Safety Advisory Council, the Technical Advisory Committee on Poison Prevention Packaging, and the National Advisory Committee for the Flammable Fabrics Act. This notice announces an extension of the deadline for applications from April 15 to May 2, 1977.

Applications for membership on the committees are available from and should be returned to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR ADDITIONAL INFORMATION CONTACT:

Delores Wilson, Committee Management Officer, Office of the Secretary (202) 634-7700.

Dated: March 25, 1977.

SADYE E. DUNN,
Secretary, Consumer Product
Safety Commission.

[FR Doc. 77-9501 Filed 3-29-77; 8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force
USAF SCIENTIFIC ADVISORY BOARD
Meeting

MARCH 21, 1977.

The USAF Scientific Advisory Board ad hoc Committee on Defensive Chemical Systems will hold a meeting on April 25-26, 1977 from 9:00 a.m. to 5:00 p.m. both days at the Pentagon, Washington, DC.

The Committee will receive classified briefings and hold classified discussions on the capability of the United States Air Force to operate in a hostile chemical environment.

The meeting will be closed to the public in accordance with Section 552(b) of Title 5, United States Code, specifically subparagraph (1).

For further information, contact the USAF Scientific Advisory Board Secretariat at 202-697-4648.

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

[FR Doc. 77-9488 Filed 3-29-77; 8:45 am]

ENERGY RESEARCH AND
DEVELOPMENT ADMINISTRATION
GEOTHERMAL ENERGY

Environmental Reporting Guidelines

Guidelines are available to assist participants in ERDA's geothermal energy program with the preparation of environmental reports about proposed geothermal activities. Those participants expected to use the guidelines include:

(1) ERDA contractors on geothermal energy research, development, and demonstration projects; (2) recipients of ERDA funds in partial support of geothermal energy projects; (3) applicants for geothermal federal loan guaranties. The guidelines identify those activities for which environmental reports are requested; instructions are provided for scoping the environmental report to the scale of the proposed activity.

Copies of the guidelines may be obtained by making a written request to the Chief, Industrial Relations Branch, Division of Geothermal Energy, U.S. Energy Research and Development Administration, Washington, D.C. 20545.

Dated: March 24, 1977.

DONALD A. BEATTIE,
Acting Assistant Administrator
for Solar, Geothermal and
Advanced Energy Systems.

[FR Doc. 77-9502 Filed 3-29-77; 8:45 am]

ENVIRONMENTAL PROTECTION
AGENCY

[FRL 706-0; OPP-66029]

GENA LABORATORIES, INC.

Cancellation of Registration of Pesticide
Product Containing Safrole

On February 21, 1977, Gena Laboratories, Inc. 1341-43 Plowman Ave.,

Dallas Texas 75203, requested that the Environmental Protection Agency (EPA) cancel its registrations for Surf-Kote Pet Repellant (EPA Registration No. 1811-8) which contains the active ingredient safrole.

Cancellation shall be effective on or before April 29, 1977, unless the registrant, or an interested person with the concurrence of the registrant, requests that the registration be continued in effect.

The Agency has determined that the distribution, sale, and use of existing stocks of this safrole product would not be inconsistent with the purposes of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136(a) et seq.), and would not have an unreasonable adverse effect on the environment. Therefore, pursuant to section 6(a) (1) of FIFRA, the distribution, sale, and use of existing stocks of the product by persons other than the registrants shall be permitted after the effective date of cancellation: *Provided*, that the use is consistent with labeling approved by EPA.

Requests concurred in by the registrant that the registration of this product be continued, and any other comments concerning this action, may be submitted in triplicate to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Rm. 401, East Tower, 401 M St. SW., Washington, D.C. 20460. Comments should bear a notation indicating both the subject and the OPP document control number (OPP-66029). Any comments or other documents filed regarding this notice of cancellation 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.

(Sec. 6(a) (1), FIFRA, as amended (86 Stat. 973, 89 Stat. 751 (7 U.S.C. 136(a) et seq.))

Dated: March 24, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator
for Pesticide Programs.

[FR Doc. 77-9402 Filed 3-29-77; 8:45 am]

[FRL 705-3]

STATE OF OKLAHOMA

Determination of Primary Enforcement
Authority

This public notice is issued pursuant to section 1413 of the Safe Drinking Water Act, Pub. L. 93-523, December 16, 1974, and §142.10 of the National Interim Primary Drinking Water Regulations, published in the FEDERAL REGISTER on January 20, 1976.

An application has been received from the Acting Commissioner of Health, dated January 3, 1977, requesting that the Oklahoma State Department of Health be granted primary enforcement responsibility for water systems in the State of Oklahoma, in accordance with the provisions of this Act.

In response, I have determined that the Oklahoma State Department of

Health has met all conditions of the Safe Drinking Water Act and subsequent regulations for the assumption of primary enforcement responsibility for water systems in the State of Oklahoma. The State—

(1) Has adopted drinking water regulations which are no less stringent than the National Interim Primary Drinking Water Regulations;

(2) Has adopted and will implement adequate procedures for the enforcement of such State regulations, including adequate monitoring and inspections;

(3) Will keep such records and make such reports as required;

(4) If it permits variances or exemptions from the requirements of its regulations, will issue such variances and exemptions in accordance with the provisions of the National Interim Primary Drinking Water Regulations;

(5) Has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances.

All documents relating to this determination are available for public inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Deputy Commissioner for Environmental Health Services, Oklahoma State Department of Health, Northeast 10th Street and Stonewall, Oklahoma City, Oklahoma 73105.
Regional Administrator, Environmental Protection Agency, Region VI, First International Building, 1201 Elm Street, Dallas, Texas 75270.

All interested parties are invited to submit written comments on this determination and may request a public hearing. Written comments and/or a request for a public hearing must be submitted on or before April 29, 1977. A request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing.

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made within thirty (30) days after this notice a public hearing will be held. The Regional Administrator will give further notice in the FEDERAL REGISTER and in a newspaper or newspapers of general circulation in the State of Oklahoma of any hearing to be held pursuant to a request submitted by an interested person, or on his own motion. Notice of the hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. In addition to publication as described above, notice will be sent to the person requesting a hearing and to the State. Notice of the hearing will include a statement of the purpose of the hearing, information regarding the time and location for the hearing,

and the address and telephone number of an office at which interested persons may obtain further information concerning the hearing.

After receiving the record of the hearing, the Regional Administrator will issue an order affirming or rescinding his determination. If the determination is affirmed, it shall become effective as of the date of this order.

If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days after issuance of this initial notice.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: March 23, 1977.

JOHN C. WHITE,
Regional Administrator, Region
VI, Environmental Protection
Agency.

[FR Doc. 77-9401 Filed 3-29-77; 8:45 am]

[FRL 706-1]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES AND NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Delegation of Authority to the State of Wisconsin

Pursuant to section 111 of the Clean Air Act, as amended, the Administrator of the U.S. Environmental Protection Agency (EPA) promulgated regulations establishing standards of performance for twenty-four categories of new stationary sources (NSPS). In addition, pursuant to section 112 of the Clean Air Act, as amended, the Administrator promulgated national emission standards for four hazardous air pollutants (NESHAPS). Section 111(c) and 112(d) directs the Administrator to delegate his authority to implement and enforce NSPS and NESHAPS to any State which has submitted adequate procedures. Nevertheless, the Administrator retains concurrent authority to implement and enforce the standards following delegation of authority to the State.

On July 23, 1973, the Regional Administrator, Region V, EPA forwarded to the State of Wisconsin information setting forth the requirements for an adequate procedure for implementing and enforcing the standards for NSPS and NESHAPS. After preliminary negotiation, on June 20, 1975, the Governor of Wisconsin submitted a request to the EPA, Region V office for delegation of authority to the State of Wisconsin for 12 NSPS categories and 3 NESHAPS pollutants. Included in the request was a description of the procedures to be utilized by the State in exercising the delegated authority. Also included were copies of the State law and regulations which provide the State with the requisite authority to implement and enforce NSPS and NESHAPS. After a thorough review of that request, the Regional Administra-

tor has determined that delegation is appropriate for the 12 NSPS source categories and 3 NESHAPS pollutants as set forth in the following official letter to the Governor of Wisconsin subject to the terms set forth in conditions 1 through 13 of that letter:

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

SEPTEMBER 28, 1976.

Honorable PATRICK J. LUCEY,
Governor of Wisconsin,
Madison, Wisconsin 53702

DEAR GOVERNOR LUCEY: This is in response to your letter of June 20, 1975, requesting delegation of authority for implementation and enforcement of the Standards of Performance for New Stationary Sources (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) to the State of Wisconsin.

We have reviewed the pertinent laws of the State of Wisconsin and have determined that they provide an adequate and effective procedure for implementation and enforcement of the NSPS and NESHAPS with certain exceptions detailed below. Therefore, delegation of authority to implement and enforce the NSPS and NESHAPS to the State of Wisconsin is granted as follows:

A. Authority for all sources located in the State of Wisconsin subject to the standards of performance for the new stationary sources promulgated in 40 CFR Part 60 as amended, Subparts D through O. (All references to 40 CFR Part 60 in this delegation refer to the Code of Federal Regulations revised as of July 1, 1975, as amended by 40 FR 46250 October 6, 1975, and 40 FR 58416, December 16, 1975). The 12 categories of new sources covered by this delegation are fossil fuel-fired steam generator units greater than 250 million BTU's per hour; incinerators greater than 50 tons per day; portland cement plants; nitric acid plants; sulfuric acid plants; asphalt concrete plants; petroleum refineries; storage vessels for petroleum liquids; secondary lead smelters; secondary brass and bronze ingot production plants; iron and steel plants, and sewage treatment plants.

B. Authority for all sources located in the State of Wisconsin subject to the national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61, as amended, Subparts B through E. (Reference to 40 CFR Part 61 as amended includes the Code of Federal Regulations revised as of July 1, 1975, as amended by 40 FR 48292, October 14, 1975.) The three hazardous air pollutants covered by the delegation are: asbestos, beryllium, and mercury.

These delegations are made pursuant to the following conditions and limitations:

1. Acceptance of this delegation of presently promulgated NSPS and NESHAPS does not commit the State of Wisconsin to request or accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the State's request of June 20, 1975.

2. Upon approval of the Regional Administrator of Region V, the Governor of Wisconsin, or a person whom he may designate to act in his stead in matters of NESHAPS and NSPS enforcement and implementation, and in requesting delegated authorities, may sub-delegate his authority to implement and enforce the NSPS and NESHAPS to other air pollution control authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.

3. Since the two year period in which USEPA may grant waivers from compliance

with NESHAPS has expired, EPA Region V cannot delegate waiver granting authority. Therefore, the State of Wisconsin will at no time grant a waiver of compliance with NESHAPS.

4. The delegation to the State of Wisconsin does not include the authority to implement and enforce NSPS and NESHAPS for sources owned or operated by the United States which are located in the State. This condition in no way relieves any Federal facility from meeting the requirements of 40 CFR Parts 60 and 61, as amended.

5. The Federal NSPS regulations 40 CFR Part 60, as amended do not have provisions for granting a variance, hence this delegation does not convey to the State of Wisconsin in authority to grant variances from the Federal NSPS regulations.

6. The State of Wisconsin and EPA will develop a system of communication sufficient to guarantee that each office is always fully informed about (a) the current compliance status of subject sources in the State of Wisconsin, (b) the interpretation of applicable regulations, and (c) the description of sources and source inventory data.

7. Section 116 of the Clean Air Act, as amended, prohibits the State of Wisconsin from adopting and enforcing a State emission standard or limitation less stringent than the Federal NSPS and NESHAPS (40 CFR Parts 60 and 61 as amended). It has been determined that the Wisconsin regulations are less stringent than the Federal regulations in the following areas and therefore this delegation is not applicable in those areas:

(a) 40 CFR 60.62 (b)(2) and (c), the 10 percent opacity limitations for clinker cooler gases and other discharges to the atmosphere other than kiln and clinker cooler gases for portland cement plants, and

(b) 40 CFR 60.83, the mass emission limitation and opacity limitations for sulfuric acid mists for sulfuric acid plants.

However, the State is encouraged to assure compliance in these areas to the extent their procedures and discretionary powers will allow. Noncompliance in these areas should be reported to EPA.

8. Where the lack of definition in the State regulations of the following terms prevents compliance with the Federal regulation, the term shall be defined as in 40 CFR Parts 60 and 61 as amended: Nitrogen oxide, proportional sampling, isokinetic sampling, startup, asbestos, asbestos materials, particulate asbestos materials.

9. If at any time the State of Wisconsin determines that a violation of a delegated NSPS or NESHAPS exists, the Governor of Wisconsin or his designee shall immediately notify EPA, Region V, of the nature of the violation together with a brief description of State efforts or strategy to secure compliance. EPA may exercise its concurrent enforcement authority pursuant to Section 113 of the Clean Air Act, as amended, with regard to any violations of NSPS or NESHAPS.

10. The State of Wisconsin will utilize the methods specified in 40 CFR Parts 60 and 61, as amended, in performing source tests and visible emission observations pursuant to the regulations. The State shall also require continuous emission monitoring for NSPS sources in accordance with 40 CFR 60.45, 60.73, 60.84, 60.105, 60.113 and 60.153 as amended by 40 FR 46250, October 6, 1975.

11. Since the State of Wisconsin regulations related to NESHAPS and NSPS became effective later than the Federal NESHAPS or NSPS, authority is not delegated for the following regulations for the following sources and pollutants for the indicated time period:

(a) All NSPS for Fossil-Fuel Fired Sources, Incinerators, Portland Cement Plants, Nitric Acid Plants and Sulfuric Acid Plants prior to April 1, 1972;

(b) All NSPS for Asphalt Concrete Plants, Secondary Lead Smelters, Secondary Brass and Bronze Ingot Pollution Plants, Iron and Steel Plants, and Sewage Treatment Plants Prior to February 1, 1975;

(c) All NSPS for storage vessels for petroleum liquids prior to July 1, 1975;

(d) The NSPS for particulate for Petroleum Refineries prior to February 1, 1975;

(e) The NSPS for Carbon Monoxide and Sulfur Dioxide for Petroleum Refineries prior to July 1, 1975;

(f) The NESHAPS for mercury prior to April 1, 1972; and

(g) The NESHAPS for asbestos and beryllium prior to July 1, 1975.

12. If the Regional Administrator determines that the State of Wisconsin or local agency procedure for implementing and enforcing the NSPS or NESHAPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Governor of Wisconsin or his designee in NSPS or NESHAPS matters.

13. In order to satisfy section 114 of the Clean Air Act, as amended, 40 CFR 60.9, and 40 CFR 61.15, in any instance where the State of Wisconsin is unable under its own authority to release emission data to the public, the State shall notify EPA, Region V, so that EPA may take the action necessary to release such data.

A Notice announcing this delegation will be published in the FEDERAL REGISTER in the near future. This Notice will state, among other things, that, effective immediately, all reports required pursuant to the Federal NSPS and NESHAPS from sources located in the State of Wisconsin should be submitted to the Bureau of Air Pollution Control and Solid Waste Management of the Department of Natural Resources, Box 450, Madison, Wisconsin 53701. Any such reports which have been or may be received by EPA, Region V, will be promptly transmitted to the Bureau of Air Pollution Control and Solid Waste Management.

Although this delegation is effective immediately and although there is no requirement that the State notify EPA of its acceptance, we would appreciate written notice of acceptance or objection to this delegation within 15 days of the date of receipt of this letter. Should no notice be received, we will proceed with public notice of the delegation in the FEDERAL REGISTER.

Sincerely yours,

GEORGE R. ALEXANDER, JR.,
Regional Administrator.

Therefore, pursuant to the authority delegated to him by the Administrator, the Regional Administrator notified the Governor of Wisconsin on September 28, 1976, that authority to implement and enforce the 12 NSPS categories and the 3 NESHAPS pollutants was delegated to the State of Wisconsin.

Copies of the request for delegation of authority are available for public inspection at the U.S. Environmental Protection Agency, Region V Office, 230 South Dearborn, Chicago, Illinois 60604.

All required reports or notices which must be sent to the State pursuant to this delegation must be submitted to EPA, Region V and must also be submitted to the State Agency at the following address: Wisconsin Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707. However, reports required pursuant to 40 CFR 60.7(c) (excess emissions and malfunctions) should be sent to the State only.

This notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended. 42 U.S.C. 1857c -6 and 7.

Dated: March 21, 1977.

GEORGE R. ALEXANDER, JR.,
Regional Administrator.

[FR Doc.77-9403 Filed 3-29-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 21155-21157; File Nos. 3465-CM-P-73 etc.]

A. MICHAEL LIPPER ET AL.

Designating Applications for Consolidated Hearing on Stated Issues; Memorandum Opinion and Order

Adopted: March 7, 1977.

Released: March 25, 1977.

In re applications of A. Michael Lipper, Docket No. 21155, File No. 3465-CM-P-73; and Electro-Media Multipoint Service, Inc., Docket No. 21156, File No. 5030-CM-P-73; and International Television Corporation, Docket No. 21157, File No. 5391-CM-P-73; for construction permits in the Multipoint Distribution Service for a new station at Reno, Nevada.

1. The Commission has before it the above-referenced applications of A. Michael Lipper (Lipper), filed on November 9, 1972; Electro-Media Multipoint Service, Inc. (EMS), filed on December 27, 1972; and International Television Corporation (ITC), filed on January 17, 1973. All three applications propose Channel 1 operation in the Reno, Nevada area, and thus are mutually exclusive and require comparative consideration. All three applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Lipper has MDS construction permit applications pending before the Commission for four other cities, including Monterey, California, and has been granted permits in Long Island, New York and So. Lake Tahoe, California. ITC has applications pending in six cities, including Santa Barbara and Bakersfield, California and has been granted permits in Oxnard, California and Lincoln, Nebraska. EMS, wholly owned by Electro-Media, has only this MDS application before the Commission.

3. Upon review of the captioned applications, we find that the three applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. Accordingly, it is hereby ordered, That pursuant to section 303(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, a consolidated proceeding, at a time and

place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:²

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Reno, Nevada area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. It is further ordered, That A. Michael Lipper, Electro-Media Multipoint Service, Inc., International Television Corporation, and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

WALTER R. HINCHMAN,
Chief, Common Carrier Bureau.

[Docket Nos. 21163-21164; File Nos. 4166-CM-P-72 and 6373-CM-P-72]

EASTERN SHORE COMMUNICATIONS CORP. AND MULTI-COMMUNICATION SERVICES, INC.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: March 7, 1977.

Released: March 25, 1977.

In re applications of Eastern Shore Communications Corporation, Docket No. 21163, File No. 4166-CM-P-72; and Multi-Communication Services, Inc., Docket No. 21164, File No. 6373-CM-P-72; for construction permits in the Multipoint Distribution Service for a new station at Lansing, Michigan.

1. The Commission has before it the above-referenced applications of Eastern Shore Communications Corporation (Eastern Shore), filed on January 3, 1972 and Multi-Communication Services, Inc. (Multi-Com) filed on March 13, 1972. Both applications propose Channel 1 operation in the Lansing, Michigan area, and thus are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests

² Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et al., 55 P.C.C. 2d 626 (1975).

[FR Doc.77-9499 Filed 3-29-77;8:45 am]

of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Eastern Shore is a wholly-owned subsidiary of United Cable Television Corporation (United Cable) and is transferee of certain MDS interests held by United Video, Inc. (Video) prior to the transfer of Video from United Cable to Lawrence Flinn, Jr. and the concomitant transfer of part of Video's MDS interests in Atlanta, Georgia to Robert Weisberg, all of which were authorized by the Commission in 1976. Eastern Shore also has construction permit applications pending for Oklahoma City and Tulsa, Oklahoma; Shreveport, Louisiana; Chattanooga, Tennessee; and Boise, Idaho. Multi-Com has twenty-three MDS construction permit applications pending. Several of its officers have interests in broadcasting and CATV operations in Florida and Georgia.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:¹

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Lansing, Michigan area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The management and entrepreneurial qualifications of the applicants.

5. It is further ordered, That Eastern Shore Communications Corporation, Multi-Communication Services, Inc., and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. It is further ordered, That parties desiring to participate herein shall file

¹ Consideration of these factors shall be made in light of the Commission's discussion in "Peabody Telephone Answering Service," et. al., 55 P.C.C. 2d 626 (1975).

their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

WALTER R. HINCHMAN,
Chief, Common Carrier Bureau.

[FR Doc.77-9497 Filed 3-29-77; 8:45 am]

[Docket Nos. 21161-21162; File Nos. 5397-CM-P-73; 5285-CM-P-73]

KLOTZ, HOWARD S./CORBUS,
WILLIAM ET AL.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: March 7, 1977.

Released: March 25, 1977.

In re applications of Klotz, Howard S./Corbus, William, Docket No. 21161, File No. 5397-CM-P-73; and J. Stanton Keck d/b/a Northwest Industries, Docket No. 21162, File No. 5285-CM-P-73; for construction permits in the Multipoint Distribution Service for a new station at Olympia, Washington.

1. The Commission has before it the above-referenced applications of Klotz, Howard S./Corbus, William (Klotz), filed on January 19, 1973 and J. Stanton Keck d/b/a Northwest Industries (Keck), filed on January 15, 1973. Both applications propose Channel 1 operation in the Olympia, Washington area, and thus are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Klotz has twenty-one MDS construction permit applications pending and is permittee in San Bernardino, California; New Haven, Connecticut; and Atlantic City, New Jersey. Keck has only the above-referenced MDS construction permit before the Commission.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:¹

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Olympia, Washington area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of this applicants.

5. It is further ordered, That Klotz, Howard S./Corbus, William, J. Stanton Keck d/b/a Northwest Industries and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

WALTER R. HINCHMAN,
Chief, Common Carrier Bureau.

[FR Doc.77-9498 Filed 3-29-77; 8:45 am]

[Docket Nos. 21165-21166; File Nos. 3994-CM-P-73; 5935-CM-P-73]

TEXAS MICROWAVE, INC. AND MULTI
VIDEO, INC.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: March 7, 1977.

Released: March 25, 1977.

In re applications of Texas Microwave, Inc., Docket No. 21165, File No. 3994-CM-P-73; and Multi Video, Inc., Docket No. 21166, File No. 5935-CM-P-73; for construction permits in the Multipoint Distribution Service for a new station at Springfield, Illinois.

1. The Commission has before it the above-referenced applications of Texas Microwave, Inc. (TM), filed on December 1, 1972 and Multi-Video, Inc. (MV), filed on February 9, 1973. Both applications propose Channel 1 operation in the Springfield, Illinois area, and thus are mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. TM has five MDS construction permits, all in Texas, and has applications pending for Little Rock, Arkansas; Shreveport, Louisiana; and Newark, Ohio. Its parent corporation, Communications Properties, Inc., has a broad range of interests in CATV, common carrier, broadcast and CARS operations throughout the Country. MV is permittee of an MDS station in Anderson, Indiana and has an application pending for Terra Haute, Indiana. Eastern Broadcasting Corporation, 50% owner of MV, is licensee of WBOW-AM-FM in Terre Haute.

3. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

4. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, and § 0.291 of the Commission's rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:²

(a) The relative merits of each proposal with respect to service area and efficient frequency use;

(b) The nature of the services and facilities proposed, and whether they will satisfy service requirements known to exist or likely to exist in the Springfield, Illinois area;

(c) The anticipated quality and reliability of the service proposed, including selection of equipment, installation, subscriber security and maintenance;

(d) The charges, regulations and conditions of the service to be rendered, and their relation to the nature, quality and costs of service; and

(e) The managerial and entrepreneurial qualifications of the applicants.

5. It is further ordered, That Texas Microwave, Inc., Multi Video, Inc., and the Chief, Common Carrier Bureau, are made parties to this proceeding.

6. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

WALTER R. HINCHMAN,
Chief, Common Carrier Bureau.

[FR Doc.77-8500 Filed 3-29-77;8:45 am]

FEDERAL ELECTION COMMISSION

[Notice 1977-19, AOR 1977-13]

ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. 437f(c) and the procedures reflected in Part 112 of the Commission's Proposed Regulations, published on August 25, 1976 (41 FR 35954), Advisory Opinion Request 1977-13 has been made public at the Commission. Copies of AOR 1977-13 were made available on March 24, 1977. These copies of the advisory opinion request were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street, NW., Washington, D.C. 20463.

² Consideration of these factors shall be made in light of the Commission's discussion in Peabody Telephone Answering Service, et al., 55 P.C.C. 2d 626 (1975).

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A description of the request recently made public as well as the identification of the requesting party follows hereafter:

AOR 1977-13: Would fundraising to defray transportation expenses of high school students participating in a three-week summer intern program sponsored by a Member of Congress, to "acquaint" them with governmental operations, involve the acceptance of contributions or the making of expenditures under 2 U.S.C. 431.—Requested by Representative Newton I. Steers, Jr., U.S. House of Representatives, Washington, D.C.

Dated: March 24, 1977.

VERNON W. THOMSON,
Chairman for the Federal
Election Commission.

[FR Doc.77-9414 Filed 3-29-77;8:45 am]

FEDERAL MARITIME COMMISSION

PACIFIC COAST EUROPE RATE AGREEMENT

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 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 19, 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.

MODIFICATION OF AGREEMENT

Notice of Agreement Filed by:

David C. Nolan, Esq., Graham & James, One Maritime Plaza, San Francisco, California 94104.

Agreement No. 10052-3, among the members of the above named agreement, adds inland points in mainland Europe, the United Kingdom, Ireland and ports in Morocco to the scope of the agreement.

By Order of the Federal Maritime Commission.

Dated: March 25, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-9520 Filed 3-29-77;8:45 am]

FEDERAL POWER COMMISSION

[Project No. 2146]

ALABAMA POWER CO.

Application for Change in Land Rights

MARCH 23, 1977.

Public notice is hereby given that an application was filed on February 18, 1977, under the Federal Power Act, 16 U.S.C. 791a-825f, by Alabama Power Company (Applicant) (Correspondence to: Mr. Jesse S. Vogtle, Senior Vice President, Alabama Power Company, P.O. Box 2641, Birmingham, Alabama 35291) for a change in land rights at the Weiss Reservoir of the Coosa River Project No. 2146. The proposed change in land rights would be located in Cherokee County near the Town of Centre, Alabama.

Applicant seeks Commission approval to grant a 20-foot wide easement across project lands at the Saddle Dike "B" levee at the Weiss Reservoir Development of Project No. 2146 to Cherokee Electric Cooperative for the construction and maintenance of an overhead electric distribution line. The proposed easement would be located in Section 17, T. 10 S., R. 9 E., near Centre, Alabama and would comprise 0.62 acre of project lands.

The transmission line would be strung on poles spaced 135 feet apart and would have a 24-foot, six-inch clearance over the levee. The normal maximum power pool elevation of Weiss Reservoir is 564 feet m.s.l., but an elevation of 578 feet (U.S.C. and G.S.) is authorized for flood control purposes. The levee was constructed immediately above elevation 580 for safety purposes and has a crest elevation of 590 feet.

The Applicant has requested the shortened procedure pursuant to § 1.32(b) of the Commission's Rules of Practice and Procedure, 18 CFR 1.32(b) (1976).

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Power Commission, Washington, D.C.

20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before May 6, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by sections 308 and 309 of the Federal Power Act (16 U.S.C. 825, § 825h) and the Commission's Rules of Practice and Procedure, specifically § 1.32(b) (18 CFR 1.32(b)) (1976), a hearing may be held without further notice before the Commission on its application if no issue of substance is raised by any request to be heard, protest or petition filed subsequent to this notice within the time required herein and if the applicant or initial pleader requests that the shortened procedure of § 1.32(b) be used.

Under the shortened procedure herein provided for, unless otherwise advised, it will not be necessary for applicant or initial pleader to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-9482 Filed 3-29-77; 8:45 am]

[Docket No. E77-77]

**PANHANDLE EASTERN PIPE LINE CO.,
ET AL.**

**Emergency Natural Gas Act of 1977;
Emergency Order**

On March 25, 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 all natural gas produced by Scarth Petroleum Inc (Scarth) at the Scarth No. 1 Hill well, Hansford County, Texas. 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 Scarth 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 Scarth 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, Scarth, 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 25, 1977.

[FR Doc.77-9566 Filed 3-29-77; 8:45 am]

[Docket No. E77-78]

**PANHANDLE EASTERN PIPE LINE CO.,
ET AL.**

**Emergency Natural Gas Act of 1977;
Emergency Order**

On March 25, 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 2,000 Mcfd of natural gas from Champlin Exploration Inc. (Champlin), at the Sherill Well, Woods County, Oklahoma. Panhandle will purchase these volumes as agent for its customer, Kokomo Gas and Fuel Company (Kokomo), 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 Champlin and deliver them to Kokomo at existing delivery points. Panhandle and Kokomo have agreed upon transportation charges of 20 cents per Mcf plus eight (8) percent of the volumes transported for compressor fuel.

Panhandle advises that Kokomo 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 Kokomo that the subject purchase complies with Order No. 6.

Pursuant to Section 6(a) of the Act, I authorize Champlin to sell gas to Panhandle as agent for Kokomo. Pursuant to Section 6(c)(1) of the Act, I author-

ize Panhandle to transport this gas for Kokomo. Since the parties have agreed upon the transportation charges, I find no basis on which to fix other charges.

Kokomo 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, Champlin and Kokomo. 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.77-9567 Filed 3-29-77; 8:45 am]

[Docket No. ER77-240]

INTERSTATE POWER CO.

Filing of Rate Schedule Amendments

MARCH 25, 1977.

Take notice that Interstate Power Company on March 11, 1977, tendered for filing proposed amendments to two of its FPC Electric Service Rate Schedules, Numbers 40 and 116. The rate schedules involved are separate electric service agreements between Interstate and Windom, Minnesota, and Interstate and Blue Earth, Minnesota, respectively. Interstate indicates that the proposed amendments expand the scope of service available to these two cities by providing them with firm power service.

Interstate states that the Cities of Blue Earth and Windom each requested firm power service from Interstate to supplement the existing capacity of each of their respective municipal utility systems. Interstate also states that it is able to provide the requested firm power service from its system and consequently, amendments to the electric service agreements with each city were executed to reflect the applicable firm power service provisions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before 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. PLUMB,
Secretary.

[FR Doc.77-9632 Filed 3-29-77; 8:45 am]

[Docket No. ER77-239]

INDIANA & MICHIGAN ELECTRIC CO.
Changes in Rates and Charges

MARCH 25, 1977.

Take notice that American Electric Power Service Corporation (AEP) on March 11, 1977 tendered for filing on behalf of its affiliate, Indiana and Michigan Electric Company (Indiana Company), Amendment No. 11 dated January 11, 1977 to the Operating Agreement dated March 1, 1966 (1966 Agreement), among Indiana Company, Consumers Power Company and the Detroit Edison Company (Michigan Companies), designated Indiana Company Rate Schedule FPC No. 68.

AEP indicates that Amendment No. 11 provides, effective April 15, 1977, for participation by the parties in Economy Energy transactions involving systems which are not parties to the 1966 Agreement.

AEP indicates that under the proposed Amendment transactions with systems not parties to the 1966 Agreement would be priced, as was previously contemplated under the 1966 Agreement, on the basis of costs incurred, plus a sharing by all of the participants of the savings realized by the ultimate receiving system. AEP indicates that transmission losses are one of the costs incurred. Each system participating in an Economy Energy transaction other than as the supplying or receiving systems would receive 15% of the savings and the supplying and ultimate receiving systems would divide the remainder of the savings. AEP states that the proposed 15% of savings allocated to intermediate systems was arrived at through negotiation and is intended to recognize participation in the transaction. AEP further states that since Economy Energy transactions will depend upon the availability of Economy Energy, the need of another system for such energy, and possible transmission restrictions, it is impossible to estimate the transactions and revenues resulting from the proposed service.

Copies of the filing were served upon Michigan Companies, the Public Service Commission of Indiana and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before 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 application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 77-9633 Filed 3-29-77; 8:45 am]

FEDERAL RESERVE SYSTEM

[H.2, 1977 No. 11]

ACTIONS OF THE BOARD

Applications and Reports Received During the Week Ending March 12, 1977

ACTIONS OF THE BOARD

Statement by Chairman Arthur F. Burns before the Senate Banking, Housing, and Urban Affairs Committee on the condition of the banking system.

Government in the Sunshine Act, Board rules regarding public observation of its meetings.

Consumers Union of the United States, petition requesting that the Board amend its rules of procedure to provide for a program of financial assistance to certain participants in Board proceedings.

Regulation Y, the Board decided for the present against adding money orders and similar consumer-type payment instruments to the list of activities that are permissible generally for bank holding companies; the Board will process applications to engage in this type of activity on a case-by-case basis because of the limited number of companies that have expressed interest in entering this business.

First Company, Powell, Wyoming, extension of time to June 17, 1977, within which it may consummate the acquisition of The First National Bank of Powell, Powell, Wyoming.¹

Cheboygan Bank, Cheboygan, Michigan, to make an investment in bank premises.¹

Chemical Bank of Binghamton, Binghamton, New York, extension of time within which to establish a branch office at 1935-1997 Lake Street, Town of Elmire, New York.¹

First National Bank of Boston, Boston, Massachusetts, extension of time to March 14, 1978, within which to complete its investment in Banco de Boston Dominicano, S.A., Dominican Republic.¹

Security State Bank, Hartley, Iowa, application for permission to exercise full trust powers.¹

Baldwyn State Bank, Baldwyn, Mississippi, proposed merger with The Peoples Bank and Trust Company, Tupelo, Mississippi, report to the Federal Deposit Insurance Corporation on competitive factors.¹

Bank of Auburn, Auburntown, Tennessee, proposed merger with Bank of Commerce, Woodbury, Tennessee, report to the Federal Deposit Insurance Corporation on competitive factors.¹

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

APPROVED

Dutchess Bank & Trust Company, Poughkeepsie, New York, Branch to be established at the Southwest corner of Mill and Garden Streets, City of Poughkeepsie, County of Dutchess.²

Piedmont Trust Bank, Martinsville, Virginia, Branch to be established at 200 East Church Street, Martinsville.²

Sun Bank of Ocala, Ocala, Florida, Branch to be established near the intersection of Silver Springs Boulevard and Northeast 36th Avenue, Ocala.²

Bank of Florida in St. Petersburg, St. Petersburg, Florida, Branch to be established at 2350 34th Street, North, St. Petersburg.²

¹ Application processed on behalf of the Board of Governors under delegated authority.

Citizens Fidelity Bank & Trust Company, Louisville, Kentucky, Branch to be established at 2901 Bardstown Road, Louisville, Jefferson County.²

To Form a Bank Holding Company Pursuant to Section 3(a) (1) of the Bank Holding Company Act of 1956.

APPROVED

First Maywood, Inc., Maywood, Illinois, for approval to acquire 10 per cent of the voting shares (less directors' qualifying shares) of the successor by merger to First National Bank of Maywood, Maywood, Illinois.²

Spencer Financial Corporation, Spencer, Iowa, for approval to acquire 66.44 per cent or more of the voting shares of Spencer National Bank, Spencer, Iowa.²

New York Mills Bancshares, Inc., New York Mills, Minnesota, for approval to acquire 80.8 per cent of the voting shares of Farmers & Merchants State Bank of New York Mills, Incorporated, New York Mills, Minnesota.²

Firststate, Inc., Topeka, Kansas, for approval to acquire 80 per cent or more of the voting shares of The First State Bank and Trust Company, Topeka, Kansas.²

Hildreth State Company, Inc., Hildreth, Nebraska, for approval to acquire 95.6 per cent of the voting shares of The State Bank of Hildreth, Hildreth, Nebraska.²

DENIED

Old Canal Bankshares, Inc., Lockport, Illinois, for approval to acquire 80 per cent or more of the voting shares of Heritage First National Bank of Lockport, Lockport, Illinois.

To Expand a Bank Holding Company Pursuant to Section 3(a) (3) of the Bank Holding Company Act of 1956.

APPROVED

Lincoln National Company, Bala Cynwyd, Pennsylvania, for approval to acquire indirectly 9.9 per cent of the voting shares of The Byrn Mawr Trust Company, Bryn Mawr, Pennsylvania.

Marshall & Hilsley Corporation, Milwaukee, Wisconsin, for approval to acquire 80 per cent or more of the voting shares of Fox Heights State Bank, Ashwaubenon Township (P.O. Green Bay), Wisconsin.²

Spencer National Bank Trust, Spencer, Iowa, for approval to acquire 75.94 per cent of the voting shares of Spencer Financial Corporation, Spencer, Iowa and indirectly acquire 64.62 per cent of the voting shares of Spencer National Bank, Spencer, Iowa.²

First City Bancorporation of Texas, Inc., Houston, Texas, for approval to acquire 100 per cent of the voting shares (less directors' qualifying shares) of the successor by merger to East Dallas Bank, Dallas, Texas.

To Retain Bank Shares Acquired in a Fiduciary Capacity Pursuant to Section 3 of the Bank Holding Company Act of 1956.

APPROVED

First United Bancorporation, Inc. and The First National Bank of Fort Worth, both of Fort Worth, Texas, for approval to retain 222 shares of University Bank, Fort Worth, Texas.²

² Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

To Expand a Bank Holding Company Pursuant to Section 4(c) (8) of the Bank Holding Company Act of 1956.

WITHDRAWN

Fulton National Corporation, Atlanta, Georgia, for approval to engage de novo in various insurance agency activities through Martin and Bazzle Insurance Agency, Inc., Atlanta, Georgia.

DELAYED

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 the Corner of Five Mile Road and Fairview Avenue, Boise, Idaho, through its subsidiary, Nationwide Financial Corporation of Idaho (3/11/77).²

PERMITTED

Worcester Bancorp, Inc., Worcester, Massachusetts, notification of intent to engage in de novo activities (acting as insurance agent or broker in offices at which Worcester Bancorp, Inc. or its subsidiaries are otherwise engaged in business with respect to the following types of insurance: credit life insurance, credit accident and health insurance, and mortgage redemption insurance) at 172 Central Street, Winchendon, Massachusetts, through a subsidiary, Wornat Insurance Agency, Inc. (3/10/77).²

Fidelcor, Inc., Rosemont, Pennsylvania, notification of intent to relocate de novo activities (making and acquiring, consumer and mortgage loans to individuals including second mortgage loans; servicing these loans and possibly other loans secured by mortgages in Massachusetts where the loans are owned by direct or indirect subsidiaries of Fidelcor; engaging in a general consumer finance business; purchasing installment contracts arising from the sale of personal property and services; and with respect to all of the above, selling credit life and credit accident and health insurance, mortgage life and disability insurance, accidental death insurance, and casualty insurance on the collateral; and through Master Life Insurance Company, an indirect subsidiary of Fidelcor, reinsuring credit life insurance and credit accident and health insurance sold) from 933 County Street, Somerset, Massachusetts to 2760 County Street, Somerset, Massachusetts, through its subsidiary, Fidelcor Financial Centers, Inc. (3/9/77).²

Fredonia Bancshares Inc. Fredonia Kansas notification of intent to engage in de novo activities (the sale of credit accident and health insurance in connection with extensions of credit by its subsidiary bank, State Bank of Fredonia, Fredonia, Kansas) at 401 North Sixth, Fredonia, Kansas (3/11/77).²

² 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.

BankAmerica Corporation, San Francisco, California, notification of intent to relocate de novo activities (making and acquiring, loans and other extensions of credit such as would be made or acquired by a finance company including purchasing installment sales finance contracts and financing inventory; making available, fire, theft, and damage insurance on a monthly reporting basis covering only the outstanding indebtedness on inventory; in addition, FinanceAmerica Management Service Corporation proposes to engage in the activity of servicing loans and other extensions of credit) from 1105 Hamilton Street, Allentown, Pennsylvania to Suite 51, 1401 Cedar Crest Boulevard, Allentown, Pennsylvania, through its indirect subsidiaries, FinanceAmerica Management Service Corporation, also d.b.a. Manufacturers Credit Corporation; Jarvis Credit Corporation; Specialty Financial Services, Inc.; and Executive Finance Group, Inc., subsidiaries of FinanceAmerica Corporation (3/7/77).²

Security Pacific Corporation, Los Angeles, California, notification of intent to relocate de novo activities (making or acquiring, for its own account or others, loans and other extensions of credit including secured and unsecured consumer, commercial, agricultural loans, sales contracts and other forms of receivables and such other types of loans and credit extension as are customarily made or acquired by a finance company; and acting as broker or agent for the sale of credit-related life/accident and health insurance and credit-related property and casualty insurance) from 373 South Main Street, Salt Lake City, Utah to 99 West 7200 South Street, Midvale, Utah, through its subsidiary, The Bankers Investment Company (3/10/77).²

APPROVED

Citicorp, New York, New York, for approval to engage de novo through a new nonbank subsidiary, Citicorp Services, Inc., New York, New York and Buffalo, New York in the activity of issuing and offering on a consignment basis general purpose variable denominated payment instruments.

Republic of Texas Corporation, Dallas, Texas, for approval to retain ownership of the voting shares of Republic Commerce Company, Dallas, Texas and indirect ownership of the voting shares of Republic Money Orders, Inc. and Republic Money Orders of California, Inc., both of Dallas, Texas.

APPLICATIONS RECEIVED

To establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

Bankers Trust Company of Western New York, Jamestown, New York. Branch to be established at the Statler Hilton Building, 107 Delaware Avenue, City of Buffalo, Erie County.

State Bank of Albany, Albany, New York. Branch to be established on the West Side of Route 32, approximately one mile north of the intersection of Routes 32 and 81, and in the parking lot of Bryant's Country Square, Greenville, Green County.

The Peoples-Merchants Trust Company, Canton, Ohio. Branch to be established at 832 West Maple Street, Village of Hartsville, Lake Township, Stark City.

The Detroit Bank and Trust Company, Detroit, Michigan. Branch to be established at 660 Jones Street, Detroit.

To Withdraw from Membership in the Federal Reserve System without a six-

month notice as prescribed by Section 9 of the Federal Reserve Act.

Citizens Bank & Trust Company, Campbellsville, Kentucky.

To Establish an Overseas Branch of a Member Bank Pursuant to Section 25 of the Federal Reserve Act.

United California Bank: Re. Branch, Manila, Republic of the Philippines.

To Form a Bank Holding Company Pursuant to Section 3(a) (1) of the Bank Holding Company Act of 1956.

Trade Development Finance (Netherlands Antilles) N.V., Curacao, The Netherlands Antilles and Trade Development Holland Holding B.V., Amsterdam, The Netherlands, for approval to directly acquire 68.63 percent of the voting shares of Republic New York Corporation, New York, New York and to indirectly acquire 99.9 percent of the voting shares of Republic National Bank of New York, New York, New York.

Baylake Corp., Sturgeon Bay, Wisconsin, for approval to acquire 80 percent or more of the voting shares of Bank of Sturgeon Bay, Sturgeon Bay, Wisconsin.

Washington Bancorporation, Washington, Iowa, for approval to acquire 80 percent or more of the voting shares of The National Bank of Washington, Washington, Iowa (a proposed new bank) the successor by merger to The National Bank of Washington, Washington, Iowa and the successor by merger to Ainsworth State Bank, Ainsworth, Iowa.

To Expand a Bank Holding Company Pursuant to Section 4(c) (8) of the Bank Holding Company Act of 1956.

Citicorp, New York, New York, notification of intent to engage in de novo activities (operating as an industrial loan company pursuant to the Utah Industrial Loan Law issuing thrift passbook certificates; if this proposal is effected, the establishment will also be known as Citicorp Person-to-Person Financial Center of Utah) at University Mall, Suite C-52, Orem, Utah, through its subsidiary, Nationwide Financial Services Corporation, presently operating as Citicorp Person-to-Person Financial Center (3/8/77).²

First Banc Group of Ohio, Inc., Columbus, Ohio, notification of intent to engage in de novo activities (leasing personal property and equipment, or acting as agent, broker, or adviser in leasing of such property where such property is acquired by the lessor at the request of the lessee for business purposes and where at the inception of the initial lease the expectation is that the effect of the transaction and reasonably anticipated future transactions with the same lessee as to the same property will be to 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; making, acquiring, and selling, for its own account or for the account of others, loans and other extensions of credit secured by interests in real property; and servicing loans and other extensions of credit secured by interests in real property for itself and for others) at 8080 Montgomery Road, Suite 201, Cincinnati, Ohio and 100 East Broad Street, Columbus, Ohio, through its wholly-owned subsidiary, First Banc Group Financial Services Corporation (2/28/77).²

² 4(c) (8) and 4(c) (12) notification processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

Fulton National Corporation, Atlanta, Georgia, notification of intent to engage in de novo activities (the sale of insurance directly related to extensions of credit by Fulton National Bank including property and liability insurance, credit life/accident and health insurance, and homeowners and fire and extended coverage insurance) at 55 Marietta Street, N.W., Atlanta, Georgia (3/10/77)²

Southeast Banking Corporation, Miami, Florida, notification of intent to engage in de novo activities (performing or carrying on any one or more of the functions or activities that may be performed or carried on by a trust company including activities of a fiduciary, agency or custodian nature) at 1010 Fifth Avenue, South, Naples, Florida, through a subsidiary, Southeast Banks Trust Company, N.A. (3/9/77)²

Trust Company of Georgia, Atlanta, Georgia, notification of intent to engage in de novo activities (acting as agent for the sale of decreasing term credit life/accident and health insurance) at 1945 The Exchange Cobb County, Georgia; 8 LaVista Perimeter Park, Tucker, Georgia; 5444 Bay Center Drive, Tampa, Florida; 1895 Phoenix Boulevard, College Park, Georgia; and 25 Park Place, N.E., Atlanta, Georgia, through a subsidiary, Adair Mortgage Company (3/9/77)²

United Kentucky, Inc., Louisville, Kentucky, for approval to acquire the shares of Kesseling-Netherton & Associates, Inc., Louisville, Kentucky (engaged in originating for its own account and the account of others conventional and guaranteed residential mortgage loans, commercial mortgage loans and the servicing of such loans for permanent investors)

BankAmerica Corporation, San Francisco, California, notification of intent to relocate de novo activities (making or acquiring, for their own account extensions of credit such as would be made or acquired by a finance company; FinanceAmerica Corporation will engage in making consumer installment loans, loans and other extensions of credit to small businesses, and loans secured by real or personal property; FinanceAmerica Industrial Plan, Inc. will engage in purchasing installment sales finance contracts; both corporations will act as agent or broker for the sale of credit related life and credit related accident and disability insurance and credit related property insurance in connection with extensions of credit made or acquired by Finance America Corporation or FinanceAmerica Industrial Plan, Inc.) from 1833 East 7th Avenue, Tampa, Florida to 205 East Brandon Boulevard, Brandon, Florida, through its indirect subsidiaries, FinanceAmerica Corporation, FinanceAmerica Industrial Plan, Inc. (both Florida Corporations) (3/1/77)²

BankAmerica Corporation, San Francisco, California, notification of intent to relocate de novo activities (making or acquiring, for its own account loans and other extensions of credit such as would be made or acquired by a finance company; such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts; making loans and other extensions of credit to small businesses, and making loans secured by real and personal property; acting as agent or broker for the sale of credit related life and credit related accident and disability insurance in connection with extensions of credit by Fi-

nanceAmerica Corporation of Massachusetts) from Store 31B, Westgate Shopping Center, Brockton, Massachusetts to Store No. 11, Park Plaza, 1334 Park Street, Stoughton, Massachusetts, through its indirect subsidiary, FinanceAmerica Corporation of Massachusetts (3/1/77)²

BankAmerica Corporation, San Francisco, California, notification of intent to relocate de novo activities (making or acquiring, for its own account loans and other extensions of credit such as would be made or acquired by a finance company; such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses; acting as agent or broker for the sale of credit related life and credit related accident and disability insurance and credit related property insurance in connection with extensions of credit made or acquired by FinanceAmerica Corporation) from 525 West Carpenter Road, Flint, Michigan to Suite 5, 1835 East Pierson Road, Flushing, Michigan, through its indirect subsidiary, FinanceAmerica Corporation (a Michigan Corporation) (3/1/77)²

BankAmerica Corporation, San Francisco, California, notification of intent to relocate de novo activities (making loans and extending credit, servicing for itself and others, loans and other extensions of credit and providing services incident to such loans and extensions of credit such as would be made or provided by a finance company including, but not limited to, providing funds and/or credit services in connection with the financing of stock and floor plan inventory of distributors and dealers of consumer products; making available to such dealers at their option and cost, fire, theft, and damage insurance on a monthly reporting basis covering only the outstanding indebtedness on such floor plan inventory) from 151, 87th Street to 347, Gellert Boulevard, Daly City, California, through its indirect subsidiaries, FinanceAmerica Private-Brands, Inc. and Ariens Credit Corporation (Pennsylvania Corporations) and Hupp Credit Corporation (a Delaware Corporation) (3/1/77)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 are normally made by a mortgage company and the servicing of such accounts for itself and for others including commercial and residential loans) at No. 8 East Broadway, Salt Lake City, Utah, through its subsidiary, First Security Mortgage Co. (2/28/77)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 are normally made by a mortgage company and the servicing of such accounts for itself and for others including commercial and residential loans) at 502 South Main, Rock Springs, Wyoming, through its subsidiary, First Security Mortgage Co. (2/28/77)²

To Expand a Bank Holding Company Pursuant to Section 4(c)(12) of the Bank Holding Company Act of 1956.

Heights Finance Corporation, Peoria, Illinois, notification of intent to acquire all the direct loan and sales finance receivables of Montgomery County Loan Company, Hillsboro, Illinois (3/10/77)²

REPORTS RECEIVED

Registration Statement Filed Pursuant to Section 12(g) of the Securities Exchange Act.

Union Trust Company of Wildwood, Wildwood, New Jersey (Amendment No. 3).

Current Report Filed Pursuant to Section 13 of the Securities Exchange Act.

Hempstead Bank, Hempstead, New York. Manufacturers Bank & Trust Company of St. Louis, St. Louis, Missouri.

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. 77-9417 Filed 3-29-77; 8:45 am]

AUDUBON INVESTMENT CO.

Order Approving Formation of Bank Holding Company

Audubon Investment Company, Audubon, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) of formation of a bank holding company through acquisition of 97.83 per cent (or more) of the voting shares of Audubon State Bank (formerly First State Bank), Audubon, Iowa ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, a nonoperating corporation with no subsidiaries, was organized for the purpose of becoming a bank holding company through the acquisition of Bank, Bank, with deposits of \$21.4 million¹, is the largest of three banks in the relevant market² and controls approximately 53 per cent of the total deposits in commercial banks in the market. Upon acquisition of Bank, Applicant would control the 141st largest banking organization in Iowa holding .18 per cent of the total deposits in commercial banks in the State. The proposed transaction is merely a restructuring of present ownership into corporate form. Applicant presently has no subsidiaries and does not engage in any activities. Principals of Applicant are associated with three other one-bank holding companies and two other banks in Iowa. None of the five banks involved is located in the relevant market and the amount of actual competition between any of them and Bank appears slight. It does not appear prob-

¹ All banking data are as of December 31, 1975.

² The relevant market is approximated by the northern nine-tenths of Audubon County.

² 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

able that such competition would increase in the foreseeable future. Consummation of the proposal would neither eliminate significant existing or potential competition nor increase the concentration of banking resources in any relevant market. Accordingly, competitive considerations are consistent with approval of the application.

The Board applies multi-bank holding company standards in assessing the managerial and financial resources of an applicant seeking to become a one-bank holding company where the principals of the applicant are engaged in establishing a series or chain of one-bank holding companies.² The three other one-bank holding companies and their respective subsidiary banks with which Applicant's principals are associated appear to be in satisfactory condition, which suggests that Applicant's principals would conduct the operations of the proposed holding company and of Bank in a satisfactory manner. In addition, Applicant has committed to inject new capital into Bank if such action becomes necessary to maintain a satisfactory ratio of capital to assets. Although Applicant will incur some debt in connection with this proposal, it appears that income from Bank will provide sufficient revenue to service the debt adequately without adversely affecting the financial resources or condition of either Applicant or Bank. Accordingly, considerations relating to the financial and managerial resources and future prospects of Applicant and Bank are consistent with and lend some weight in favor of approval.

Although consummation of the transaction would have no immediate effect on area banking needs, considerations relating to the convenience and needs of the community to be served are consistent with approval of the application. It is the Board's judgment that consummation of the proposed transaction would be consistent with 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 made (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 Chicago pursuant to delegated authority.

By order of the Board of Governors,³ effective March 23, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[PR Doc.77-9418 Filed 3-29-77;8:45 am]

² See the Board's Order of June 14, 1976 denying the application of Nebraska Banco, Inc., Ord, Nebraska (62 Fed. Res. Bulletin 638 (1976)).

³ Voting for this action: Chairman Burns and Governors Gardner, Coldwell, Jackson, and Partee. Absent and not voting: Governors Wallich and Lilly.

D. H. BALDWIN CO.

Order Approving Acquisition of Louisville Mortgage Service Company

D. H. Baldwin Company, Cincinnati, Ohio, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), to acquire Louisville Mortgage Service Company, Louisville, Kentucky ("Service"), a company that engages in the activities of mortgage banking, including originating and servicing, for its own account and the account of others, conventional and guaranteed residential mortgage loans. Service also acts as insurance agent for the sale of insurance that is directly related to extensions of credit by Service, including mortgage cancellation insurance and credit accident and health insurance.¹ Such activities have been determined by the Board to be closely related to banking (12 CFR 225.4 (a)(1), (3), and (9)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (41 FR 50031 (1976)). The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the public interest factors set forth in 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)).

Applicant, the fourth largest banking organization in Colorado, controls twelve subsidiary banks in that State, with aggregate deposits of \$582 million, representing approximately 7.7 percent of the total deposits in commercial banks in Colorado. Applicant also engages through subsidiaries in a variety of non-banking activities, including savings and loan, mortgage banking, personal and real property leasing, consumer finance, and insurance agency and insurance underwriting. Applicant also engages in the manufacture and sale of musical instruments pursuant to indefinite grandfather benefits under section 4(a)(2) of the Act.²

Service operates a single office in Louisville, Kentucky. As of June 30, 1975, Service, with a real estate mortgage

¹ Applicant originally proposed to continue Service's sale of property damage and casualty insurance. On January 10, 1977, the United States Court of Appeals for the Fifth Circuit ruled, in "Alabama Association of Insurance Agents v. Board of Governors," 544 F. 2d 1245 (1977), that the sale of property damage and casualty insurance in connection with extensions of credit by a non-bank subsidiary of a bank holding company is not closely related to banking and, therefore, is not a permissible activity. In a letter to the Board dated January 20, 1977, Applicant committed itself to halt the sale of property damage and casualty insurance upon consummation of the acquisition of Service.

servicing portfolio of \$176.0 million,³ ranked 170th among all mortgage companies in the United States. Service engages principally in the origination and servicing of loans on 1-4 family residential properties in the Louisville market,⁴ and in 1975 originated approximately only 3 percent (in dollar value) of the mortgage loans in that area. Service competes with at least 20 other mortgage banking companies (including six of the nation's largest), six banks, and twelve savings and loan associations. Applicant is currently engaged in mortgage banking through its wholly-owned subsidiary, C. C. Fletcher Mortgage Company, Cincinnati, Ohio ("FMC").⁵ While Service primarily originates 1-4 family residential mortgage loans, FMC's principal business is originating commercial and industrial mortgage loans. Accordingly, it appears that there is no significant existing competition between Service and FMC. In addition, though Applicant's banking and savings and loan subsidiaries engage in mortgage lending, their activities are concentrated in Colorado and the western United States. Accordingly, it appears that there is no significant competition between Service and these subsidiaries. Thus approval of the proposed acquisition should have no adverse effect on existing competition.

The facts of record indicate that Service's market share has declined in recent years. It is anticipated that Service's affiliation with Applicant will provide Service with access to Applicant's expertise, substantial financial resources, and widespread investor relationships and thereby enable Service to strengthen and revitalize itself as a viable and aggressive competitor in the mortgage banking business. On balance, the Board concludes that the benefits to the public that can reasonably be expected to result upon consummation of this proposal outweigh any possible adverse effects on the public interest that might result from the proposed acquisition.

There is no evidence in the record indicating that consummation of the proposed acquisition would result in undue concentration of resources, conflicts of interests, unsound banking practices, or other adverse effects.

² Applicant's nonbank activities are described in detail in a Board determination dated June 14, 1973, relating to Applicant's grandfather benefits (59 Federal Reserve Bulletin 536 (1973)).

³ American Banker of October 21, 1975. Service was not listed in the American Banker of October 25, 1976, as among the 300 largest mortgage companies as of June 30, 1976. Applicant indicates that Service had a servicing portfolio of \$181.5 million as of May 31, 1976, which would rank Service 176th among all mortgage banking companies as of mid-year 1976.

⁴ The Louisville mortgage banking market is approximated by the Louisville SMSA (which includes Jefferson, Oldham, and Bullitt counties in Kentucky, and Floyd and Clark counties in Indiana), plus Fayette County, Kentucky.

⁵ As of June 30, 1976, FMC had a mortgage servicing portfolio of \$35.9 million.

Service's wholly-owned subsidiary, General Realty Corporation of Kentucky, Inc., Louisville, Kentucky ("General"), is engaged primarily in holding real property for sale, which is an activity the Board has not determined to be permissible for bank holding companies. Therefore, Service must dispose of all the real estate holdings of General no later than two years from the effective date of this Order.*

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c) (8) is favorable. Accordingly, the application is hereby approved subject to the conditions that Service dispose of the real estate holdings of General no later than two years from the effective date of this Order and reduce its interest in Heart to no more than 5 percent of Heart's outstanding voting shares upon consummation of this proposal. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof. The transaction shall be made not later than three months after the effective date of this Order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Kansas City.

By order of the Board of Governors,
effective March 24, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-9420 Filed 3-29-77;8:45 am]

FIRST NATIONAL CHARTER CORP. Acquisition of Bank

First National Charter Corporation, Kansas City, Missouri, has applied for the Board's approval under section 3(a) (3) of the Bank Holding Company Act (12 U.S.C. 1842(a) (3)) to acquire 80 percent or more of the voting shares of The

*In accomplishing a divestiture of such property, Applicant has agreed to transfer irrevocably the real estate held by General to an independent trustee who shall have the duty of divesting the property within the applicable time period.

Service holds in excess of 5 per cent of the voting stock of Heart of Louisville, Inc., Louisville, Kentucky ("Heart"), which engages in real property leasing that is not in compliance with the requirements of § 225.4(a) (6) (b) of Regulation Y (12 CFR 225.4(a) (6) (b)). Applicant has stated it will reduce Service's interest in Heart to no more than 5 per cent upon consummation of the subject proposal.

*Voting for this action: Chairman Burns and Governors Gardner, Coldwell, Jackson, and Partee. Absent and not voting: Governors Wallich and Lilly.

Farmers Trust Company of Lee's Summit, Lee's Summit, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than April 21, 1977.

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

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-9419 Filed 3-29-77;8:45 am]

[Docket No. R-0091]

PRIVACY ACT OF 1974

Proposed New System of Records

Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Board of Governors of the Federal Reserve System hereby gives notice of a new system of records which it proposes to maintain. The Board filed a new system report with the Office of Management and Budget, the Speaker of the House, the President of the Senate, and the Privacy Protection Study Commission on March 24, 1977.

Public comments are invited on this notice on or before May 2, 1977, addressed to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, D.C. 20551. All material submitted should be in writing and should contain the docket number R-0091. All written documents will be made available for public inspection during the regular hours of the Office of the Secretary at the above address.

Dated: March 11, 1977.

By order of the Board of Governors.

[SEAL] THEODORE E. ALLISON,
Secretary of the Board.
BGFRS—17

System name:

FRB—Municipal Securities Principal and Municipal Securities Representative Records.

System location:

Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, D.C. 20551. Records stored in computerized files are maintained off Board premises at the National Association of Securities Dealers, 1735 L Street NW., Washington, D.C. 20036.

Categories of individuals covered by the system:

Persons who are or seek to be municipal securities principals or municipal securities representatives associated with a municipal securities dealer which is a

State member bank of the Federal Reserve System, or a subsidiary of a bank holding company which is a bank (other than a national bank or a bank operating under the Code of Law for the District of Columbia or a bank insured by the Federal Deposit Insurance Corporation which is not a member of the Federal Reserve System) or a subsidiary or a department or division of such subsidiary.

Categories of records in the system:

These records may contain identifying information as well as educational, employment, and disciplinary information, and, where applicable, information regarding termination of employment of individuals covered by the system. Identifying information includes name, addresses, date and place of birth, and may include social security account number.

Authority for maintenance of the system:

Sections 15B, 17, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c) (5), 78g, and 78w) and section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information in these records may be used:

(a) To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to the appropriate governmental authority, whether Federal, State, local, or foreign, or self-regulatory organization, as defined in section 3(a) (26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a) (26)).

(b) To refer, in the event of litigation, whether civil, criminal, or regulatory in nature, to the appropriate court, magistrate, or administrative law judge.

(c) To assist in any proceeding in which the Federal securities or banking laws are in issue or in which the Federal Reserve Board or a past or present member of its staff is a party or otherwise involved in an official capacity.

(d) To disclose to a Federal, State, local, or foreign governmental authority or a self-regulatory organization if necessary in order to obtain information relevant to a Federal Reserve Board inquiry concerning a person who is or seeks to be associated with a municipal securities dealer described in *Categories of individuals covered by the system* as a municipal securities principal or municipal securities representative.

(e) To respond to a request from a Federal, State, local, or foreign governmental authority or a self-regulatory organization for information in connection with the issuance of a license or other benefit to the extent that such information is relevant and necessary.

(f) To disclose to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained in file folders and on computer discs.

Retrievability:

Records are indexed by name.

Safeguards:

File folders are stored in lockable metal cabinets and computer discs are accessed only by authorized personnel.

Retention and disposal:

Records may be maintained indefinitely.

System manager and address:

Director, Division of Banking Supervision and Regulation, Federal Reserve Board, 20th and Constitution NW., Washington, D.C. 20551.

Notification procedure:

Inquiries, including name and date and place of birth, should be addressed to the System Manager, address above. Inquirers may be required to include a notarized statement attesting to identity.

Record address procedures:

Same as *Notification* above.

Contesting records procedures:

Same as *Notification* above.

Record source categories:

Individuals on whom the records are maintained as well as municipal securities dealers described in *Categories of individuals covered by the system* and Federal, State, local, and foreign governmental authorities, and self-regulatory organizations, which regulate the securities industry.

System exempted from certain provisions of the Act:

None.

[FR Doc. 77-9358 Filed 3-29-77; 8:48 am]

REPUBLIC OF TEXAS CORP.

Order Approving Acquisition of Bank

Republic of Texas Corporation, Dallas, Texas, 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 Dallas National Bank in Dallas, Dallas, Texas ("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 the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the fourth largest banking organization in Texas, controls eight banks with aggregate deposits of approximately \$3.1 billion, which represents 6.5 per cent of total commercial bank deposits in Texas.¹ Acquisition of Bank (\$32.0 million in deposits) would increase Applicant's share of Statewide commercial bank deposits by less than 0.1 per cent and would have no appreciable effect upon the concentration of banking resources in Texas.

By Order dated October 25, 1973, the Board approved the application of Applicant to become a bank holding company through the direct acquisition of Republic National Bank of Dallas, Dallas, Texas ("Republic Bank"), and the indirect acquisition of 29.9 per cent of the voting shares of Oak Cliff Bank & Trust Company, Dallas, Texas ("Oak Cliff Bank"). At that time, Republic Bank owned indirectly between 5 and 24.9 per cent interest in twenty-one non-subsubsidiary banks, eighteen of which were in the Dallas banking market.² Applicant represented to the Board that it would file separate applications for prior approval by the Board for acquisition of additional shares in each of certain of those banks, and would divest completely its interest in others. The Board in its Order stated that each such application filed by Applicant would be considered on its own merit in light of the statutory standards set forth in section 3 of the Act. Since that time Applicant has divested its interests in seven of the Dallas-area banks. This is Applicant's second application to acquire additional shares in one of the Dallas-area banks.³

Bank is the 37th largest of 132 banks in the Dallas banking market and controls 0.4 percent of the total deposits of commercial banks in the market. Applicant presently has two subsidiary banks in the Dallas banking market.⁴ Republic Bank is the largest bank in that market with 25.5 percent of the total deposits in commercial banks in the market, and Oak Cliff Bank & Trust Company is the eighth largest bank in the market with 1.2 percent of market deposits. The eleven non-subsubsidiary banks in the Dallas market (including Bank and Garland Bank) in which Applicant presently holds minority interests have aggregate deposits of \$505.0 million, representing 5.4 percent of market deposits.

¹ All banking data are as of December 31, 1976, and reflect bank holding company formations and acquisitions approved through February 28, 1977.

² The relevant banking market is approximated by the Dallas RMA.

³ By separate action of this date, the Board approved Applicant's acquisition of First National Bank in Garland, Garland, Texas ("Garland Bank").

⁴ Upon acquiring Garland Bank, Applicant will control a third subsidiary bank in the Dallas market and will thereby control an additional 0.7 percent of market deposits.

While consummation of the proposal would appear to eliminate some existing competition since Applicant and Bank operate in the same market, the Board notes that Applicant, or its predecessor in interest, Republic Bank, has controlled 20 percent or more of the shares of Bank since 1947, that officers and directors of Republic Bank were instrumental in the formation of Bank, and that the duration and nature of this relationship is such that little, if any, meaningful competition presently exists between Bank and Applicant's subsidiary banks in the Dallas market. Absent the history of the long established relationship between Applicant and Bank, the effects on existing competition would be regarded as more serious; however, in light of that relationship, the effects are considered as only slight. Moreover, while Applicant is the largest organization in the banking market, in view of all the facts of record, the Board does not regard the slight increase in concentration of market deposits as significant. Accordingly, the Board concludes that the proposed acquisition of Bank by Applicant would not have significant adverse effects on competition.

The financial and managerial resources and future prospects of Applicant, its subsidiaries, and Bank are regarded as satisfactory and consistent with approval of the application. Following consummation of the transaction, Applicant intends to improve and expand the services presently offered to customers of Bank. Applicant also has indicated that it would support and encourage Bank's efforts to aid the community it serves, by having Bank continue to engage in community development activities, which include programs for loans to minority businesses and home-improvement loans to low-income families. These considerations relating to convenience and needs of the community to be served lend weight toward approval of the application and, in the Board's view, outweigh any slightly adverse competitive effects that might result from consummation of the proposal. Accordingly, it is the Board's judgment that the proposed acquisition 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 made (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 Dallas pursuant to delegated authority.

By order of the Board of Governors,⁵ effective March 23, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 77-9421 Filed 3-29-77; 8:45 am]

⁵ Voting for this action: Chairman Burns and Governors Gardner, Wallich, Coldwell, Jackson, Partee, and Lilly.

REPUBLIC OF TEXAS CORP.

Order Approving Acquisition of Bank

Republic of Texas Corporation, Dallas, Texas, 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 First National Bank in Garland, Garland, Texas ("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 the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the fourth largest banking organization in the State of Texas, controls eight bank subsidiaries with aggregate deposits of \$3.1 billion, representing 6.5 per cent of commercial bank deposits in the State.¹ Acquisition of Bank would increase Applicant's share of commercial bank deposits in Texas by 0.14 per cent but would not alter Applicant's State-wide ranking.

By Order dated October 25, 1973, the Board approved the application of Applicant to become a bank holding company through the direct acquisition of Republic National Bank of Dallas ("Republic Bank"), and the indirect acquisition of 29.9 percent of the voting shares of Oak Cliff Bank and Trust Company, Dallas, Texas ("Oak Cliff Bank"). At that time Republic Bank owned indirectly between 5 and 24.99 percent interest in twenty-one non-subsidiary banks, eighteen of which were in the Dallas banking market.² Applicant represented to the Board that it would file separate applications for prior approval by the Board for acquisition of additional shares in each of certain of those banks, and would divest completely its interests in others. The Board in its Order stated that each such application filed by Applicant would be considered on its own merits in light of the statutory standards set forth in § 3 of the Act. Since that time Applicant has divested its interests in seven of the Dallas-area banks. This is Applicant's first application to acquire additional shares in one of the Dallas-area banks.³

Bank is the 16th largest of 132 banks in the Dallas banking market and holds deposits of \$66.4 million, representing 0.7 percent of the total deposits of commercial banks in the market. Applicant presently has two subsidiary banks in the Dallas banking market. Republic Bank is the largest bank in that market with 25.5 percent of the total deposits in commercial banks in the market, and Oak Cliff Bank is the eighth largest bank in the market with 1.2 percent of market deposits. The eleven non-subsidiary banks in the Dallas market (including Bank) in which Applicant presently holds minority interests have aggregate deposits of \$505.0 million, representing 5.4 percent of market deposits.

While consummation of the proposal would appear to eliminate some existing competition inasmuch as Applicant and Bank operate in the same market, the Board notes that Applicant, or its predecessor in interest, Republic Bank, has held 20 percent or more of the shares of Bank for 30 years, and that the duration and nature of this relationship are such that little, if any, meaningful competition presently exists between Bank and Applicant's subsidiary banks in the Dallas market. But for the history of the long established relationship between Applicant and Bank, the effects on existing competition would be viewed as more serious, but viewed in light of that relationship the effects are only slight. Moreover, while Applicant is the largest organization in the banking market, in view of the facts presented in the record of this application, the Board does not regard the slight increase in concentration of market deposits as significant. Accordingly, the Board concludes that the proposed acquisition of Bank by Applicant would not have significant adverse effects on competition.

The financial and managerial resources of Applicant, its subsidiaries, and Bank are regarded as satisfactory and consistent with approval of the application. Considerations relating to banking factors are also consistent with approval of the application. Following consummation of the transaction, Applicant intends to improve and expand services presently offered to customers of Bank. These considerations relating to convenience and needs of the community to be served do not appear to be substantial but they do lend some weight toward approval of the application, and in the Board's view, outweigh any slightly adverse effects on competition that might result from consummation of this proposal. Accordingly, it is the Board's judgment that the proposed acquisition 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 made (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 Fed-

eral Reserve Bank of Dallas pursuant to delegated authority.

33933 Bob Geisendaffer 3-28-77 4-5-1 Oper. 31-10 90-30 fol. 1336 mach. 55

By order of the Board of Governors,⁴ effective March 23, 1977.

GRIFFITH L. GARWOOD,

Deputy Secretary of the Board.

⁴ Voting for this action: Chairman Burns and Governors Gardner, Wallich, Coldwell, Jackson, Partee, and Lilly.

[FR Doc. 77-9423 Filed 3-29-77; 8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt and Approval of a Proposed Report

A request for clearance of a proposed report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on March 16, 1977. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice is to inform the public of such receipt and the action taken by GAO.

FEDERAL ENERGY ADMINISTRATION

The Federal Energy Administration (FEA) requested emergency clearance of the proposed Form FEA-P132-M-O: Heating Oil Importers Monthly Report.

On Friday, February 11, 1977, the FEA adopted Special Rule No. 8 to Subpart C of 10 CFR Part 211 which provides for the extension of entitlement benefits to imports of No. 1, including kerosene, and No. 2 heating oils during the months of February and March 1977. This action was prompted by the extremely high level of demand for heating oil in the North Central and Northeast regions of the United States caused by the continued unusually severe weather.

The voluntary monthly Form FEA-P132-M-O has been designed to be filed by any importer of heating oil which imported eligible products for sale into PAD Districts I through IV during February and March 1977 and wishes to be issued entitlements for said product. The data collected on the form FEA-P132-M-O will be used solely for the purpose of issuing No. 1 and No. 2 heating oil entitlements.

Due to the urgent need for the data collected on this form, emergency clearance was requested so that the reporting firms would have adequate time to complete them correctly and file on a timely basis. Therefore, if emergency clearance processing was denied, and the normal 45-day process was implemented, a needless delay would result in the issuing of entitlements for No. 1 and No. 2 heating oils for the months of February and March 1977. The form FEA-P132-M-O will be mailed out to 75 companies which have licenses to import finished products on file with the FEA. Those eligible companies wishing to file the form will be required to do so by April 5, 1977, for February imports and by May 5, 1977, for March imports. The FEA estimates a monthly burden of four hours per report.

GAO granted clearance on March 23, 1977, under number B-181254 (RO442).

¹ All banking data are as of December 31, 1975 unless otherwise stated.

² The relevant banking market is approximated by the Dallas RMA.

³ By separate action of this date, the Board approved Applicant's acquisition of Dallas National Bank (formerly Fair Park National Bank), Dallas, Texas.

This clearance will expire on June 30, 1977.

NORMAN F. HEYL,
Regulatory Reports
Review Officer.

[FR Doc.77-9450 Filed 3-29-77; 8:45 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs.
Temporary Reg. P-418]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent, in conjunction with the Administrator of General Services, the consumer interests of the executive agencies of the Federal Government in an investigation into utility refunding practices before the California Public Utilities Commission.

2. *Effective date:* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 83 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d)(40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the California Public Utilities Commission (Case No. 10255) involving an investigation, initiated on the Commission's own motion, of the methods of awarding refunds when ordered by the Commission, and how refunds may be most equitably made. The authority delegated to the Secretary of Defense shall be exercised concurrently with the Administrator of General Services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

ROBERT T. GRIFFIN,
Acting Administrator of
General Services.

MARCH 18, 1977.

[FR Doc.77-9451 Filed 3-29-77; 8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health
Administration

ADVISORY COMMITTEES

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory body scheduled to assemble during the month of April 1977:

Interagency Committee on Federal Activities
for Alcohol Abuse and Alcoholism

April 19; 9:30 a.m.

Conference Room F, Parklawn Building, 5600
Fishers Lane, Rockville, Maryland 20857

Open meeting

Contact Mr. James Vaughan, Parklawn Bldg.,
Room 16C-10, 5600 Fishers Lane, Rockville,
Maryland 20857, 301-443-4375

Purpose. The Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism (1) evaluates the adequacy and technical soundness of all Federal programs and activities which relate to alcohol abuse and alcoholism and provides for the communication and exchange of information necessary to maintain the coordination and effectiveness of such programs and activities, and (2) seeks to coordinate efforts undertaken to deal with alcohol abuse and alcoholism in carrying out Federal health, welfare, rehabilitation, highway safety, law enforcement, and economic opportunity laws.

Agenda. This meeting will be open to the public. The meeting will consist of presentations by working groups of their current and proposed activities. The Department of Transportation will also make a presentation on its programs relating to alcohol abuse and traffic safety.

Substantive program information may be obtained from the contact person listed above. Attendance by the public will be limited to space available.

The NIAAA Information Officer who will furnish summaries of the meeting and a roster of committee members is Mr. Harry C. Bell, Associate Director for Public Affairs, National Institute on Alcohol Abuse and Alcoholism, Room 6C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-3308.

Minority Advisory Committee, ADAMHA

April 20-22; 1:00 p.m.

April 20—Conference Room 17-09B, April 21-
22—Conference Room 14-105, Parklawn
Building, 5600 Fishers Lane, Rockville,
Maryland 20857

Open meeting

Contact Mr. Ernest Hurst, Room 13C-15,
Parklawn Building, 5600 Fishers Lane,
Rockville, Maryland 20857, 301-443-3838

Purpose. The Minority Advisory Committee, ADAMHA, advises the Secretary, Department of Health, Education, and Welfare, and the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, on needs, programs, and activities regarding minority alcohol, drug abuse, and mental health matters, and makes recommendations for possible solutions which meet the needs and concerns of minority groups throughout the United States. The Committee functions in an advisory capacity to the Administrator, ADAMHA, on these matters which relate to the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health.

Agenda. This meeting will be open to the public. Agenda items will include reports by each of the committee members on special projects, agency visits, and liaison assignments, discussion of

accreditation/certification issues, discussion with the Deputy Administrator, ADAMHA, and a planning session.

Substantive program information may be obtained from the contact person listed above. Attendance by the public will be limited to space available.

Mr. James C. Helsing, Deputy Director, Office of Public Affairs, ADAMHA, will furnish, on request, summaries of the meeting and a roster of the committee members. Mr. Helsing is located in Room 16-95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-3783.

Dated: March 25, 1977.

CAROLYN T. EVANS,
Committee Management Officer,
Alcohol, Drug Abuse, and
Mental Health Administration.

[FR Doc.77-9412 Filed 3-29-77; 8:45 am]

Health Resources Administration NATIONAL ADVISORY COUNCIL ON HEALTH PROFESSIONS EDUCATION Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1977:

Name: National Advisory Council on Health
Professions Education

Date and Time: May 2-6, 1977, 8:30 a.m.

Place: Conference Room No. 10, Building 31,
National Institutes of Health, 6th Floor,
C-Wing, 9000 Rockville Pike, Bethesda,
Maryland 20014

Open May 2, 8:30 a.m.—12:30 p.m.

Closed for remainder of meeting.

Purpose. The Council advises the Secretary with respect to the administration of programs of financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance.

Agenda. The open session of the meeting will be devoted to a business meeting covering: (1) A review of legislative implementation plan; (2) review of regulations implementation plan; (3) progress reports; (4) review of draft guidelines and program guidelines; and (5) announcements. Also during the open session, from 10:30 a.m.—12:30 p.m., will be structured study for Council members. The remainder of the meeting will be closed to the public for the review of grant applications for Federal assistance submitted under the Dental TEAM, Continuing Dental Education, SCHOG, HMEIA, Conversion, Start-Up Assistance, Financial Distress, and Preceptorships programs. The closing is in accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and the Determination by the Deputy Administrator, Health Resources Administration, pursuant to Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Mrs. Lynn Stevens, Bureau of Health Man-

power, Room 4C-02, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20014, Telephone (301) 496-6601.

Agenda items are subject to change as priorities dictate.

Dated: March 23, 1977.

JAMES A. WALSH,
Associate Administrator for
Operations and Management.

[FR Doc. 77-9413 Filed 3-29-77; 8:45 am]

TASK FORCE ON COST-SHARING (COOPERATIVE HEALTH STATISTICS ADVISORY COMMITTEE)

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to assemble during the month of May 1977:

Name: Task Force on Cost-Sharing (Cooperative Health Statistics Advisory Committee)
Date and Time: May 9-11, 1977, 9:00 a.m.
Place: Conference Room K, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857
Open the entire meeting.

Purpose. The Cooperative Health Statistics Committee felt that one of the key issues that should be explored and developed by a Task Force was the matter of cost-sharing as it relates to the Cooperative System. As the funding of the Cooperative Health Statistics System continues and increases, it is essential that valid evaluation criteria and cost-sharing mechanisms be developed in support of this funding to insure that each participating level of government contributes its fair share to the System and that each of the seven components is funded adequately and on the basis of equitable formulae.

Agenda. Review Cost-sharing guidelines of the vital statistics components; study and develop cost-sharing guidelines for the manpower and facilities component; discuss development of "core staff" for State Centers.

The meeting is open to the public for observation and participation. Anyone wishing to participate, obtain a roster of members, or other relevant information should contact Mr. James A. Smith, National Center for Health Statistics, Room 8-21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1470.

Agenda items are subject to change as priorities dictate.

Dated: March 24, 1977.

JAMES A. WALSH,
Associate Administrator for
Operations and Management.

[FR Doc. 77-9411 Filed 3-29-77; 8:45 am]

National Institutes of Health

COMMISSION FOR THE CONTROL OF HUNTINGTON'S DISEASE AND ITS CONSEQUENCES

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Com-

mission for the Control of Huntington's Disease and Its Consequences, National Institute of Neurological and Communicative Disorders and Stroke, National Institutes of Health, on April 23-24, 1977, in the Crystal Ballroom F, Atlanta Hilton Hotel, Atlanta, Ga. 30303.

The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m. subject to space available. The purpose of the meeting is to consider findings and recommendations as reported by Work Groups, hearings and special studies as part of its development of a comprehensive plan of research, treatment, care and social management of Huntington's disease. This meeting is also being held in conjunction with the meeting of the American Academy of Neurology.

Dr. Nancy S. Wexler, Executive Director, Commission for the Control of Huntington's Disease and Its Consequences, NIH, Building 31, Room 8A11, Bethesda, MD 20014 (301) 496-9275, will provide substantive program information.

Mrs. Ruth Dudley, Chief, Office of Scientific and Health Reports, NINCDS Building 31, Room 8A02, Bethesda, MD 20014, (301) 496-5751, will provide summaries of the meeting and rosters of Commission members.

(Catalog of Federal Domestic Assistance Program No. 13.852, National Institutes of Health)

Dated: March 22, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 77-9426 Filed 3-29-77; 8:45 am]

DEVELOPMENTAL BIOLOGY AND NUTRITION BRANCH, CENTER FOR RESEARCH FOR MOTHERS AND CHILDREN

Meeting

Notice is hereby given of a workshop on early detection of potential diabetics sponsored by the Developmental Biology and Nutrition Branch, Center for Research for Mothers and Children, National Institute of Child Health and Human Development, June 21-22, 1977, at the National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland.

This meeting will be open to the public for all sessions to discuss certain issues of obesity, insulin resistance and the development of diabetes mellitus. The scheduled sessions are: June 21, from 9:00 a.m. to 5:00 p.m.; June 22, from 9:00 a.m. to 5:00 p.m. Attendance by the public will be limited to the space available.

For additional information please contact: Mrs. Marian Young, Developmental Biology and Nutrition Branch, Center for Research for Mothers and Children, National Institute of Child Health and Human Development, 7910 Woodmont Avenue, Bethesda, Maryland 20014, 301-496-5575.

(Catalog of Federal Domestic Assistance Program No. 13.895, National Institutes of Health.)

Dated: March 22, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 77-9428 Filed 3-29-77; 8:45 am]

NATIONAL HEART, LUNG, AND BLOOD ADVISORY COUNCIL AND ITS MANPOWER SUBCOMMITTEE AND RESEARCH SUBCOMMITTEE

Meeting

Pursuant to Pub. L. 92-463 notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung and Blood Institute, May 12-14, 1977, National Institutes of Health, Building 31, Conference Room 10, at 9:00 a.m.

This meeting will be open to the public Council, National Heart, Lung, and Blood on May 12 from 9:00 a.m. to approximately 3:00 p.m., to discuss program policies and issues. Attendance by the public is limited to space available. In addition, meetings of the Manpower Subcommittee and the Research Subcommittee of the above Council will be held on May 11, 1977 at 8:00 p.m. in Building 31, Conference Rooms 9 and 10 respectively.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on May 12 from 3:00 p.m. until recess, and on May 13 from 9:00 a.m. to adjournment on May 14 for the review, discussion and evaluation of individual grant applications. The Manpower Subcommittee and the Research Subcommittee of the above Council will be closed from 8:00 p.m. to adjournment on May 11, also for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 5A03, National Institutes of Health, Bethesda, Maryland 20014, 301-496-4236, will provide summaries of the meetings and rosters of the Council members.

Dr. Jerome G. Green, Director of Extramural Affairs, NHLBI, Westwood Building, Room 7A17, 301-496-7416, will provide substantive program information.

Dated: March 22, 1977.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, 13.838, and 13.839, National Institutes of Health.)

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 77-9427 Filed 3-29-77; 8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration
(FDAA-3023-EM; Docket No. NFD-450)

CALIFORNIA

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of California, dated January 20, 1977, and amended on February 2, 1977, and February 15, 1977, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 20, 1977:

The Counties of:

Kern	Modoc
Kings	Monterey
Lake	Santa Cruz

The purpose of this designation is to provide emergency livestock feed assistance and cattle transportation assistance only in the aforementioned affected areas effective the date of this amended Notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: March 10, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster
Assistance Administration.

[FR Doc. 77-9454 Filed 3-29-77; 8:45 am]

[Docket No. NFD-452; (FDAA-3025-EM)]

COLORADO

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of Colorado, dated January 29, 1977, and amended on February 15, 1977, is hereby further amended to include the following county among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 29, 1977:

The County of:

Lincoln

The purpose of this designation is to provide emergency livestock feed and cattle transportation assistance only in the aforementioned affected area effective the date of this Notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: March 10, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster
Assistance Administration.

[FR Doc. 77-9455 Filed 3-29-77; 8:45 am]

[Docket No. NFD-449; (FDAA-3017-EM)]

MISSOURI

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of Missouri dated September 24, 1976, and

amended on November 9, 1976, January 12, 1977, January 19, 1977, February 10, 1977, February 24, 1977, and March 11, 1977, is hereby further amended to include the following county among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 24, 1976:

The County of:

Henry

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected area effective the date of this amended Notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: March 15, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster
Assistance Administration.

[FR Doc. 77-9456 Filed 3-29-77; 8:45 am]

[Docket No. NFD-453; (FDAA-3017-EM)]

MISSOURI

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of Missouri dated September 24, 1976, and amended on November 9, 1976, January 12, 1977, January 19, 1977, February 10, 1977, and February 24, 1977, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 24, 1976:

The Counties of:

Carier	St. Francois
Cooper	Stone
Greene	Vernon
Howard	

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this amended Notice.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: March 11, 1977.

WILLIAM E. CROCKETT,
Deputy Administrator, Federal
Disaster Assistance Administration.

[FR Doc. 77-9457 Filed 3-29-77; 8:45 am]

[Docket No. NFD-451; PDAA-3034-EM]

NEW MEXICO

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of New Mexico, dated March 2, 1977, is hereby amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 2, 1977:

The Counties of:

Rio Arriba	Sandoval
Roosevelt	

The purpose of this designation is to provide emergency livestock feed assistance only in the aforementioned affected areas effective the date of this amended Notice.

Dated: March 10, 1977.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

THOMAS P. DUNNE,
Administrator, Federal Disaster
Assistance Administration.

[FR Doc. 77-9458 Filed 3-29-77; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[SAC 079877]

CALIFORNIA

Partial Cancellation of Partial Termination of Proposed Withdrawal and Reservation of Lands

MARCH 23, 1977.

The Notice of Partial Termination of U.S. Bureau of Reclamation proposed withdrawal and reservation of lands published in the Federal Register February 2, 1977, FR Doc. 77-5920, page 11286 is cancelled insofar as it affects the following described lands:

MOUNT DIABLO MERIDIAN

T. 15 N., R. 11 E.,
Sec. 17, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 20, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.

JOAN B. RUSSELL,
Chief, Lands Section, Branch of
Lands and Minerals Operations.

[FR Doc. 77-9486 Filed 3-29-77; 8:45 am]

CALIFORNIA

ORV Designation for Eureka Dunes Area

Notice is hereby given that certain national resource lands (public lands and roads), known as the Eureka Valley Sand Dunes Special Design area, are designated closed to off-road vehicles under the authority of CFR 6010.3, 6010.4, and E.O. 11644. Vehicular travel is prohibited in this area except upon a vehicle corridor from the point where the South Eureka Road enters the northwest corner of the designated area to the point where the previously designated vehicle corridor in the North Saline Valley Closed Area adjoins the southeast corner of the designated area. The corridor upon which vehicles may travel consists of an existing road upon which signs have been placed identifying the corridor as available for off-road vehicle use. The area designated as close to off-road vehicles is the same area referred to as Area # 1 on the California Desert Vehicle Program (BLM's Interim Critical Management Program for Vehicle Use on the California Desert), dated November 1, 1974, which is available at the Bureau of Land Management's office in Bakersfield or by mail from the Bureau of Land Manage-

ment, 2800 Cottage Way, Sacramento, California 95825.

The designation, which was made after considerable study and public input, is needed to minimize damage to the resources of national resource lands and to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of these public lands until regulations governing off-road vehicle use on public lands are adopted. The designation will be effective May 1, 1977, and will remain in effect until further notice.

ED HASTEY,
State Director.

[FR Doc.77-9487 Filed 3-29-77;8:45 am]

[Serial No. I-05080]

IDAHO

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

MARCH 23, 1977.

The U.S. Fish and Wildlife Service, Department of the Interior, filed application Serial No. I-05080 on August 15, 1952 for a withdrawal of 850.47 acres of public lands. In May of 1960 and June of 1967, termination notices were published in the FEDERAL REGISTER reducing the lands remaining in the original application to the acreage described below:

BOISE MERIDIAN

C. J. STRIKE WILDLIFE MANAGEMENT AREA

T. 6 S., R. 5 E.
Sec. 17, NW 1/4 NE 1/4.

The area described aggregates 40 acres in Owyhee County, Idaho.

The applicant desires that the land be reserved for the development and maintenance of upland game and waterfowl nesting habitat and to assure public access to the backwaters of the C. J. Strike Reservoir for hunting and fishing purposes.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on December 22, 1955, page 9868, Document No. 55-10237.

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 May 2, 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 May 2, 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 effected, 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 pend-

ing withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

VINCEN S. STROBEL,
Chief, Bureau of Lands and
Minerals Operations.

[FR Doc.77-9489 Filed 3-29-77;8:45 am]

Fish and Wildlife Service ENDANGERED SPECIES PERMIT Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: George A. Allen, Jr., 1155 E. 4780 South, Salt Lake City, Utah 84117.

DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE		1. APPLICATION FOR (a) <input type="checkbox"/> IMPORT OR EXPORT LICENSE (b) <input checked="" type="checkbox"/> PERMIT	
 FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION		2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED To purchase from Harry Hardy, 4566 Portland St., B.C., Canada two pairs White Eared Pheasants (Crossoptilon c. crossoptilon) for display, propagation and to help preserve this species at The Game Bird Preservation Center, George A. Allen, Jr., Director, 1155 E. 4780 South, Salt Lake City, Utah.	
		3. APPLICANT (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested) George A. Allen, Jr., 1155 E. 4780 South Salt Lake City, Utah 84117. Phone (801) 262-4852. Birds will be my personal property and kept and bred at the above address.	
4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:		5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING: EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION	
<input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> ME HEIGHT 6 feet WEIGHT 300 DATE OF BIRTH Aug. 26, 1929 COLOR HAIR brownish-grey COLOR EYES greenish PHONE NUMBER WHERE EMPLOYED (801) 262-4852 SOCIAL SECURITY NUMBER blue 528-32-2966 OCCUPATION ANY BUSINESS, AGENCY, OR INSTITUTION AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT not applicable		NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC. n/a IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED n/a	
6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED The Game Bird Preservation Center, 1155 East 4780 South, Salt Lake City, Utah 84117		7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If yes, list license or permit number) PRT-2-185-DN Waterfowl Sale and Disposal Permit (federal)	
8. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF n/a		8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? <input type="checkbox"/> YES <input type="checkbox"/> NO (If yes, list jurisdiction and type of document)	
9. DESIRED EFFECTIVE DATE Feb. 1, 1978		11. DURATION NEEDED Oct. 1, 1977	
12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED IS IN CFR 27.12 AND MUST BE ATTACHED; IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED. Additional information is attached as called for by CFR part 17.22			
CERTIFICATION			
I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 17 OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.			
SIGNATURE (in ink) <i>George A. Allen, Jr.</i>		DATE Jan. 9, 1977	
3-20 16/74		GPO 875-042 881-1718-74	

George A. Allen, Jr.
1155 E. 4780 South
Salt Lake City, Utah 84117

Feb. 25, 1977

Mr. Larry La Rochelle
Federal Wildlife Permit Office
Fish and Wildlife Service
Washington, D. C. 20240

Dear Mr. La Rochelle,

Thank you for your phone call yesterday advising me that I had not provided all the necessary information required on my application for an endangered species permit to import two pair of White-bellied Pheasants from another breeder in Burnaby, B. C., Canada.

These pheasants are for permanent display and propagation at our Game Bird Preservation Center, 1155 E. 4780 South, Salt Lake City, Utah 84117. The purpose for obtaining these is for aesthetic appreciation of the species at the Center as well as to help save and preserve the species by captive propagation program as well as to help save and preserve the species by captive propagation program here. Offspring raised will be given, traded or sold to other qualified breeders who have the appropriate permit from the government so they can likewise propagate the species and aid in its establishment and preservation in captivity.

As for the other question I apparently failed to answer, I would like to state that we have had practically no mortality in our pheasants during the past five years other than old age. We follow a preventive program which includes secure aviaries from predators, dogs and cats, and disturbance from other things. Strict sanitation of water, food and pens. If a pheasant dies, it is posted to determine cause, however we have found no sickness in any birds posted during the past 5 years. We have a good knowledge of drugs and other treatment for game birds as well as have a veterinarian on call, and if a bird looks sick, appropriate medications or other steps are taken. As already stated, we have had during the past five years only what we consider normal mortality so no records of disease and treatment exists. This is undoubtedly due to our preventive program which includes the administering of appropriate medication if and when a bird appears to be sick.

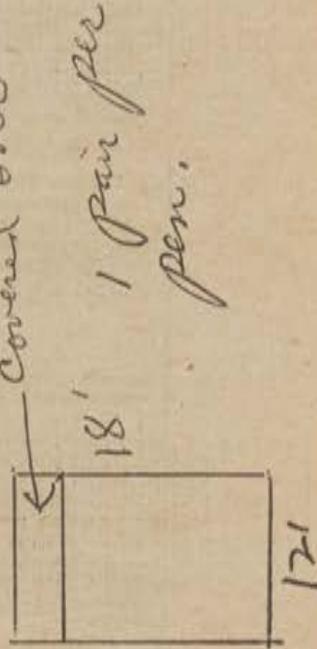
Hoping the above adequately covers and answers the questions, I remain

Yours truly,

George A. Allen, Jr.
George A. Allen, Jr.

Attachment to permit application (382000) with information required under 17.22 Permits for scientific purposes or for the enhancement of propagation or survival.

1. I would like to purchase two pairs of White Eared Pheasants (*Crossoptilon c. crossoptilon*) from Harry J. Hardy, 4566 Portland Street, B. C., Canada V5J 2N9 for the purpose of display propagation at The Game Bird Preservation Center, 1155 E. 4780 South, Salt Lake City, Utah 84117, and to help preserve the species in captivity. Two pair (2 males, 2 females), hatched May, 1976. Offspring raised will be offered to other collectors to further help propagate and preserve the species by increasing the captive population.
2. These birds were raised in captivity.
3. Qualifications: I have had 35 years experience raising almost all the species of pheasants that have been available including six of those on the endangered species list and was the first person in the world to captive propagate the Hime's Bar-tailed Pheasant in captivity in America. My expertise and facilities for raising pheasants is among the best in the world. I am the author of countless articles and several books on pheasant propagation which are used as a guide by pheasant propagators throughout the world.
4. I am willing to participate in a cooperative breeding program, and to maintain or contribute data to a studbook if required by the government.
5. These pheasants will be shipped directly via commercial airlines from Vancouver, B. C., to Salt Lake City, Utah, and will be shipped in standard pheasant shipping boxes of adequate space, ventilation, feed, water, and correctly marked and addressed.
6. Pens in which these birds will be kept and bred are 18 feet by 12 feet by 7 feet high with a back shelter and well planted with trees and shrubs for cover. Baseboards of pens are 2 by 12's, framing 2 by 4's, chicken wire, and covered over solid backs and tops. These pens provide good protection and a natural environment for the birds. Pens are located within the Center whose perimeter is enclosed with a 7 foot chain link fence with the main entrance to the park always kept shut and/or locked so that security for all the stock within the Center is at a maximum. No dogs or other predators can penetrate or get within the Center to disturb the stock kept here. Our facilities are among the best in the world for keeping and breeding pheasants, waterfowl and other game birds.



Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-593-07; please refer to this number when submitting comments. All relevant comments received on or before April 29, 1977.

Dated: March 25, 1977.

LARRY LaROCHELLE,
Acting Chief, Permit Branch,
Federal Wildlife Permit Office,
U.S. Fish and Wildlife Service.

[PR Doc.77-9464 Filed 3-29-77;8:45 am]

ENDANGERED SPECIES PERMIT
Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Chihuahuan Desert Research Institute, Box 1334, Alpine, Texas 79830. Peter W. Larson.

DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION		DWR NO. 47-R-1575																									
		1. APPLICATION FOR (Indicate only one) <input type="checkbox"/> IMPORT OR EXPORT LICENSE <input checked="" type="checkbox"/> PERMIT																									
3. APPLICANT (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested) Peter W. Larson Chihuahuan Desert Research Institute Box 1334 Alpine, Texas 79830 (915) 837-2475		2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED. See attachment																									
4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING: <table border="1"> <tr> <td><input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.</td> <td>HEIGHT</td> <td>WEIGHT</td> </tr> <tr> <td></td> <td>6'0"</td> <td>155 lb.</td> </tr> <tr> <td>DATE OF BIRTH</td> <td>COLOR HAIR</td> <td>COLOR EYES</td> </tr> <tr> <td>8 Sept. 1948</td> <td>brown</td> <td>brown</td> </tr> <tr> <td>PHONE NUMBER WHERE EMPLOYED</td> <td colspan="2">SOCIAL SECURITY NUMBER</td> </tr> <tr> <td>(915) 837-2475</td> <td colspan="2">150-38-2516</td> </tr> <tr> <td colspan="3">OCCUPATION</td> </tr> <tr> <td colspan="3">Research Associate, C.D.R.I.</td> </tr> </table>		<input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.	HEIGHT	WEIGHT		6'0"	155 lb.	DATE OF BIRTH	COLOR HAIR	COLOR EYES	8 Sept. 1948	brown	brown	PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER		(915) 837-2475	150-38-2516		OCCUPATION			Research Associate, C.D.R.I.			5. IF "APPLICANT" IS A BUSINESS CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING: EXPLAIN TYPE OF KIND OF BUSINESS, AGENCY, OR INSTITUTION A non-profit research institute dedicated to conservation, education and scientific research.	
<input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS.	HEIGHT	WEIGHT																									
	6'0"	155 lb.																									
DATE OF BIRTH	COLOR HAIR	COLOR EYES																									
8 Sept. 1948	brown	brown																									
PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER																										
(915) 837-2475	150-38-2516																										
OCCUPATION																											
Research Associate, C.D.R.I.																											
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT Chihuahuan Desert Research Institute Box 1334 Alpine, Texas 79830		NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC. W. Grainger Hunt, PhD, Research Director (915) 837-2475																									
6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED Scientific collecting in Coahuila and Nuevo Leon, Mexico. Import from Mexico through Laredo, Texas to C.D.R.I., Alpine, Texas for measurement and storage. Then ship to Patuxent Wildlife Research Center, Laurel, Maryland for analysis.		7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If yes, list license or permit number)																									
8. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF \$ N/A		10. DESIRED EFFECTIVE DATE 1 April, 1977																									
11. DURATION NEEDED 2 years		9. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If yes, list jurisdiction and type of document) Mexico: Permiso de colector científico No. 14 - 77/925																									
12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 17.12) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED. see attachment answering 8 questions from 50CFR 17.22																											
CERTIFICATION																											
I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 17, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER 5 OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.																											
SIGNATURE (In ink) Peter W. Larson		DATE 31 Jan 1977																									

3-770
12-74

GPO 892-642

16-11775-34

In addition I wish to import for measurement and pesticide residue analysis the following parts of endangered species:

- 5) 5 addled eggs of Peregrine Falcons (*Falco peregrinus anatum*).
- 6) Eggshell fragments of Peregrine Falcons (*F. p. anatum*).

Attachment, in response to block 12, answering 8 questions from 50CFR 17.22 pertinent to endangered species.

1) To be imported from Mexico to the United States: 5 addled eggs, in formalin, of Peregrine Falcons (*Falco peregrinus anatum*). Eggshell fragments from nests of Peregrine Falcons.

2) Addled eggs and eggshell fragments will be removed from nests after the viable eggs have hatched and it is clear that the remaining eggs are addled.

3) Addled eggs are non-viable and are to be collected, along with eggshell fragments, in the manner least disturbing to the falcons.

4) N/A

5) Eggshell fragments will be measured for thickness at the Chihuahuan Desert Research Institute, Alpine, Texas.

Addled eggs will be measured at the C.D.R.I. to obtain a Ratcliffe Index of shell thickness, then shipped to Patuxent Wildlife Research Center, Laurel, Maryland, for pesticide residue analysis.

6) N/A

7) See copies of attached proposals to the National Geographic Society and the U. S. Fish and Wildlife Service.

8) That portion of this permit relating to endangered species will enable me to import into the U. S. from Mexico materials collected from Peregrine Falcon eyries in Mexico, for determination of pesticide burdens in the eggs and the degree of thinning in the eggshells. Eyries will be entered when young Peregrines are present at approximately 2 to 3 weeks after hatching or after the young have fledged. This will enable me to obtain a maximum of information with a minimum risk to the falcons. DDE levels in addled eggs are the single most reliable measure of the rate of contamination in a peregrine population. Combined with residue data from non-endangered migratory species (request for importation this application) and information about local pesticide useage we can determine the status of the study population.

Tissues will be shipped to Patuxent Wildlife Research Center, Laurel, Md., for analysis. Eggshells will be placed in the collection of the C.D.R.I. and will be available to the scientific community.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-667-07,12; please refer to this number when submitting comments. All relevant comments received on or before April 29, 1977.

Dated: March 25, 1977.

LARRY LA ROCHELLE,
Acting Chief, Permit Branch,
Federal Wildlife Permit Office,
U.S. Fish and Wildlife Service.

[FE Doc.77-9465 Filed 3-29-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Peter F. O'Connor, Jr., 2053 West Broad Street, Scotch Plains, N.J. 07076.

Attachments No. 1
 Peter F. O'Connor
 2093 W. Broad Street
 Scotch Plains, N.J.
 07076

17.22:

1. Pheasant White-eared - Crossoptilon crossoptilon - 1 pair and female - ages yet unknown - to be bred for further advancement of propagation - needed to increase their numbers and in future to have them taken off the Endangered & Threatened lists.
2. Born in captivity.
3. Does not apply.
4. Born in captivity. U.S.A.
5. See app permit filed 6-15-76 / 17.33

- 6i. " " " " " " " "
- ii. " " " " " " " "
- iii. " " " " " " " "
- iv. " " " " " " " "
- v. " " " " " " " "

7. None.

- 8i. Same as 17.22.1
- ii. By trying to duplicate their surroundings as close to as possible: i.e. environment, terrain, plants, shrubs, food & climate.
- iii. If time and permits, to allow new imported species to be bred back to captive-self-sustain pop.
- iv. When & if bred at time all offspring will follow lines established by CFR unless otherwise noted.

ONE NO. 42-100

1. APPLICATION FOR PERMIT (27 AND)

EXPORT OR EXPORT LICENSE PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.

PERMIT TO BAY PHEASANTS
 ENDANGERED SPECIES
 SPECIFIC TRANSACTION
 50.CFR 17.22.

3. APPLICANT (Name, complete address and phone number of individual, business, agency or institution for which permit is requested)

PETER F. O'CONNOR JR.
 2093 W. BROAD ST.
 SCOTCH PLAINS, N.J.
 201 07076
 654-5799

4. IF APPLICANT IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

SEX	<input checked="" type="checkbox"/> M <input type="checkbox"/> F	WEIGHT	190
DATE OF BIRTH	3-18-36	COLOR HAIR	BLOND
PHONE NUMBER WHERE EVALUATED	654-5799	COLOR EYES	BLUE
OCCUPATION	PROLOGICAL & LANDSCAPE DESIGNER	SOCIAL SECURITY NUMBER	151-26-8385

5. IF APPLICANT IS A BUSINESS CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:

EXPLAIN TYPE OF BUSINESS, AGENCY, OR INSTITUTION

DOES NOT APPLY

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED

NONE

7. DO YOU HOLD ANY CURRENT OR VALID FEDERAL, REGIONAL, OR STATE LICENSE OR PERMIT?

YES NO

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU REQUEST?

YES NO

9. LICENSE EFFECTIVE DATE

NONE

10. EXPIRATION PERIOD

?

11. SIGNATURE OF APPLICANT

Peter F. O'Connor Jr.

12. ATTACHMENTS: THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE PERMIT REQUESTED IS IN CFR TITLE 50. IF ANY ATTACHMENTS ARE REQUIRED, THEY MUST BE PROVIDED.

SEE ATTACHMENTS

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM AWARE OF THE REGULATIONS CONTAINED IN TITLE 50, PART 17, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS OF CHAPTER 1 OF TITLE 50, PART 17, OF THE CODE OF FEDERAL REGULATIONS AND I HAVE AGREED TO COMPLY WITH ALL THE REGULATIONS AND CONDITIONS OF THE PERMIT I AM REQUESTING. I HAVE READ AND UNDERSTAND THE REGULATIONS AND CONDITIONS OF THE PERMIT I AM REQUESTING AND I AGREE TO COMPLY WITH ALL THE REGULATIONS AND CONDITIONS OF THE PERMIT I AM REQUESTING AND I AGREE TO COMPLY WITH ALL THE REGULATIONS AND CONDITIONS OF THE PERMIT I AM REQUESTING.

SIGNATURE OF APPLICANT: Peter F. O'Connor Jr. DATE: 12-20-76

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-567-07; please refer to this number when submitting comments. All relevant comments received on or before April 29, 1977.

Dated: March 25, 1977.

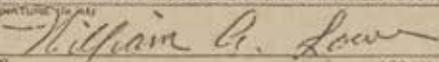
LARRY LA ROCHELLE,
Chief, Permit Branch, Federal
Wildlife Permit Office, U.S.
Fish and Wildlife Service.

[PR Doc.77-0467 Filed 3-29-77;8:45 am]

ENDANGERED SPECIES PERMIT
Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: William A. Lowe, Route 4, Box 206, Beaver Dam, Wisconsin 53916.

 <p>DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE</p> <p>FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION</p>		1. APPLICATION FOR (SEE 501.5)	
		<input type="checkbox"/> IMPORT OR EXPORT LICENSE <input checked="" type="checkbox"/> PERMIT	
3. APPLICANT (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)		5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING: EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION	
William A. Lowe Route 4, Box 206 Beaver Dam, WI. 53916 Telephones: 414-335-9631 414-335-9246		Not applicable	
4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:		6. IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED	
SEX: <input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS. DATE OF BIRTH: 1-8-35 OFFICE: 414-335-9346 HOME: 414-335-9631 OCCUPATION: Self-employed*	HEIGHT: 6' WEIGHT: 185 lbs. COLOR HAIR: brown COLOR EYES: blue SOCIAL SECURITY NUMBER: 396-32-4608	gors, llamas, leopards, fox, ferrets	
ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:		7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If yes, list license or permit number)	
*Arabian horse breeder - "straight Egyptian" breeding Veal Calf Operation - currently own and operate 1800-calf facility Breeder of certain zoo animals--Bengal tigers. Cheetahs will be kept in the NW 1/4 Sec. 35, T12N, R14E, Beaver Dam Township, Dodge County, Wisconsin.		35-A-91	
William Lowe Farm Route 4, Box 206 Beaver Dam, WI 53916		8. IF ACQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If yes, list jurisdiction and type of document)	
9. CERTIFIED CHECK OR MONEY ORDER (IF APPLICABLE) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF:		State of Wisconsin Game Farm License and individual permits for tigers and leopards Cheetah permit should be issued on completion of facility.	
Not applicable as purpose is propagation of cheetahs		10. DATE EFFECTIVE: April 20, 1977 11. DURATION NEEDED: Six months if possible	
12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (SEE 30 CFR 22.103) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 30 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.			
Enclosed			
CERTIFICATION			
I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER D OF CHAPTER 1 OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED BY THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.			
Signature (In ink) 		DATE February 18, 1977	

Attachment (12) to Form 3-200

17:22

(a) Application form enclosed

- (1) Cheetah (*Acinonyx jubatus*)
One (1) male--age one year
One (1) female--age one year
Activity except to be authorized--transportation permit from California to Wisconsin for purpose of propagation.
- (2) Both cheetahs were born in captivity
- (3) This transaction would not affect the status of cheetahs in the wild. It would make room for more cheetahs to be propagated at this San Diego facility (Wild Animal Park).
- (4) Born in captivity--San Diego, California 1976 (Wild Animal Park)
- (5) The cheetahs will be kept in the NE $\frac{1}{4}$ of Section 35, T12N, R14E, Beaver Dam Township, Dodge County, Wisconsin.

William A. Love Farm
Route 4, Box 206
Beaver Dam, WI 53916

The farm is 34 acres. It includes a home, five barns (four barns house approximately 50 Arabian horses, one barn houses 3 Bengal tigers and two leopards.)
(6) Live cheetahs will be housed if approved. The facility described will be completed immediately pending this approval.

- (1) I am building the facility on recommendations of Dr. Dolan so that we have the maximum potential for breeding them. We are duplicating the facility and care used successfully by Dr. Dolan in breeding cheetahs in San Diego's Wild Animal Park. It is necessary to keep male and female cheetahs separate except for the breeding period. For this reason we are building two facilities approximately 1/4 mile apart for the male and the female. We will construct each facility large enough to house additional cheetahs, as it is our desire to eventually have a large cheetah breeding operation. Each facility will have: 8 ft. high chain link wire (11 gauge), approximately 1 1/2 acres, hexagonal shape, located on a moderate hill with several rock piles, include a heated and insulated 8' x 10' x 8' building for their optional use, and a ten-foot gate opening. This land is currently in grass. (A diagram of the facility is on the next page.)


BILL AND JANET LOWE
LOWE ARABIANS
RT. 4, BOX 206 • BEAVER DAM, WI 53916 • PHONE: 424-2821

- (ii) My wife, Janet, and I have raised Arabian horses since 1959. We have won national championships and are well recognized as serious breeders. Since 1973 we have specialized in horses of "Egyptian breeding," which has included three trips to Egypt for purchasing them.

In 1976 we acquired four Bengal tigers from the Racine Zoo and have made arrangements for the purchase of two leopards. (We are waiting for warmer weather to ease transporting them.)

Our main purpose in acquiring the tigers and leopards was to gain expertise and recognition so that we would be granted the necessary permits to raise cheetahs.

Besides Arabian horses, tigers, and leopards, we raise llamas and have a large veal calf operation, currently housing 1,840 calves. The calves give us an excellent source of meat for our tigers and leopards.

In addition, our six children are raising fox, ferrets and dogs.

- (iii) We would be willing to work on a cooperative breeding program and will maintain stud books. Most zoos have been unsuccessful in breeding cheetahs because of lack of a proper facility. We hope to eventually work a breeding loan with some of them.

- (iv) Transportation would be done by horse trailer van with 200 crates housing the animals inside. The 200 crates are approximately 30" x 60" x 43". They are open on one end with one-inch pipe, 3 inches on center. Food and water will be fed between the pipes.

7. Copy of sale contract is attached.

8. Reasons why permit is justified:

- (i) Intention of transporting two cheetahs from San Diego, California, to Beaver Dam, Wisconsin, for the purpose of propagation.
- (ii) Transportation will be by horse van carrying two 200 cages used for this purpose. Breeding facilities will be constructed prior to arrival of the two cheetahs.
- (iii) The purpose is propagation.
- (iv) Eventually animals will be offered for sale to zoos or others who are interested in propagation.


BILL AND JANET LOWE
LOWE ARABIANS

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-657-07; please refer to this number when submitting comments. All relevant comments received on or before April 29, 1977.

Dated: March 25, 1977.

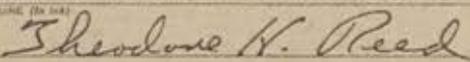
DONALD G. DONAHOO,
Chief, Permit Branch, Federal
Wildlife Permit Office, U.S.
Fish and Wildlife Service.

[FR Doc.77-9462 Filed 3-29-77;8:45 am]

ENDANGERED SPECIES PERMIT
Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: National Zoological Park, Smithsonian Institution, Washington, D.C. 20009, Theodore H. Reed, Director.

DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE		FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION	
		1. APPLICATION FOR (Indicate only one) <input type="checkbox"/> IMPORT OR EXPORT LICENSE <input checked="" type="checkbox"/> PERMIT	
3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)		2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.	
National Zoological Park Smithsonian Institution Washington, D.C. 20009		Import three (3) male and three (3) female live <i>Solenodon</i> , <i>Solenodon paradoxus</i> , from the Dominican Republic for study and propagation.	
4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:		5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:	
<input type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MISS <input type="checkbox"/> MS. DATE OF BIRTH COLOR HAIR COLOR EYES PHONE NUMBER WHERE EMPLOYED SOCIAL SECURITY NUMBER OCCUPATION ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT		EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION The National Zoological Park NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC. T. H. Reed, D.V.M., Director (202) 381-7222 IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED	
6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED		7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If yes, list license or permit numbers)	
National Zoological Park Washington, D. C. 20009		PRT-5-3-X; PRT-8-142-C	
8. CERTIFIED CHECK OR MONEY ORDER (IF APPLICABLE) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF \$		8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO (If yes, list jurisdictions and type of documents)	
9. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 17.122) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.		10. DESIRED EFFECTIVE DATE ASAP	
Attachments are provided under 17.22		11. DURATION NEEDED Through 1977	
CERTIFICATION			
I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 17, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER 1 OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF, I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 951.			
SIGNATURE (IN INK) 		DATE 22 Dec '76	

3. Non-applicable. Please see category number 8, below.
4. The specimens requested will be studied at the Office of Zoological Research, National Zoological Park, Smithsonian Institution, Washington, D. C. 20009, telephone (202) 381-7291.
5. The six specimens for which we request permission to import are to be drawn from a pool of specimens under study in the Dominican Republic. Some of the specimens that may be sent to us are currently housed in the research facilities of the Parque Zoológico Nacional. Other specimens will be trapped as part of the on-going study conducted by staff scientists in the Dominican Republic.

6. At the present time, there are no specimens of *Solenodon paradoxus* in captivity outside of the Dominican Republic. The history of the captive maintenance of *Solenodon paradoxus* at the National Zoological Park is contained in the publication: Tenrecs and solenodons in captivity by J. F. Eisenberg, International Zoo Yearbook Vol. 15, pages 6 through 12 (see attachment). The animals will be housed in pairs in cages having a floor area exceeding 18 square feet per pair (see attached photograph). The technical staff of the National Zoological Park is well qualified to care for the specimens, having had a great deal of experience in previous years (see attached publication by Eisenberg, 1975 and Eisenberg and Gould, 1966).

As stated in the preface, we are not only willing, but are part of a cooperative breeding program as arranged with the Dominican Republic under the auspices of the IUCN. We would cooperate in the maintenance of a stud book.

Shipping containers will conform to IATA standards. We would attempt to approximate containers as listed under Note 6. The animals will be shipped directly from Santo Domingo to Miami where they will be met by a *ZZP* technician for feeding and watering. The specimens will then be trans-shipped directly to Washington, D. C.

7. A copy of the contract and agreement between the Parque Zoológico Nacional, República Dominicana and the National Zoological Park is attached.



NATIONAL ZOOLOGICAL PARK

December 23, 1976

Mr. Lynn A. Greenwalt, Director
U. S. Fish and Wildlife Service
Attn: Law Enforcement
P. O. Box 19183
Washington, D. C. 20036

Dear Sir:

The National Zoological Park requests an Endangered Species Permit to import three (3) female and three (3) male Hispaniolan solenodons, *Solenodon paradoxus*. In accordance with the regulations outlined under Paragraph 17.22, we provide the following supplemental information:

1. The National Zoological Park has studied *Solenodon paradoxus* for some years. Recently we have acted in an advisory capacity with the Parque Zoológico Nacional, República Dominicana in an effort to aid them in the captive propagation of the species. To this end, we have cooperated with Dr. Walter Podurschka, who has been coordinating the *Solenodon* conservation program sponsored by the IUCN and WWF. In an agreement among the IUCN, Frankfurt Zoological Society, Parque Zoológico Nacional and Dr. Podurschka, the National Zoological Park has been designated as a center for captive propagation. We thus request permission to import three (3) male and three (3) female *Solenodon paradoxus* from the Dominican Republic.

2. Attached is a photocopy of a letter from Dr. Viñas Román offering specimens to us which have been collected and held in accordance with legal restraints of the Dominican Republic. The Parque Zoológico Nacional is an authorized federal agency of the Dominican Republic which offers these specimens as part of their research program. No profit or gain is involved with said transaction.

8. Should we obtain the permit, the National Zoological Park will attempt to establish compatible pairs upon the arrival of the six animals. By providing appropriate nest boxes and carefully monitoring the interactional rates among the pairs, we should be able to ascertain when breeding has taken place. As an initial part of our study, we will attempt to isolate males from females prior to the birth of the young. We are still uncertain if the male need be present throughout the rearing phase of the young and part of our research will be to ascertain the role of the male in the family group. The research will be carried out under the direction of John F. Eisenberg, Ph.D.

The captive propagation of the Solenodon has been unsuccessful to date. It is hoped that the Dominican Republic will continue to elucidate valuable natural history facts by continuing their field studies. At the request of the Dominican Republic; Washington, D.C., Vienna, and Frankfurt have been designated as adjunct propagation centers where it is hoped that certain details of reproductive behavior and pair bonding can be studied in conjunction with the Dominican efforts. The National Zoological Park was so designated because of our long-term experience with the species in question.

Sincerely yours,

S. H. Reed
Theodore H. Reed, D.V.M.
Director

Dated: March 25, 1977.
DONALD G. DONAHOO,
Chief, Permit Branch, Federal
Wildlife Permit Office, U.S.
Fish and Wildlife Service.

[FR Doc 77-9461 Filed 3-29-77; 8:45 am]

THREATENED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under Section 4 (d), 16 USC 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Peter O'Connor, 2093 W. Broad Street, Scotch Plains, New Jersey 07076.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, NW, Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-564-07; please refer to this number when submitting comments. All relevant comments received on or before April 29, 1977 will be considered.

 <p>DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE</p> <p>FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION</p>		<p>1. APPLICANT'S Name, complete address and phone number of individual, business, agency, or institution for which permit is requested.</p> <p>PETER F. O'CONNOR JR. 2093 WEST BROAD ST. SCOTCH PLAINS, N.J. 07076 WESTFIELD P.O.</p>		<p>2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS DESIRED.</p> <p>BREEDING OF EXOTIC ENHANCED PUGNAENTS TO BUY AND SELL CAPTIVE-REARED ENDANGERED BIRDS FOR THE PURPOSE OF PROPAGATION</p>		<p>3. IF APPLICANT IS A BUSINESS CORPORATION, PUBLIC AGENCY OR INSTITUTION, COMPLETE THE FOLLOWING:</p> <p>EXPLAIN TYPE OF KIND OF BUSINESS, AGENCY, OR INSTITUTION</p> <p>NONE</p>											
<p>4. IF APPLICANT IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:</p> <table border="1"> <tr> <td>SEX</td> <td>WEIGHT</td> </tr> <tr> <td><input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MS.</td> <td>5-7 1/2 194</td> </tr> <tr> <td>DATE OF BIRTH</td> <td>COLOR HAIR</td> </tr> <tr> <td>3-18-36</td> <td>BLOND BLUE</td> </tr> <tr> <td>PHONE NUMBER WHERE EMPLOYED</td> <td>SOCIAL SECURITY NUMBER</td> </tr> <tr> <td>654-5799</td> <td>151-26-8385</td> </tr> </table> <p>OCCUPATION ARCH. LANDSCAPE DESIGNER</p> <p>ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION DURING 180 DAYS WITHIN THE PERIOD TO BE COVERED BY THIS LICENSE/PERMIT</p> <p>NONE</p>		SEX	WEIGHT	<input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MS.	5-7 1/2 194	DATE OF BIRTH	COLOR HAIR	3-18-36	BLOND BLUE	PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER	654-5799	151-26-8385	<p>5. IF APPLICANT IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED</p> <p>NONE</p>		<p>6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED.</p> <p>2093 WEST BROAD ST. SCOTCH PLAINS, N.J. 07076 WESTFIELD P.O.</p>	
SEX	WEIGHT																
<input checked="" type="checkbox"/> MR. <input type="checkbox"/> MRS. <input type="checkbox"/> MS.	5-7 1/2 194																
DATE OF BIRTH	COLOR HAIR																
3-18-36	BLOND BLUE																
PHONE NUMBER WHERE EMPLOYED	SOCIAL SECURITY NUMBER																
654-5799	151-26-8385																
<p>7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSES OR PERMITS (Indicate type and number)?</p> <p><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p>		<p>8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THIS ACTIVITY? (Indicate type and number of approval)</p> <p><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p>		<p>9. LICENSE EFFECTIVE DATE</p> <p>AS OF THIS DATE 2 YEARS</p>													
<p>10. CERTIFIED CHECK OR MONEY ORDER (WHICH IS AVAILABLE TO THE U.S. FISH AND WILDLIFE SERVICE) ENCLOSED IN AMOUNT OF \$</p>		<p>11. DESIRED EFFECTIVE DATE</p>		<p>12. ATTACHMENTS: THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (SEE 36 CFR 171.16) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 36 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.</p> <p>*SEE ATTACHMENTS</p>													
<p>CERTIFICATION</p> <p>I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 17, OF THE CODE OF FEDERAL REGULATIONS AND I BELIEVE THE APPLICABLE PARTS OF CHAPTER 8 OF PART 17, AND I FURTHER CERTIFY THAT THE INFORMATION PROVIDED IN THIS APPLICATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENTS MAY SUBJECT ME TO THE PENALTIES PROVIDED IN 50 USC 3605.</p> <p><i>Peter O'Connor Jr.</i> APPLICANT 7-29-76 DATE</p>																	

3. I have been collecting & breeding birds for the past 10 years. In the past 4 years I have concentrated on Pheasants & have raised 200 this year all ornamental's & none on the Endangered Species Act i.e., Golden, Silvers, Amherst, Reeves, Versicolor, White Crested Kaliji, Yellow Golden.
4. I, the applicant, would only be too happy & willing to participate in a co-op. breeding program, as, in this way, many more birds could be produced & a varied enlightenment into getting the harder & less productive birds to breed would be a great venture.

Also, productive records (hens) & (cocks) studbook are being kept & will be in the future as this is a must in any scientific experiment which we are dealing with.

5. Shipping containers to be used by myself are acceptable in domestic & foreign shipments (which of course foreign does not apply here) by air.

They are made of a non-breakable - reinforced plastic 1/4" thick which I modified for ship. Bottom is of a heavy 3/8 hard plastic grid spacing every 5/8" vent openings are 1/2" holes drilled in a set pattern to create cross ventilation - A sturdy reinforced plastic top - Which is bolted to remain in place. Water is held in place by straps & Dupont non-flake sponges cut to fit cup's to attain max. moisture. Food is available by same means.

Box was designed for bursting at 600 p.s.i. - Total work load 200 max. & drop force not to exceed 240 lbs. size: 2'x2'x1' - Average larger size available for LG. birds.

6. Being of a scientific nature it shall be no trouble to provide an in-depth study of mortalities, treatment, visual autopsy, etc. for a period of 5 yrs. or more and accurate records shall be just logged.
7. (i) In order for a collection & breeding of C.S.S.P. Pheasant's, one has to accomplish a goal - & the goal I have set is to breed as many varieties within my means - In this way & only this way does a collector get & see first hand information about the breeding & rearing of rare Pheasants. Of course in some cases it is trial & error, but if it is a success - With your records let it be told do that your good fortune & knowledge will keep others to help breed endangered Pheasants.

(ii) Upon completion of said program the disposition of permit birds will be disposed of in a proper, & legal manner whereas what ever laws that are in effect now or shall be in the future will be rigidly adhered to.

Peter J. Conroy, Jr.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has

been assigned File Number PRT 2-332-25; please refer to this number when submitting comments. All relevant comments received on or before April 29, 1977.

Dated: March 25, 1977.

LARRY LAROCHELLE,
Chief, Permit Branch, Federal
Wildlife Permit Office, U.S.
Fish and Wildlife Service.

[FR Doc.77-9466 Filed 3-29-77;8:45 am]

Post Office Box 551, San Diego, California 92112
 Telephone (714) 234-5151
 Cable Address: SDZOO San Diego, California, U.S.A.



Zoological Society of San Diego

24 November 1976

Director (FWS/LE)
 U. S. Fish and Wildlife Service
 U. S. Department of the Interior
 P. O. Box 19183
 Washington, D. C. 20036

Dear Sir:

The San Diego Zoological Garden requests an endangered species permit for an unlimited number of transactions involving captive, self-sustaining populations of tiger, leopard, jaguar, ring-tailed lemur and the black lemur.

1. THE COMMON AND SCIENTIFIC NAMES OF THE SPECIES SOUGHT TO BE COVERED BY THE PERMIT AND THE ACTIVITY SOUGHT TO BE AUTHORIZED.

The species are the tiger Leo tigris (=Panthera tigris), leopard Leo pardus (=Panthera pardus), Jaguar Leo onca (=Panthera onca), ring-tailed Lemur Lemur catta, and the black lemur Lemur macaco. The activity is interstate commerce to include delivery, receipt, carriage, transportation, sale, offer of sale, exchange or trade of specimens.

2. A COMPLETE DESCRIPTION, INCLUDING PHOTOGRAPHS OR DIAGRAMS, OF THE AREA AND FACILITIES WHERE SUCH WILDLIFE WILL BE HOUSED AND CARED FOR.

Self-explanatory drawings of the San Diego Zoo facility are attached: these facilities have proven successful in displaying and breeding these species. Also enclosed are black and white photographs of the areas.

3. A BRIEF RESUME OF THE TECHNICAL EXPERTISE OF THE PERSONS WHO WILL CARE FOR SUCH WILDLIFE, INCLUDING ANY EXPERIENCE THE APPLICANT OR HIS PERSONNEL HAVE HAD IN RAISING, CARING FOR, AND PROPAGATING SIMILAR WILDLIFE, OR ANY CLOSELY RELATED WILDLIFE.

See enclosed personnel resumes.

16 USC 1533(d), of the Endangered Species Act of 1973 (Pub. L. 93-205).
 Applicant: San Diego Zoological Garden, P.O. Box 551, San Diego, California 92112.
 Charles L. Bielert, Director.

THREATENED SPECIES PERMIT
 Receipt of Application
 Notice is hereby given that the following application for permit is deemed to have been received under Section 4(d).

<p>DEPARTMENT OF THE INTERIOR U.S. FISH AND WILDLIFE SERVICE FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION</p>		OVER VOL. SUBJECTS 1. APPLICATION FOR (check one) <input type="checkbox"/> EXPORT LICENSE <input checked="" type="checkbox"/> PERMIT	
2. SPECIES OR OCCUPATION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED. Engage in the delivery, receipt, carriage, transportation or shipment in interstate commerce, sale and transfer of specimens of captive, self-sustaining populations of Tiger, Leo tigris (=Panthera tigris), Leopard Leo pardus (=Panthera pardus), Jaguar Leo onca (=Panthera onca), Ring-tailed Lemur Lemur catta, Black Lemur Lemur macaco.		3. IF "APPLICANT" IS A BUSINESS CORPORATION, SUBSIDIARY, OR PARTNERSHIP, COMPLETE THE FOLLOWING: EXPLAIN THE KIND OF BUSINESS, SERVICE, OR INSTITUTION Public zoo - conservation and research programs in addition to educational and recreation activities.	
4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING: NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC. Charles L. Bielert, Director, San Diego Zoological Garden. IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED		5. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING: HEIGHT FEET _____ INCH _____ WEIGHT _____ COLOR HAIR _____ COLOR EYES _____ PHONE NUMBER WHERE EMPLOYED _____ SOCIAL SECURITY NUMBER _____ OCCUPATION _____	
6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED Within the United States of America		7. DO YOU HOLD AND CURRENTLY HOLD FEDERAL PERMITS AND LICENSES UNDER PERMIT 58 118 <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, list them or attach needed	
8. CERTIFIED CHECK BY APPLICANT (IF APPLICANT IS RESPONSIBLE TO THE U.S. FISH AND WILDLIFE SERVICE) ENCLOSED IN AMOUNT OF \$ _____ N/A		9. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU REQUEST? <input type="checkbox"/> YES <input type="checkbox"/> NO If yes, list jurisdiction and type of approval	
10. LICENSES EFFECTIVE DATE ASAP		11. EXPIRATION PERIOD Until terminated	
12. ATTACHED TO THIS APPLICATION IS THE TYPE OF LICENSE/PERMIT REQUESTED (SEE LIST OF PERMITS AND LICENSES ATTACHED TO THIS APPLICATION, LIST SECTIONS OF 36 CFR UNDER PERMITS AND LICENSES PROVIDED). N/A			
13. I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 14 OF THE CODE OF FEDERAL REGULATIONS AND THE SPECIES APPLICABLE PARTS IN CHAPTERS 8 OF CHAPTERS 10, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE ORIGINAL PENALTIES OF 18 U.S.C. 1014. SIGNATURE (IN INK) <i>Charles L. Bielert</i> DATE 24 November 1976			

4. A STATEMENT OF THE APPLICANT'S WILLINGNESS TO PARTICIPATE IN A COOPERATIVE BREEDING PROGRAM, AND TO MAINTAIN OR CONTRIBUTE DATA ON A STUDBOOK.

We are now participating in the Siberian Tiger Studbook. Our offspring are registered. We have one Siberian tiger out on breeding loan. All of our mammals are registered in the International Species Inventory System (ISIS) and we would be willing to participate in additional approved breeding programs and studbooks.

5. A DETAILED DESCRIPTION OF THE TYPE, SIZE AND CONSTRUCTION OF ALL CONTAINERS INTO WHICH SUCH WILDLIFE WILL BE PLACED DURING TRANSPORTATION OR TEMPORARY STORAGE, IF ANY, AND OF THE ARRANGEMENTS FOR FEEDING, WATERING, AND OTHERWISE CARING FOR SUCH WILDLIFE DURING THAT PERIOD.

Transportation containers to be used will depend upon the age and species of the specimens being transported. All containers however will exceed the minimum standards required by the International Air Transport Association (IATA). The felines will have a metal lined, metal reinforced heavy plywood crate, ventilated at both ends and having food and water chutes. The lemurs will have heavy plywood crates with similar ventilation and servicing provisions. Feeding and watering schedules enroute will depend upon mode of transportation, weather, and time in transit. Every effort will be made to reduce time in transit or rely on common carrier personnel for care. When possible, professional animal care personnel will service animals during stopovers and possible delay points. We have had extensive experience in shipping animals and plan for as many contingencies as possible.

6. FOR THE 5 YEARS PRECEDING THE DATE OF THIS APPLICATION PROVIDE A DETAILED DESCRIPTION OF ALL MORTALITIES INVOLVING THE SPECIES COVERED IN THE APPLICATION AND HELD BY THE APPLICANT (OR ANY OTHER WILDLIFE OF THE SAME GENUS OR FAMILY), INCLUDING THE CAUSES OF SUCH MORTALITIES AND THE STEPS TAKEN TO AVOID OR DECREASE SUCH MORTALITIES.

Detailed necropsy reports are attached for all deaths in which post mortems were made. In addition, there were several non-necropsied deaths. On 21 May 1976 three North Chinese leopards were born and eaten by the dam. It was her first litter. Our previous endangered species permit applications go into greater detail on several mortalities. The San Diego Zoo has extensive veterinary, research, and pathology facilities and staffs. Our Children's Zoo has a well equipped nursery with experienced keepers to hand raise any newborn should the need arise. Weekly animal

health meetings are held between the curators, veterinarians, pathologists, and researchers to discuss health problems. Every mortality is studied by the staff to determine what factors were responsible and possible courses of action to decrease such mortalities. It is interesting to note that of all mortalities of the requested species for the preceding five years there were 72 births; 21 deaths of zoo bred animals, and only 1 death of a wild caught specimen. Since surplus stock is sent to other zoos the captive reproductive success realized here greatly minimizes the drain of wild populations as animal sources.

7. A FULL STATEMENT OF JUSTIFICATION FOR THE PERMIT TO INCLUDE DETAILS OF THE ACTIVITIES SOUGHT TO BE AUTHORIZED BY THE PERMIT, THE PLANNED DISPOSITION OF SUCH WILDLIFE UPON TERMINATION OF THE ACTIVITIES SOUGHT TO BE AUTHORIZED.

Our primary objective has been the conservation of wildlife and we have concentrated on captive breeding programs for endangered species. Our previous endangered species permits for lemurs, tigers, and jaguars in the past few years attest to our commitment to conservation. Our success in reproducing these species requires us to be able to more easily transfer and exchange animals to other institutions to establish additional breeding groups and exchange unrelated specimens to expand gene pools. The educational and research value of captive, reproducing endangered species also enhances the future of these species by sensitizing the public to the need for ensuring the survival of endangered species, and to provide data for scientists to more wisely manage and protect specimens in the wild as well as in captivity. Specimens acquired under the requested permit will only be used, while under our control, for propagative, educational and scientific purposes.

I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and other applicable parts in Subchapter B of Chapter 1 of Title 50, and I further certify that the information submitted in the application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to the criminal penalties of 18 U.S.C. 1001.

Sincerely,

Mark S. Rich

Mark S. Rich
Assistant Curator of Mammals

MSR:sal
Enc.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-513-25; please refer to this number when submitting comments. All relevant comments received on or before April 29, 1977.

Dated: March 25, 1977.

LARRY LaROCHELLE,
Acting Chief, Permit Branch,
Federal Wildlife Permit
Office, U.S. Fish and Wildlife
Service.

[FR Doc.77-9463 Filed 3-29-77;8:45 am]

Office of the Secretary
[INT FES 77-10]

FRUITLAND MESA PROJECT, COLORADO

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the authorized Fruitland Mesa Project, Colorado.

The environmental statement concerns a proposed 606 surface-acre reservoir and water delivery system for the purpose of providing irrigation, fishery, and recreation development to Delta, Montrose, and Gunnison Counties, Colorado.

Copies are available for inspection at the following locations:

Office of Assistant to the Commissioner—Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20204, telephone 202-343-4991.

Division of Engineering Support, Technical Services and Publications Branch, E&R Center, Denver Federal Center, Denver, Colorado 80225, telephones 303-234-3006.

Office of the Regional Director, Bureau of Reclamation, Federal Building, 125 South State Street, Salt Lake City, Utah 84111, telephone 801-524-5404.

Western Colorado Projects Office, Bureau of Reclamation, Building 8, ERDA Compound, Grand Junction, Colorado 81501, telephone 303-242-9621.

Single copies of the final environmental statement may be obtained on request to the Commissioner of Reclamation or the Regional Director. Please refer to the statement number above.

Dated: March 25, 1977.

STANLEY D. DOREMUS,
Deputy Assistant Secretary
of the Interior.

[FR Doc.77-9484 Filed 3-29-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[332-83]

ADMINISTRATION AND OPERATION OF CUSTOMS LAWS

Investigation

The United States International Trade Commission has instituted the first of a series of investigations under section 332 (a) of the Tariff Act of 1930 (19 U.S.C. 1332(a)) into the administration and operation of the customs laws. Section 332 (a) provides as follows:

(a) It shall be the duty of the commission to investigate the administration and fiscal and industrial effects of the customs laws of this country, the relations between the rates of duty on raw materials and finished or partly finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, to investigate the operation of customs laws, including their relation to the Federal revenues, their effect upon the industries and labor of the country, and to submit reports of its investigations as hereafter provided.

As the first of this series of investigations the Commission is undertaking a study of customs procedures with respect to the verification of import statistics. The investigation will include, but will not be limited to an examination of—

(1) Customs entry procedures and documentation requirements with respect to the importation of merchandise;

(2) The process of collecting, verifying and reporting statistical data; and

(3) The effectiveness of current import statistical collection procedures.

Public comments on the scope of this investigation and suggestions as to other matters which the Commission should investigate with respect to the gathering of import statistics are invited. All such comments should be submitted on or before April 18, 1977, to the Secretary, United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436.

After completion of this investigation the Commission plans to initiate further investigations into different, or perhaps related, aspects of the customs laws. In this connection, interested parties are requested to submit their comments and suggestions as to other areas of the administration and operation of the customs laws which they believe the Commission should investigate pursuant to its responsibilities under section 332(a) of the Tariff Act of 1930. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

The time and place of any public hearings to be held in connection with this investigation will be announced at a future date.

Issued: March 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-9391 Filed 3-29-77;8:45 am]

[TA-201-24]

CAST-IRON STOVES

Investigation and Hearing

Investigation instituted. Following receipt of a petition on March 9, 1977, filed by the Atlanta Stove Works, Inc., Washington Stove Works, United States Stove Company, Portland Stove Foundry Co., and Martin Industries, the United States International Trade Commission on March 23, 1977, instituted an investigation under section 201(b) of the Trade Act of 1974 to determine whether stoves, stove parts, and fireplace grates, wholly or almost wholly of cast iron, provided for in item 653.50 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Public hearing. A public hearing in connection with this investigation will be held beginning on Thursday, May 19, 1977, in the Hearing Room of the United States International Trade Commission, 701 E Street, NW., Washington, D.C. Requests for appearances at the hearing should be filed, in writing, with the Secretary of the Commission at his office in Washington not later than noon, Monday, May 16, 1977.

Investigation to be expedited. It is the belief of the Commission that the investigation can be expedited and it is the intention of the Commission to report to the President by July 11, 1977, if possible.

Inspection of petition. The petition filed in this case is available for public inspection at the Office of the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and at the New York City Office of the United States International Trade Commission located at 6 World Trade Center.

Issued: March 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-9392 Filed 3-29-77;8:45 am]

[Investigation No. 337-TA-28]

CERTAIN KNITTING MACHINES AND THROAT PLATES THEREFOR

Memorandum Opinion and Order Terminating Investigation

On February 18, 1977, the presiding officer in this matter, Administrative Law Judge Myron R. Renick, certified to the Commission the motion of respondents' Costruzioni Meccaniche Di Lonati Francesco E Figli and Henderson Machinery, Inc., to terminate this investigation, together with a Recommended Determination granting the motion. Respondents' motion was joined by the complainant, Marvel Specialty Co., Inc. (Marvel), and supported by the Commission investigative attorney.

¹ The motion was docketed as M-28-1.

The investigation was instituted by notice published in the *FEDERAL REGISTER* of November 12, 1976 (41 FR 50076).

The basis for Marvel's complaint to the Commission in this matter was the alleged importation and sale by respondents of knitting machines and/or ceramic inlay throat plates infringing the claims of U.S. Letters Patent No. 3,444,705 (the '704 patent). Respondents' motion for termination was prompted by the discovery, subsequent to institution of the investigation, of previously undiscovered prior art alleged to be sufficient to invalidate the claims of the '704 patent.

By a notice of disclaimer and dedication dated January 14, 1977, and filed with the U.S. Patent and Trademark Office, complainant has disclaimed and dedicated all claims of the '704 patent to the public for their full remaining term.

Investigation No. 337-TA-28 was directed to the issue of patent infringement. The disclaimer and dedication by complainant of all claims of the '704 patent to the public dispose of the infringement issued and render further proceedings unnecessary. On the basis of a review of the recorded data and the record certified to the Commission by the presiding officer, we find at this time that there is no violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337).

Accordingly, it is ordered: 1. Investigation No. 337-TA-28, Certain Knitting Machines and Throat Plates Therefor, is hereby terminated; and

2. The Secretary will publish this order in the *FEDERAL REGISTER* and serve copies of this Order upon the parties. The Secretary will also serve copies of this Order upon the Department of Health, Education, and Welfare, the Department of Justice, and the Federal Trade Commission.

Issued: March 24, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 77-9390 Filed 3-29-77; 8:45 am]

[AA1921-164]

ROUND HEAD STEEL DRUM PLUGS FROM JAPAN

Investigation and Hearing

Having received advice from the Department of the Treasury on March 14, 1977, that round head steel drum plugs from Japan are being, or are likely to be, sold at less than fair value, the United States International Trade Commission on March 23, 1977, instituted investigation No. AA1921-164 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held

in the Commission's Hearing Room, United States International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, beginning at 10 a.m., e.d.t., on Tuesday, May 3, 1977. All parties shall there and then have the right to appear by counsel or in person, to present evidence, and to be heard. Requests to appear at the public hearing, or to intervene under the provisions of section 201(d) of the Antidumping Act, 1921 (19 U.S.C. 160(d)), shall be filed with the Secretary of the Commission, in writing, not later than noon, Thursday, April 28, 1977.

Issued: March 25, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 77-9529 Filed 3-29-77; 8:45 am]

DEPARTMENT OF JUSTICE

Attorney General

[Order No. 707-77]

PRIVACY ACT OF 1974

Systems of Records

Notice is hereby given that pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Justice is reporting three new systems of records maintained by the Federal Bureau of Investigation (FBI).

The Employee Travel Vouchers and Individual Earnings Records (Justice/FBI-010) and the Employee Health Records (Justice/FBI-011) are existing systems of records which were inadvertently omitted from previous publication due to administrative oversight based on unfamiliarity with the scope of Civil Service Commission notices of personnel systems.

The Time Utilization Record-Keeping (TURK) System (Justice/FBI-012) is a proposed new system of records for which no public notice has been previously published in the *FEDERAL REGISTER*.

Interested persons are invited to submit written comments on the routine uses of these systems. Comments should be addressed to the Administrative Counsel, Office of Management and Finance, Room 1117, Department of Justice, 10th and Constitution Avenue N.W., Washington, D.C. 20530. All comments must be received no later than April 29, 1977. Comments received will be available for inspection in Room 1266, Main Department of Justice Building. No oral hearings are contemplated.

Reports of these previously unpublished systems of records were submitted to the Speaker of the House, the President of the Senate, the Office of Management and Budget and the Privacy Protection Study Commission on March 18, 1977.

Justice/FBI-010

System name:

Employees Travel Vouchers and Individual Earnings Records.

System location:

Federal Bureau of Investigation, 10th and Pennsylvania Avenue NW., Washington, D.C. 20535. Records pending audit are located at Federal Records Centers.

Categories of individuals covered by the system:

Former and current employees of the FBI.

Categories of records in the system:

Payroll, travel and retirement records of current and former employees of the FBI.

Authority for maintenance of the system:

The head of each executive agency, or his delegate, is responsible for establishing and maintaining an adequate payroll system, covering pay, leave and allowances, as a part of the system of accounting and internal control of the Budget and Accounting Procedures Act of 1950, as amended, 31 U.S.C. 66, 66a and 200(a).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These records are used by Departmental personnel to prepare and document payment to employees of the FBI and to carry out financial matters related to the payroll or accounting functions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system—Storage:

Manual (paper files).

Retrievability:

The records can be retrieved by name; and either social security account number or employee identification number.

Safeguards:

Accessed by Bureau employees at FBI Headquarters and by Field Office employees at Records Centers. Transmittal document contains Bureau statement concerning security, i.e., who may access or view records. Records are maintained in rooms under the control of employees during working hours and maintained in locked file cabinets in locked rooms at other times. Security guards further restrict access to the building to authorized personnel only.

Retention and disposal:

Employee travel vouchers—retained indefinitely. Individual earnings records—retained 56 years after date of last entry.

System manager(s) and address:

Director, Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, D.C. 2035.

Notification procedure:

Written inquiries, including name, date of birth, and social security number, to determine whether this system contains records about an individual may be addressed to Director, Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, D.C. 20535.

Record accessing and contesting procedures:

Written inquiries, including name, date of birth and social security number, requesting access or contesting the accuracy of records may be addressed to: Director, Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, D.C. 20535.

Record source categories:

Travel vouchers turned in by individual employees for official business. Pay records—time and attendance records, pay determined by the agency.

Systems exempted from certain provisions of the Act:

None.

JUSTICE/FBI-011

System name:

Employee Health Records.

System locations:

Federal Bureau of Investigation, Finance and Personnel Division, Health Service, 9th and Pennsylvania Avenue, NW., Washington, D.C. 20535 and the following field offices: New York, Newark, Philadelphia, Chicago, Los Angeles, San Francisco, and FBI Academy, Quantico, Virginia. Addresses for these offices can be found in Justice/FBI-999, the appendix of Field Offices for the Federal Bureau of Investigation published at 41 FR 40002-3 (September 16, 1976).

Categories of individuals covered by the system:

Current and former employees of the FBI.

Categories of records in the system:

Records of visits to health facilities relating to sickness, injuries or accidents.

Authority for maintenance of the system:

The head of each agency is responsible, under 5 U.S.C. 7902, for keeping a record of injuries and accidents to its employees and for reducing accidents and health risks. These records are maintained under the general authority of 5 U.S.C. 301 so that the FBI can be kept aware of the health related matters of its employees and more expeditiously identify them.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These records are maintained by the FBI to identify matters relating to the health of its present and former employees. Information is available to employees of the FBI whose job function relates to identifying and resolving health matters of former and current personnel of the FBI.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system—Storage:

Filing of 3×5 index record cards.

Retrievability:

These index cards are retrievable by the name of an individual.

Safeguards:

These records are maintained by FBI personnel during working hours and in locked file cabinets during non-working hours. Security guards further restrict access to the building to authorized personnel.

Retention and disposal:

These 3×5 index cards are maintained for the duration of an employee's service with the FBI unless the resolution of a health related problem warrants retention beyond this period.

System manager(s) and address:

Director, Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, D.C. 20535.

Notification procedure:

Written inquiries, including name, date of birth and social security number, to determine whether this system of records contains records about an individual may be addressed to: Director, Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, D.C. 20535.

Record access and contesting procedures:

Written inquiries, including name, address and social security number, requesting access or contesting the accuracy of records may be addressed to: Director, Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, D.C. 20535 and the above-mentioned field offices at addresses referred to in Justice/FBI-999.

Record source categories:

Employees of the Federal Bureau of Investigation originate their own records.

Systems exempted from certain provisions of the Act:

None.

JUSTICE/FBI-012

System name:

Time Utilization Record-Keeping (TURK) System.

System location:

Administrative Services Division, Federal Bureau of Investigation, J. Edgar Hoover Building, 9th and Pennsylvania Avenue, NW., Washington, D.C. 20535.

Categories of individuals covered by the system:

Special Agents, Accounting Technicians, Investigative Assistants, and Laboratory Technicians.

Categories of records in the system:

System contains bi-weekly time utilization data of Special Agents, Accounting Technicians, Investigative Assistants and Laboratory Technicians.

Authority for maintenance of the system:

This system of records is maintained under the authority of 31 U.S.C. 66a

which requires the head of the Department, or his delegate, to establish a system of accounting and internal control designed to provide full disclosure of the financial results of the FBI's activities; adequate financial information needed for the FBI's management purposes and effective control over the accountability for all funds, property and other assets for which the FBI is responsible.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

For the purpose of producing cost accounting reports reflective of personnel utilization, records may be made available to the General Accounting Office, the Office of Management and Budget and the Treasury Department.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system—Storage:

Information maintained in the system is stored electronically on magnetic tapes and discs for use in a computer environment.

Retrievability:

Information is retrieved by name and/or social security number.

Safeguards:

Information is safeguarded and protected in accordance with the FBI's Computer Center regulations that permit access and use by authorized personnel only.

Retention and disposal:

Bi-weekly magnetic tapes are retained for a period of 3 years. Hard copy records are retained in accordance with instructions contained in General Records Schedule 8, and GSA Bulletin FPMR-47 Archives and Records. Hard copy records will be destroyed, magnetic tapes will be erased and reused.

System manager(s) and address:

Director, Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, D.C. 20535.

Notification procedures:

Same as above.

Record accessing and contesting procedures:

Written requests for access to information may be made by an employee through his supervisor or by former employees by writing to: Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, D.C. 20535 (Attn: Administrative Services Division). Contesting of any information should be set out in written detail and forwarded to the above address. A check of all supportive records will be made to determine the factual data in existence.

Record source categories:

Source of information is derived from daily time utilization recording made by the employees.

Systems exempted from provisions of this Act:

None.

Dated: March 18, 1977.

GRIFFIN B. BELL,
Attorney General.

[FR Doc.77-9385 Filed 3-29-77; 8:45 am]

**Federal Bureau of Investigation
NATIONAL CRIME INFORMATION
CENTER**

**Annual Review of Federal Advisory
Committee**

In accordance with Office of Management and Budget (OMB) Transmittal Memorandum No. 5, Circular No. A-63, dated March 7, 1977, captioned "Review of Federal Advisory Committee," the FBI National Crime Information Center (NCIC) hereby announces that a review of its Federal Advisory Committee, the National Crime Information Center Advisory Policy Board, is underway.

A brief summary of the significant activities of the NCIC Advisory Policy Board includes the reviewing and the considering of the rules, regulations, and procedures for the operation of the NCIC; the considering of the operational needs of criminal justice agencies in light of public policies, and local, state, and Federal statutes and the Department of Justice Regulations on criminal justice information systems; the reviewing and considering of security and privacy aspects of the NCIC system; and the recommending of standards for participation by criminal justice agencies in the NCIC system.

The review includes: (1) the number of times the committee has met in the past year; (2) the number of reports submitted by the committee in the past year; (3) a description of how the committee's reports, recommendations, or advice have been used; (4) an explanation of why the recommendations or information cannot be obtained from other sources; (5) an explanation of any degree of duplication; (6) the relationship of the cost of the committee to the reports, recommendations, or information provided; and (7) a description of the membership in relation to the functions to be performed and views to be represented.

Public comments and recommendations concerning the annual review may be directed to Mr. Frank B. Buell, Chief, NCIC Section, Administrative Services Division, FBI Headquarters, Washington, D.C. 20535, telephone 202/324-2606.

CLARENCE M. KELLEY,
Director.

[FR Doc.77-9490 Filed 3-29-77; 8:45 am]

**Drug Enforcement Administration
MANUFACTURE OF CONTROLLED
SUBSTANCES
Application**

Section 303(a)(1) of the Comprehensive Drug Abuse Prevention and Con-

trol Act of 1970 (21 U.S.C. 823(a)(1)) states:

The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

Pursuant to § 1301.43 of Title 21 of the Code of Federal Regulations (CFR), notice is hereby given that on January 31, 1977, Ganes Chemicals, Inc., Lessee of Siegfried Chemical, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances listed below:

Drug:	Schedule
Pentobarbital	II
Amobarbital	II
Secobarbital	II
Methaqualone	II

Pursuant to Section 301 of the Controlled Substances Act (21 U.S.C. 821), and in accordance with 21 CFR 1301.43(a), notice is hereby given that the above company has made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances indicated, and any other such person, and any existing registered bulk manufacturer of the above substances may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on the application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than May 4, 1977.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration, Room 1203, 1405 Eye Street NW., Washington, D.C. 20537.

Dated: March 23, 1977.

DONALD E. MILLER,
Acting Deputy Administrator,
Drug Enforcement Administration.

[FR Doc.77-9393 Filed 3-29-77; 8:45 am]

**MANUFACTURE OF CONTROLLED
SUBSTANCES
Registration**

By Notice dated January 17, 1977, and published in the FEDERAL REGISTER on

January 26, 1977; (41 FR 4918), Knoll Pharmaceutical Company, Production Dept., 30 North Jefferson Road, Whippany, N.J. 07981, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of hydromorphone, a basic class controlled substance listed in schedule II.

No comments or objections having been received, and pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and 21 CFR 1301.54(e), the Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of hydromorphone is granted.

Dated: March 23, 1977.

DONALD E. MILLER,
Acting Deputy Administrator,
Drug Enforcement Administration.

[FR Doc.77-9394 Filed 3-29-77; 8:45 am]

**MANUFACTURE OF CONTROLLED
SUBSTANCES
Application**

Section 303(a)(1) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 823(a)(1)) states:

The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with the United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

Pursuant to § 1301.43 of Title 21 of the Code of Federal Regulations (CFR), notice is hereby given that on February 24, 1977, Parke, Davis & Company, 188 Howard Avenue, Holland, Michigan 49423, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances listed below:

Drug:	Schedule
Oxycodone	II
Methylphenidate	II
Methaqualone	II
Pentobarbital	II

Pursuant to section 301 of the Controlled Substances Act (21 U.S.C. 821), and in accordance with 21 CFR 1301.43(a), notice is hereby given that the above firm has made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances indicated, and any other such person, and

any existing registered bulk manufacturer of the above substances may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on the application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than May 4, 1977.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration, Room 1203, 1405 Eye Street, N.W., Washington, D.C. 20537.

Dated: March 23, 1977.

DONALD E. MILLER,
Acting Deputy Administrator,
Drug Enforcement Administration.

[FR Doc.77-9395 Filed 3-29-77;8:45 am]

MANUFACTURE OF CONTROLLED SUBSTANCES

Application

Section 303(a)(1) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 823(a)(1)) states:

The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

Pursuant to § 1301.43 of Title 21 of the Code of Federal Regulations (CFR), notice is hereby given that on February 23, 1977, S. B. Penick & Company, A unit of CPC International Inc., 530 New York Avenue, Lyndhurst, New Jersey 07071, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Methadone	II
Methadone-Intermediate	II
Alphacetylmethadol	I
Concentrate of Poppy Straw	II
Diphenoxylate	II

Pursuant to section 301 of the Controlled Substances Act (21 U.S.C. 821), and in accordance with 21 CFR 1301.43 (a) notice is hereby given that the above company has made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances indicated, and any other such firm, and any existing registered bulk manufacturer of the above substances may file written comments on or objections to the

issuance of such registration and may, at the same time, file a written request for a hearing on the application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than May 4, 1977.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration, Room 1203, 1405 Eye Street, N.W., Washington, D.C. 20537.

Dated: March 23, 1977.

DONALD E. MILLER,
Acting Deputy Administrator,
Drug Enforcement Administration.

[FR Doc.77-9396 Filed 3-29-77;8:45 am]

MANUFACTURE OF CONTROLLED SUBSTANCES

Application

Section 303(a)(1) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 823(a)(1)) states:

The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

Pursuant to § 1301.43 of Title 21 of the Code of Federal Regulations (CFR), notice is hereby given that on February 23, 1977, S. B. Penick Co., A Unit of CPC International Inc., 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Opium extracts	II
Opium fluid extracts	II
Opium powders	II
Opium granulated	II
Opium tinctures	II
Codeine	II
Fentanyl	II
Hydrocodone	II
Morphine	II
Oxycodone	II
Thebaine	II
Dihydrocodeine	II
Methadone	II
Methadone-Intermediate	II
Pethidine	II
Phenazocine	II
Mixed alkaloids of opium	II
Diphenoxylate	II
Concentrate of poppy straw	II
Alphacetylmethadol	I
Pholcodine	I

Pursuant to section 301 of the Controlled Substances Act (21 U.S.C. 821), and in accordance with 21 CFR 1301.43 (a) notice is hereby given that the above company has made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances indicated, and any other such firm, and any existing registered bulk manufacturer of the above substances may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on the application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than May 4, 1977.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration, Room 1203, 1405 Eye Street, N.W., Washington, D.C. 20537.

Dated: March 23, 1977.

DONALD E. MILLER,
Acting Deputy Administrator,
Drug Enforcement Administration.

[FR Doc.77-9397 Filed 3-29-77;8:45 am]

IMPORTATION OF CONTROLLED SUBSTANCES

Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under section 102(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearings.

Therefore in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 17, 1977, Stepan Chemical Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, N.J. 07667, made application to the Drug Enforcement Administration to be registered as an importer of coca leaf, a basic class of controlled substance in schedule II.

As to the basic class of controlled substance listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefor, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than May 4, 1977.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration,

Room 1203, 1405 Eye Street NW., Washington, D.C. 20537.

Dated: March 23, 1977.

DONALD E. MILLER,
Acting Deputy Administrator,
Drug Enforcement Administration.

[FR Doc.77-9398 Filed 3-29-77;8:45 am]

MANUFACTURE OF CONTROLLED SUBSTANCES

Application

Section 303(a) (1) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 823(a) (1)) states:

The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

Pursuant to § 1301.43 of Title 21 of the Code of Federal Regulations (CFR), notice is hereby given that on February 17, 1977, Stepan Chemical Co., Natural Products, 100 W. Hunter Avenue, Maywood, N.J. 07607, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances listed below:

Drug:	Schedule
Cocaine	II
Egonine	II

Pursuant to section 301 of the Controlled Substances Act (21 U.S.C. 821), and in accordance with 21 CFR 1301.43 (a), notice is hereby given that the above firm has made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances indicated, and any other such person, and any existing registered bulk manufacturer of the above substances may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on the application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Such comments, objections and requests for a hearing may be filed no later than May 4, 1977.

Comments and objections may be addressed to the DEA Federal Register Representative, Office of Chief Counsel, Drug Enforcement Administration,

Room 1203, 1405 Eye Street NW., Washington, D.C. 20537.

Dated March 23, 1977.

DONALD E. MILLER,
Acting Deputy Administrator,
Drug Enforcement Administration.

[FR Doc.77-9399 Filed 3-29-77;8:45 am]

LEGAL SERVICES CORPORATION

LEGAL SERVICES CORPORATION OF IOWA

Grants and Contracts

MARCH 25, 1977.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-29961. Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly, and shall notify the Governor and the State Bar Association of any State where legal assistance will thereby be initiated, of such grant, contract, or project * * *"

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Legal Services Corporation of Iowa to serve the counties of Scott, Clinton, Woodbury, Monona, Harrison, Mills, Bremer, Buchanan, Cedar, Iowa, Clayton, Fayette, Allamakee, Dubuque, Delaware, Jackson, Johnson, Jones and Washington.

No. 60764 MAHER, Michael 3-35-77 451 Operation 31-10 Jacket 90-000 Folio 1354 Mach. 63 Mar. 28, 1977.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at:

Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Illinois 60604.

THOMAS EHRlich,
President.

[FR Doc.77-9530 Filed 3-29-77;8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 77-22]

APPLICATIONS STEERING COMMITTEE, SPACE PROCESSING AD HOC ADVISORY SUBCOMMITTEE

Meeting

The Applications Steering Committee, Space Processing ad hoc Advisory Subcommittee will meet at the National Bureau of Standards in Gaithersburg, Maryland, on April 20 and 21, 1977. The meeting will be held in the Green Auditorium, Administration Building, beginning at 9:15 a.m. each day and ending at 5:15 p.m. on April 20 and 4:30 p.m. on April 21, 1977. The meeting is open

to the public, and individuals interested in attending should contact Mr. Ronald Johnson, Gaithersburg, Maryland, (301) 921-2835.

This Subcommittee is responsible for developing recommendations on the selection of space investigations submitted in response to Announcements of Opportunity issued by the Space Processing Applications Program, Office of Applications. The Subcommittee will take part in a review of the results of selected flight investigations and prepare recommendations on the possible future applications of space flight in materials science and technology.

Following is the approved agenda:

APRIL 20, 1977

Topic

- 9:15 a.m.—Introduction.
- 10:15 a.m.—Experimental Capabilities, past and present.
- 11:00 a.m.—Review of Results from Skylab and Apollo-Soyuz.
- 2:00 p.m.—Review of Results from Recent Space Processing Applications Rocket Missions.
- 5:15 p.m.—Adjourn.

APRIL 21, 1977

- 9:15 a.m.—Future—Materials Applications.
- 1:30 p.m.—Future—Research Applications.
- 4:30 p.m.—Adjourn.

DUWARD L. CROW,
Associate Deputy Administrator.

MARCH 23, 1977.

[FR Doc.77-9415 Filed 3-29-77;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ADVISORY PANELS

Annual Comprehensive Review

MARCH 25, 1977

In accordance with section 7(b) of the Federal Advisory Committee Act (Pub. L. 92-463), the National Endowment for the Humanities is currently reviewing each advisory panel to determine:

- a. Whether the panel is carrying out the purpose;
- b. Whether consistent with the provisions of applicable statutes the responsibilities assigned to it should be revised;
- c. Whether it should be merged with other advisory committees; or
- d. Whether it should be abolished.

Public comments and recommendations concerning the advisory panels of the National Endowment for the Humanities may be addressed to Mr. John W. Jordan, Advisory Committee Management Officer, National Endowment for the Humanities, Mail Stop 301, Washington, D.C. 20506 (Phone 202-382-2031).

Comments should be received by April 8, 1977.

Signed in Washington, D.C., on March 25, 1977.

JOHN W. JORDAN,
Advisory Committee
Management Officer.

[FR Doc.77-9416 Filed 3-29-77;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on March 23, 1977, (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service, An Assessment of the Medical Preceptorship Program, single time, medical and osteopathic schools, medical students, residents, Human Resources Division, Reese, B. F., 395-3532.

REVISIONS

VETERANS ADMINISTRATION

Request for Medical Evidence, FL-21-121, on occasion, non-VA medical institutions, Warren Topellus, 395-5872.

DEPARTMENT OF COMMERCE

Bureau of Census, Birth Expectations, Fertility, and Child Care, supplement—June 1977 CPS, CPS-1, annually, females in 53,000 households, George Hall, 395-6140.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Referral and Treatment Plan, SSA-2043, SSA-2043A, monthly, home health agencies, Warren Topellus, 395-5872.

Office of Human Development, Aftercare and Project Record of Follow-Up Form; Client Follow-Up, Program Performance, other (see SF-83), clients of funded runaway youth projects, Human Resources Division, Reese, B. F., 395-3532.

DEPARTMENT OF THE TREASURY

Departmental and Other, Quarterly Consolidated Report of Assets, Liabilities, and Positions in Specified Currencies of Foreign Branches and Subsidiaries of Firms in the United States, FC-4, quarterly, nonbanking business firms and nonprofit institutions, Gaylord Worden, 395-4730.

EXTENSIONS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Management, Monthly Report of Cooperative Projects, HUD-93211, monthly, management agents in cooperative corporation, Housing, Veterans, and Labor Division, 395-3532.

DEPARTMENT OF LABOR

Employment and Training Administration, Job Corps Enrollee Allotment Determination, MA-6-58, on occasion, Job Corps members electing to make allotments, Marsha Traynham, 395-4529.

EXTENSIONS

DEPARTMENT OF LABOR

Employment and Training Administration: Enrollment and departure report, MA6-57, on occasion, applicants assigned to Job Corps centers, Marsha Traynham, 395-4529.

Statement from court or other agency, Statement from Institution Recommendation for Job Corps, MA6-55, MA6-55A, MA6-55B, on occasion, courts, institutions, or other agencies, Marsha Traynham, 395-4529.

Request for Readmission, MA6-60, on occasion, Job Corps applicants (disadvantaged youth), Marsha Traynham, 395-4529.

PHILLIP D. LARSEN,

Budget and Management Officer.

[FR Doc.77-9604 Filed 3-29-77; 8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for us in collecting information from the public received by the office of management and budget on March 24, 1977, (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the clearance office, office of management and budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Dance/Film/Video Questionnaire, single time, nonprofit dance companies, Caywood, D. P., 395-3443.

Questionnaire (Short Fiction in Newspapers), single time, newspapers, Warren Topellus, 395-5872.

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service, Environment and Corn Yield Study (Missouri), single time, sample of corn farmers, Gaylord Worden, 395-4730.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service, professional nurse Traineeship program (HR-35 Series), on occasion, schools of nursing, Bowry, R. L., 395-3772.

NEW FORMS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Management, Section 106(b) Non-profit Sponsor Assistance "Seed Money" Loan Application, HUD-92290, on occasion, private nonprofit organizations, Housing, Veterans, and Labor Division, 395-3532.

DEPARTMENT OF TRANSPORTATION

Departmental and Other, Bart Impact Program Workplace Survey of Travel Behavior, single time individuals, Strasser, A., 395-5867.

EXTENSIONS

U.S. CIVIL SERVICE COMMISSION

Application for Police Promotion Examination, E-36, on occasion, applicants for police and fireman promotion examination, Marsha Traynham, 395-4529.

DEPARTMENT OF DEFENSE

Departmental and Other, Request for payment of Funeral and/or Interment expenses (for Decreased Military Personnel), DD1375, on occasion, individuals, Marsha Traynham, 395-4529.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration, Health Program Reporting System, NCHS 0022, annually, 56 State agencies, Richard Eisinger, Ellett, C. A., 395-6140.

EXTENSIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration, Organization Profile/Organization Contact Forms, AAA 0804, on occasion, NIAAA-funded consultants, Marsha Traynham, 395-4529.

PHILLIP D. LARSEN,

Budget and Management Officer.

[FR Doc.77-9605 Filed 3-29-77; 8:45 am]

DEPARTMENT OF STATE

Agency for International Development

[165-14]

AID AFFAIRS OFFICER, REGIONAL DEVELOPMENT OFFICE/CARIBBEAN

Redelegation of Authority

Correction

In FR Doc. 77-6635 appearing at page 12936 in the issue for Monday, March 7, 1977 the docket number in the heading should have read as set forth above.

**DEPARTMENT OF
TRANSPORTATION**

Office of the Secretary
PRIVACY ACT OF 1974

**Additions, Changes and Deletions to
Notices of Systems of Records**

The Department of Transportation herewith submits three additional systems of records for publication and comment. In addition, several administrative adjustments are necessary between the Federal Inventory of Systems of Records as taken from DOT publications in the Federal Register in 1975 and as finally published in the "Privacy Act Issuances 1976 Compilation." The final adjustments will make the inventory and the compilation exactly the same.

Any person or agency may submit written comments on the proposed systems to the Privacy Act Officer (TAD-20), Room 10320, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments must be received by April 30, 1977, to be considered.

If no comments are received, the proposed systems will become effective on May 1, 1977. If comments are received, the comments will be considered and where adopted, the system will be republished with the changes.

This notice supplements the Notices of Systems of Records published by the Office of the Federal Register under the title "Privacy Act Issuances, 1976 Compilation, Volume 2." Deletions and the changed system should be noted in that compilation which contains all systems of records reported by the Department of Transportation as of August 15, 1976.

Issued in Washington, D.C., on March 22, 1977.

BROCK ADAMS,
Secretary of Transportation.

DELETIONS FROM FEDERAL REGISTER ONLY

Delete System Number—21-20-0009, agency identifier DOT/FAA 808, system name, "Imprest Fund System," published September 24, 1975, Pages 44092-44093.

Delete System Number—21-25-0016, agency identifier DOT/FHWA 221, system name, "FHWA Time and Attendance Report," published November 19, 1975, Page 52978.

**DELETIONS FROM PRIVACY ACT
ISSUANCES—1976 COMPILATION**

Delete: DOT/SLS 159, 1976 Compilation, Page 566—no longer maintained separately.

Delete: DOT/SLS 160, 1976 Compilation, Page 567—for union grievances, file not retrieved by name.

Delete: DOT/TSC 710; file no longer maintained, Page 571.

**DELETE FROM BOTH FEDERAL REGISTER AND
PRIVACY ACT ISSUANCES 1976**

Delete: DOT/OST 023, 031 and 051, on longer maintained; Federal Inventory Number 21-05-0021, 0028 and 0063, respectively. DOT/FRA 111, file no longer maintained, Number 21-30-0012.

Delete: From "Categories of Records" in System DOT/OST 013 the words "Career Profile Cards," Number 21-05-0012.

PUBLISH THREE NEW SYSTEMS

DOT/FAA 843, DOT/UMTA 179, and DOT/UMTA 180 were not previously published in the Federal Register. DOT/FAA 843 will supplement the Compilation of 1976, whereas the two systems DOT/UMTA 179 and 180 have already been included in the Compilation of 1976.

DOT/FAA 843.

System name:

FAA World Home Address System.
DOT/FAA.

System location:

FAA Office of Public Affairs, Washington, D.C.

Categories of individuals:

FAA full time permanent and temporary employees.

Categories of records:

Address labels, master list (names, addresses, job series, and job location), and error list.

Routine uses:

Home mailing of FAA World magazine; occasional mailing of other employee information material and employee union ballots. See prefatory statement of general routine uses.

Policies and practices:

Storage:

Magnetic tape; paper printouts.

Retrievability:

By last name, job series and job location.

Safeguards:

Magnetic tape used only by authorized computer operators; paper printouts only by authorized Headquarters and regional control points.

Retention and disposal:

Magnetic tape is re-used until worn, then destroyed; paper printouts are destroyed after each monthly use to check accuracy of data.

System manager and address:

Assistant Administrator, Office of Public Affairs, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591.

Notification procedure:

Individuals wishing to know if their records appear in this system of records may inquire in person or in writing to the System Manager.

Record access procedure:

Individuals who desire access to the information about themselves in this system of records should contact or address their inquiries to the System Manager.

Contesting record procedure:

Individuals who desire to contest information about themselves contained in this system of records should contact or address their inquiries to the Administrator or his delegatee, 800 Independence Ave., SW., Washington, D.C. 20591.

Record source categories:

FAA employees, on a voluntary basis.

DOT/UMTA 179.

System name:

Application for U.S. Government Motor Vehicles Operator's Identification Card. DOT/UMTA.

System location:

Department of Transportation (DOT), Urban Mass Transportation Administration (UMTA), Personnel Office, UAD-60, 400 7th Street, SW, Washington, D.C. 20590.

Categories of individuals:

All UMTA employees who apply for a Government Motor Vehicle Operator's license.

Categories of records:

Applications for Motor Vehicle Operator's license and related documents.

Routine uses:

To verify applicants' qualifications. To issue I.D. Cards. See Prefatory Statement of General Routine Uses.

Policies and practices:

Storage:

Records are maintained in a metal file cabinet.

Retrievability:

The system is maintained by individual's name.

Safeguards:

File cabinet is in records room, with approved security lock on door.

Retention and disposal:

Records are retained until the expiration of three year period or until employee leaves UMTA. Documents destroyed by tearing or shredding.

System manager:

Director, Personnel Division, UAD-60, Department of Transportation, Urban Mass Transportation Administration, 400 7th Street, SW, Room 4116, Washington, D.C. 20590.

Notification procedure:

Inquiries should be addressed to the System Manager.

Record access procedures:

If requestor applies in person be prepared to furnish adequate identification. Written requests should be sent to the System Manager.

Contesting record procedure:

Should be submitted to the System Manager.

Record source categories:

Past driving record as to accidents, arrests, citations and physical condition.

DOT/UMTA 180.

System name:

Occupational Safety and Health Accident Reporting System. DOT/UMTA.

System location:

Department of Transportation (DOT), Urban Mass Transportation Administration (UMTA), Personnel Office, UAD-60, 400 7th Street, SW, Room 4116, Washington, D.C. 20590.

Categories of individuals:

Any UMTA employee involved in an accident while on duty status which results in injury to an individual or property damage.

Categories of records:

This system contains documents pertaining to occupational accidents involving injury to employees and/or non-employees. It will also contain documents pertaining to accidents involving employees of UMTA when no injury is involved but property damage has occurred.

Routine uses:

Accumulate accident information and statistics per DOT Order. Develop accident cause trends. For accident reports. For accident prevention program. See Prefatory Statement of General Routine uses.

Policies and practices:

Storage:

Records are maintained in a metal file cabinet.

Retrievability:

Folders are in alphabetic order by name.

Safeguards:

File cabinets are located in records room which has a security approved lock on door.

Retention and disposal:

Records are maintained for five years and then destroyed by tearing or shredding.

System manager:

Director, Personnel Division, UAD-60, Department of Transportation, Urban Mass Transportation Administration, 400 7th Street, SW, Room 4116, Washington, D.C. 20590.

Notification procedure:

Inquiries should be addressed to the System Manager at the address above. If in person, proper identification will be required. If written, notarized signature and social security number of the individual involved in the accident must be presented.

Record access procedure:

Same as "Notification Procedure."

Contesting record procedure:

Same as "Notification Procedures."

Record source categories:

Individuals involved in accidents. Witnesses to accidents. Supervisor of the UMTA employee involved in an accident. Doctors of medical facility where treated.

[FR Doc. 77-9185 Filed 3-29-77; 8:45 am]

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

PRIVACY ACT OF 1974

Proposed New System of Records

AGENCY: Comptroller of the Currency.

ACTION: Proposed New System of Records.

SUMMARY: The Comptroller of the Currency ("Comptroller") proposes to establish and maintain a new system of records in order to aid in its enforcement of the professional qualifications rules of the Municipal Securities Rulemaking Board. The professional qualifications rules affect certain persons who are or seek to be associated with national and District of Columbia bank municipal securities dealers. This proposed system will provide the Comptroller with an adequate data base for carrying out its statutory enforcement responsibilities in this area.

DATES: The proposed effective date is September 1, 1977. Comments must be received on or before May 2, 1977.

ADDRESSES: Written comments should be addressed to John E. Shockey, Chief Counsel, Comptroller of the Currency, Washington, D.C. 20219.

FOR FURTHER INFORMATION CONTACT:

R. Michael Hagen, Attorney, Securities Disclosure Division, Comptroller of the Currency, Washington, D.C. 20219. 202-447-1954. Mr. Hagen is the author of the preamble and the primary author of the final form of this notice. Substantial input was provided by the staffs of the Federal Reserve Board and the Federal Deposit Insurance Corporation.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Privacy Act of 1974 (Pub. L. 93-579; 5 U.S.C. 552a), the Comptroller gives notice that it proposes to establish and maintain a new system of records. The Comptroller on March 23, 1977, filed a report of the new system with the Office of Management and Budget, the Speaker of the House of Representatives, the President of the Senate, and the Privacy Protection Study Commission.

The new system will be created as a result of certain filing requirements which would be established by proposed 12 CFR Part 10, which is published in a separate Notice of Proposed Rulemaking elsewhere in this issue of the FEN-

ERAL REGISTER. Interested persons are urged to read the full text of that document as well as the following description of the proposed system of records, and are invited to submit written comments on or before May 2, 1977.

TREASURY/COMPTROLLER—00.221

System name:

Treasury/Comptroller — Professional Qualifications Records for Municipal Securities Principals and Municipal Securities Representatives.

System location:

Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219. Records stored in computerized files are maintained off-premises at the National Association of Securities Dealers, 1735 "L" Street NW., Washington, D.C. 20036.

Categories of individuals covered by the system:

Persons who are or seek to be associated with a municipal securities dealer which is a national or District of Columbia bank, or a department, division, or subsidiary of any such bank, in the capacity of municipal securities principals or municipal securities representatives.

Categories of records in the system:

These records contain identifying information, detailed educational and occupational histories, certain professional qualifications examination information, disciplinary histories, and information concerning the termination of employment of individuals covered by the system. Identifying information includes names, address history, date and place of birth, and may include social security number.

Authority for maintenance of the system:

Sections 15B(c)(5), 17 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(5), 78q and 78w) and the general authority of the National Banking Laws, 12 U.S.C. 1 et seq.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The information contained in these records may be subject to the following uses:

(a) Referral to the appropriate governmental authority, whether Federal, State, local, or foreign, or to the appropriate self-regulatory organization, of such information as may indicate a violation or potential violation of law, regulation or rule.

(b) Referral to the appropriate court, magistrate or administrative law judge of such information as may be relevant to proceedings before any such court or judicial officer.

(c) Disclosure of such information as may aid in the resolution of any action or proceeding:

(1) In which the Federal securities or banking laws are at issue;

(2) In which the propriety of any disclosure of information contained in the system is at issue; or

(3) To which the Comptroller of the Currency or a past or present member of its staff is a party or otherwise involved in an official capacity.

(d) Disclosure to a Federal, State, local, or foreign governmental authority, or to a self-regulatory organization, of such information as may be necessary to obtain from such authority or organization additional information concerning the qualifications of an individual covered by the system.

(e) Disclosure of such information as may be necessary to respond to a request from a Federal, State, local, or foreign governmental authority, or from a self-regulatory organization, for information needed in connection with the issuance of a license, granting of a benefit, or similar action by such authority or organization affecting an individual covered by the system.

(f) Disclosure of such information as may be necessary to respond to any Congressional inquiry undertaken at the request of an individual covered by the system.

Policies and practices for storing, retrieving, accessing and retaining and disposing of records in the system:

Storage:

Records are maintained in file folders and on computer memory discs.

Retrievability:

Records are indexed by name of individual.

Safeguards:

File folders are stored in lockable metal cabinets and computer memory discs are accessed only by authorized personnel.

Retention and disposal:

Records may be maintained for the life of an individual. Disposal is by normal methods.

System manager and address:

Deputy Comptroller for Banking Operations, Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

Notification procedure:

Inquiries, including name and date and place of birth, should be addressed to the System Manager. Inquirers may be required to include a notarized statement attesting to identity.

Record access procedure:

Same as notification procedure.

Contesting Records procedure:

Same as notification procedure.

Record source categories:

Those individuals and municipal securities dealers described in the section entitled *Categories of individuals covered by the system* provide the bulk of the information in the system. Additional input is provided by Federal, State, local, and foreign governmental authorities, and

by self-regulatory organizations, which regulate the securities industry.

Dated: March 23, 1977.

ROBERT BLOOM,

Acting Comptroller of the Currency.

[FR Doc. 77-9337 Filed 3-29-77; 8:45 am]

Office of the Secretary

CARBON STEEL PLATE FROM JAPAN

Antidumping Proceeding Notice

AGENCY: United States Treasury Department.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether or not imports of carbon steel plate from Japan are being, or likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market or the constructed value.

EFFECTIVE DATE: This investigation will begin on March 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Linda F. Potts, Office of Tariff Affairs, United States Treasury Department, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220 (202-566-2951).

SUPPLEMENTARY INFORMATION:

On March 8, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Oregon Steel Mills, Division of Gilmore Steel Corporation, a domestic producer of the subject merchandise indicating a possibility that carbon steel plate from Japan is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

For purposes of this notice, the term "carbon steel plate" means hot-rolled carbon steel plate, 0.1875 (3/16) inches or more in thickness, over 8 inches in width, not in coils, not pickle, not coated or plated with metal, not clad, and not cut, pressed or stamped to non-rectangular shape.

There is evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States. This evidence indicates that imports of carbon steel plate from Japan increased significantly during the last year. Furthermore, the petitioner has experienced serious declines in sales, capacity utilization and employment and is being significantly undersold by the alleged sales at less than fair value of the imported merchandise.

Having conducted a summary investigation as required by § 153.29 of the Customs

Regulations (19 CFR 153.29) and having determined that there are grounds for doing so, the United States Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of information received from all sources is as follows:

The information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the constructed value.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

JOHN H. HARPER,
Acting Assistant Secretary
of the Treasury.

MARCH 24, 1977.

[FR Doc. 77-9386 Filed 3-29-77; 8:45 am]

WELDED STAINLESS STEEL PIPE AND TUBING FROM JAPAN

Reopening of Discontinued Antidumping Investigation

AGENCY: United States Treasury Department.

ACTION: Reopening of Discontinued Antidumping Investigation.

SUMMARY: This notice is to advise the public that a discontinued antidumping investigation is being reopened for the purpose of determining whether there are reasonable grounds to believe or suspect that welded stainless steel pipe and tubing from Japan are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market or the constructed value.

EFFECTIVE DATE: This investigation will begin on March 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Linda F. Potts, Office of Tariff Affairs, U.S. Treasury Department, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220 (202-566-2951).

SUPPLEMENTARY INFORMATION:

On March 2, 1977, the U.S. International Trade Commission ("Commission") notified the Secretary of the Treasury that "[p]ursuant to sections 334 and 337(b) (3) of the Tariff Act of 1930, as amended (19 U.S.C. 1334 and 1337(b)(3)), this letter is to notify you that the complaint filed on November 15, 1976, may involve matters which, on the basis of information received thus far, the Commission has reason to believe may come within the purview of the Antidumping Act, 1921, as amended (19 U.S.C. 160, et seq.)." The complaint referred to, and in response to which the Commission instituted an investigation under section 337 on February 1, 1977, covered stainless steel pipe and tube. It was filed by counsel acting on behalf of Acme Tube In-

corporated, Somerset, New Jersey; Allegheny Ludlum Steel Corporation, Pittsburgh, Pennsylvania; Armco Steel Corporation, Advanced Material Division, Baltimore, Maryland; Bristol Metal, Inc., Bristol, Tennessee; Carpenter Technology Corporation, Tube Division, Union, New Jersey; Colt Industries, Inc., Trent Tube Division, East Troy, Wisconsin; Consolidated Metals Corporation, Dover, New Jersey; and Sharon Steel Corporation, Damascus Tubular Products Division, Greenville, Pennsylvania.

A "Notice of Discontinuance of Antidumping Investigation" was published in the FEDERAL REGISTER of November 22, 1972 (37 FR 24838). A "Notice of Intent to Discontinue Antidumping Investigation" was published in the FEDERAL REGISTER of August 4, 1972 (37 FR 15742). The latter notice stated in part:

The comparisons made revealed some instances where purchase price was lower than the adjusted home market price of such or similar merchandise. However, these were determined to be minimal in terms of the volume of export sales involved.

In addition, formal assurances were received from the manufacturers that they would make no future sales at less than fair value within the meaning of the [Antidumping] Act.

The fact recited above constitute evidence warranting the discontinuance of the investigation.

The U.S. Customs Service is renewing its inquiry to obtain the facts necessary to enable the Secretary of the Treasury to determine whether subsequent to the above-noted discontinuance, there are reasonable grounds to believe or suspect that there are, or are likely to be, sales to the United States at less than fair value, as required by § 153.33(g) of the Customs Regulations (19 CFR 153.33(g)).

The reopened investigation will be concluded as expeditiously as possible, but in no event, will exceed the time limits specified in section 201(b)(1) of the Act.

A summary of current information received from all sources is as follows:

The information received tends to indicate that the prices of the merchandise sold, or offered for sale, for exportation to the United States, are or are likely to be, less than the constructed value of such or similar merchandise.

JOHN H. HARPER,
Acting Assistant Secretary
of the Treasury.

MARCH 24, 1977.

[FR Doc.77-9408 Filed 3-29-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 357]

ASSIGNMENT OF HEARINGS

MARCH 25, 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 84687 (Sub-4), Veterans Truck Line, Inc. now being assigned June 14, 1977 (9 days) at Chicago, Illinois in a hearing room to be later designated.

MC 133095 (Sub-112), Texas Continental Express, Inc., now assigned April 18, 1977 at New York, New York, will be held in Court Room No. 4, U.S. Court of Customs, 26 Federal Plaza.

MC 105369 (Sub-12), N.Y. & N.J. Freightways, Inc., now assigned April 20, 1977 at New York, New York, will be held in Court Room No. 4, U.S. Court of Customs, 26 Federal Plaza.

MC 118207 (Sub-4), East Freightways, Inc., now assigned April 12, 1977 at New Orleans, Louisiana, will be held in the East Courtroom, Room 223, U.S. Court of Appeals, 600 Camp Street.

MC 95540 (Sub-949), Watkins Motor Lines, Inc., now assigned April 13, 1977 at New Orleans, Louisiana, will be held in the East Courtroom, Room 223, U.S. Court of Appeals, 600 Camp Street.

MC 118142 (Sub-130), M. Bruenger & Co., Inc. and MC 127042 (Sub-173), Hagen, Inc., now assigned April 18, 1977 at New Orleans, Louisiana, will be held in the East Courtroom, Room 223, U.S. Court of Appeals, 600 Camp Street.

MC 134922 (Sub-203), B. J. McAdams, Inc., now assigned April 20, 1977 at New Orleans, Louisiana, will be held in the East Courtroom, Room 223, U.S. Court of Appeals, 600 Camp Street.

MC 135797 (Sub-61), J. M. Hunt Transport, Inc., now assigned April 21, 1977 at New Orleans, Louisiana, will be held in the East Courtroom, Room 223, U.S. Court of Appeals, 600 Camp Street.

MC 119789 (Sub-306), Caravan Refrigerated Cargo, Inc., now assigned April 22, 1977 at New Orleans, Louisiana, will be held in the East Courtroom, Room 223, U.S. Court of Appeals, 600 Camp Street.

MC 142308, Bob Forman Associates, Inc., now assigned May 3, 1977 at Charlotte, N.C., will be held at the Public Library, 310 Tryon Street.

MC 111871 (Sub-No. 10), Southeastern Freight Lines, now assigned May 3, 1977, at Columbia, S.C., will be held at the Holiday Inn, N.W. Interstate 26 and U.S. Highway One West.

MC-F-13011, Jack I. Murphree—Continue Control—Jimco, Inc.; MC 142586, Jimco, Inc. and MC 96961 (Sub-No. 3), West Tennessee Motor Express, Inc., now being assigned June 7, 1977 (9 days) at Nashville, Tennessee, in a hearing room to be later designated.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc.77-9525 Filed 3-29-77;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

MARCH 25, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than

those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before April 14, 1977.

FSA No. 43345—Ethylene Glycol from Freeport, Texas. Filed by Southwestern Freight Bureau, Agent, (No. B-666), for interested rail carriers. Rates on ethylene glycol, in tankcar loads, as described in the application, from Freeport, Texas, to Earl and Fiberton, North Carolina, also Darlington and Greer, South Carolina.

Grounds for relief—Market competition.

Tariff—Supplement 12 to Southwestern Freight Bureau, Agent, tariff 11-H, I.C.C. 5242. Rates are published to become effective on May 1, 1977.

By the Commission,

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc.77-9523 Filed 3-29-77;8:45 am]

[Ex Parte No. MC-43]

LEASE AND INTERCHANGE OF VEHICLES BY MOTOR CARRIERS

Order

At a session of the Interstate Commerce Commission, Motor Carrier Leasing Board, held at its office in Washington, D.C. on the 21st day of March 1977.

It appearing, that a petition has been filed by J & M Transportation Co., Inc. (MC-115311 and numerous subs), and Mustang Transportation, Inc. (MC-118039 and various subs), under temporary common control, for waiver of paragraphs (a) (3) and (c) of § 1057.4 of the Lease and Interchange of Vehicles Regulations (49 CFR 1057), concerning equipment leased between petitioners;

It further appearing, that petitioners have a jointly administered program applying the same standards of inspection and maintenance to equipment in accordance with the motor carrier safety regulations of the U.S. Department of Transportation;

It further appearing, that the U.S. Department of Transportation offers no objection to a grant of the petition;

It further appearing, that no proceeding is pending involving the fitness of petitioners;

It is ordered, That waiver of paragraphs (a) (3) and (c) of Section 1057.4, be, and it is hereby granted provided that the equipment is inspected on the day it is to be leased and found to meet the requirements of the motor carrier safety regulations of the U.S. Department of Transportation and that petitioners remain in satisfactory compliance with those regulations and under common control.

By the Commission, Motor Carrier Leasing Board, Board Members Burns, Teeple, and Sibbald.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-9526 Filed 3-29-77;8:45 am]

[Notice No. 43]

**MOTOR CARRIER TEMPORARY
AUTHORITY APPLICATIONS**

MARCH 25, 1977.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 514 (Sub-No. 4TA), filed March 15, 1977. Applicant: UNITED WAREHOUSE & TRANSFER, INC., Ash and Earnest Sts., Johnson City, Tenn. 37601. Applicant's representative: Edwin O. Norris, P.O. Box 3740, Kingsport, Tenn. 37664. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Johnson City, Washington County, Tenn., on the one hand, and, on the other, points and places in Carter, Greene, Hawkins, Johnson, Sullivan, and Unicoi Counties, Tenn., Scott and Washington Counties, Va., for 180 days. Supporting shipper(s): There are approximately six (6) states of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S.

Court House, 801 Broadway, Nashville, Tenn. 37203.

No. MC 31381 (Sub-No. 224TA), filed March 15, 1977. Applicant: McLEAN TRUCKING COMPANY, 617 Waughtown Street, Winston-Salem, N.C. 27107. Applicant's representative: David P. Eshelman, P.O. Box 213, Winston-Salem, N.C. 27102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment serving the plantsite and distribution facilities of Ditto of California, Inc., located at or near Colfax, La., as an off-route point in conjunction with applicant's regular route operations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ditto of California, Inc., Highway 8 East, Colfax, La. 71417. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd., Room CC516, Mart Office Building, Charlotte, N.C. 28205.

No. MC 50069 (Sub-No. 521TA), filed March 18, 1977. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Ave., Oregon, Ohio 43616. Applicant's representative: William P. Fromme, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sulfuric acid*, in bulk, in tank vehicles, from Cairo and Toledo, Ohio, to points in Kentucky, Virginia and West Virginia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Coulton Chemical Corporation, 6600 Sylvania Ave., Sylvania, Ohio 43560. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission 313 Federal Office Bldg., 234 Summit St., Toledo, Ohio 46304.

No. MC 59806 (Sub-No. 8TA), filed March 14, 1977. Applicant: GROSS & HECHT TRUCKING, INC., P.O. Box 514, 35 Brunswick Ave., Edison, N.J. 08817. Applicant's representative: A. David Millner, P.O. Box 1409, 167 Fairfield Road, Fairfield, N.J. 07006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such merchandise* as is dealt in by wholesale, retail and chain grocery and food business houses; and (2) *Equipment, materials and supplies* used in the conduct of the business described in (1), restricted (1) and (2) above against the transportation of commodities in bulk, between points in Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union and Warren Counties, N.J.; Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster and Westchester Counties, N.Y., and Fairfield County, Conn., under a continuing contract with White Rose

Frozen Food Corp., for 180 days. Supporting shipper: White Rose Frozen Food Corp., 562 Henderson St., Jersey City, N.J. 07302. Send protests to: Robert S. H. Vance, District Supervisor, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 95136 (Sub-No. 21TA), filed March 15, 1977. Applicant: ALLEN S. YEATMAN, INCORPORATED, P.O. Box 383, Montross, Va. 22520. Applicant's representative: Maxwell A. Howell, 1100 Investment Building, 1511 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood mats*, from Warsaw, Va., to Baltimore, Howard and Anne Arundel Counties, Md., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Benjamin Morris, President, Northern Neck Lumber Company, Warsaw, Va. Send protests to: District Supervisor Paul D. Collins, Bureau of Operations, Rm. 10-502, Federal Bldg., 400 North 8th Street, Richmond, Va.

No. MC 106398 (Sub-No. 771TA), filed March 14, 1977. Applicant: NATIONAL TRAILER CONVOY, INC., 525 S. Main, P.O. Box 3329, Tulsa, Okla. 74101. Applicant's representative: Irvin Tull (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, paneling and composition board*, from Camden, N.Y., to points in Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Iowa, Missouri, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Delaware, Maryland, Tennessee, Kentucky, Arkansas, Louisiana and the District of Columbia, for 180 days. Supporting shipper: American Wood Finishing Systems, Inc., 2nd and Beckett Sts., Camden, N.Y. 08103. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 NW., Third St., Oklahoma City, Okla. 73102.

No. MC 107403 (Sub-No. 1004TA), filed March 16, 1977. Applicant: MTLACK, INC., Ten W. Baltimore Ave., Lansdowne, Pa. 19050. Applicant's representative: Martin C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Liquid wood preservatives*, in bulk, in tank vehicles, from Valparaiso, Ind., to Minneapolis, Minn.; Prairie du Chien, Wis.; Munising, Schoolcraft and St. Clair, Mich.; Washington Court House, Columbus and Orrville, Ohio; West Elizabeth, Pa., and Henry, Tenn.; and (2) *Arsenic acid*, in bulk, in tank vehicles, from Bonham and Bryan, Tex., to Valparaiso, Ind., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Koppers Company, Inc., 850 Koppers Bldg., Pittsburgh, Pa. 15219. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce

Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 107527 (Sub-No. 58TA), filed March 14, 1977. Applicant: POST TRANSPORTATION CO., P.O. Box 4827, Carson, Calif. 90745. Applicant's representative: R. Sherman Kirksey, 1970 E. 213th St., Carson, Calif. 90745. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chlorine*, in bulk, from Henderson, Nev., to points in Maricopa, Pima, Cochise, Gila, Pinal and Yuma Counties, Ariz., under a continuing contract with Jones Chemicals, Inc., for 180 days. Supporting shipper: Jones Chemicals, Inc., P.O. Box 275, Torrance, Calif. 90507. Send protests to: Linda H. Sypher, District Supervisor, Interstate Commerce Commission, Room 1321 Federal Bldg., 300 N. Los Angeles St., Los Angeles, Calif. 90012.

No. MC 108247 (Sub-No. 2TA), filed March 16, 1977. Applicant: WESTCHESTER MOTOR LINES, INC., 35 Edgemere Road, New Haven, Conn. 06512. Applicant's representative: Maxwell A. Howell, 1511 K. Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Organs*, from the distribution centers of Thomas International Corp., at Philadelphia Pa., and at or near Milford, Conn., to points in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont, with no transportation for compensation on return except as otherwise authorized, for 180 days. Supporting shipper(s): Thomas Organ Co., 8345 Havenhurst Avenue, Sepulveda, Calif. Send protests to: J. D. Perry, Jr., Interstate Commerce Commission, Bureau of operations, 135 High Street, Room 324, Hartford, Conn. 06101.

No. MC 109821 (Sub-No. 51TA), filed March 15, 1977. Applicant: H. W. TAYNTON COMPANY, INC., 40 Main Street, Wellsboro, Pa. 16901. Applicant's representative: Dewey T. Whitford (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products*, from the plant site of Watkins Salt Company in Watkins Glen, N.Y., to points in Kentucky and West Virginia, for 180 days. Supporting shipper(s): Watkins Salt Company, 518 E. Fourth Street, Watkins Glen, N.Y. 14981. Send protests to: Paul J. Kenworthy, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 314 U.S. Post Office Building, Scranton, Pa. 18503.

No. MC 110563 (Sub-No. 198TA), filed March 15, 1977. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, St. Rt. 29 North, 113 N. Ohio, Ohio Bldg., Sidney, Ohio 45365. Applicant's representative: Victor J. Tambascia (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat by-products, and articles distributed by meat*

packinghouses, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk and hides), from: Wichita, Kansas, to points in Maryland, Massachusetts, New Jersey, New York, and Pennsylvania, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Dubuque Packing Co., 1410 E. 21st St., Wichita, Kans. 67214. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit Street, Toledo, Ohio 43604.

No. MC 114569 (Sub-No. 189TA), filed March 15, 1977. Applicant: SHAFER TRUCKING, INC., P.O. Box 418, New Kingstown, Pa. 17072. Applicant's representative: N. L. Cummins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food and foodstuffs* in vehicles equipped with mechanical refrigeration (except commodities in bulk, in tank vehicles), from the plant and warehouse facilities of Kraft, Inc., at Champaign, Ill., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia, restricted to traffic originating at the above named origin and destined to the above named destination points, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Kraft, Inc., 500 Peshtigo Court, Chicago, Ill. 60690. Send protests to: Robert P. Amerine, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 278 Federal Building, P.O. Box 369, Harrisburg, Pa. 17108.

No. MC 115162 (Sub-No. 354TA), filed March 15, 1977. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, Ala. 36401. Applicant's representative: Robert E. Tate (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors* (except truck tractors), *attachments, parts and accessories* for tractors when moving at the same time and in the same shipment with tractors, from the plant site of Ford Motor Company at Romeo, Michigan to points in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. Restriction: The operations authorized herein are restricted to the transportation of traffic (a) originating at the above named origin point, and (b) destined to points in the named destination states, except that restriction (b) above shall not apply to traffic moving in foreign commerce, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ford Motor Co., Ford Tractor Operations, 2500 E. Maple, Troy, Mich. 48084. Send protests to: Clifford W. White, Dis-

trict Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1616-2121 Building, Birmingham, Ala. 35203.

No. MC 117940 (Sub-No. 215 TA), filed March 16, 1977. Applicant: NATION-WIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative: Allan L. Timmerman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Freezer and refrigerator baskets*, in boxes, crates or wrapped bundles, and (2) *Wire refrigerator shelves*, in cartons, from Ferndale, Mich., to St. Cloud, Minn., restricted to the transportation of shipments originating at the above named origin and destined to the facilities of Franklin Manufacturing Company at St. Cloud, Minn., for 180 days. Supporting shipper: Franklin Manufacturing Company, 701 33rd Ave., North, St. Cloud, Minn. 56301. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 118159 (Sub-No. 202TA), filed March 14, 1977. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366-Dawson Station, Tulsa, Okla. 74151. Applicant's representative: Warren Taylor (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat by-products*, from Omaha, Nebr., to points in Georgia, Kentucky, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Armour Food Company, 111 W. Clarendon, Greyhound Tower, Phoenix, Ariz. 85077. Send protests to: Joe Green, District Supervisor, Room 240, Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 118159 (Sub-No. 203TA), filed March 16, 1977. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366-Dawson Station, Tulsa, Okla. 74151. Applicant's representative: Warren Taylor (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from Greeley, Colo., to points in Connecticut, Delaware, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia and the District of Columbia, for 180 days. Applicant has also filed an underlying ETA seeking up

to 90 days of operating authority. Supporting shipper: Monfort Packing, Greeley, Colo. Send protests to: Joe Green, District Supervisor, Room 240, Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 118202 (Sub-No. 72TA), filed March 16, 1977. Applicant: SCHULTZ TRANSIT, INC., 323 Bridge St., P.O. Box 406, Winona, Minn. 55987. Applicant's representative: Eugene A. Schultz (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric pipe and supplies, electrical wire and cable, plumbing fixtures and supplies, lighting fixtures, heating and air conditioning units and parts therefor*, from Maspeth, Hicksville and Yonkers, N.Y.; Edison, N.J.; Baltimore, Md.; Moundsville, W. Va.; Wheatland, Pittsburgh and Philadelphia, Pa.; Bellevue, Niles, Perrysville and Cleveland, Ohio; Kohler, Wis., to Eau Claire, Marshfield, Hudson, Wis.; Minneapolis-St. Paul, Minn.; Watertown, S. Dak., restricted to shipments destined to warehouses and jobsites of the J. H. Larson Electrical Company, at the above named destination points, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: J. H. Larson Electrical Company, 530 N. Third St., Minneapolis, Minn. 55401. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg. and U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 124111 (Sub-No. 52TA), filed January 14, 1977, published in the FEDERAL REGISTER of January 31, 1977 and republished as granted by order dated _____ by the Motor Carrier Board. Applicant: OHIO EASTERN EXPRESS, INC., P.O. Box 2297, 300 W. Perkins Ave., Sandusky, Ohio 44870. Applicant's representative: John P. McMahon, 100 E. Broad St., Columbus, Ohio 43215.

Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas, and agricultural commodities exempt from economic regulation under Section 203(b) (6) of the Act*, when transported in mixed loads with bananas, from Norfolk and Newport News, Va., to points in Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, West Virginia and Wisconsin.

NOTE.—Any interested party may file petitions for reconsideration of the action of the Motor Carrier Board within 20 days following publication. The Commission requires the original and six copies of each such petition filed and also a statement certifying that one copy thereof has been served on each party of record.

No. MC 126539 (Sub-No. 27TA), filed March 15, 1977. Applicant: KATUIN BROS. INC., 102 Terminal Street, P.O. Box 1127, Dubuque, Iowa 52001. Appli-

cant's representative: Carl E. Munson, 469 Fischer Building, Dubuque, Iowa 52001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat by-products, and articles distributed by meat packinghouses* as described in Sections A & C to Appendix I to the report in *Descriptions in Motor Carriers Certificates*, 61 M.C.C. 209 and 766 (except in bulk), from the plant site and storage facilities of Hygrade Food Products Corp., at or near Storm Lake and Cherokee, Iowa, to points in Indiana and Ohio. Restricted to traffic originating at named origin points and destined to named destination states, for 180 days. Supporting shipper(s): Hygrade Food Products Corporation, P.O. Box 4771, Detroit, Mich. 48219. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, Iowa.

No. MC 128638 (Sub-No. 13TA), filed March 16, 1977. Applicant: CENTRAL GRAIN HAULERS, INC., Van Meter Road, Route No. 1, P.O. Box 746, Winchester, Ky. 40391. Applicant's representative: George M. Catlett, Suite 708 McClure Bldg., Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer ingredients*, in bulk (except in tank vehicles), from Cincinnati, Ohio and points in its commercial zone, to Winchester and Louisville, Ky., and points in their respective commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Southern States Cooperative, Inc., Roger H. Carwile, Plant Manager, P.O. Box 13065, Louisville, Ky. 40213. Send protest to: H. C. Morrison, Sr., District Supervisor, Room 216 Bakhaus Bldg., 1500 W. Main St., Lexington, Ky. 40505.

No. MC 128940 (Sub-No. 30TA), filed March 14, 1977. Applicant: RICHARD A. CRAWFORD, doing business as CRAWFORD TRUCKING SERVICE, P.O. Box 722, 9327 Riggs Road, Adelphi, Md. 20783. Applicant's representative: Charles E. Creager, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, Md. 21740. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Laminated plastic sheets*; (2) *Adhesives* used in the application of plastic sheets; and (3) *Materials, equipment and supplies* used in the manufacture, sale, and distribution of the commodities named in (1) and (2) above, between Odenton, Md., and its commercial zone, on the one hand, and, on the other, points in Arkansas, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, West Virginia, Virginia, North Carolina, South Carolina and the District of Columbia; (2) *Steel press plates*; (a) from Odenton, Md., and its commercial zone, to York, S.C., and its commercial zone;

(b) from York, S.C., and its commercial zone, to Mishawaka, Ind., and its commercial zone; and (c) from Mishawaka, Ind., and its commercial zone, to Odenton, Md., and its commercial zone; (3) *Laminated plastic sheets and carpet backing and adhesives, materials and supplies* used in the application thereof, from Long Beach, Calif., and its commercial zone, to points in Arizona, California, Colorado, New Mexico, Oregon and Washington; and (4) *Carpet backing*, from Summerville, S.C., and its commercial zone, to points in California, under a continuing contract with Exxon Chemical Company, U.S.A., for 180 days. Supporting shipper: Exxon Chemical Company, U.S.A., Odenton, Md. 21113. Send protests to: W. C. Hersman, District Supervisor, Interstate Commerce Commission, 12th and Constitution Ave., N.W., Room 1413, Washington, D.C. 20423.

No. MC 129790 (Sub-No. 4TA), filed March 15, 1977. Applicant: JOSEPH A. BECKER, d/b/a BECKER HI-WAY FRATE, 121 Adams Avenue, Albert Lea, Minn. 56007. Applicant's representative: Andrew R. Clark, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fresh meats and packinghouse products* (except hides and commodities in bulk), from the plantsite and storage facilities of Wilson Foods Corporation at Albert Lea, Minn., to points in Delaware, Kentucky, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia, under a continuing contract with Wilson Foods Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Wilson Foods Corporation, 4545 N. Lincoln Boulevard, Oklahoma City, Okla. 73105. Send protests to: Mrs. Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 134323 (Sub-No. 96TA), filed March 16, 1977. Applicant: JAY LINES, INC., 720 North Grand St., Amarillo, Tex. 79107. Applicant's representative: Gailyn Larsen, 521 S. 14th St., Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plantsite and storage facilities of MBPXL Corp., at or near Nebraska City, Nebr., to points in the United States (except Alaska and Hawaii), under a continuing contract with MBPXL Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: MBPXL Corporation, 900 E. 21st St., P.O. Box 2519, Wichita, Kans. 67201. Send protests to: Haskell E. Ballard, District Supervisor, Interstate

Commerce Commission, Bureau of Operations, Box H-4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 136981 (Sub-No. 4TA) (correction), filed February 28, 1977, published in the FEDERAL REGISTER issue of March 15, 1977, and republished as corrected this issue. Applicant: BLAIR CARTAGE, INC., 13658 Auburn Road, P.O. Box 52, Newbury, Ohio 44065. Applicant's representative: Lewis S. Witherpoon, 88 E. Broad St., Suite 930, Columbus, Ohio 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Litharge, nepheline syenite, soda ash, glass, bulbs, glass rods and tubing, glassware, K. D. metal racks, cullet, electric lamps, batteries and battery chargers, lighting fixtures, holiday decorations, K. D. packaging materials, steel nestainers and propane gas*, for the General Electric Company, between points in Illinois, Indiana, Ohio, Michigan, Buffalo, N.Y.; points in Pennsylvania west of Interstate Highway 76; (Penna. Turnpike) and north of Interstate Highway 70; and points of entry at the International Border between the United States and Canada, at Buffalo, N.Y., and Detroit, Mich.; also propane movements between points in Ohio, Lexington, Ky., and Bridgeville, Pa., and between Hutchinson, Kans., and points in Ohio, Lexington, Ky., and Bridgeville, Pa., under a continuing contract with General Electric Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: General Electric Company, Comp. No. 4504, Nela Park, Cleveland, Ohio 44112. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Bldg., 1240 E. Minth St., Cleveland, Ohio 44199. The purpose of this republication is to correct the commodity description in this proceeding.

No. MC 138126 (Sub-No. 10TA), filed March 15, 1977. Applicant: WILLIAMS REFRIGERATED EXPRESS, INC., P.O. Box 47, Old Denton Road, Federalsburg, Md. 21632. Applicant's representative: Chester A. Zyblut, 1030 15th St., N.W., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs*, from Salisbury, Md., to points in Mich., for 180 days. Supporting shipper(s): Mr. Donald R. Loring, Manager of Transportation, Campbell Soup Company, P.O. Box 1618, Salisbury, Md. 21801. Send protest to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814-B Federal Building, Baltimore, Md. 21201.

No. MC 138126 (Sub-No. 11TA), filed March 15, 1977. Applicant: WILLIAMS REFRIGERATED EXPRESS, INC., P.O. Box 47, Old Denton Road, Federalsburg, Md. 21632. Applicant's representative: Chester A. Zyblut, 1030 14th St., N.W., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs*, from

the plantsite of Ore-Ida Foods, Inc., at Greenville, Mich., to points in New York, New Jersey, Pennsylvania and Delaware, for 180 days. Applicant was granted 30 days ETA at R-14 and has an extension pending to perform the above authority excepting the State of Pennsylvania. Supporting Shipper(s): Mr. Donald C. Fowle, Traffic Manager, Ore-Ida Foods, Inc., P.O. Box 10, Boise, Idaho 83707. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814-B Federal Building, Baltimore, Md. 21201.

No. MC 138991 (Sub-No. 19TA), filed March 15, 1977. Applicant: K. J. TRANSPORTATION, INC., 1000 Jefferson Road, Rochester, N.Y. 14623. Applicant's representative: S. Michael Richards, 44 North Avenue, Webster, N.Y. 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Dundee, Marion, Newark, Williamson, Oaks Corners and East Williamson, N.Y., to points in Illinois, Indiana, Kentucky, Michigan and Wisconsin. Restriction: The operations herein involved are restricted to traffic originating at the facilities of Seneca Foods Corp., Marion Foods Corp. and wholly owned subsidiaries, under a continuing contract or contracts with Marion Foods Corp., Division of Seneca Foods Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Gregory J. Curtin, Traffic Manager, Marion Foods Corp., Division of Seneca Foods Corp., 60 South Main Street Marion, N.Y. 14505. Send protests to: Morris H. Gross, District Supervisor, Interstate Commerce Commission, U.S. Courthouse and Federal Bldg., 100 S. Clinton St. Rm. 1259, Syracuse, N.Y. 13202.

No. MC 139868 (Sub-No. 7TA), filed March 15, 1977. Applicant: WESTERN SALES TRANSPORTATION, INC., 1801 North 11th Street, Omaha, Nebr. 68110. Applicant's representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metal*, from Omaha, Nebr., to Chicago, Ill., and points in the Chicago commercial zone, under a continuing contract, or contracts, with Western Sales and Service, Inc. and Cleveland Container Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Robert Ernst, President, Western Sales & Service, Inc., 1801 North 11th Street, Omaha, Nebr. 68110. (2) Robert Ernst, General Manager, Cleveland Container Corp., 1801 North 11th Street, Omaha, Nebr. 68110. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th St., Omaha, Nebr. 68102.

No. MC 140612 (Sub-No. 13TA), filed March 15, 1977. Applicant: ROBERT F. KAZIMOUR, P.O. Box 2011, 1200 Norwood Dr., S.E., Cedar Rapids, Iowa 52403.

Applicant's representative: J. L. Kazimour (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from the facilities of Terminal Ice and Cold Storage Co., at or near Bettendorf, Iowa to points in Kentucky and Tennessee, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Terminal Ice & Cold Storage Co., 6875 State Street, Bettendorf, Iowa 52722. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, Iowa 50309.

No. MC 141546 (Sub-No. 14TA), filed March 14, 1977. Applicant: BULK TRANSPORT SERVICE, INC., 1 Dundee Park, Andover, Mass. 01810. Applicant's representative: Kenneth B. Williams, 84 State St., Boston, Mass. 02109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk, in tank trucks, from Lewiston, Maine, to points in New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut and New York, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Independent Cement Corporation, 65 William St., Wellesley Office Park, Wellesley, Mass. 02181. Send protests to: Max Gorenstein, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 150 Causeway St., Boston, Mass. 02114.

No. MC 141546 (Sub-No. 15TA), filed March 14, 1977. Applicant: BULK TRANSPORT SERVICE, INC., 1 Dundee Park, Andover, Mass. 01810. Applicant's representative: Kenneth B. Williams, 84 State St., Boston, Mass. 02109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk, in tank trucks, from Nashua, N.H., to points in Maine, Vermont, Massachusetts, Connecticut, Rhode Island and New York, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Independent Cement Corporation, 65 William St., Wellesley Office Park, Wellesley, Mass. 02181. Send protests to: Max Gorenstein, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 150 Causeway St., Boston, Mass. 02114.

No. MC 141879 (Sub-No. 2TA), filed March 15, 1977. Applicant: CHILDRESS BROTHERS, P.O. Box 525, Briscoe, Tex. 79011. Applicant's representative: William D. Lynch, P.O. Box 912, Austin, Tex. 78767. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood, moldings, door-jams and related mill-work items*, having a prior movement by water, from all seaports and ship unloading areas along the Texas Gulf Coast to Hemphill County, Tex., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Cana-

dian Millwork, Inc., P.O. Box 67, Canadian, Tex. 79014. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission—Bureau of Operations, Box H-4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 142728 (Sub-No. 2TA), filed March 15, 1977. Applicant: BLUE CHIP TRANSFER COMPANY, INC., Route 5, Box 71-B, Russellville, Ark. 72801. Applicant's representative: Lester J. Bohnsack (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Saw dust, bark, wood chips and shavings*, from Ola, Ark., over irregular routes to Lilly, La., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Deltic Farms and Timber Co., Inc., Ola, Ark. 72853. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72001.

No. MC 142765 (Sub-No. 1TA), filed March 15, 1977. Applicant: AMERICAN TRANSPORTATION, INC., P.O. Box 2379, Trenton, N.J. 08601. Applicant's representative: Mel P. Booker, 118 North St. Asaph Street, Alexandria, Va. 22314. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Asphalt sealer, tennis court sealer, tennis court coating, roof coating and concrete coating*, in pails and in drums, from Ewing Township, N.J., to points in Connecticut, Delaware, District of Columbia, Maine, Mary-

land, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Cosmicoat, Inc., 100 Lexington Avenue, Trenton, N.J. 08648. Send protests to: Dieter H. Harper, District Supervisor, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, N.J. 08608.

No. MC 142848 (Sub-No. 1TA) (Correction), filed February 7, 1977, published in the FEDERAL REGISTER issue of February 22, 1977, and republished as corrected this issue. Applicant: JAMES R. POSHARD AND SON, INC., P.O. Box 69, Mt. Vernon, Ind. 47620. Applicant's representative: Norman R. Garvin, 815 Merchants Bank Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, between Williamson, Jefferson, and Saline Counties, Ill. and Hopkins and Webster Counties, Ky., on the one hand, and, on the other, points in Vanderburgh and Posey Counties, Ind., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Mead Johnson & Company, 2404 Pennsylvania St., Evansville, Ind. 47721, Whirlpool Corporation, Hwy. 41N, Evansville, Ind. 47727, and General Electric Company, Lexan Lane, Mt. Vernon, Ind. 46720. Send protests to: William S. Ennis, Dis-

trict Supervisor, Interstate Commerce Commission, Federal Bldg., and U.S. Courthouse, 46 E. Ohio St., Room 429, Indianapolis, Ind. 46204.

No. MC 143036TA, filed March 16, 1977. Applicant: JOHN L. KOOP, doing business as "CUSTOM TOWING," 4620 Steel St., Denver, Colo. 80216. Applicant's representative: Arthur R. Hauver, Suite 1600, Lincoln Center, 1660 Lincoln St., Denver, Colo. 80264. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked, damaged, disabled, and replacement motor vehicles*, in wrecker service, by the use of wrecker equipment only, between points in Colorado, on the one hand, and, on the other, points in Kansas, Nebraska, Wyoming, New Mexico, Utah, Oklahoma, Montana, South Dakota, Iowa, Missouri, Arizona, Nevada, California, Idaho, and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 12 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Herbert C. Ruoff, District Supervisor, 721 19th St., Denver, Colo. 80202.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-9524 Filed 3-29-77;8:45 am]

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).

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1

AGENCY HOLDING THE MEETING: Consumer Product Safety Commission.

TIME AND DATE: April 6, 1977, 2 p.m.

STATUS: Part of this meeting will be open to the public; the rest is closed.

MATTERS TO BE CONSIDERED:

Portion Open to the Public:

Employee Conduct Regulations.—The staff will brief the Commission on issues related to a draft Federal Register document which would revise Employee Conduct Regulations implementing section 4(g) (2) of the Consumer Product Safety Act (restrictions on employment after leaving employment with the Commission).

Portion Closed to the Public (beginning at 3 p.m.).

Three Carpet Cases on Appeal.—At this closed session, the staff and Commission will discuss issues related to three cases under the Flammable Fabrics Act (FFA), involving Westland Carpet Mills, Inc. (Docket 75-21), Barrott Carpet Mills, (Docket 75-5), and Northwick Mills, Inc. (Docket 76-6). The Commission voted on March 10, 1977 to close meetings at which these cases will be discussed.

CONTACT PERSON FOR MORE INFORMATION: Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Suite 300, 1111-18th St., NW., Washington, DC 20207, telephone 202-634-7700.

[S-44-77 Filed 3-28-77; 9:20 am]

2

AGENCY HOLDING THE MEETING: Consumer Product Safety Commission.

TIME AND DATE: April 7, 1977, 9:30 a.m. and 1:30 p.m.

PLACE: 3rd Floor Hearing Room, 1111-18th St., NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

9:30 a.m.

1. **Petition on Tris.**—The Environmental Defense Fund (EDF) has petitioned the Commission to ban the use of the flame-

retardant chemical Tris from use in wearing apparel because the chemical is allegedly carcinogenic.

2. **Matchbook Standard.**—The Commission will give additional consideration to its proposed safety standard for matchbooks, specifically to the issue on whether and when to act on possible burn control requirements for matches. The Commission considered this matter at the March 24, 1977 Commission meeting.

3. **Generic Toy Regulations/Sharp Points Regulations.**—The Commission will consider a staff recommendation that it issue "technical guidelines" enforced by individual banning of hazardous toys or other children's articles, rather than self-executing banning regulations under the Federal Hazardous Substances Act (FHSA).

1:30 p.m.

4. **Proposed Ban of Certain Contact Adhesives.**—Before the Commission is a draft Federal Register document which would propose a ban of certain extremely flammable contact adhesives.

5. **Power Lawn Motor Standard.**—Under section 7 of the Consumer Product Safety Act, the Commission has initiated a proceeding to develop a safety standard for power lawn mowers. At this meeting, the Commission will vote on a draft Federal Register document proposing the standard, a draft Hazard Analysis of power mowers, a draft Environmental Impact Assessment, and alternatives for certification that power mowers meet the standard.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Suite 300, 1111-18th St., NW., Washington, DC 20207, telephone 202-634-7700.

[S-45-77 Filed 3-28-77; 9:21 am]

3

FEDERAL HOME LOAN BANK BOARD MEETING

Change Notice

Pursuant to the Government in the Sunshine Act of 1976, 5 U.S.C. § 552b (e) (2) and (3), announcement is made of a change of subject matter and of a decision to close a portion of the Board meeting to be held on March 31, 1977, at 9:30 a.m., in room 630, Mr. Garth Marston and Mr. Grady Perry, Jr., constituting the entire membership of the Board, hereby determine by recorded vote that Board business requires such change and that no earlier announcement of such change was possible. The announcement of this change and the vote of each member upon such change is being made

at the earliest practicable time.

The changes are as follows:

Additional Case to be Considered at the Board Meeting:

1. Final Approval of Exact Location—Limited Facility Application—Biscayne Federal Savings and Loan Association, Miami, Florida.

Cases that will be Considered in the Closed Portion of the Meeting:

2. Association Request for Waiver and Modification of Conditions in Established EFTS-RSU Application—Home Federal Savings and Loan Association, Hamilton, Ohio.

3. Consideration of Branch Office Application—First Federal Savings and Loan Association of Miami, Miami, Florida.

4. Concurrent Consideration of Five Branch Office Applications—Republic Federal Savings and Loan Association, Altadena, California, Home Federal Savings and Loan Association of San Diego, San Diego, California, Fidelity Federal Savings and Loan Association, Glendale, California, First Federal Savings and Loan Association of Hollywood, Hollywood, California, California Federal Savings and Loan Association, Los Angeles, California.

Mr. Robert Marshall (202-376-3012) is the Board official designated to respond to requests for information pertaining to such meeting.

THE FEDERAL HOME LOAN
BANK BOARD,
RONALD A. SNIDER,
Assistant Secretary.

[S-42-77 Filed 3-25-77; 4:37 pm]

4

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: April 4, 1977, 2 p.m.

PLACE: Room 12126, 1100 L Street, NW., Washington, D.C. 20573

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Agreement No. 10099-2, Application to indefinitely extend the International Council of Containership Operators Agreement and the U.S. Trades Addendum thereto.

2. Docket No. 73-27—Consolidated Express, Inc. v. Sea-Land Service, Inc., et al.

3. Special Docket No. 481—The Permanent Mission of Socialist Republic of Romania v. Prudential Lines.

4. Special Docket No. 505—Kuhne & Nagel v. Sea-Land Service, Inc.

Portions closed to the public:

1. Agreements Nos. 9929-2, 9929-3, 9929-4, modifications to the Combi Line joint service, and Agreements Nos. 10266, 10266-1, a joint marketing agreement between I.C.T. and C.G.M.

2. Docket No. 76-54—Consolidation Rules Published in the Freight Tariffs of

Conferences; Independent Carriers and a Rate Agreement—Appeal from Order Granting Motion to Discontinue.

3. Docket No. 76-64—Military Traffic Management Command: Petition for Declaratory Order.

4. Enforcement Alternatives Re: Implementation of Section 15 Agreement prior to FMC Approval.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Acting Secretary. (202-523-5727).

[S-46-77 Filed 3-28-77;11:17 am]

5

FEDERAL POWER COMMISSION MEETING

Change of Subject Matter

MARCH 24, 1977.

The following item is added to the Commission meeting of March 29, 1977, upon the affirmative vote of Commissioner Watt, Acting Chairman, and Commissioners Smith and Holloman. Chairman Dunham did not participate in the vote of this item.

P-12. Project No. 2709, Monongahela Power Company, Potomac Edison Company, West Penn Power Company.

KENNETH F. PLUMB,
Secretary.

[S-46-77 Filed 3-25-77;2:19 pm]

6

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

Meeting

On Friday, April 1, 1977, at 10 a.m. a meeting of the Board of Governors of the Federal Reserve System will be held at the Board's offices at 20th Street and Constitution Avenue, N.W., Washington, D.C., to consider the following items of official Board business:

1. Draft testimony to be presented before the Senate Committee on Banking, Housing, and Urban Affairs regarding the 1977 budget for the Federal Reserve System.
2. Issues regarding electronic funds transfer systems in preparation for testimony before the Congress.
3. Official staff appointments and reallocation of personnel and funds within one of the Board's divisions.
4. Any agenda items carried forward from a previously announced closed meeting.

This meeting will be closed to public observation because the items fall under exemptions contained in the Government in the Sunshine Act (5 U.S.C. § 552b(e)). Information with regard to this meeting may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at 202-452-3204.

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

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-37-77 Filed 3-25-77;10:41 am]

7

FEDERAL TRADE COMMISSION MEETING

Changed Agenda

In accordance with 5 U.S.C. 552b(e)(3), the Federal Trade Commission announces that it has changed the agenda of its Wednesday, March 30, 1977, open meeting to add the following agenda item:

(3) Consideration of Proposal to Exempt Certain Consumer Credit Contracts from Holder in Due Course Trade Regulation Rule.

Additional Information: Questions concerning this meeting should be directed to the Office of Public Information, Room 496 of the Federal Trade Commission Building, telephone number 202-523-3830. Any change in the time, place, or subject matter of this meeting will be posted at the earliest practicable time in Room 130 of the Federal Trade Commission Building. Except as they relate exclusively to matters closed under 5 U.S.C. 552b(c)(10) and 552b(d)(4) such changes will also be submitted to the FEDERAL REGISTER for publication. For recorded information on the current status of this meeting, call 202-523-3806.

Issued: March 24, 1977.

JOHN F. DUGAN,
Acting Secretary.

[S-38-77 Filed 3-25-77;1:13 pm]

8

MEETINGS

In accordance with 5 U.S.C. § 552b(e)(3), the Federal Trade Commission announces the following meetings:

OPEN MEETING: March 31, 1977.

The public is invited to attend the Commission's open meeting, which will begin at 2 p.m. on Thursday, March 31, 1977, in Room 532 of the Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. The agenda for the open meeting consists of:

Oral Argument in *Grolier, Inc.*, Docket No. 8879.

CLOSED MEETING: March 31, 1977.

The Commissioners will meet in a closed session at 4 p.m. on Thursday, March 31, 1977 in Room 540 of the Federal Trade Commission Building. The agenda for the closed meeting consists of: Executive Session to Discuss Oral Argument and Final Decision in *Grolier, Inc.*, Docket No. 8879.

This meeting may be continued the following work day to enable the Commission to complete appropriate action.

GUIDELINES FOR PUBLIC OBSERVERS AT OPEN MEETINGS

Members of the public may observe but not participate in open meetings of the Commission. Accordingly, members

of the public, while in the meeting room, shall maintain appropriate decorum and shall not engage in conduct that is distracting to other observers or to the meeting participants. Observers may be ejected from the meeting room for violating these guidelines.

Except for accredited members of the news media, observers are prohibited from taking photographs, motion pictures, or video recordings during a meeting or from using any sound recording device other than a small, portable, self-contained device that can be operated unobtrusively from the observer's seat.

GUIDELINES FOR MEDIA AT OPEN MEETING

Open meetings of the Commission may be covered by the media subject to certain restrictions on the use of audio-visual equipment.

Audio-only tape recording of meetings is permitted, provided the recording devices and microphones are placed at the press table.

"Available light only" hand-held still and motion picture photography and hand-held videotaping cameras are permitted in the meeting room provided such use is unobtrusive. Tripods or other portable supports may be used, but flash bulbs and flood-lights are not permitted.

ADDITIONAL INFORMATION

Questions concerning these meetings should be directed to the Office of Public Information, Room 496 of the Federal Trade Commission Building, telephone number 202-523-3830. Any change in the time, place, or subject matter of these meetings will be posted at the earliest practicable time in Room 130 of the Federal Trade Commission Building. Except as they relate exclusively to matters closed under 5 U.S.C. 552b(c)(10) and 552b(d)(4) such changes will also be submitted to the FEDERAL REGISTER for publication. For recorded information on the current status of these meetings, call 202-523-3806.

Issued: March 24, 1977.

JOHN F. DUGAN,
Acting Secretary.

[S-39-77 Filed 3-25-77;1:13 pm]

9

INTERNATIONAL TRADE COMMISSION MEETING

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on Thursday, April 7, 1977, beginning at 9:30 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436. Except as hereinafter specified, the Commission plans to consider the following agenda items in open session.

1. Agenda;
2. Minutes;

3. AA1921-Inq.-6 (Impression Fabric of Manmade Fiber from Japan)—consideration of staff report and vote;

4. AA1921-163 (Clear Sheet Glass from Romania)—consideration of staff report and vote;

5. Consideration of a report on a review of granting MFN treatment to the U.S.S.R. (Commission-initiated project to be completed by April 1, 1977);

6. Consideration of requests for investigations on: (a) Cattle and beef (Docket No. 438); (b) Matrix inject printers (Docket No. 436); (c) Toys (Docket No. 435);

7. Any items left over from previous agenda;

8. Review of the status of a Commission employee previously granted extended leave for medical reasons; and

9. Reorganization.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c) (2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with 19 CFR 201.36(b) (2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the April 7, 1977, meeting with respect to a review of the status of a Commission employee previously granted extended leave for medical reasons (Agenda item No. 8) in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since: (1) the discussion would only concern internal personnel practice and procedures; and (2) the information discussed in such portion would be likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons expected to be present at this closed portion, and their corresponding affiliations, are listed as follows:

Daniel Minchew, Chairman.
Joseph O. Parker, Vice Chairman.
Will E. Leonard, Commissioner.
George M. Moore, Commissioner.
Catherine Bedell, Commissioner.
Italo H. Ablondi, Commissioner.
Kenneth R. Mason, Secretary.
E. Bernice Morris, Staff Assistant.
Charles R. Ramsdale, Chief, Personnel Division.

Mrs. P. Cox, Librarian (Cataloguer).
Mrs. D. Berkowitz, Librarian.

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d) (1) and in conformity with 19 CFR 201.36(d). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552(b) (c) (2) and (6) and 19 C.F.R. 201.36(b) (2) and (6).

Pursuant to the specific exemptions of 5 U.S.C. 552b(c) (2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with 19 CFR 201.36(b) (2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the April 7, 1977, meeting with respect to the selection of personnel under reorganization (agenda item No.

9) in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since: (1) the discussion would only concern internal personnel practice and procedures; and (2) the information discussed in such portion would be likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons expect to be present at this closed portion, and their corresponding affiliations, are listed as follows:

Daniel Minchew, Chairman.
Joseph O. Parker, Vice Chairman.
Will E. Leonard, Commissioner.
George M. Moore, Commissioner.
Catherine Bedell, Commissioner.
Italo H. Ablondi, Commissioner.
Kenneth R. Mason, Secretary.
Jayne L. Silva, Staff Assistant (if Mr. Mason is not available).
E. Bernice Morris, Staff Assistant.
Charles R. Ramsdale, Chief, Personnel Division.
Norma H. Warbis, Personnel Management Specialist (if Mr. Ramsdale is not available).
Bruce N. Hatton, Assistant to Commissioner Leonard.

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of April 7, 1977, was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d) (1) and in conformity with 19 CFR 201.36(e). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552b(c) (2) and (6) and 19 CFR 201.36(b) (2) and (6).

By order of the Commission.

KENNETH R. MASON,
Secretary.
RUSSELL N. SHEWMAKER,
General Counsel.

[S-36-77 Filed 3-25-77; 10:14 am]

10

MEETING

Partially Closed

Pursuant to the specific exemptions of 5 U.S.C. 552b(c) (2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with 19 CFR 201.36(b) (2) and (6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold the portion of the March 31, 1977, meeting with respect to the selection of personnel under reorganization (agenda item No. 7) in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since: (1) the discussion would only concern internal personnel practice and procedures; and (2) the information discussed in such portion would be likely to disclose information of a personal nature which could constitute a clearly

unwarranted invasion of personal privacy.

Those persons expected to be present at this closed portion, and their corresponding affiliations, are listed as follows:

Daniel Minchew, Chairman.
Joseph O. Parker, Vice Chairman.
Will E. Leonard, Commissioner.
George M. Moore, Commissioner.
Catherine Bedell, Commissioner.
Italo H. Ablondi, Commissioner.

Kenneth R. Mason, Secretary
Jayne L. Silva, Staff Assistant (if Mr. Mason is not available)

E. Bernice Morris, Staff Assistant.
Charles R. Ramsdale, Chief, Personnel Division

Norma H. Warbis, Personnel Management Specialist (if Mr. Ramsdale is not available)

Bruce N. Hatton, Assistant to Commissioner Leonard

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of March 31, 1977, was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d) (1) and in conformity with 19 CFR 201.36(e). The discussion to be held in closed session is within the specific exemptions of 5 U.S.C. 552b(c) (2) and (6) and 19 CFR 201.36(b) (2) and (6).

By order of the Commission.

Issued: March 23, 1977.

RUSSELL N. SHEWMAKER,
General Counsel.

KENNETH R. MASON,
Secretary.

[S-35-77 Filed 3-25-77; 10:14 am]

11

MEETING

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on Friday, March 25, 1977, beginning at 9 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436. Except as hereinafter specified, the Commission plans to consider the following agenda item in open session:

1. Consideration of the Commission's response to the letter from Congressman Vanik, dated March 7, 1977.

Commissioners Minchew, Parker, Leonard, Moore, Bedell, and Ablondi determined by recorded vote that Commission business requires that the meeting of March 25, 1977, be called with less than one week's prior notice and directed the issuance of this notice at the earliest practicable time.

If you have any questions concerning the agenda for the March 25, 1977, Commission meeting, please contact the Secretary to the Commission at 202-523-0161. Access to documents to be considered by the Commission at the meeting is provided for by access to the public

files of the Commission, or when such documents are not in such files, as provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with 19 CFR 201.38(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

By order of the Commission.

Issued: March 24, 1977.

KENNETH R. MASON,
Secretary.

[8-34-77 Filed 3-25-77;10:14 am]

12

MEETING

Additional Agenda Item

In deliberations held March 25, 1977, the United States International Trade Commission, acting on the authority of 19 U.S.C. 1335 in conformity with 19 CFR 201.37, voted to add the following

item to its agenda for the meeting of March 31, 1977:

8. Further consideration of the Customs oversight study.

Commissioners Minchew, Parker, Leonard, Moore, and Bedell determined by recorded vote that Commission business requires the change in subject matter by addition of the agenda item, and affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Ablondi was not present for the vote.

If you have any questions concerning the agenda for the March 31, 1977, Commission meeting, please contact the Secretary to the Commission at 202-523-0161. Access to documents to be considered by the Commission at the meeting is provided for by access to the public files of the Commission, or when such documents are not in such files, as provided for in Subpart C of the Commission's rules (19 CFR 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with 19 CFR 201.38(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation.

Such requests should be communicated to the Office of the Chairman of the Commission.

By order of the Commission.

Issued: March 25, 1977.

KENNETH R. MASON,
Secretary.

[8-43-77 Filed 3-25-77;4:45 pm]

13

AGENCY HOLDING THE MEETING:
National Labor Relations Board.

TIME AND DATE: 9:30 a.m., Tuesday,
April 12, 1977.

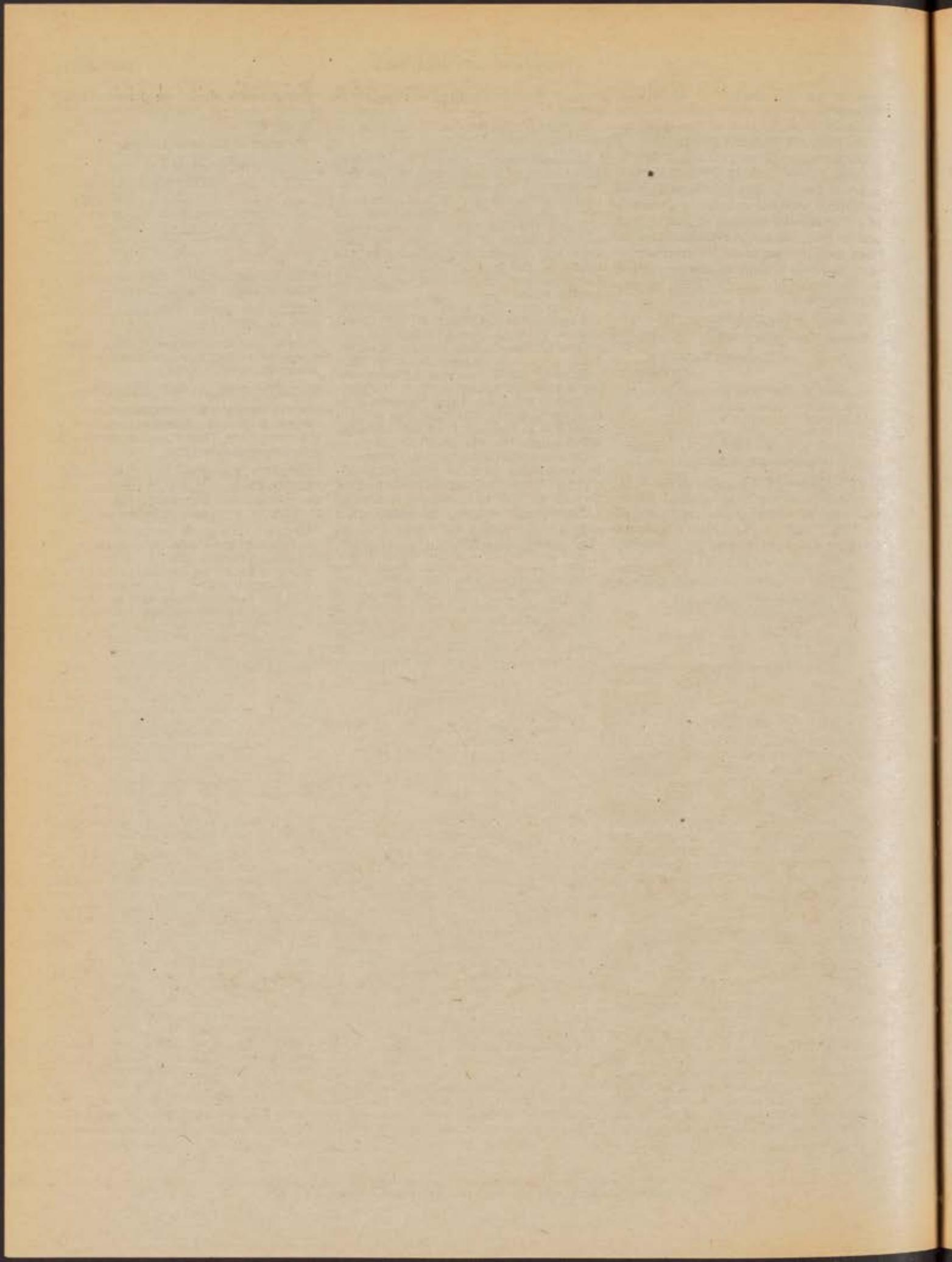
PLACE: Board Conference Room, Sixth
Floor, 1717 Pennsylvania Avenue, NW,
Washington, D.C. 20570.

STATUS: Open to Public Observation.

MATTERS TO BE CONSIDERED:
Interim Report and Recommendations of
the Chairman's Task Force on the NLRB,
dated November 5, 1976.

CONTACT PERSON FOR MORE IN-
FORMATION: John C. Truesdale, Es-
quire, Executive Secretary, Washington,
D.C. 20570. Telephone number: 202-254-
9430.

[8-49-77 Filed 3-28-77;11:53 am]



Federal Register

WEDNESDAY, MARCH 30, 1977

PART II



**SECURITIES AND
EXCHANGE
COMMISSION**



**RECORDS CONTROL
SCHEDULE AND
INCORPORATION BY
REFERENCE**

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5819; 34-13394; 35-19946; 39-461; IC-9683; IA-579]

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

Records Control Schedule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: This rule prescribes formal requirements for the retention of records and filings made with the Securities and Exchange Commission.

EFFECTIVE DATE: July 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles A. Moore, Records Officer, Securities and Exchange Commission, Washington, D.C. 20549 (202-523-5550).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commis-

sion announced today the adoption of rules governing Commission records and information.

All documents filed under the various federal statutes¹ administered by the Commission have been retained since the Commission was established in 1934². In order to promote more efficient records management within the Commission and to carry out the intended purpose of the Records Disposal Act of 1943, the Commission has developed and hereby adopts a records control schedule, subject to the approval of the National Archives, effective July 1, 1977.

17 CFR 200 is amended by adding § 200.80f to read as follows:

§ 200.80f Appendix F—Records Control Schedule.

¹ Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Trust Indenture Act of 1939, Investment Advisers Act of 1940, Investment Company Act of 1940.

² The Federal Records Center as of 1976 held over 40,000 cubic feet of Commission records. The Commission has about 20,000 additional cubic feet of records in its headquarters office.

Securities Act of 1933

Type of filing	File No.	Retention period
Registration statements (regulation C).....	2-.....	For as long as registrant has reporting requirement plus 10 yr.
Notice of proposed resale of restricted securities and resale of securities by control persons (forms 144).....	9-.....	6 yr.
Notice of proposed sale by noncontrolling person of restricted securities of issuers which do not satisfy all of the conditions of rule 144 (forms 237).....	98-.....	Do.
Notification of exemption of shares of stock or similar security offered to provide funds to be distributed to shareholders in lieu of using fractional shares, script certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction (rule 236).....	100-.....	*Do.
Offering sheets for oil or gas royalties—regulation B (schedules A, B, C, and D).....	20-.....	15 yr.
Reports of sale (accorded confidential treatment) (forms 1-G).....	20-.....	Indefinitely.
Reports after termination of offering (forms 2-G).....	20-.....	7 yr.
Notification of exemption from registration (regulation A).....	24-.....	10 yr after completion or termination of offering or order permanently suspending exemption, whichever comes first.
Notification of exemption for assessment or assessable stock (regulation F).....	94-.....	For as long as issuer is selling securities under an exemption from registration plus 10 yr.
Applications for relief from disability (regulation A).....	92-.....	Indefinitely.
Applications for relief from disability (regulation F).....	96-.....	Do.
Periodic reports (sec. 15(d)—1934 Act) (annual, quarterly, current, and proxy material).....	2-.....	10 yr.
Notice of sales of securities by closely held issuers (issuers with 100 or less beneficial owners) other than investment companies, registered or required to be registered under the Investment Company Act of 1940 (forms 240).....	90-.....	6 yr.
Notification of exemption for securities issued by a small business investment company (regulation E).....	95-.....	10 yr after completion or termination of offering or order permanently suspending exemption, whichever comes first.

Securities Exchange Act of 1934

Registration statements.....	1-, 0-.....	For as long as registrant has reporting requirement plus 10 yr.
Exemptions—American Depository Receipts.....	92-.....	Rule 12g-3(a)(b). For as long as securities are being sold under an exemption from registration plus 10 yr. Others, 3 yr.
Periodic reports (Sec. 13(a)) (annual, quarterly, current, and proxy material).....	1-, 0-.....	10 yr.
Periodic reports:		
Inter-American Development Bank.....	83-1.....	3 yr.
Asian Development Bank.....	83-2.....	Do.
Reports of beneficial ownership of securities (sec. 16(a)).....	6-.....	6 yr.
Acquisitions, tender offers and solicitations.....	5-.....	Indefinitely.
Applications for registration as broker-dealer and related reports.....	8-.....	For as long as broker-dealer is registered plus 10 yr.
Annual report—Income and expenses (form X-17A-10).....	8-.....	10 yr.
Reports—OTC market makers (form X-17A-12).....	8-.....	6 yr.
Notification regarding 3d market makers (form X-17A-16).....	8-.....	Do.
Reports by broker-dealer block positioners (form X-17A-17).....	8-.....	Do.

Type of filing	File No.	Retention period
Applications by an exchange for registration as a national securities exchange.	10-----	For as long as the exchange is registered plus 10 yr.
Applications for registration as a national securities association or affiliated securities association.	16-----	For as long as the association is registered plus 10 yr.
Proposed rule changes and notices as to stated policies and interpretations by self-regulatory organizations.	SR-----	For as long as organization is registered plus 10 yr.
Applications for listing securities on an exempted exchange.	13-----	10 yr.
Applications for permission to extend unlisted trading privileges and related applications pursuant to Rule 13f.	7-----	Do.
Reports on stabilizing activities (forms X-17A-1)	17-----	For as long as registrant has reporting requirement plus 10 yr.
Applications for registration as a (nonbank) clearing agency and amendments thereto.	600-----	For as long as agency is registered plus 10 yr.
Applications for exemption from registration as a (nonbank) clearing agency.	601-----	For as long as clearing agency has a reporting requirement plus 10 yr.
Applications for registration as a municipal securities dealer which is a bank or separately identifiable department or division of a bank.	86-----	For as long as municipal securities dealer is registered plus 10 yr.
Applications for registration as a securities information processor and amendments.	87-----	For as long as securities information processor is registered plus 10 yr.
Applications for exemption as a securities information processor.	88-----	For as long as securities information processor has a reporting requirement plus 10 yr.
Applications for registration as a transfer agent (nonbank) and amendments thereto.	84-----	For as long as transfer agent is registered plus 10 yr.

Public Utility Holding Company Act of 1935

Notification and registration by public utility holding companies and annual supplements.	30-----	For as long as holding company has a reporting requirement plus 10 yr.
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Applications and declarations

Applications/declarations pursuant to sec. 6(b), 7, 9, 9(c)(3), 10, 12(b), 12(c), 12(d), 12(f) and applicable rules thereunder.	70-----	2 yr after closing. ¹
Order granting or withdrawing exemptions from rules.	50-----	Do. ¹
Application for approval of reorganization under sec. 11(f).	52-----	Do. ¹
Divestment of securities, assets or control.	54-----	Do. ¹
Application for approval of fees incurred in connection with plan under sec. 11(f).	55-----	Do. ¹
Simplification of corporate structure.	59-----	Do. ¹
Applications and declarations for authorization of service companies.	37-----	For as long as service company is part of registered holding company system plus 5 yr.

Statements and reports

Certificates of notification by registered holding companies and subsidiaries, of security issues exempted from sec. 6(a) by sec. 6(b) or exempt under rule 47(b) and not the subject of an order of the Commission.	40-----	Until new certificate is filed.
Statements pursuant to sec. 12(i) by persons employed or retained by a registered holding company or subsidiary thereof.	12-1-----	Until new statement is filed.
Statement under rule 70(a)(1) executed by financial institution authorizing representative to serve as officer/director of holding company, filed by representative.	38-----	For as long as officer/director serves.
Report by an affiliate service company or one engaged principally in the performance of services.	62-----	For as long as service company is part of registered holding company system plus 5 yr.
Reports of beneficial ownership of securities (sec. 12(a)).	6-----	6 yr.
Declaration with respect to solicitations regarding reorganization of registered holding companies of subsidiaries subject to Rule 62.	68-----	10 yr.
Exemption of purchaser, assignee, etc. of leased facilities.	32-----	For life of lease plus 5 yr.
Report of communication with stockholders (secs. 14 and 15).	72-----	2 yr.
Periodic accounting reports:		

Periodic accounting reports

Annual report by mutual and subsidiary service companies.	49-----	For as long as service company is part of registered holding company system plus 5 yr.
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Statements and reports from unregistered (exempt) companies

Annual statements by holding companies claiming exemption pursuant to rule 2 (intrastate or predominantly operating companies).	69-----	2 yr.
Annual statement by banks holding public utility securities but claiming exemption under rule 3.	33-1-----	2 yr.
Statement of exemption from the act by order.	31-----	For as long as company relies on exemption.

Trust Indenture Act of 1939

Statements of eligibility and qualification of corporations or individuals as trustees under qualified indenture under which debt security has been or is to be issued and exemptions thereto.	22-----	For the life of the indenture.
Reports of indenture trustee to indenture security holders with respect to eligibility and qualification under sec. 310.	93-----	1 yr.

Investment Advisers Act of 1940

Applications for registration as investment adviser.	801-----	For as long as investment adviser is registered plus 10 yr.
Applications for exemption from registration as investment adviser.	803-----	For as long as investment adviser is conducting business under an exemption plus 10 yr.

Investment Company Act of 1940

Type of filing	File No.	Retention period
Notifications and registration statements	811	For as long as registrant has reporting requirement plus 10 yr.
Periodic reports (Annual, quarterly, semiannual, proxy material)	811	10 yr. ¹
Applications for exemption and other relief	812	Do.
Applications for foreign management investment companies for order permitting registration	812	For as long as registrant has reporting requirement plus 10 yr.
Request for advisory report regarding reorganization of registered investment company	816	6 yr.
Report of repurchase of securities by closed end investment company	817	Do.
Sales literature regarding securities of certain investment companies (sec. 24(b))	818	6 years.
Statement of the Federal Savings & Loan Corp. relating to the exemption of certain issuers	819	Do.
Compliance reports (sec. 19(f))		Do.
Reports of beneficial ownership of securities (sec. 30(f))	6	Do.

Miscellaneous files and reports

Administrative proceedings stop orders	3	For as long as registrant has reporting requirement plus 10 yr.
Disciplinary proceedings (broker-dealer and investment adviser)	3	25 yr.
2(c) Proceedings	4	Do.
All others	3	Do.
Applications for continuance in membership and applications for review of disciplinary actions—NASD	3	10 yr.
General correspondence:		
Active companies	132-3	Do.
Inactive companies	132-3	6 yr.
All others	132-3	6 yr from date of last entry.
Litigation files:		
Do	LIT-	10 yr (except for briefs) 25 years (briefs).
	CIV-	10 yr.
	MISC-	
	CRIM-	Do.
	MISC-	
Reorganization files	200	Permanent.
(Chapters IX, X, XI)	207, etc., 917, etc.	
Examination reports (broker-dealer)	8	For as long as broker-dealer is registered plus 2 yr.
Securities violations files	119	10 yr from date of last reported action.
Office of the secretary		
Minutes of Commission meetings:		
Record copies of minutes of meetings of the Commission since its establishment and orders and opinions of the Commission.		
Confidential treatment materials		
Periodic reports (1933 and 1934 Acts)		10 yrs.
Subject files		
Advisory committees to the Commission	205	Permanent.
Canadian Extradition Treaty (correspondence)	120-13	Do.
Congressional files:		
Members of Congress	122-2	Retain until expiration of term in office plus 1 yr.
Senate Committees	122-3	Permanent.
House Committees	112-4	Do.
Congressional Commissions and Joint Committees	122-6	Do.
Federal Government agencies (miscellaneous correspondence)	111	Permanent (or destroy when abolished by Congress or Executive Order of the President).
Legislation and Laws: Suggested amendments to acts administered by the Commission.	124-1 through 124-6, 124-11, 124-20.	Permanent.
Proposed legislation submitted by Senate to SEC for comment	124-7	Do.
Proposed legislation submitted by House to SEC for comment	124-7a	Do.
Bills not yet reported in Congress (drafted)	124-7b	Do.
Rule proposals (SEC), comments, views, etc.	87	Do.
Rules and regulations under the separate acts (1933, 1934, 1935, 1939, 1940-IA, and 1940-IC)	140	Do.
Stock exchanges (general correspondence)	128-4	For as long as exchange is registered plus 10 yr.

¹ A file is "closed" when the transaction(s) proposed and/or other issues raised are finally resolved by an appropriate Commission order which does not expressly reserve jurisdiction with respect to any further matters, and the applicant or declarant has consummated such transaction(s) or taken such other steps as may be required to fully comply with the terms and conditions imposed by the Commission in its order.

² Excludes closed end investment companies. Retention schedule to be supplied by amendment.

FORMAL CORRESPONDENCE

Under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940 and the Investment Company Act of 1940 formal correspondence will be disposed of at the Commission's discretion.

The Commission finds that the foregoing action relates solely to agency organizational procedure and practice and that notice and prior publication under U.S.C. 553 are not necessary.

(Pub. L. 78-115, 57 Stat. 390; Pub. L. 81-754, 64 Stat. 578; Pub. L. 94-575, 80 Stat. 2728)

By the Commission.

GEORGE A. FITZSIMMONS,

Secretary.

MARCH 18, 1977.

[FR Doc.77-9188 Filed 3-29-77; 8:45 am]

[Release Nos. 33-5818; 34-13393; 35-10945; 39-460; IC-9682; IA-578]

INCORPORATION BY REFERENCE

Amendments to Rules of Practice and Re-
scission of Related Rule Classifying
Basic Documents

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: These rules govern incorporation by reference of all documents filed with the Securities and Exchange Commission.

EFFECTIVE DATE: July 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles A. Moore, Records Officer, Securities and Exchange Commission, Washington, D.C. 20549 (202-523-5550).

SUPPLEMENTARY INFORMATION: On May 21, 1976, a notice of proposed rulemaking was published in the FEDERAL REGISTER (41 FR 21796), stating that the Securities and Exchange Commission was considering amending its rules relating to incorporation by reference of documents previously filed with the Commission and the treatment of basic documents. The Commission determined that the cost of storing the originals of all documents filed with it outweighs the usefulness to the Commission and to the public of many, if not most, of these records. These proposals (1) provided that no document may be incorporated by reference more than 3 years after it was filed unless it is a basic document as newly defined in the Rule; (2) permitted a person to designate as a basic document one which was filed with the Commission not more than 10 years before the date of designation and which can reasonably be expected to be incorporated by reference in a later

file; (3) provided that no document may be incorporated by reference in a current filing if the basic document was filed with the Commission more than 20 years prior to a current file; and (4) prohibited the incorporation by reference of a document which itself incorporates another document by reference. The Commission also proposed to rescind Securities Exchange Act Rule 12b-34 which, among other things, classifies certain categories of documents as basic documents.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of written comments.

PUBLIC COMMENTS

The Commission received 40 letters of comment in response to its proposal. In addition to the commenters who wrote simply to express support of the Commission's efforts to modernize and clarify its records procedures, certain commenters articulated serious concerns about various aspects of the proposal.

In the main, the serious concerns dealt with the belief that the proposed rule changes would place significant financial and administrative burdens on registrants if the Commission arbitrarily destroyed certain documents which were filed previously and required registrants to refile such documents. Certain registrants pointed out, for example, that they no longer have or no longer have readily available many of the documents that are regularly incorporated by reference in a current filing. Commenters also pointed out that they often incorporate by reference in a current filing certain long-term legal documents which may continue in effect for longer terms than the 20-year retention period contemplated by the proposal.

On review and further consideration of its proposal, the Commission has determined not to destroy documents without first giving registrants ample notice and permitting them to obtain from the Commission any documents they may need before the scheduled destruction deadline. In this connection, the Commission urges registrants to obtain from the Commission copies of any specific documents that may be useful to the registrant in a future filing if such document is likely to be destroyed in accordance with the Commission's records control schedule. The Commission believes, however, that most of the documents that are likely to be incorporated by reference are those documents that are contained in a registration statement. Under the adopted rule, documents contained in a registration statement will not be destroyed until 10 years after the registrant is no longer required to file reports with the Commission.

Several commenters expressed the view that the Commission should reassess its requirements that registrants file certain documents which may be of marginal use to the staff and of little interest to registrants. The Commission recognizes the seriousness of this concern and has chartered an advisory committee on corporate disclosure to examine

the operation of the corporate disclosure system administered by the Commission. In discharging its mandate, the committee is reviewing both registration statements under the Securities Act of 1933 and the reports under the Securities Exchange Act of 1934 to determine whether they are necessary, of high quality and cost-effective. At its meeting on April 14 and 15, 1977, the committee expects to consider recommendations designed to eliminate any duplicative and unnecessary reporting by registrants.

A commenter recommended that the Commission consider permitting non-basic documents to be incorporated by reference within a five-year period rather than within the three-year limitation provided for in the proposal. After carefully considering the public comments on its proposal, the Commission has determined to allow registrants to incorporate documents by reference within a five-year period.

Subsequent to the announcement of the incorporation by reference proposal, a records control schedule was developed by the SEC for all papers and documents filed with the Commission to permit an orderly destruction of unneeded filings which will accomplish three major objectives:

(1) It will bring the Commission into compliance with General Services Administration (GSA) regulations governing records control.

(2) It will assure more effective compliance by the Commission with the Privacy Act which requires agencies to maintain only records which are timely and relevant.

(3) It will move the Commission in the desired direction of avoiding costs inherent in maintaining and storing unneeded records.

Since registration statements under the various Acts will be retained for as long as the registrant has a reporting requirement with the Commission plus 10 years, the "basic documents" concept will no longer be necessary and accordingly, Rule 12b-34 under the Securities Exchange Act is rescinded and Rule 24 of the Commission's rules of practice has been revised.

After consideration of all the comments and the adoption of a records control schedule, the Commission has determined to modify the proposal and hereby adopts rules and amendments to rules as indicated.

The new Rule 24 (17 CFR 201.24) will permit incorporation by reference in a current filing of material that was physically filed with the Commission within the 5-year period immediately prior to the current filing. The new Rule will permit registrants to incorporate by reference, in a current filing, material that was filed more than 5 years previously only where the registrant specifically identifies the physical location by SEC file number reference, and providing the materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f). Incorporation by reference will be permitted only where reference is made to a specific document in a prior filing in which it

is physically filed and not to another document which incorporates it by reference.

In consideration of the foregoing, Chapter II of Title 17, CFR is hereby amended by revising §§ 201.24 and 230.472, and by rescinding § 240.12b-34 as set forth below.

PART 201—RULES OF PRACTICE

(1) Section 201.24 is revised to read as follows:

§ 201.24 Incorporation by reference.

Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and to the prior filing in which such document was physically filed. Reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except—

(a) Documents contained in registration statements which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission;

(b) Documents that the registrant specifically identifies by physical location by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

No documents which has been granted confidential treatment by the Commission before the effectiveness of this Rule may be incorporated by reference in any document which is filed subsequent to the effective date of this rule.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

§ 230.472 [Amended]

(2) Section 230.472(d)(2) is amended by deleting therefrom the words "or be designated as a basic document for the purpose of § 201.24(b) of this chapter."

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.12b-34 [Deleted]

(3) Section 240.12b-34, Basic Documents, is rescinded in its entirety.

These amendments shall be effective July 1, 1977.

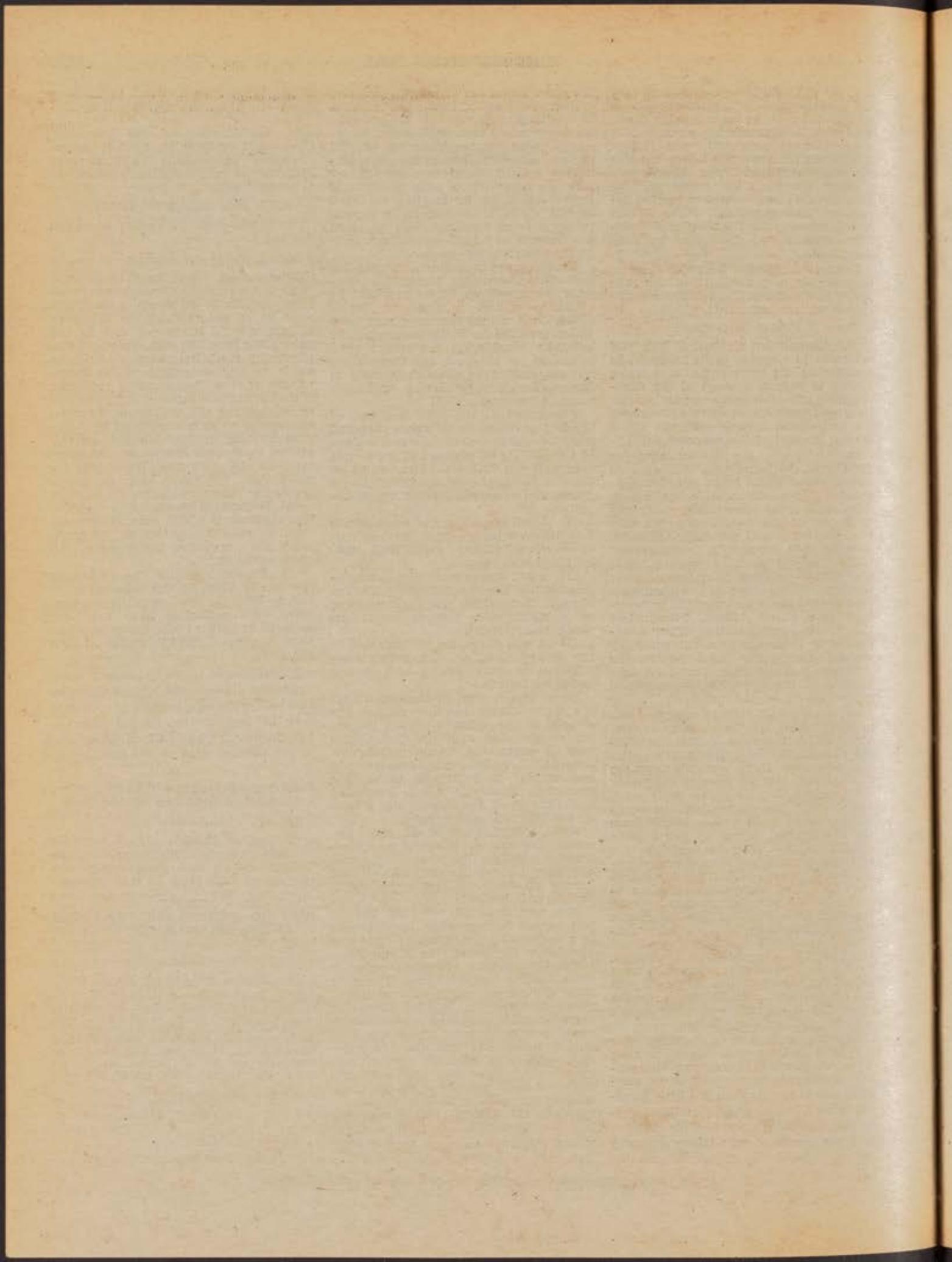
(Sec. 19, 48 Stat. 85, sec. 23, 48 Stat. 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 (15 U.S.C. 77s, 78w, 79c, 77ass, 80a-37, 80b-11).)

By the Commission,

GEORGE A. FITZSIMMONS,
Secretary.

MARCH 18, 1977.

[FR Doc. 77-9186 Filed 3-29-77; 8:45 am]



register
federal

WEDNESDAY, MARCH 30, 1977

PART III



DEPARTMENT
OF STATE

■
FISHERY CONSERVATION
AND MANAGEMENT
ACT OF 1976

Applications for Permits To Fish Off
Coasts of U.S.

DEPARTMENT OF STATE

[Public Notice 532]

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits to Fish Off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The Act also requires that all applications for such permits be published in the FEDERAL REGISTER.

Additional Applications for fishing beginning March 1, 1977, have been received from the Government of Japan, and are published herewith.

Dated: March 22, 1977.

ALBERT L. ZUCCA,
Director, Office of Fisheries Affairs.

16. Navigation Equipment: Loran C (), Loran A (), JA-77-0801
 Decca (), Navstar (), Radar (), Tachometer (),
 Other _____

17. Cargo Capacity (MT) 18. Cargo Space Handax Hand
 Salted Fish _____ Freezer 1. SEE ATTACHED 1
 Fresh Fish _____ Dry Hold _____
 Frozen Fish 62 M.T. Tanks _____
 Fish Meal _____ Other _____
 Other _____

19. Processing Equipment (Indicate daily capacity, MT)
FREEZER 2 SITS 6 M.T./DAY (COMBINED)

20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contingent Catch to be Used
 (From-To) (MT)
SEE ATTACHED 1

21. Name and Address of Agent appointed to receive any legal
 process issued in the United States:
SEE ATTACHED 1

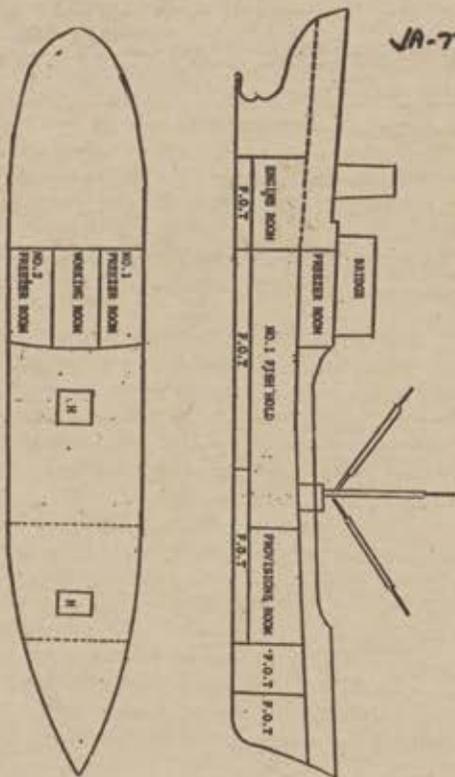
INDEPENDENT CHAS POT FISHERY

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

811

Permit Period NOV 4, 1977 - Application No. JA-77-0801
 Applied For: DECEMBER 31, 1977 For Use of Issuing Office

1. Name of Vessel HOJISEI MARU 50
 2. Vessel No./Call No. (CHAS 71) Registration No. UKI 405
 3. Name and Address of Owner Name and Address of Charterer
 Name HOJISEI GYOEN KASUGIYI KAISHA KAIYO GYOEN KASUGIYI KAISHA
 Address 5-13, OTOYOHCHI 1-1-18, HINATO-CHO, ICHIDOMARI
HAKODATE HOKKAIDO JAPAN MIYAGI-KEN JAPAN
 Cable Address _____
 4. Homeport and State of Registry: HAKODATE, JAPAN
 5. Type of Vessel POT VESSEL (CHAS), INDEPENDENT
 6. Tonnage (Gross) 421.68 M.T. (Net) _____
 7. Length 48.60 M. B. Breadth 5.50 M. G. Draft 2.00 M.
 10. Horsepower 1,250 shp. 11. Maximum Speed 10.5 kt.
 11. Propulsion: Diesel (), Steam (), Diesel/Electric (),
 Other _____
 12. Date Built 08.19.1967
 14. Number and Nationality of Personnel 29 JAPAN
 Officers 8 Crew 21 Other (Specify) _____
 15. Communications: VHF-FM (), AM/SSB, Voice (), Telegraphy (),
 Other _____
 International Radio Call Sign J P J B
 Radio Frequencies Monitored 500 KHZ
 Other Working Frequencies 41 2075 KHZ
 Schedule WATCH TIME (G.M.T.) 05:30 TO 06:30, 22:00 TO 23:00



JA-77-0801

ATTACHED 1
 CHAS SPACE

ATTACHED I

OCEAN AREA: BERING SEA AND ALASKIAN
 PERIOD: MAY - OCTOBER
 SPECIES: TAIJER CRAB
 CONTEMPLATED DATE:

JA-77-0801

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,727 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINE BRANS BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 177° 00' W. LONG.; 56° 00' N. LAT. - 177° 00' W. LONG.;
 56° 00' N. LAT. - 166° 00' W. LONG.

GEAR TO BE USED: CRAB POT

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period MAY 1, 1977 - Application No. JA-77-0802
 Applied For: DECEMBER 21, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel: SUNOSHIO MARU, NO. 18
 G = 7.3 Registration No. JMI-418
 (CRAB 72)

2. Vessel No./Hull No. (CRAB 72)

3. Name and Address of Owner: Name and Address of Charterer
 Name: KICHIRO GYOGYO KANISHIKI KAISHA, SOYO BUISAN SANSHIKI KAISHA
 Address: CHUNYUWASHO BLDG., 4-5-8, KUBIKAWA YOSHINO, 1-12-1, YUMAKI-CHO, CHITOSE, TOKYO, JAPAN, KANAGAWA-SEN, JAPAN
 Cable Address: NICHINGOYO, TOKYO

4. Homeport and State of Registry: YOKOSUKA, JAPAN

5. Type of Vessel: POT VESSEL (CRAB), INDEPENDENT

6. Tonnage (Gross): 544.97 M.T. (Net)

7. Length: 47.60 M. B. Breadth: 8.20 M. S. Draft: 3.75 M.

10. Horsepower: 1,000 shp. 11. Maximum Speed: 11.8 kt.

11. Propulsion: Diesel (M), Steam (), Diesel/Electric ().
 Other

13. Date Built: AUG 16, 1968

14. Number and Nationality of Personnel: 20, JAPAN
 Officers: 2 Crew: 21 Other (Specify):

15. Communications: VHF-FM (), AM/SBS, Voice (M), Telegraphy (M).
 Other: International Radio Call Sign: J T L U
 Radio Frequencies Monitored: 300 KHZ
 Other Working Frequencies: 41 2075 KHZ
 Schedule: WATCH TIME (G.M.T.) 05:30 TO 06:30, 17:00 TO 21:00

ATTACHED II

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) KIZUCHI OSHO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4170)
 (HOME ADDRESS)
 429 EAST 52ND ST. APT. 28E,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

JA-77-0801

16. Navigation Equipment: Loran C (M), Loran A (), Omega (),
 Decca (), Seveast (), Radar (M), Fathometer (M),
 Other:

17. Cargo Capacity (MT) 18. Cargo Space
 Number: 1888
 Salted Fish: Processor 1.2.5 SEE ATTACHED I
 Fresh Fish: Dry Hold
 Frozen Fish: 70 M.T. Tanks
 Fish Meal: Other
 Other:

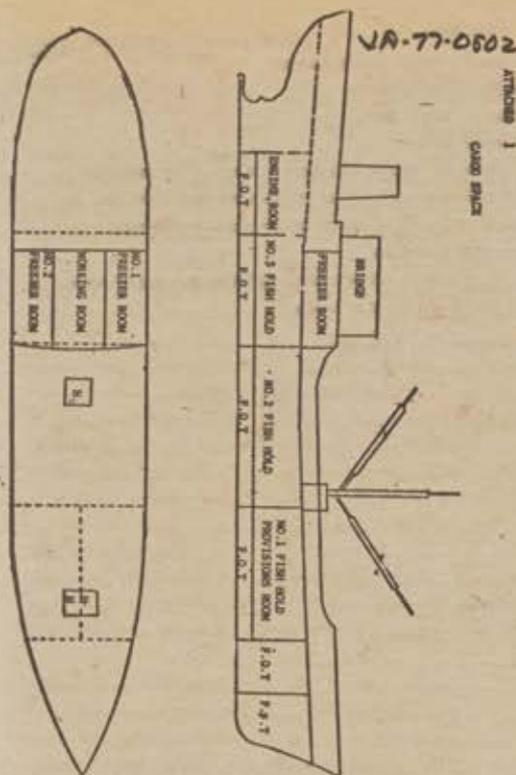
19. Processing Equipment (Indicate daily capacity, MT)
 PROCESSOR 2 SETS 4 M.T./DAY (COMBINED)

20. Fisheries for which Permit is Requested:
 Ocean Area: Period: Species: Contemplated Gear to be Used:
 (From-To) (From-To) (From-To)
 BERING SEA (MAY - OCTOBER) CRAB (M.T.)

JA-77-0802

SEE ATTACHED I

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
 SEE ATTACHED II



ATTACHED 2

OCEAN AREA: BERING SEA AND ALUTTIAN
 PERIOD: MAY - OCTOBER
 SPECIES: TANAKA CRAB

CONTINGENT CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,727 TONS IN THIS AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINES DRAWN BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG.; 56° 09' N. LAT. - 173° 00' W. LONG.;
 56° 09' N. LAT. - 166° 00' W. LONG.)

GEAR TO USED: CRAB POT

ATTACHED 3

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCEEDINGS ISSUED IN THE UNITED STATES:

(NAME) HIROSHI OHSO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.

(ADDRESS)
 277 PARK AVENUE, NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)

(HOME ADDRESS)
 499 EAST 52ND ST. APT. 208,
 RIVERCHOUNT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

803

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period MAY 1, 1977.
 Applied For: DECEMBER 31, 1977.

Application No. JA-77-0803
 For Use of Issuing Office

Vessel: TAIYO

- Name of Vessel SHIMOTO MARU, NO. 27
- Vessel No.; Hull No. (CRAB 71) Registration No. KMI-297
- Name and Address of Owner Name and Address of Charterer
 Name HEIHO GYOEN HANSHI GAISSA, TAIYO GYOEN HANSHI GAISSA
 Address SHINYAKUCHO BLDG., 1-3-18, HINATA-CHO, ISHINOMAKI,
1-12-1, YURAKU-CHO, CHUO-KU, TOKYO, JAPAN. MIYAGI-KEN, JAPAN.
 Cable Address HEIHO GYOEN, TOKYO
- Homeport and State of Registry: YOKOHAMA, JAPAN
- Type of Vessel POT VESSEL (CRAB), INDEPENDENT
- Tonnage (Gross) 499.53 M.T (Net)
- Length 51.60 M. B. Breadth 8.80 M. 9. Draft 4.30 M.
- Horsepower 1,250 shp. 11. Maximum Speed 11.0 kt.
- Propulsion: Diesel (D), Steam (S), Diesel/Electric (E),
 Other _____
- Date Built SEP. 14, 1967
- Number and Nationality of Personnel 29, JAPAN
 Officers 8 Crew 21 Other (Specify) _____
- Communications: VHF-FM (), AM/SSB, Voice (V), Telegraphy (G),
 Other _____

International Radio Call Sign J P J K
 Radio Frequencies Monitored 500 KHZ
 Other Working Frequencies AI 2075 KHZ
 Schedule WATCH TIME (C.M.T) 05:30 TO 06:30, 22:00 TO 23:00

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

804

Permit Period MAY 1, 1977 — Application No. JA-77-0804
 Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel: SHIMO MARU

2. Vessel No./Hull No.: 0079 Registration No.: TK 1-923
(CRAB POT)

3. Name and Address of Owner: FURUKAWA HANSHU CO., LTD. Name and Address of Charterer: SEE ATTACHED III
 Address: NO. 219, TOMOYAMA
SHIMIZU, SHIZUOKA-PREF., JAPAN
 Cable Address: _____

Homeport and State of Registry: TOKYO, JAPAN

4. Type of Vessel: FUR VESSEL (CRAB), INDUSTRY

5. Tonnage (Gross): 292.62 M.T. (Net) _____

6. Length: 44.40 M. B. Breadth: 7.90 M. D. Draft: 3.10 M.

7. Horsepower: 850 shp. 11. Maximum Speed: 10.5 kt.

8. Propulsion: Diesel (X), Steam (), Diesel/Electric (), Other _____

9. Date Built: FEB. 1968

10. Number and Nationality of Personnel: 29, JAPAN

Officers: 5 Crew: 21 Other (Specify): MASTER, INTERCOMPT

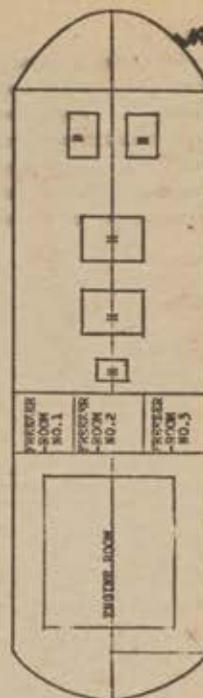
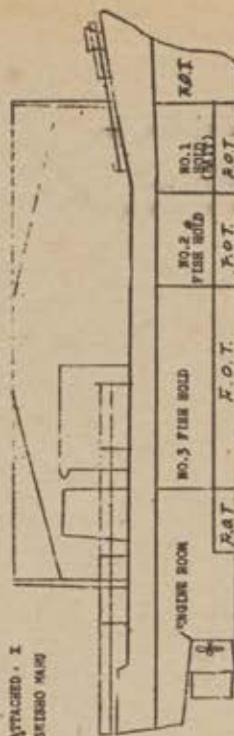
11. Communications: VHF-FM (), AM/VHF, Voice (), Telegraphy (), Other _____

International Radio Call Sign: JFVU

Radio Frequencies Monitored: 500 MHz

Other Working Frequencies: AL 2075 Freq

Schedule WATCH TIME (G.M.T.): 00:00 TO 01:00, 05:00 TO 07:00



12. Navigation Equipment: Loran C (X), Loran A (), Omega (), Decca (), Ultras (), Radar (), Tachometer (), Other _____

13. Tonnage Capacity (MT) 14. Tonnage Space Market Bank

• Salted Fish _____ Freezer 2, 3 SEE ATTACHED I

Fresh Fish _____ Dry Hold _____

Frozen Fish 50 M.T. Tanks _____

Fish Meal _____ Other _____

15. Processing Equipment (Indicate daily capacity, MT)

FREZER 3 BATH 3 M.T./DAY (COMBINED)

20. Fisheries for which Permit is Requested:

Gear Area Period Species Specified Gear to be Used
 (From-To) (Mesh (M))

SEE ATTACHED I

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

SEE ATTACHED IV

ATTACHED I

OCEAN AREA: SHIMO SEA AND ADJACENT

PERIOD: MAY - OCTOBER

SPECIES: PANFISH CRAB

CONTINGENT CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,727 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINED DRAWS BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG. 56° 09' N. LAT. - 173° 00' W. LONG.

56° 09' N. LAT. - 168° 00' W. LONG.

GEAR TO BE USED: CRAB POT

JA-77-0804

JA-77-0804

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

805

ATTACHED X

NAME AND ADDRESS OF CHARTERER

1. NAME: HOKUYO SWIDAN CO., LTD.
 ADDRESS: 7-9-13, TSUKIJI, CHUO-KU, TOKYO, JAPAN
 CABLE ADDRESS: HOKUYO SWIDAN TOKYO
 2. NAME: HOKOKU MARINE PRODUCTS CO., LTD.
 ADDRESS: 7-9-13, TSUKIJI, CHUO-KU, TOKYO, JAPAN
 CABLE ADDRESS: HMP, CO, LTD.

Permit Period: MAY 1, 1977 - Application No. JA-77-0805
 Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel: TAKASHIRO MARU NO. 51
 2. Vessel No./Hull No. 2-75 (COAB 75) Registration No. ME 3-633
 3. Name and Address of Owner: Name and Address of Charterer
 Name: TAKASHIROHATSU MATSU CO., LTD. SEE ATTACHED X
 Address: 712-5, OKASHIMURA, NANSU-MACHI, WATSUMI-GUN, MIE-KEN, JAPAN
 Cable Address: _____
 4. Homeport and State of Registry: MIE, JAPAN
 5. Type of Vessel: FRY VESSEL (CRAB), IMPROVED
 6. Tonnage (Gross): 171.28 M.T. (Net) _____
 7. Length 42.10 M. B. Breadth 8.80 M. D. Draft 3.25 M.
 8. Horsepower: 1000 shp. 11. Maximum Speed: 20.8 kt.
 11. Propulsion: Diesel (S), Steam (), Diesel/Electric (), Other _____
 13. Date Built: JUL. 21, 1960
 14. Number and Nationality of Personnel: 30, JAPAN
 Officers: 5 Crew: 24 Other (Specify): 2, SUPER-INTERPRETER
 15. Communications: VHF-FM (), AM/SB, Voice (), Telegraphy (), Other _____
 International Radio Call Sign: JFTL
 Radio Frequencies Monitored: 500 kHz
 Other Working Frequencies: A1 2075 kHz
 Schedule: TACKLE TIME (G.M.T.): 00:00 TO 01:00, 06:00 TO 07:00

ATTACHED W

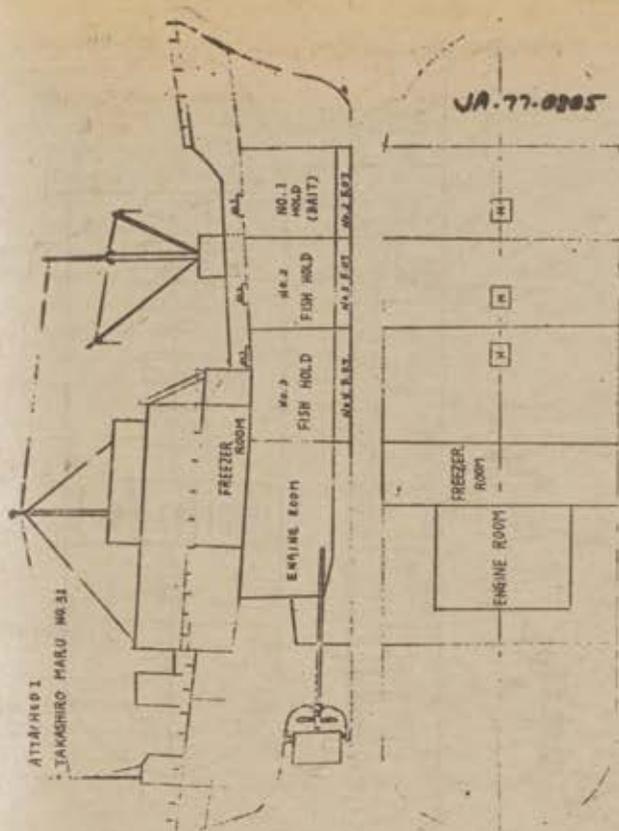
NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) HISUGO OHNO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)
 (HOME ADDRESS)
 429 EAST 52ND ST. APT. 26E,
 RIVERCOURT NEW YORK, N.Y. 10027
 (TEL. 212-751-8216)

JA-77-0804

16. Navigation Equipment: Loren Q (), Loren A (), Omega (), Decca (), Navstar (), Radar (), Tachometer (), Other _____
 17. Cargo Capacity (MT) 18. Cargo Space Ranker Name
 Salted Fish _____ Processor 2, 3 SEE ATTACHED I
 Fresh Fish _____ Dry Hold
 Frozen Fish 80 M.T. Yenko
 Fish Meal _____ Other _____
 19. Processing Equipment (Indicate daily capacity, MT)
 PRESSEUR 3 SETS 5 M.T./DAY (COMBINED)
 20. Fisheries for which Permit is Requested:
 Grand Area Takeda Species Contemplated Catch to be Used (From-To) Catch (MT)
 SEE ATTACHED X
 21. Name and Address of Agent appointed to receive any legal process issued in the United States:
 SEE ATTACHED W

JA-77-0805



ATTACHED X

JA-77-0805

NAME AND ADDRESS OF CHARTERER

1. NAME: HOKUTO SEISAN CO., LTD.
 ADDRESS: 7-9-13, TSUKIJI, CHUO-KU, TOKYO, JAPAN
 CABLE ADDRESS: HOKUTO SEISAN TOKYO
2. NAME: HOKONI MARINE PRODUCTS CO., LTD.
 ADDRESS: 7-9-13, TSUKIJI, CHUO-KU, TOKYO, JAPAN
 CABLE ADDRESS: SHIP. CO. LTD.

ATTACHED Y

OCEAN AREA: BERING SEA AND ALUTKIAN
 PERIOD: MAY - OCTOBER
 SPECIES: TASSER CRAB
 CONTEMPLATED TONNAGE:

JA-77-0805

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,727 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINES DRAWN BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG.; 58° 09' N. LAT. - 173° 00' W. LONG.;
 58° 09' N. LAT. - 166° 00' W. LONG.;

GEAR TO BE USED: CRAB POT

ATTACHED W

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES: JA-77-0805

(NAME) KIICHO OHSO
 PRESIDENT,
 TAITO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)
 (HOME ADDRESS)
 429 EAST 52ND ST. APT. 208,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

806

Permit Period MAY 1, 1977 — Application To: JA-77-0806
 Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel: SUNTO MARU NO. 2

2. Vessel No.; Hull No.: 8-76 Registration No.: TK 1-952
 (COAB 76)

3. Name and Address of Owner: WANE AND ADDRESS OF CHARTERER
 Name: KYOTOPUJI SHOUJI CO. LTD. SVC ATTACHED III
 Address: NO. 2-5-1, WIMATO-CHO,
SHIMIZU, SHIZUOKA-KEN, JAPAN
 Cable Address: _____

4. Homeport and State of Registry: YOKO, JAPAN

5. Type of Vessel: FOOT VESSEL (COAB), IMPERMENTED

6. Tonnage (Gross): 402.73 M.T. (Net): _____

7. Length: 46.67 m. B. Breadth: 8.40 m. D. Draft: 3.50 m.

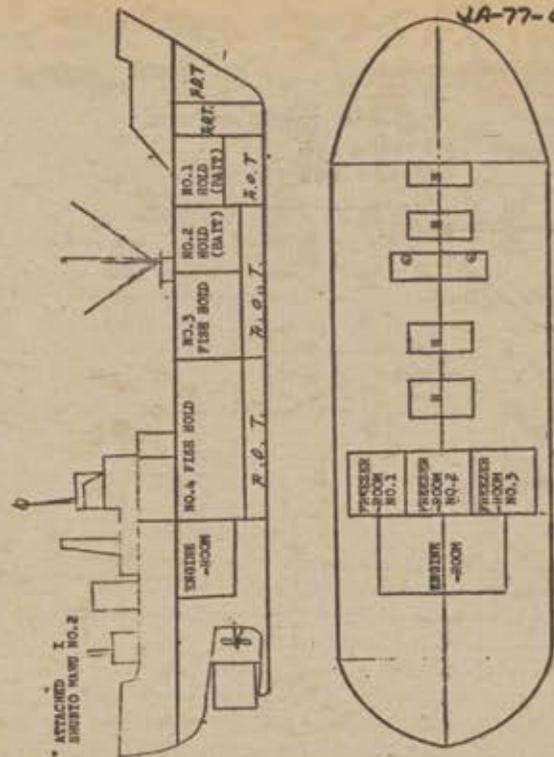
10. Horsepower: 1000 shp. 11. Maximum Speed: 13.0 kt.

11. Propulsion: Diesel (D), Steam (S), Diesel/Electric (E),
 Other: _____

13. Date Built: APR 1967

14. Number and Nationality of Personnel: 50, JAPAN
 Officers: 5 Crew: 23 Other (Specify): 2, SUPER-INTENDANTS

15. Communications: VHF-FM (F), AM/SSB, Voice (V), Telegraphy (T),
 Other: _____
 International Radio Call Sign: 22ND
 Radio Frequencies Monitored: 500 KHZ
 Other Working Frequencies: AT 2075 KHZ
 Schedule: HATCH TIME (G.M.T.): 00:00 TO 01:00, 06:00 TO 07:00



16. Navigation Equipment: Loran C (C), Loran A (A), Omega (O),
 Decca (D), Navast (N), Radar (R), Tachometer (T),
 Other: _____

17. Cargo Capacity (MT)

	18. Cargo Space Number	Name
Salted Fish	Freezer 3, 4	SEE ATTACHED I
Fresh Fish	Dry Hold	
Frozen Fish	65 M.T.	Tanks
Fish Meal	Other	
Other		

19. Processing Equipment (Indicate daily capacity, MT)
FREZER 3 CUBS 3 M.T./DAY (COMBINED)

20. Fisheries for which Permit is Requested:
 Fisher Area Period Species Contemplated Gear to be Used
 (From-To) (Catch (MT))
 SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal
 process issued in the United States:
 SEE ATTACHED IV

ATTACHED I

OCEAN AREA: BENTON SEA AND ALASKIAN

PERIOD: MAY - OCTOBER

EFFICES: TANDEM CRAB

CONTEMPLATED GEAR:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION
 TO THE JAPANESE IMPERMENTED CRAB FISHERY (2,727 TONS IN THE AREA
 LOCATED TO THE NORTH AND WEST OF STRAIGHT LINE DRAWN BETWEEN
 THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 177° 00' W. LONG.; 56° 09' N. LAT. - 177° 00' W. LONG.;
 56° 09' N. LAT. - 164° 00' W. LONG.)

GEAR TO USED: CRAB POT

NOTICES

16935

JA-77-0806

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

817

ATTACHED I

NAME AND ADDRESS OF CHARTERER

1. NAME: HOKUYO SUISAN CO., LTD.
 ADDRESS: 7-9-13, TSUKIJI, CHYO-KU, TOKYO, JAPAN
 CABLE ADDRESS: HOKUYO SUISAN TOKYO
 2. NAME: HOKOKU MARINE PRODUCTS CO., LTD.
 ADDRESS: 7-9-13, TSUKIJI, CHYO-KU, TOKYO, JAPAN
 CABLE ADDRESS: HMP. CO., LTD.

Permit Period MAY 1, 1977 Application No. **JA-77-0807**
 Applied For: TO BEGIN ON 11, 1977 For Use of Issuing Office

State: JAPAN
 1. Name of Vessel: TAISEI MARE NO. 1
 2. Vessel No./Hull No.: (GRAB 77) Registration No. TEL-525
 3. Name and Address of Owner: NAME AND ADDRESS OF CHARTERER
 Name: YOKUAI SYOKUO KANISHIKI TAISEI SEE THE ATTACHED I
 Address: 2-3-9, TRIFUNE
CHYO-KU, TOKYO, JAPAN
 Cable Address: INTEL FISHCO TOKYO
 4. Homeport and State of Registry: TOKYO, JAPAN
 5. Type of Vessel: POY VESSEL (GRAB), IMPROVED
 6. Tonnage (Gross): 422.45 M.T. (Net) -
 7. Length 42.25 M. 8. Breadth 8.90 M. 9. Draft 4.20 M.
 10. Horsepower 1190 hp 11. Maximum Speed 12.5 kt.
 12. Propulsion: Diesel (), Steam (), Diesel/Electric (),
 Other -
 13. Date Built: JULY 15, 1968
 14. Number and Nationality of Personnel: NT, JAPAN
 Officers 9 Crew 18 Other (Specify) -
 15. Communications: VHF-FM (), AM/SSB, Voice (), Telegraphy (),
 Other -
 International Radio Call Sign: JMY
 Radio Frequencies Monitored: 500 KHZ.
 Other Working Frequencies: AL 2070, 2075 KHZ.
 Schedule: WATCH TIME (G.M.T.) 00:00 TO 01:00, 06:00 TO 07:00

ATTACHED IV

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) **KEISUO OHNO**
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)
 (HOME ADDRESS)
 429 EAST 52ND ST. APT. 20E,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

JA-77-0806

16. Navigation Equipment: Loran C (), Loran A (), Omega (),
 Speed (), Heave (), Radar (), Pathometer (),
 Other: DIRECTION FINDER
 17. Cargo Capacity (MT) 18. Cargo Space

Salted Fish	-	Freezer	1, 2, 5, 4
Fresh Fish	-	dry hold	-
Frozen Fish	120 M.T.	Tanks	-
Fish Meal	-	Other	-
Other	-		

 19. Processing Equipment (Indicate daily capacity, MT)
FREEZER 30000 M.T./DAY (COOKING)
 20. Fisheries for which Permit is Requested:

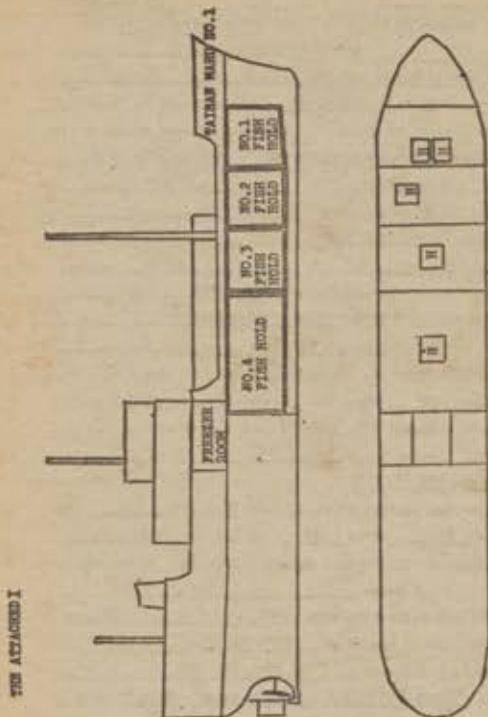
Ocean Area	Period (From-To)	Species	Commodities	Gear to be Used
				<u>GRAB (MT)</u>

 SEE THE ATTACHED I
 21. Name and Address of Agent appointed to receive any legal process issued in the United States:
SEE ATTACHED IV

JA-77-0807

JA-77-0807

JA-77-0807



THE ATTACHED IV

NAME AND ADDRESS OF CHARTERER

(NAME) KYOGUAI OTSOTO KANSHIKI KAISHA
 (ADDRESS) 2-3-8, INIFUNE, CHOO-KU, TOKYO, JAPAN
 (CABLE ADDRESS) INELFISCO TOKYO

(NAME) KYOGUO CO., LTD.
 (ADDRESS) 2-1-8, HANBUOKI, CHITODA-KU, TOKYO, JAPAN
 (CABLE ADDRESS) CHITODA KYOKUO

ATTACHED I

JA-77-0807

OCEAN AREA: KURENG SEA AND ADJACENT
 PERIOD: MAY - OCTOBER
 SPECIES: TANKER CRAB
 CONTEMPLATED CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,777 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINES DRAWN BETWEEN THE FOLLOWING COORDINATES:

36° 00' N. LAT. - 173° 00' W. LONG.; 38° 09' N. LAT. - 173° 00' W. LONG.;
 38° 09' N. LAT. - 166° 00' W. LONG.)

GEAR TO USED: CRAB POT

ATTACHED IV

JA-77-0807

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) MIZUNO OSIRO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)

(HOME ADDRESS)
 429 EAST 50TH ST. APT. 202,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

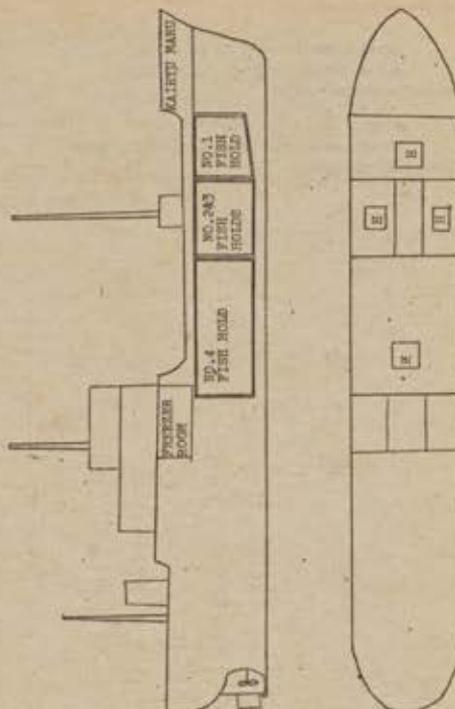
808

JA-77-0808

Permit Period MAY 1, 1977 Application No. **JA-77-0808**
 Applied For TO OCTOBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel KAIYU MARI
2. Vessel No. Hull No. (CRAB 76) Registration No. JMI-277
3. Name and Address of Owner Name and Address of Charterer
 Name DAIICHOENYO GYOKU CO., LTD. SEE THE ATTACHED II
 Address 6-22-4, SHUKIJI
OHUO-KU, TOKYO, JAPAN
 Cable Address MIYAKO-FISHERY TOKYO
4. Homeport and State of Registry: KANAGAWA, JAPAN
5. Type of Vessel POW VESSEL (CRAB), INDEPENDENT
6. Tonnage (Gross) 453.14 M.T. (Net) 202.60 M.T.
7. Length 47.01 M. 8. Breadth 8.50 M. 9. Draft 4.20 M.
10. Horsepower 2160 shp. 11. Maximum Speed 12.5 hr.
11. Propulsion: Diesel (*), Steam (), Diesel/Electric (),
 Other -
12. Date Built NOVEMBER 6, 1957
13. Number and Nationality of Personnel 27, JAPAN
 Officers 0 Crew 19 Other (Specify) -
14. Communications: VHF-FM (), AM/SSB, Voice (*), Telegraphy (*),
 Other -
 International Radio Call Sign JLXP
 Radio Frequencies Monitored 500 KHZ.
 Other Working Frequencies At 2070, 2075 KHZ.
 Schedule WATCH TIME (G.M.T.) 00:00 TO 01:00, 06:00 TO 07:00



SEE THE ATTACHED I

16. Navigation Equipment: Loran C (*), Loran A (), Omega (),
 Decca (), Navsat (), Radar (*), Tachometer (*),
 Other DIRECTION FINDER
17. Cargo Capacity (MT) 18. Cargo Space

	Number	Name
Salted Fish	-	SEE THE ATTACHED I
Fresh Fish	-	Freezer 1, 2, 3, 4
Frozen Fish	<u>100 M.T.</u>	Dry Hold -
Fish Meal	-	Tanks -
Other	-	Other -
19. Processing Equipment (Indicate daily capacity, MT)
FRESHEN 3000 5M.T./DAY (COMBINED)
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
SEE THE ATTACHED II				
21. Name and Address of Agent appointed to receive any legal process issued in the United States:
SEE ATTACHED IV

ATTACHED I

OCEAN AREA: BERING SEA AND ALASKIAN
 PERIOD: MAY - OCTOBER
 SPECIES: PANFISH CRAB
 CONTEMPLATED CATCH:
 THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,727 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINE DRAWN BETWEEN THE FOLLOWING COORDINATES:
 56° 00' N. LAT. - 173° 00' W. LONG.; 58° 09' N. LAT. - 175° 00' W. LONG.;
 58° 09' N. LAT. - 164° 00' W. LONG.)
 GEAR TO BE USED: CRAB POT

JA-77-0808

THE ATTACHED III

JA-77-0808

NAME AND ADDRESS OF CHARTERER

(NAME) KOKURAI GYOYO KANSHIKI KAISHA
 (ADDRESS) 2-3-8, IRIYUNE, CHUO-KU, TOKYO, JAPAN
 (CABLE ADDRESS) INTLFINSCO TOKYO

(NAME) KYOKUYO CO., LTD.
 (ADDRESS) 2-1-2, MARUBOUCHI, CHIYODA-KU, TOKYO, JAPAN
 (CABLE ADDRESS) CHIYODA KYOKUYO

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

809

Permit Period MAY 1, 1977 Application No. JA-77-0809
 Applied For: TO BE ISSUED 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel FUKUCHI MARU NO. 11
 2. Vessel No. / Hull No. 79 (CRAB 79) Registration No. TEL-912

3. Name and Address of Owner Name and Address of Charterer
 Name TOKURAI GYOYO KANSHIKI KAISHA SEE THE ATTACHED III
 Address 2-3-8, IRIYUNE
 CHUO-KU, TOKYO, JAPAN
 Cable Address INTLFINSCO TOKYO

4. Homeport and State of Registry: TOKYO, JAPAN

5. Type of Vessel POP VESSEL (CRAB), INDEPENDENT

6. Tonnage (Gross) 340.95 M.T. (Net) 194.11 M.T.

7. Length 46.97 M. S. Breadth 8.90 M. S. Draft 3.75 M.

10. Horsepower 2000 shp. 11. Maximum Speed 13.0 Kt.

11. Propulsion: Diesel (*), Steam (), Diesel/Electric (),
 Other -

13. Date Built JUNE 20, 1969

14. Number and Nationality of Personnel 20, JAPAN
 Officers 8 Crew 20 Other (Specify) -

15. Communications: VHF-FM (), AM/SSB, Voice (), Telegraphy (),
 Other -
 International Radio Call Sign JWPB
 Radio Frequencies Monitored 500 KHZ.
 Other Working Frequencies 41 2070, 2075 KHZ.
 Schedule WATCH TIME (G.M.T.) 00:00 TO 01:00, 06:00 TO 07:00

ATTACHED IV

JA-77-0808

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY
 LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) MIZUO OHNO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)

(HOME ADDRESS)
 429 EAST 52ND ST. APT. 28E,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

16. Navigation Equipment: Loran C (), Loran A (), Omega (),
 Decca (), Harvest (), Radar (*), Fathometer (*),
 Other DESCRIPTION FINISHED

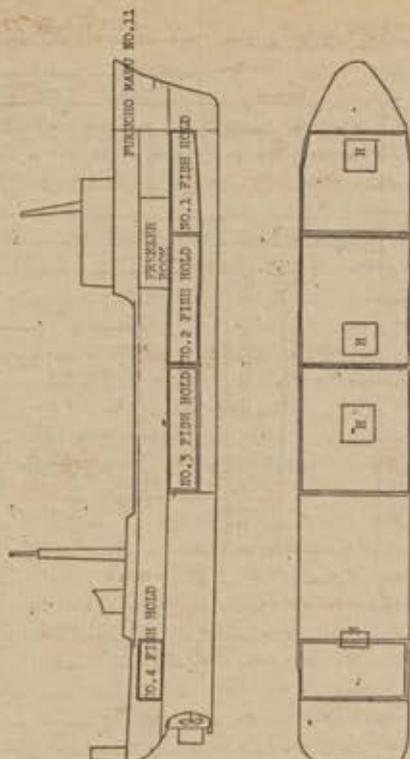
17. Cargo Capacity (MT) 18. Cargo Space
 Number
 Salted Fish - Freezer 1, 2, 3, 4
 Fresh Fish - Dry Hold -
 Frozen Fish 90 M.T. Tanks -
 Fish Meal - Other -
 Other -

19. Processing Equipment (Indicate daily capacity, MT)
 FREEZER QUOTE SH.T./DAY (CONTINUED)

20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contingent Catch (MT) Gear to be Used
 (From-To) Catch (MT)
 SEE THE ATTACHED I

21. Name and Address of Agent appointed to receive any legal
 process issued in the United States:
 SEE ATTACHED IV

JA-77-0809



THE ATTACHED I

ATTACHED I

OCEAN AREA: BERING SEA AND ALASKIAN
 PERIOD: MAY - OCTOBER
 SPECIES: TANNER CRAB
 CONTEMPLATED CATCH:

THIS VESSEL APPLIED FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,707 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINES DRAWN BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG.; 58° 09' N. LAT. - 173° 00' W. LONG.;
 58° 09' N. LAT. - 164° 00' W. LONG.)

GEAR TO USED: CRAB POT

JA-77-0809

JA-77-0809

THE ATTACHED II

NAME AND ADDRESS OF CHARTERER

(NAME) KODUAI SYOCTO KASUSHIKI KAISEI
 (ADDRESS) 2-5-0, IRIFUNE, CHUO-KU, TOKYO, JAPAN
 (CABLE ADDRESS) INTL/FISRCO TOKYO

(NAME) KYOKUTO CO., LTD.
 (ADDRESS) 2-1-2, MASUMUCHI, CHIYODA-KU, TOKYO, JAPAN
 (CABLE ADDRESS) CHIYODA KYOKUTO

ATTACHED IV

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) HIZURO OHNO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)

(HOME ADDRESS)
 429 EAST 52ND ST. APT. 2BR,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

810

Permit Period MAY 1, 1977 Application No. JA-77-0810
 Applied For: TO NOVEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel SEE MARY NO. 13

2. Vessel No. Hull No. 力 = 80 (CRAB 80) Registration No. HKI-634

3. Name and Address of Owner Name and Address of Charterer
 Name YOSHII HAKAMOTO SEE THE ATTACHED III
 Address 1-1, NOKCHO, KENYUO-SHI
HOKEIHO, JAPAN
 Cable Address -

4. Homeport and State of Registry: KENYUO, JAPAN

5. Type of Vessel POY VESSEL (CRAB), INDEPENDENT

6. Tonnage (Gross) 253.96 M.T. (Net) -

7. Length 30.54 M. B. Breadth 7.50 M. 9. Draft 3.35 M.

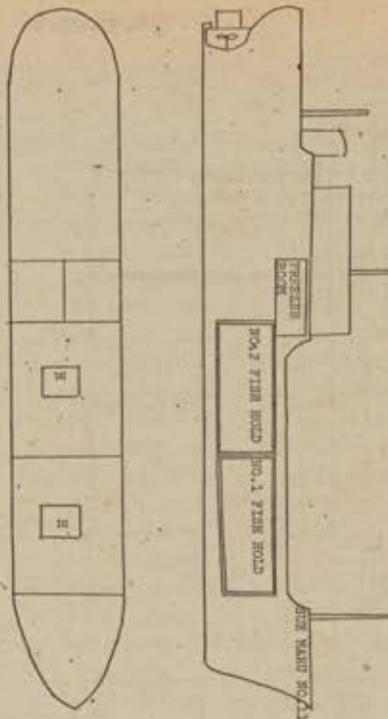
10. Horsepower 710 shp. 11. Maximum Speed 11.0 kt.

11. Propulsion: Diesel (), Steam (), Diesel/Electric (),
 Other -

13. Date Built AUGUST 1, 1967

14. Number and Nationality of Personnel 27, JAPAN
 Officers 0 Crew 19 Other (Specify) -

15. Communications: VHF-FM (), AM/VHF, Voice (), Telegraphy (),
 Other -
 International Radio Call Sign JKNH
 Radio Frequencies Monitored 500 KHZ.
 Other Working Frequencies 41 2070, 2075 KHZ.
 Schedule WATCH TIME (O.M.T.) 00:00 TO 01:00, 06:00 TO 07:00



JA-77-0810

I (UNOFFICIAL COPY)

16. Navigation Equipment: Loran C (), Loran A (), Omega (),
 Decca (), Navsat (), Radar (), Fathometer (),
 Other DIRECTION FINDER

17. Cargo Capacity (MT) 18. Cargo Space Handlax MARE
SEE THE ATTACHED I
 Salted Fish - Freezer 1, 2
 Fresh Fish - Dry Hold
 Frozen Fish 60 M.T. Tanks
 Fish Meal - Other
 Other -

19. Processing Equipment (Indicate daily capacity, MT)
FREEZER 2000 M.T./DAY (COMBINED)
-
-

JA-77-0810

ATTACHED I

OCEAN AREA: BERING SEA AND ALASKAN

PERIOD: MAY - OCTOBER

SPECIES: TANNER CRAB

CONTINGENT CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,127 TONS) IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINE DRAWN BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG.; 58° 09' N. LAT. - 173° 00' W. LONG.;
58° 09' N. LAT. - 164° 00' W. LONG.

GEAR TO USED: CRAB POT

JA-77-0810

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contingent Catch (MT)	Gear to be Used
<u>SEE THE ATTACHED I</u>				

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

SEE ATTACHED IV

-

-

JA-77-0810

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

811

THE ATTACHED II

NAME AND ADDRESS OF CHARTERER

(NAME) KOSHUAI STOKYO KANGSHIKI KAISHA
 (ADDRESS) 2-3-8, INIFUNE, CHUO-KU, TOKYO, JAPAN
 (CABLE ADDRESS) INTIFISHCO TOKYO

(NAME) KYOKUTO CO., LTD.
 (ADDRESS) 2-1-2, MARUNOUCHI, CHIYODA-KU, TOKYO, JAPAN
 (CABLE ADDRESS) CHIYODA KYOKUTO

Permit Period JUL 1, 1977 Application No. JA-77-0811
 Applied For 20 NOVEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel AIYUKI MARU NO. 31
 # 81
 2. Vessel No. Hull No. (GRAY 01) Registration No. YN 1-608

3. Name and Address of Owner TAITO FISHERY CO., LTD. Name and Address of Charterer
Address 1-5-1, MARUNOUCHI,
CHIYODAKU, TOKYO, JAPAN
 Cable Address OCHANPINE TOKYO

4. Homeport and State of Registry: TOKYO, JAPAN

5. Type of Vessel POT VESSEL (GMR), INDEPENDENT

6. Tonnage (Gross) 110.70 M.T. (Net)

7. Length 43.00 M. 8. Breadth 8.00 M. 9. Draft 3.70 M.

10. Horsepower 1000 shp. 11. Maximum Speed 12.00 Kts.

12. Propulsion: Diesel (*), Steam (), Diesel/Electric (),
 Other _____

13. Date Built AUGUST 12, 1967

14. Number and Nationality of Personnel 77, JAPAN
 Officers 7 Crew 30 Other (Specify) _____

15. Communications: VHF-FM (), AM/VHF, Voice (*), Telegraphy (*),
 Other _____
 International Radio Call Sign J F M I
 Radio Frequencies Monitored 41 2075 KHZ
 Other Working Frequencies 41 2075 KHZ
 Schedule WATCH TIME (G.M.T.) 07:00 TO 08:00

ATTACHED IV

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) HIROSHI OHNO
 PRESIDENT,
 TAITO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-471-4120)

(HOME ADDRESS)
 429 EAST 52ND ST. APT. 25K,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-5216)

JA-77-0810

16. Navigation Equipment: Loran C (*), Loran A (), Omega (),
 Decca (), Ecosat (), Radar (*), Fathometer (*),
 Other _____

17. Cargo Capacity (MT)

	18. Cargo Space Number	Name
Salted Fish _____	Freezer	SEE ATTACHED I
Fresh Fish _____	Dry Hold	
Frozen Fish <u>60 M.T.</u>	Tanks	
Fish Meal _____	Other	
Other _____		

19. Processing Equipment (Indicate daily capacity, MT)
FREEZER 2 5000 M.T. / DAY (CONTINUED)

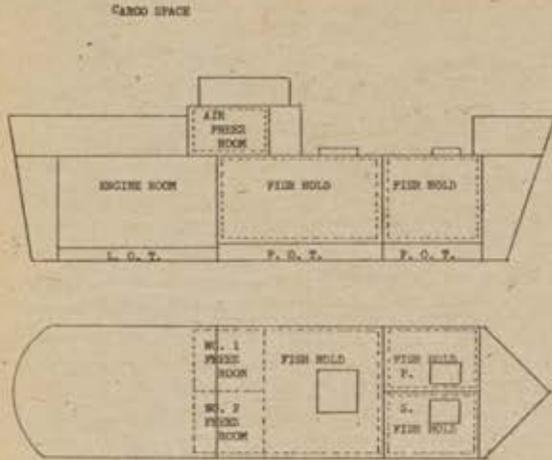
20. Fisheries for which Permit is Requested:
 Banned Area _____ Starting Species _____ Contingent Gear to be Used
 (From-To) _____ Catch (MT)
SEE ATTACHED I

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
SEE ATTACHED III

JA-77-0811

ATTACHED I

JA-77-0811



ATTACHED II

JA-77-0811

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) RIZURO OHNO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)
 (HOME ADDRESS)
 429 EAST 52ND ST. APT. 208,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

ATTACHED I

JA-77-0812

OCEAN AREA: BERING SEA AND ALUTYAN
 PERIOD: MAY - OCTOBER
 SPECIES: TANUKE CRAB
 CONTINGENTS CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,127 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINE DRAWN BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG.; 58° 09' N. LAT. - 173° 00' W. LONG.;
 58° 09' N. LAT. - 164° 00' W. LONG.

CRAB TO BE USED: CRAB POT

812

FISHING VESSEL IDENTIFICATION FORM (FORWARD)

Permit Period: MAY 1, 1977 Application No. JA-77-0812
 Applied For: TO DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

- Name of Vessel: KOTO HASSU NO. 7
 Vessel No. Hull No. (CRAB SP) Registration No. TK 1-462
- Name and Address of Owner: Same and Address of Charterer:
 Name: HAKODATE KOKAI GYOEN CO., LTD.
 Address: 3-19, CHACHI, HAKODATE,
 HOKKAIDO, JAPAN
- Cable Address:
 KOKAI FISHERY TOKYO
- Homeport and State of Registry: TOKYO, JAPAN
- Type of Vessel: POT VESSEL (CRAB), INDEPENDENT
- Tonnage (Gross): 298.95 M.T. (Net): -
- Length: 42.30 M. Breadth: 7.90 M. Draught: 2.55 M.
- Horsepower: 200 shp. Max. Speed: 12.00 kt.
- Propulsion: Diesel (), Steam (), Diesel/Electric (),
 Other: -
- Date Built: JUNE 25, 1963
- Number and Nationality of Personnel: 23, JAPAN
 Officers: 6 Crew: 19 Other (Specify): -
- Communications: VHF-72 (), AM/SIS, Voice (), Telegraphy (),
 Other: -
 International Radio Call Sign: S I T D
 Radio Frequencies Monitored: 4, 2091 KHZ
 Other Working Frequencies: 4, 2075 KHZ
 Schedule: WATCH TIME (G.M.T.): 07:00 TO 08:00

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

813

Permit Period MAY 1, 1977 - Application No. JA-77-0513
 Applied For: SEPTEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel HOKO MARU NO. 36

2. Vessel No. Hull No. 0-83 (CRAB 83) Registration No. KW 1-265

3. Name and Address of Owner Name and Address of Charterer
 Name HOKO FISHING CO., LTD.
 Address 1-2-4, TOKIJI,
CHUO-KU, TOKYO, JAPAN
 Cable Address _____
HK SUISAN TOKYO

4. Homeport and State of Registry: TOKYO, JAPAN

5. Type of Vessel POT VESSEL (CRAB), INDEPENDENT

6. Tonnage (Gross) 414.23 M.T (Net)

7. Length 45.00 M. 8. Breadth 7.80 M. 9. Draft 3.44 M.

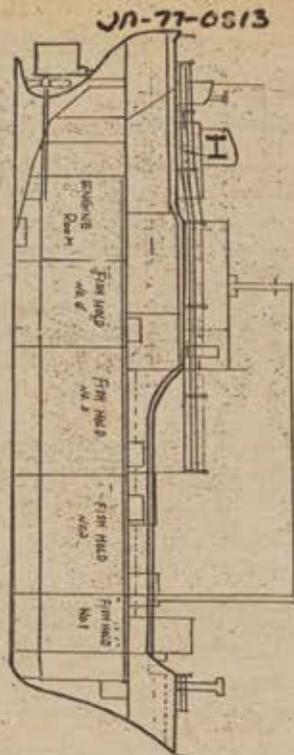
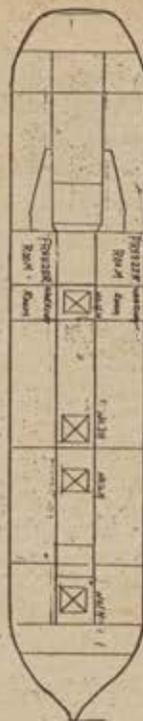
10. Horsepower 800 shp. 11. Maximum Speed 10 kt.

11. Propulsion: Diesel (X), Steam (), Diesel/Electric (),
 Other _____

12. Date Built OCT. 13, 1959

14. Number and Nationality of Personnel 28, JAPAN
 Officers 7 Crew 21 Other (Specify) _____

15. Communications: VHF-FM (), AM/SSB, Voice (X), Telegraphy (X)
 Other _____
 International Radio Call Sign JHUX
 Radio Frequencies Monitored 500 KHZ
 Other Working Frequencies A1 2075 KHZ
 Schedule WATCH TIME (GMT): 06:00 - 07:00



II SIDEVIEW

JA-77-0513

16. Navigation Equipment: Loran C (X), Loran A (X), Omega (),
 Decca (), Smeat (), Radar (X), Fathometer (X),
 Other _____

17. Cargo Capacity (MT)

	18. Cargo Space Number	Name
Salted Fish _____	Freezer 1, 2, 3, 4,	
Fresh Fish _____	Dry Hold	SEE ATTACHED I
Frozen Fish <u>72 M.T</u>	Tanks	
Fish Meal _____	Other	
Other _____		

19. Processing Equipment (Indicate daily capacity, MT)
FREEZER 2 SETS 5 M.T/DAY (COMBINED)

JA-77-0513

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Gear to be Used
			<u>SAUCH (OT)</u>

SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
SEE ATTACHED III

ATTACHED I

OCEAN AREA: BERING SEA AND ALUTIAN

PERIOD: MAY - OCTOBER

SPECIES: TANYER CRAB

CONTEMPLATED CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (3,727 TONS) IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINE DRAWN BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG. 58° 09' N. LAT. - 173° 00' W. LONG.
58° 09' N. LAT. - 164° 00' W. LONG.

GEAR TO USED: CRAB POT

JA-77-0513

ATTACHED II

JA-77-0813

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) HIZUKU OHNO
PRESIDENT,
TAIYO FISHING CO., LTD.

(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 712-471-4120)

(HOME ADDRESS)
409 EAST 52ND ST. APT. 25R,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

JA-77-0814

16. Navigation Equipment: Loran C (*), Loran A (*), Omega ()

Decca (), Decca (), Radar (*), Fathometer (*),

Other _____

17. Cargo Capacity (MT)

18. Cargo Space
Number Name

Salted Fish _____ Freezer 1,2,3, SEE ATTACHED I

Fresh Fish 500 T. Dry Hold

Frozen Fish _____ Tanks

Fish Meal _____ Other

Other _____

19. Processing Equipment (Indicate daily capacity, MT)

20. Fisheries for which Permit is Requested:

Ocean Area Period Species Contemplated Gear to be Used
(From-To) Catch (MT)

SEE ATTACHED I

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

SEE ATTACHED II

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

814

Permit Period MAY 1, 1977
Applied For: DECEMBER 31, 1977

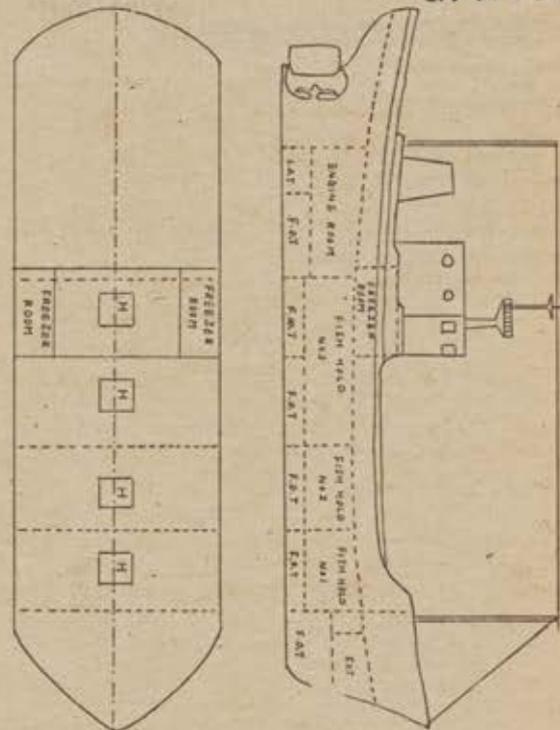
Application No. JA-77-0814
For Use of Issuing Office

State: JAPAN

1. Name of Vessel: HONSHU MARU NO.26
2. Vessel No./Hull No. (CRAB 04) Registration No. 101-177
3. Name and Address of Owner Name and Address of Charterer
Name: TOSHIMASA Address: 6-4-2, TRIFORCE, KYUSHU, NOKAZATO, JAPAN
Name: HIZUKU OHNO Address: 2-1-2, FANBUCKLE, CHITODA-30, YOKO, JAPAN
Cable Address: CHITODA KYUSHU

4. Homeport and State of Registry: KYUSHU, JAPAN
5. Type of Vessel: CRAB TRAWLER
6. Tonnage (Gross): 250.500 T. (Net)
7. Length: 30.53 M. B. Breadth: 7.00 M. 9. Draft: 1.25 M.
10. Horsepower: 850 shp. 11. Maximum Speed: 10 Kt.
12. Propulsion: Diesel (*), Steam (), Diesel/Electric (),
Other _____
13. Date Built: MAY 8, 1968
14. Number and Nationality of Personnel: 20, JAPAN
Officers: 6 Crew: 22 Other (Specify): _____
15. Communications: VHF-VH (), AM/SSB, Voice (*), Telegraphy (*),
Other _____
International Radio Call Sign: JSTY
Radio Frequencies Monitored: 5000KHz
Other Working Frequencies: 81 2075KHz
Schedule: WATCH TIME (C.R.T.) 00:00 TO 01:00, 03:00 TO 06:00

JA-77-0814



ATTACHED I CARGO SPACE

ATTACHED I

OCEAN AREA: WEST INDIA AND ALBANY
 PERIOD: MAY - OCTOBER
 SPECIES: TANKER CRAB
 CONTINGENTS CATCH:

JA-77-0814

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,721 TONS) WHICH IS THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINES DRAWN BETWEEN THE FOLLOWING COORDINATES:
 56° 00' N. LAT. - 173° 00' W. LONG. 56° 09' N. LAT. - 173° 00' W. LONG.;
 56° 09' N. LAT. - 164° 00' W. LONG.

GEAR TO USED: CRAB POT

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period MAY 1, 1977 - DEC. 31, Application No. JA-77-0815
 Applied For: 1977 For Use of Issuing Office

State: JAPAN

- Name of Vessel: KYOMA MARU NO. 7
- Vessel No./ Hull No. (2313 85) Registration No. 71-27
- Name and Address of Owner: TOYAMA-KUN KAIKOH SHIMIZUYO
 Name: GINZO KYODO KUMIAL
 Address: 385, IZUMI, KUMOH-GHI,
 TOTARA-EKH, JAPAN
 Name and Address of Charterer: _____
 Cable Address: _____
- Homeport and State of Registry: KUMOH, JAPAN
- Type of Vessel: POT VESSEL (CRAB), INDEPENDENT
- Tonnage (Gross): 389.16 G.T. (Net): _____
- Length: 46.05 M. E. Breadth: 8.20 M. V. Draft: 3.35 M.
- Horsepower: 1000 whp. 11. Maximum Speed: 10.20 kt.
- Propulsion: Diesel (*), Steam (), Diesel/Electric (),
 Other: _____
- Date Built: NOV. 9, 1961
- Number and Nationality of Personnel: 27, JAPAN
 Officers: 8 Crew: 19 Other (Specify): _____
- Communications: VHF-FM (), AM/SSB, Voice (*), Telegraph (*),
 Other: _____
 International Radio Call Sign: TLMW
 Radio Frequencies Monitored: 500 KHZ
 Other Working Frequencies: 2075 KHZ
 Schedule: WATCH TIME (G.M.T.) 21:00 TO 22:00, 02:00 TO 03:00

ATTACHED II

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCEEDINGS ISSUED IN THE UNITED STATES:

(NAME) HISAHO OHNO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)
 (HOME ADDRESS)
 429 EAST 52ND ST. APT. 28B,
 RIVINGTON NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

JA-77-0814

Navigation Equipment: Loran C (*), Loran A (*), Omega (*),
 Decca (), Distant (), Radar (*), Fathometer (*),
 Other: _____

17. Cargo Capacity (MT) 18. Cargo Space

	Deck	Trunk
Salted Fish	Foreer 2, 3, 4.	SEE ATTACHED I
Fresh Fish	Dry Hold	
Frozen Fish	Yenka	
Fish Meal	Other	
Other		

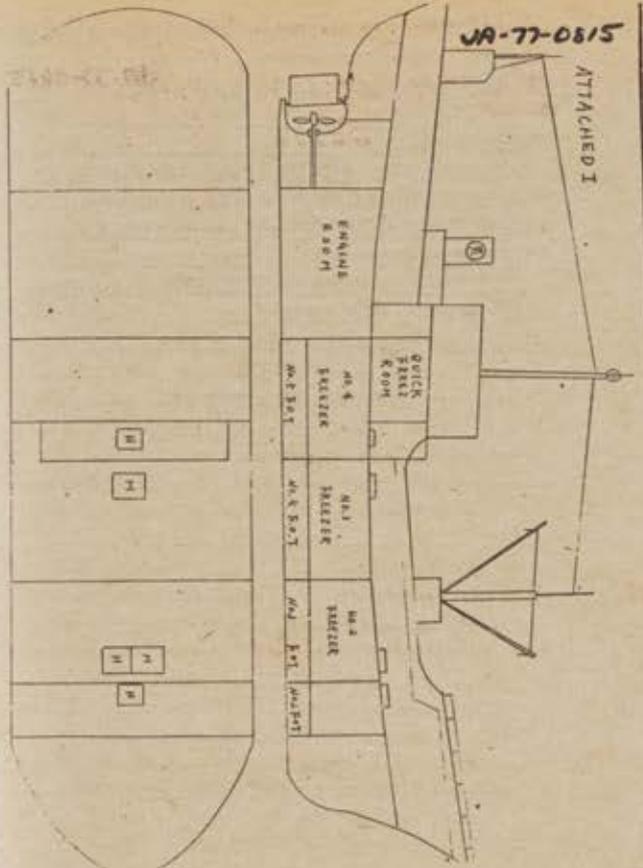
19. Processing Equipment (Indicate daily capacity, MT)
 PEELER & GRIND } M.T. / DAY (COMBINED)

20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contemplated Gear to be Used
 (From-To) Catch (MT)

JA-77-0815

SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
 SEE ATTACHED II



ATTACHED II

JA-77-0815

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) KIZUHO OHNO
PRESIDENT,
TATTO FISHERY CO., LTD.

(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4120)

(HOME ADDRESS)
429 EAST 52ND ST. APT. 28B,
RIVERHOUST NEW YORK, N.Y. 10022
(TEL. 212-751-8215)

ATTACHED I

JA-77-0815

OCEAN AREA: BERING SEA AND ALASKAS
PERIOD: MAY - OCTOBER
SPECIES: SALMON CRAB
CONTINGENT CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,127 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINE DRAWN BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG.; 58° 09' N. LAT. - 173° 00' W. LONG.;
58° 09' N. LAT. - 164° 00' W. LONG.)

GEAR TO USED: CRAB POT

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

816

Permit Valid: MAY 2, 1977 Application No. JA-77-0816
Applied For: NOVEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel: CHOKKI MARU No. 58

2. Vessel No.: Hull No. (CRAB 06) 720 86 Registration No. MKI-339

3. Name and Address of Owner: TATTO FISHERY CO., LTD. Name and Address of Charterer: KIZUHO OHNO
Address: 1-1, HON-CHO, YOKOHAMA, CANTON, JAPAN Address: 101, AOKIYAKI, NYUGEN-CHO, SHIMIZUKAWA-CHO, TOTAMA-KU, JAPAN

4. Homeport and State of Registry: MOWSANTOU, JAPAN

5. Type of Vessel: PCV VESSEL (CRAB), INDEPENDENT

6. Tonnage (Gross): 160.82 M.T. (Net)

7. Length: 46.97 M. B. Breadth: 8.15 M. S. Draft: 3.08 M.

10. Horsepower: 910 shp. 11. Maximum Speed: 10.0 kt.

11. Propulsion: Diesel (*), Steam (), Diesel/Electric (), Other

13. Date Built: DEC. 10, 1959

14. Number and Nationality of Personnel: 27, JAPAN
Officers: 6 Crew: 19 Other (Specify):

15. Communications: VHF-PH (), AM/SIS, Voice (*), Telegraphy (), Other

International Radio Call Sign: JPKQ

Radio Frequencies Monitored: 500 KHZ

Other Working Frequencies: AL 2075 KHZ

Schedule: WATCH TIME (G.M.T.) 06:00 - 08:00

ATTACHED II

JA-77-0817

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) NIZUHO OSHO
PRESIDENT,
TAIYO FISHERY CO., LTD.
(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4120)
(HOME ADDRESS)
429 EAST 52ND ST. APT. 208,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

16. Navigation Equipment: Loren C (*), Loren A (*), Omega (*),
Decca (*), Navmat (*), Radar (*), Fathometer (*),
Other _____

17. Cargo Capacity (MT) 18. Cargo Space
Number Tonnage
Salted Fish _____ Freezer 1,2,3. SEE ATTACHED I
Fresh Fish _____ Dry Hold _____
Frozen Fish 75 M.T. Tanks _____
Fish Meal _____ Other _____
Other _____

19. Processing Equipment (Indicate daily capacity, MT)
PRESSER 2 UNITS G.M.T. / DAY (COMBINED)

20. Fisheries for which Permit is Requested:
Ocean Area Period Species Contemplated Gear to be Used
(From-To) Catch (MT)
SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
SEE ATTACHED III

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

818

Permit Period MAY 1, 1977 Application No. JA-77-0818
Applied For FEBRUARY 21, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel SHOKUTO MARI NO. 58

2. Vessel No. Hull No. (CRAN 88) Registrative No. HEI-626

3. Name and Address of Owner Name and Address of Charterer
KIPPON GODO KANGINE KATSUSHIROMI USUI
Name KANOSHIMI RAISHA.

Address 8-2, EIYOTAKA-CHO, 1-6, TOKIWA-CHO, SINGO, HOKKAIDO,
HONJO, HOKKAIDO, JAPAN JAPAN

Cable Address _____

4. Homeport and State of Registry: SINGO, JAPAN

5. Type of Vessel POP VESSEL (CRAB), INDEPENDENT

6. Tonnage (Gross) 351.90 M.T. (Net) _____

7. Length 47.50 M. 8. Breadth 8.80 M. 9. Draft 5.80 M.

10. Horsepower 1,800 shp. 11. Maximum Speed 13 kt.

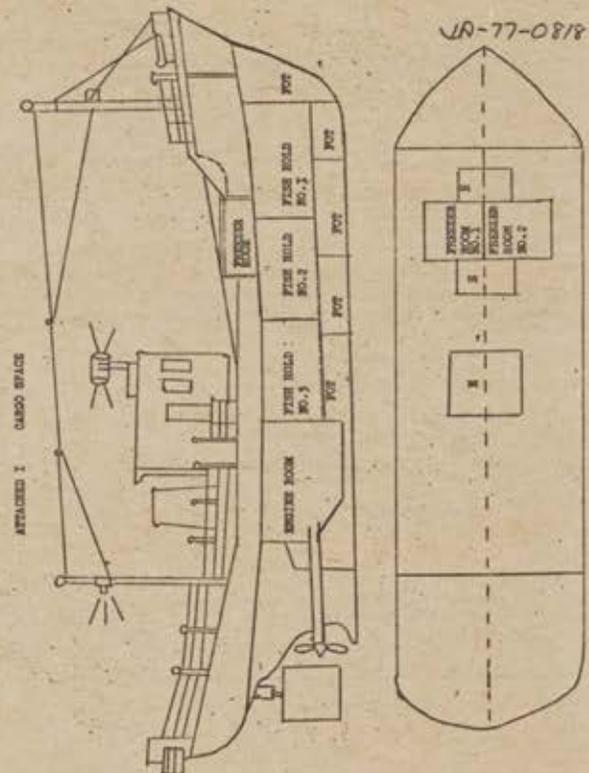
11. Propulsion: Diesel (*), Steam (*), Diesel/Electric (*),
Other _____

12. Date Built AGO, 1969

13. Number and Nationality of Personnel 20, JAPAN
Officers 7 Crew 21 Other (Specify) _____

14. Communications: VHF-FM (*), AM/SSB, Voice (E), Telegraphy (*),
Other _____

International Radio Call Sign JHMB
Radio Frequencies Monitored 500 KHZ
Other Working Frequencies A 1 2075
Schedule WATCH TIME (G.M.T.): 00.00 TO 01.00, 07.00 TO 08.00



ATTACHED I

JA-77-0818

OCEAN AREA: BERING SEA AND ALUTSIAN
 PERIOD: MAY - OCTOBER
 SPECIES: SALMON CRAB
 CONTEMPLATED CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,722 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINES DRAWN BETWEEN THE FOLLOWING COORDINATES:
 56° 00' N. LAT. - 173° 00' W. LONG.; 58° 09' N. LAT. - 173° 00' W. LONG.; 58° 09' N. LAT. - 166° 00' W. LONG.)

GEAR TO BE USED: CRAB POT

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

819

Permit Period: MAY 1, 1977. Application No. JA-77-0817
 Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel: HOKUTO MARU NO. 55
 2. Vessel No., Hull No. (CRAB 89) Registration No. HKI-146
 3. Name and Address of Owner: NIPPON GODO KANZUME
 Name: KANSHIKI KAIHWA. Address: 2-2, KITOTAKA-CHO, NEMURO, HOKKAIDO, JAPAN
 Name and Address of Charterer: SEE ATTACHED III
 Cable Address: _____
 4. Homeport and State of Registry: NEMURO, JAPAN
 5. Type of Vessel: POT VESSEL (CRAB), INDEPENDENT
 6. Tonnage (Gross): 273.93 MT (Net) _____
 7. Length: 42.50 M. B. Breadth: 7.70 M. DRAFT: 3.50 M.
 10. Horsepower: 850 hp. 11. Maximum Speed: 13 kts
 11. Propulsion: Diesel (*), Steam (), Diesel/Electric (), Other _____
 12. Date Built: AUG., 1965
 14. Number and Nationality of Personnel: 26, JAPAN
 Officers: 7 Crew: 19 Other (Specify) _____
 15. Communications: VHF-FM (), AM/SSB, Voice (*), Telegraphy (), Other _____
 International Radio Call Sign: JFPC
 Radio Frequencies Monitored: 500 KHZ
 Other Working Frequencies: AT 2075
 Schedule: WATCH TIME (G.M.T.) 06:00 TO 01:00, 07:00 TO 06:00

ATTACHED

III

JA-77-0818

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) HISUHO OHNO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.

(ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)

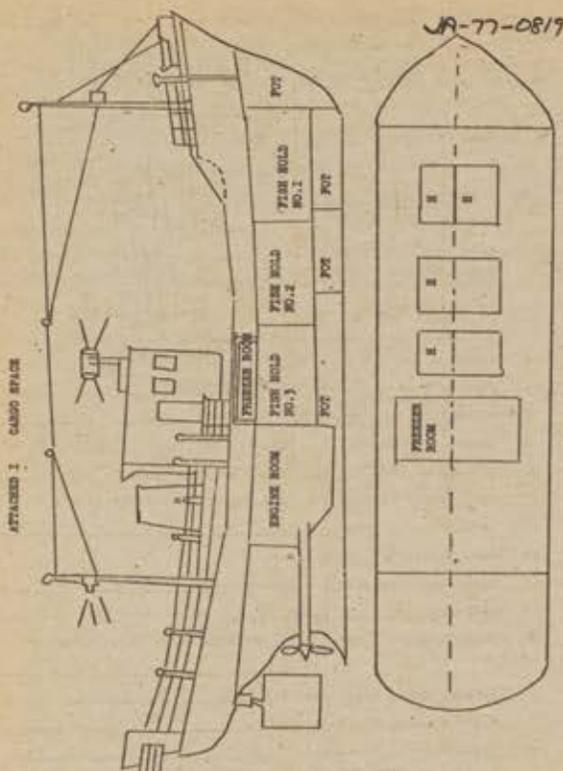
(HOME ADDRESS)
 499 EAST 52ND ST. APT. 28B,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

JA-77-0819

16. Navigation Equipment: Loran C (*), Loran A (*), Omega (), Decca (), Navsat (), Radar (e), Fathometer (), Other _____
 17. Cargo Capacity (MT) 18. Cargo Space
 Number Tonnage
 Salted Fish _____ Freezer 1.2.3. SEE ATTACHED I
 Fresh Fish _____ Dry Hold _____
 Frozen Fish 40 MT Tanks _____
 Fish Meal _____ Other _____
 19. Processing Equipment (Indicate daily capacity, MT)
 PROCESOR 1 SET 4MT/DAY

 20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contemplated Gear to be Used
 (From-To) Catch (MT)
 SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
 SEE ATTACHED IV



JA-77-0819

ATTACHED III

NAME AND ADDRESS OF CHARTERER

(NAME) TOSHIRO HASHITA
 (ADDRESS) 3-14, MATSUOGA-CHO, NOMURO, HOKKAIDO, JAPAN
 (CABLE ADDRESS) _____

(NAME) JIURUJI KANEKO
 (ADDRESS) 4-2, HOKUTO-CHO, NOMURO, HOKKAIDO, JAPAN
 (CABLE ADDRESS) _____

ATTACHED I

JA-77-0819

OCEAN AREA: BERING SEA AND ALUPTIAN
 PERIOD: MAY - OCTOBER
 SPECIES: TANKER CRAB
 CONTEMPLATED CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,727 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINES DRAWN BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG.; 56° 05' N. LAT. - 173° 00' W. LONG.;
 56° 05' N. LAT. - 164° 00' W. LONG.)

GEAR TO USED: GRAB POT

ATTACHED IV

JA-77-0819

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCEED ISSUED IN THE UNITED STATES:

(NAME) MITSUO OHNO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)
 (HOME ADDRESS)
 429 EAST 52ND ST. APT. 28E,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

820

Permit Period MAY 1, 1977 Application No. JA-77-0820
 Applied For: EXHIBITION 31, 1977 For Use of Issuing Office: JAPAN

State: KIWA MARU NO. 28

1. Name of Vessel KIWA MARU NO. 28
 U.S. No. 90 Registration No. TEI-51

2. Vessel No./Hull No. (CHAR NO.) _____

3. Name and Address of Owner: KIWA MARU NO. 28
 Name and Address of Charterer: SEE ATTACHED III

Name: KIWA MARU NO. 28
 Address: TOI, ABEYAKI, HYOGO-CHO, SHIMOHATA-KAWA-CHO, TOYAMA-KU, JAPAN
 Cable Address: _____

4. Homeport and State of Registry: KIWA, JAPAN

5. Type of Vessel: POW VESSEL (CHAR), INDEPENDENT

6. Tonnage (Gross): 467.23 (Net) _____

7. Length 48.00 M. 8. Breadth 8.80 M. 9. Draft 4.30 M.

10. Horsepower: 1000 shp. 11. Maximum Speed: 11.0 kt.

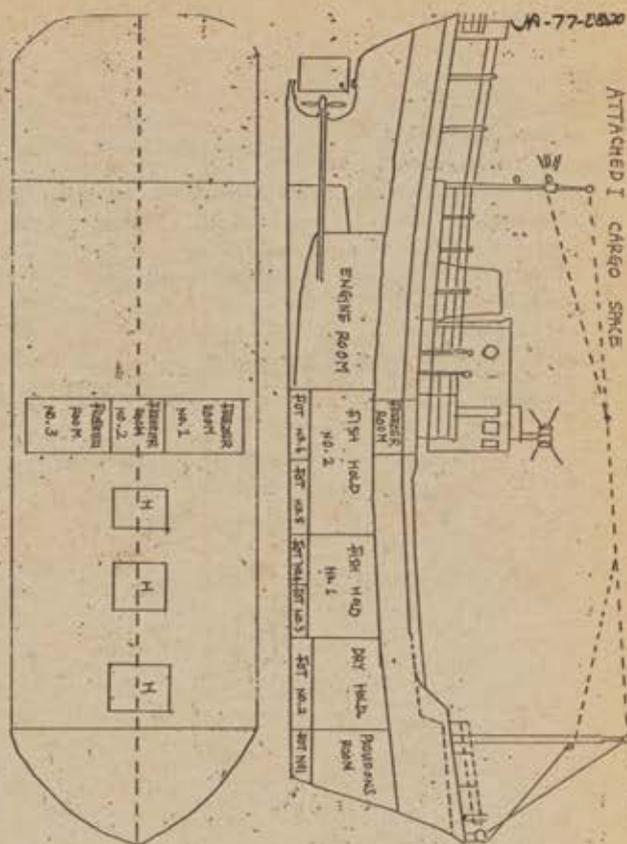
12. Propulsion: Diesel (X), Steam (), Diesel/Electric (), Other _____

13. Date Built: JULY 7, 1961

14. Number and Nationality of Personnel: 27, JAPAN
 Officers: 8 Crew: 19 Other (Specify): _____

15. Communications: VHF-FM (), AM/SSB, Voice (X), Telegraphy (), Other _____

International Radio Call Sign: T J17
 Radio Frequencies Monitored: 500 KHZ
 Other Working Frequencies: 43 2075 KHZ
 Schedule: WATCH TIME (O.N.T.), 06:00 - 08:00



16. Navigation Equipment: JA-77-0820
 Loran C (X), Loran A (X), Omega (),
 Decca (), Rayvac (), Radar (X), Tachometer (X),
 Other _____

17. Cargo Capacity (MT) _____

18. Cargo Space None
 Number _____

Salted Fish _____ Freezer 1.0 SEE ATTACHED I
 Fresh Fish _____ Dry Hold _____
 Frozen Fish 82 M.T Tanks _____
 Fish Meal _____ Other _____

19. Processing Equipment (Indicate daily capacity, MT)
FREEZER 3 BAYS 8 M.T/DAY (COMBINED)

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contemplated Catch (MT)	Gear to be Used
SEE ATTACHED II				

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
SEE ATTACHED IV

JA-77-0820

ATTACHED I

OCEAN AREA: NERING SEA AND ALUTYAN
 PERIOD: MAY - OCTOBER
 SPECIES: TANAKA CRAB
 CONTEMPLATED CATCH:
 THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CHAR FLEET (2,707 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINED DRAWS BETWEEN THE FOLLOWING COORDINATES:
56° 00' N. LAT. - 173° 00' W. LONG. - 58° 09' N. LAT. - 173° 00' W. LONG. - 58° 09' N. LAT. - 164° 00' W. LONG.)
 GEAR TO BE USED: CRAB POT

NOTICES

JA-77-0820

ATTACHED III

NAME AND ADDRESS OF CHARTERER

(NAME) MOTOJI KAWAYATA

(ADDRESS) 4-2, NAKANE-CHO, KINOSHITA, HOKKAIDO, JAPAN

(CABLE ADDRESS)

(NAME) YUKIO SATO

(ADDRESS) 1-12, ASAKI-CHO, SHIRO, HOKKAIDO, JAPAN

(CABLE ADDRESS)

(NAME) EISABU KISHIZIMA

(ADDRESS) TOI, AOKIYAKI, WADZU-CHO, EHIKAWA-KEN, YUTAMA-KEN, JAPAN

(CABLE ADDRESS)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

821

Permit Period: MAY 1, 1977 - Application No. JA-77-0820/
Applied For: 08-30, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel NATSUKI MARU NO.78
 2. Vessel No./Hull No. 8091 (CRAB 01) Registration No. JK1-278
 3. Name and Address of Owner Name and Address of Charterer
 Name MATSUJIMA OYASU CO., LTD. SEE ATTACHED III
 Address 2-2, NAKANE-CHO,
KINOSHITA, HOKKAIDO, JAPAN
 Cable Address _____
4. Homeport and State of Registry KINOSHITA, JAPAN
 5. Type of Vessel POT VESSEL (CRAB), INDEPENDENT
 6. Tonnage (Gross) 899.73 MT (Net) _____
 7. Length 43.60 M. 8. Breadth 8.20 M. 9. Draft 4 M.
 10. Horsepower 950 shp. 11. Maximum Speed 10.5 kt.
 11. Propulsion: Diesel (*), Steam (), Diesel/Electric ().
 Other _____
13. Date Built MAY 5, 1969
 14. Number and Nationality of Personnel 26, JAPAN
 Officers 8 Crew 18 Other (Specify) _____
 15. Communications: VHF-FM (), AM/VHF, Voice (*), Telegraphy (*).
 Other _____
 International Radio Call Sign JQPB
 Radio Frequencies Monitored 500 KHZ
 Other Working Frequencies AI 2075 KHZ
 Schedule WATCH TIME (O.M.T.), 07:00 - 08:00

JA-77-0820

ATTACHED IV

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY
LEGAL PROCESS ISSUED IN THE UNITED STATES:(NAME) KIYUNO OHNO
PRESIDENT,
TAIYO FISHERY CO., LTD.(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4120)(HOME ADDRESS)*
429 EAST 52ND ST. APT. 28B,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

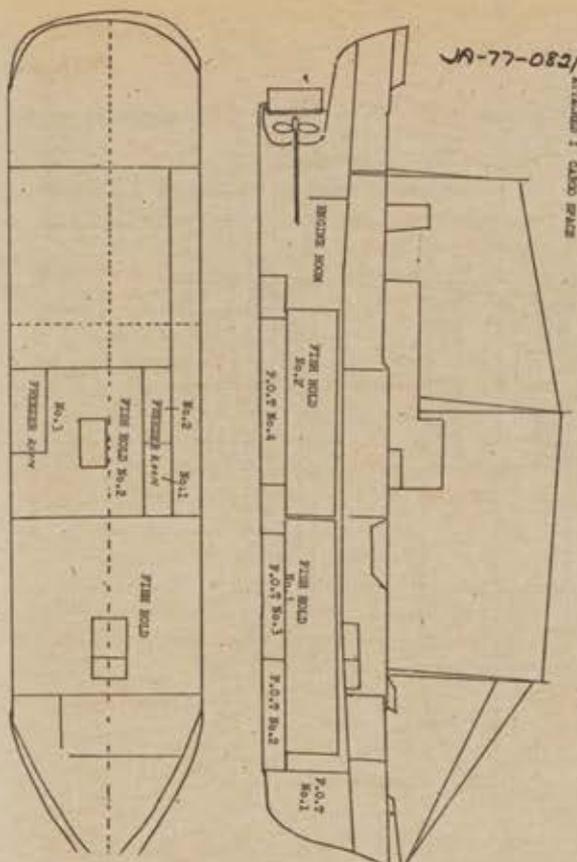
16. Navigation Equipment: Loran C (*), Loran A (), Omega (),
Decca (), Havarat (), Radar (), Fathometer (*).
Other _____
17. Cargo Capacity (MT) 18. Cargo Space
Number 1.2 SEE ATTACHED I
 Salted Fish _____ Freezer
 Fresh Fish _____ Dry Hold
 Frozen Fish 65 MT Tanks
 Fish Meal _____ Other _____
 Other _____
19. Processing Equipment (indicate daily capacity, MT)
FRONZER 1 BATCH 8 M.T./DAY (COMBINED)

20. Fisheries for which Permit is Requested:
 Ocean Area Fished Species Contemplated Gear to be Used
 (From-To) Catch (MT)

SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal
process issued in the United States:
SEE ATTACHED IV

JA-77-082/



ATTACHED I

JA-77-082/

OCEAN AREA: BERING SEA AND ALUTIAN
 PERIOD: MAY - OCTOBER
 SPECIES: TANNER CRAB
 CONTEMPLATED CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,727 TONS) IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINES DRAWN BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG.; 58° 09' N. LAT. - 173° 00' W. LONG.;
 56° 09' N. LAT. - 164° 00' W. LONG.

GEAR TO USED: CRAB POT

ATTACHED III

NAME AND ADDRESS OF CHARTERER

(NAME) MATSUMURA CYOZO CO., LTD.

(ADDRESS) 2-2, KAKUMI-CHO,
NEMUNO, HOKKAIDO, JAPAN

(CABLE ADDRESS) -

(NAME) TOGELIKI TAKAMOTO

(ADDRESS) 4-41, NEM-CHO, NEMUNO, HOKKAIDO, JAPAN

(CABLE ADDRESS) -

(NAME) YUJIDOMU MATSUURA

(ADDRESS) 19, AKENONO-CHO, NEMUNO, HOKKAIDO, JAPAN

(CABLE ADDRESS) -

ATTACHED IV

JA-77-082/

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) MIZUNO OHNO
PRESIDENT,
TAIYO FISHERY CO., LTD.(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4120)(HOME ADDRESS)
429 EAST 52ND ST. APT. 28E,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

JA-77-0822

ATTACHED III

NAME AND ADDRESS OF CHARTERER

(NAME) RIKYU GYOYO KANSHIHI KAISHA
 (ADDRESS) 90, KISEI, OCHIISHI, NEMURO, HOKKAIDO, JAPAN
 (CABLE ADDRESS)
 (NAME) HAMAYA SUIGAN KANSHIHI KAISHA
 (ADDRESS) 15-1, CHISHIMA-CHO, NEMURO, HOKKAIDO, JAPAN
 (CABLE ADDRESS)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

823

Permit Period MAY 1, 1977 - Application No. JA-77-0823
 Applied For: DECEMBER 21, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel RIKYU MARU No. 52
 2. Vessel No. Hull No. CRAB 93 Registration No. HEI-181
 3. Name and Address of Owner Name and Address of Charterer
 Name HAMAYA SUIGAN KANSHIHI KAISHA SEE ATTACHED III
 Address 15-1, CHISHIMA-CHO,
NEMURO, HOKKAIDO, JAPAN
 Cable Address _____

4. Homeport and State of Registry: NEMURO, JAPAN
 5. Type of Vessel POW VESSEL (CRAB), INDEPENDENT
 6. Tonnage (Gross) 299.81 (Net) _____
 7. Length 42.70 m. 8. Breadth 7.90 m. 9. Draft 3.30 m.
 10. Horsepower 750 shp. 11. Maximum Speed 11.3 kt.
 11. Propulsion: Diesel (x), Steam (), Diesel/Electric (),
 Other _____
 12. Date Built DEC. 18, 1966
 13. Number and Nationality of Personnel 25, JAPAN
 Officers 7 Crew 21 Other (Specify) _____
 14. Communications: VHF-FM (), AM/SSB, Voice (x), Telegraphy (),
 Other _____
 International Radio Call Sign JEDV
 Radio Frequencies Monitored 41 2091 KHZ
 Other Working Frequencies 41 2075 KHZ
 Schedule WATCH TIME (G.M.T.) 09:00 - 11:00

ATTACHED IV

JA-77-0822

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) KIKURO OSHO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS) 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-471-4120)
 (HOME ADDRESS) *
 429 EAST 52ND ST. APT. 268,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

16. Navigation Equipment: Loran C (x), Loran A (x), Omega (),
 Decca (), Navstat (), Radar (x), Lathometer (),
 Other _____

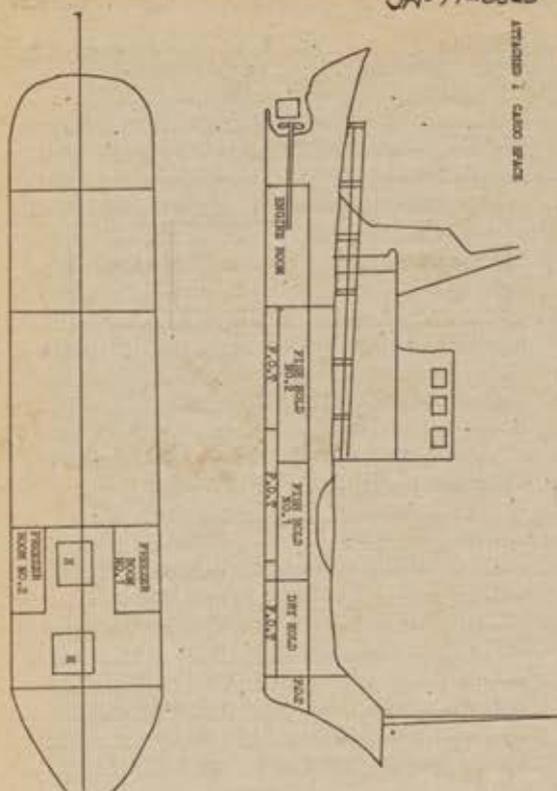
17. Cargo Capacity (MT) 18. Cargo Space
 Number Name
 Salted Fish _____ Freezer 1.2 SEE ATTACHED I
 Fresh Fish _____ Dry Hold _____
 Frozen Fish 60 M.T. Tanks _____
 Fish Meal _____ Other _____
 Other _____

19. Processing Equipment (Indicate daily capacity, MT)
PROCESS 2 SETS 6 M.T./DAY (COMBINED)

20. Fisheries for which Permit is Requested:
 Species Area Facing Species Contemplated Gear to be Used
 (From-To) Catch (MT)

SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
SEE ATTACHED IV



ATTACHED I

OCEAN AREA: BERING SEA AND ALUTSIAN
 PERIOD: MAY - OCTOBER
 SPECIES: TANNER CRAB
 CONTEMPLATED CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,721 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINE A BOUND BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG.; 58° 09' N. LAT. - 173° 00' W. LONG.;
 58° 09' N. LAT. - 164° 00' W. LONG.

GEAR TO BE USED: CRAB POT

JA-77-0823

ATTACHED III

NAME AND ADDRESS OF CHARTERER

(NAME) HAYATA SUZUMI KANSHUKI KAISHA
 (ADDRESS) 15-1, CHIKUMA-CHO, NINOMIYA,
 HOKKAIDO, JAPAN
 (CABLE ADDRESS) -

(NAME) TAYAKI TAOKUNA
 (ADDRESS) 27-1, NIKIJI-CHO, NINOMIYA,
 HOKKAIDO, JAPAN
 (CABLE ADDRESS)

JA-77-0823

ATTACHED IV

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) HIJUNO OHNO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)

(HOME ADDRESS)
 429 EAST 52ND ST. APT. 28E,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

JA-77-0823

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

824

JA-77-0824

Permit Period: MAY 1, 1977 Application No. JA-77-0824
 Applied For: TO DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel: AIKHO MARU NO. 32
 # 94

2. Vessel No.: Hull No. (CRAB 94) Registration No. EM 1-63

3. Name and Address of Owner: TAIYO FISHING CO., LTD. Name and Address of Charterer: GOTO SUISAN CO., LTD.
1-5-1, HANBUKUCHI, CHITODANI, TOKYO, JAPAN 2-21-5, MISAKI, MIDORI-SHI, NAGAWA-KEN, JAPAN

4. Homeport and State of Registry: TOKYO, JAPAN

5. Type of Vessel: POW VESSEL (CRAB), INDEPENDENT

6. Tonnage (Gross): 121.52 M.T. (Net)

7. Length 43.00 M. B. Breadth 8.00 M. 9. Draft 2.70 M.

10. Horsepower 1050 shp. 11. Maximum Speed 12.00 kt.

11. Propulsion: Diesel (*) Steam (), Diesel/Electric (), Other _____

12. Date Built: SEPTEMBER 25, 1969

13. Number and Nationality of Personnel: 27, JAPAN
 Officers 7 Crew 20 Other (Specify) _____

14. Communications: VHF-FM (), AM/SSB, Voice (), Telegraphy (), Other _____

International Radio Call Sign: J D E P

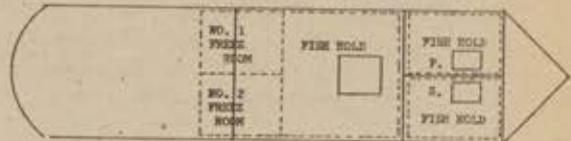
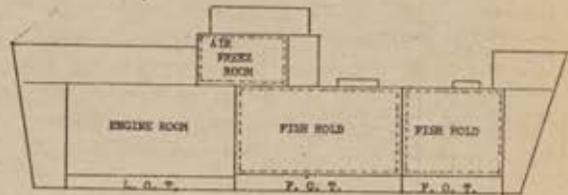
Radio Frequencies Monitored: A1 2071 KHZ

Other Working Frequencies: A1 2075 KHZ

Schedule: MARCH TIME (G.M.T.) 07:00 TO 08:00

ATTACHED I

CARGO SPACE



16. Navigation Equipment: Loran C (*), Loran A (), Omega (), Decca (), Navstar (), Radar (*), Fathometer (*), Other _____

17. Cargo Capacity (MT) 18. Cargo Space SEE ATTACHED I
 Number SEE ATTACHED I Name _____

Salted Fish _____ Freezer _____
 Fresh Fish 60 M.T. Dry Hold _____
 Frozen Fish _____ Tanks _____
 Fish Meal _____ Other _____
 Other _____

19. Processing Equipment (Indicate daily capacity, MT)
FRIGID 2 BATH 1 M.T. / DAY (CONTINUED)

JA-77-0824

ATTACHED I

JA-77-0824

OCEAN AREA: KERING SEA AND ALBERTIAN
 PERIOD: MAY - OCTOBER
 SPECIES: TARKIN CRAB
 CONTEMPLATED CATCH: _____

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,727 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINE DRAWN BETWEEN THE FOLLOWING COORDINATES:
 56° 00' N. LAT. - 173° 00' W. LONG.; 58° 09' N. LAT. - 175° 00' W. LONG.;
 58° 09' N. LAT. - 166° 00' W. LONG.)

GEAR TO USED: CRAB POT

20. Fisheries for which Permit is Requested:
 Ocean Area SEE ATTACHED I Period SEE ATTACHED I Species SEE ATTACHED I Contemplated Catch (MT) SEE ATTACHED I Gear to be Used SEE ATTACHED I

21. Name and Address of Agent appointed to receive any legal process issued to the United States:
SEE ATTACHED I

ATTACHED I

JA-77-0824

JA-77-0825

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) KIZUHO OHNO
PRESIDENT,
TAIYO FISHERY CO., LTD.
(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-491-4120)
(HOME ADDRESS)
429 EAST 52ND ST. APT. 2SE,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

16. Navigation Equipment: Loran C (), Loran A (), Omega (),
Decca (), Meckel (), Radar (), Fathometer (),
Other _____

17. Cargo Capacity (MT) 18. Cargo Space
Number Name
Salted Fish _____ Freezer SEE ATTACHED I
Fresh Fish 50 M.T. Dry Hold
Frozen Fish _____ Tanks
Fish Meal _____ Other
Other _____

19. Processing Equipment (Indicate daily capacity, MT)
FREEZER 2 SEES R.O.M.T./DAY (CONTINUED)

20. Fisheries for which Permit is Requested:
Ocean Area Fished Species Contemplated Catch to be Used
(From-To) (Tons) (MT)
SEE ATTACHED II

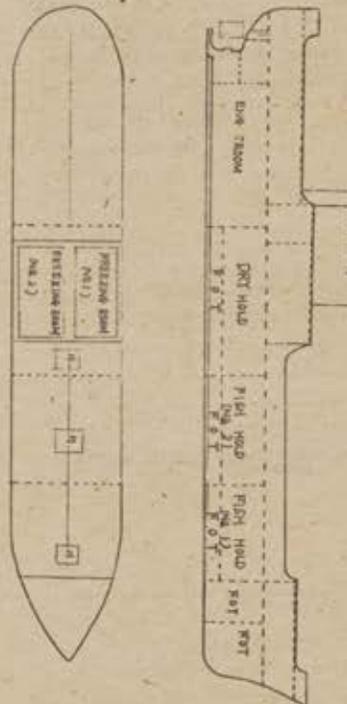
21. Name and Address of Agent appointed to receive any legal process issued in the United States:
SEE ATTACHED I

FISHING VESSEL IDENTIFICATION FORM (FOCI) (REV)

825

JA-77-0825

Permit Period MAY 1, 1977 Application No. JA-77-0825
Applied For: 0225000N 31, 1977 For Use of Issuing Office
State: JAPAN
1. Name of Vessel AISHA HARU NO.15
2. Vessel No./Hull No. (GAR 95) Registration No. KRL-406
3. Name and Address of Owner Name and Address of Charterer
Name TAIYO FISHERY CO. LTD.
Address 1-5-1, MANUHOCHI,
CHIYODAI, TOKYO, JAPAN
Cable Address OCEAN VISH TOKYO
4. Homeport and State of Registry: TOKYO, JAPAN
5. Type of Vessel FOR VESSEL (GAR), TROPICHERMY
6. Tonnage (Gross) 293.14 M.T. (Net)
7. Length 37.40 M. B. Breadth 7.4 M. DRAFT 3.50 M.
10. Horsepower 650 shp. 11. Maximum Speed 10.0 kt.
11. Propulsion: Diesel (), Steam (), Diesel/Electric (),
Other
13. Date Built NOV. 1963
14. Number and Nationality of Personnel 25, JAVAN
Officers 6 Crew 19 Other (Specify) -
15. Communications: VHF-FM (), AM/SSB, Voice (), Telegraphy (),
Other
International Radio Call Sign B LSP
Radio Frequencies Monitored A1 2091 KHZ
Other Working Frequencies A1 2075 KHZ
Schedule WATCH TIME (G.M.T.) 06.00-07.00



ATTACHED I

ATTACHED I

OCEAN AREA: BERING SEA AND ALUTSIAN
 PERIOD: MAY - OCTOBER
 SPECIES: TANHER CRAB
 CONTEMPLATED CATCH:

JA-77-0825

THIS VESSEL APPLIED FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,721 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINES DRAWN BETWEEN THE FOLLOWING COORDINATES:
 56° 00' N. LAT. - 173° 00' W. LONG.; 56° 09' N. LAT. - 173° 00' W. LONG.;
 56° 09' N. LAT. - 166° 00' W. LONG.)

GEAR TO USED: CRAB POT

826

FISHING VESSEL IDENTIFICATION FORM (FOURING)

Permit Period: MAY 1, 1977 Application No. JA-77-0826
 Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

- Name of Vessel: ASIMA MARU NO. 21
- Vessel No. Hull No. CRAB 96 Registration No. KW1-326
- Name and Address of Owner: TAIYO FISHERY CO. LTD. Name and Address of Charterer: _____
 Address: 1-5-1, NABEYUCHI
CHIYODAI, TOKYO, JAPAN
 Cable Address: _____
OCEAN FISH TOKYO
- Homeport and State of Registry: TOKYO, JAPAN
- Type of Vessel: POT VESSEL (CRAB), INDEPENDENT
- Tonnage (Gross): 239.62 (Net)
- Length: 37.0 M. B. Breadth: 7.20 M. D. Draft: 3.20 M.
- Horsepower: 650 shp. 11. Maximum Speed: 10 kt.
- Propulsion: Diesel (*), Steam (), Diesel/Electric (),
 Other _____
- Date Built: JAN. 1962
- Number and Nationality of Personnel: 24, JAPAN
 Officers: 5 Crew: 18 Other (Specify) _____
- Communications: VHF-FM (), AM/FM, Voice (P), Telegraphy (),
 Other _____
 International Radio Call Sign: YL20
 Radio Frequencies Monitored: A1 2091 KHZ
 Other Working Frequencies: A1 2079 KHZ
 Schedule: HATCH TIME (G.M.T) 07:00 - 08:00

ATTACHED II

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) KIIZURO OHDO
 PRESIDENT,
TAIYO FISHERY CO., LTD.

(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4170)

(HOME ADDRESS)
429 EAST 52ND ST. APT. 2SE,
RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

JA-77-0825

16. Navigation Equipment: Loran C (*), Loran A (), Omega (),
 Decca (), Navsat (), Radar (*), Fathometer (),
 Other _____

17. Cargo Capacity (MT) 18. Cargo Space
 Number Name
 Salted Fish _____ Freezer SEE ATTACHED I
 Fresh Fish 50 M.T Dry Hold _____
 Frozen Fish _____ Tanks _____
 Fish Meal _____ Other _____
 Other _____

19. Processing Equipment (Indicate daily capacity, MT)
FRASER 3 SHEET 3.0 H.W./DAY (COMBINED)

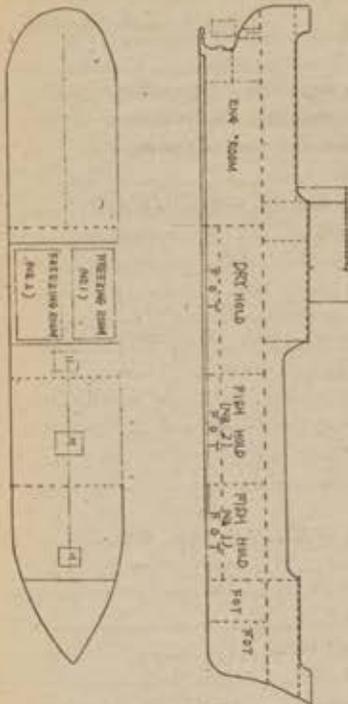
20. Fisheries for which Permit is Requested:
 Ocean Area Permitted Species Contemplated Catch to be Used
 (From-To) (Catch (MT))
SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

SEE ATTACHED II

JA-77-0826

ATTACHED K



ATTACHED I

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES: JA-77-0826

(NAME) KIZUO OHNO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)

(HOME ADDRESS)
 429 EAST 52ND ST. APT. 20R,
 RIVERMOUNT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

ATTACHED I

OCEAN AREA: BERING SEA AND ALASKIAN
 PERIOD: MAY - OCTOBER
 SPECIES: TANNER CRAB

JA-77-0826

CONTEMPLATED CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,127 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINES DRAWN BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG.; 58° 00' N. LAT. - 173° 00' W. LONG.;
 58° 00' N. LAT. - 164° 00' W. LONG.

CRAB TO USED: CRAB POT

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

827

Permit Period: MAY 1, 1977 Application No. JA-77-0827
 Applied For: DECEMBER 31, 1977 For Use of Licensing Office

State: JAPAN

- Name of Vessel: YUNYUOCHI MARU NO. 15
- Vessel No./Hull No.: 597 (GRAB 97) Registration No.: 101-76
- Name and Address of Owner: ROZONI KAWABATA
 Name and Address of Charterer: WUWUO, HONSHU, JAPAN
 Address: 4-2, MANUKI-CHO
 Cable Address: _____
- Homeport and State of Registry: WUWUO, JAPAN
- Type of Vessel: CRAB VESSEL (GRAB), INDEPENDENT
- Tonnage (Gross): 297.01 (Net) _____
- Length: 41.06 M. B. Breadth: 7.20 M. D. Draught: 3.60 M.
- Horsepower: 650 shp. 11. Maximum Speed: 10.0 kt.
- Propulsion: Diesel () Steam () Diesel/Electric ()
 Other: _____
- Date Built: JAN. 1956
- Number and Nationality of Personnel: 26, JAPAN
 Officers: 5 Crew: 20 Other (Specify): _____
- Communications: VHF-FM (), AM/SSB, Voice (), Telegraphy ()
 Other: _____
 International Radio Call Sign: JHES
 Radio Frequencies Monitored: A1 2091 KHZ
 Other Working Frequencies: A1 2075 KHZ
 Schedule: WATCH TIME (G.M.T.) 06:00-06:00

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

828

Permit Period MAY 1, 1977 - Application No. **JA-77-0828**
 Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel: YOSHINO MARU NO. 18

2. Vessel Hull No.: 5099 Registration No.: JKL-423

3. Name and Address of Owner: RIEHO COYUDO KANISHIKI KAIJIA, 1040 MIYAN KANISHIKI KAIJIA, 2-2-6, KURIHAMA, YOKOHAMA, 2-22-1, MINAMI-CHO, CHITOSE, TOKYO, JAPAN, KANAGAWA-KEN, JAPAN
 Cable Address: NIJUNINGYO, TOKYO

4. Homeport and State of Registry: YOKOHAMA, JAPAN

5. Type of Vessel: FOT VESSEL (CRAB), INDEPENDENT

6. Tonnage (Gross): 370.45 M.T. (Net): ---

7. Length: 48.50 M. B. Breadth: 8.80 M. D. Draft: 2.20 M.

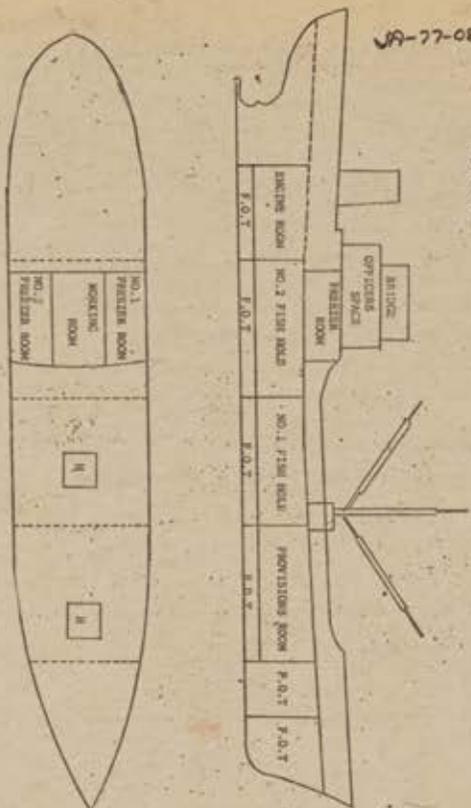
10. Horsepower: 550 shp. 11. Maximum Speed: 10.5 Kt.

11. Propulsion: Diesel (M), Steam (), Diesel/Electric (), Other: ---

13. Date Built: FEB 10, 1960

14. Number and Nationality of Personnel: 20, JAPAN
 Officers: 8 Crew: 21 Other (Specify): ---

15. Communications: VHF-FM (), AM/SSB, Voice (g), Telegraphy (g), Other: ---
 International Radio Call Sign: J T D X
 Radio Frequency Monitored: 430 000
 Other Working Frequencies: at 2075 KHZ
 Schedule: WATCH TIME (G.M.T.) 01:30 TO 04:30, 21:00 TO 24:00



JA-77-0828

ATTACHED I
 CARGO SPACE

16. Navigation Equipment: Loran C (M), Loran A (), Omega (), Decca (), Navstar (), Radar (g), Tachometer (g), Other: ---

17. Cargo Capacity (MT) 18. Cargo Space Number 8888

Salted Fish	Freezer 1.2	SEE ATTACHED I
Fresh Fish	Dry Hold	
Frozen Fish	Tanks	
Fish Meal	Other	
Other		

19. Processing Equipment (Indicate daily capacity, MT)
FISHING NETS & M.T./DAY (CONTINUED)

20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contemplated Total to be Used
 (From-To) Catch (MT)
SEE ATTACHED I

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
SEE ATTACHED I

JA-77-0828

ATTACHED I

OCEAN AREA: BERING SEA AND ALUTKIAN

PERIOD: MAY - OCTOBER

SPECIES: JAPANESE CRAB

CONTINGENT CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,727 TONS) IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINES DRAWN BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG.; 56° 09' N. LAT. - 173° 00' W. LONG.;
 56° 09' N. LAT. - 164° 00' W. LONG.

GEAR TO USED: CRAB POT

JA-77-0828

ATTACHED II

JA-77-0828

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) MIZUHO OHNO
PRESIDENT,
TAITO FISHERY CO., LTD.

(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4120)

(HOME ADDRESS)
429 EAST 52ND ST. APT. 28H,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

16. Navigation Equipment: Loran C (), Loran A (), Omega (),
Decca (), Racon (), Radar (R), Fathometer (F),
Other _____

17. Cargo Capacity (MT) 18. Cargo Space
Salted Fish _____ Freezer 2, 3 SEE ATTACHED I
Fresh Fish _____ Dry Hold
Frozen Fish 80 M.T. Tanks
Fish Meal _____ Other
Other _____

19. Processing Equipment (Indicate daily capacity, MT)
PRESSURE 3 STEPS 3 M.T./DAY (COMBINED)

20. Fisheries for which Permit is Requested:
Ocean Area Period Species Contemplated Gear to be Used
(From-To) Catch (MT)

SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

SEE ATTACHED II

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

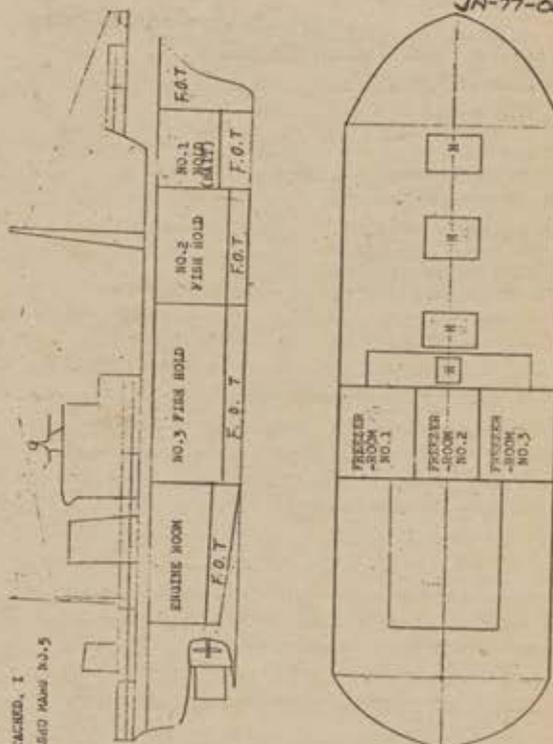
825

Permit Period: MAY 1, 1977 - Application No. JA-77-0827
Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

- Name of Vessel: RYUSHO MARU NO.5
- Vessel No./Hull No. 2-100 Registration No. (CRAB 100)
- Name and Address of Owner: FUJI MARIN CO., LTD. Name and Address of Charterer: ROKYO SUISAN CO., LTD.
Address: 3-9, NISHIKI-MACHI, MOJI-KU, KITAKYUSHU, FUKUOKA-KEN, JAPAN Address: 7-9-15, TSUKUJI, CHUO-KU, TOKYO, JAPAN
Cable Address: _____ Address: ROKYO SUISAN TOKYO
- Homeport and State of Registry: KITAKYUSHU, JAPAN
- Type of Vessel: POT VESSEL (CRAB), INDEPENDENT
- Tonnage (Gross): 196.76 M.T. (Net) _____
- Length: 52.20 m. B. Breadth: 8.80 m. 9. Draft: 3.80 m.
- Horsepower: 1100 shp. 11. Maximum Speed: 11.0 kt.
- Propulsion: Diesel (D), Steam (S), Diesel/Electric (E),
Other _____
- Date Built: FEB. 1960
- Number and Nationality of Personnel: 30, JAPAN
Officers: 5 Crew: 25 Other (Specify): 2, SUPER-INTENDENTS
- Communications: VHF-FM (), AM/SSB, Voice (), Telegraphy (),
Other _____
International Radio Call Sign: JACC
Radio Frequencies Monitored: 500 KHZ
Other Working Frequencies: A1 2075 KHZ
Schedule WATCH TIME (G.M.T.): 09:00 TO 01:00, 05:00 TO 07:00

JA-77-0829



ATTACHED, I
RYUSHO MARU NO.5

ATTACHED I

JA-77-0829

OCEAN AREA: BERING SEA AND ALBUZIAN
 PERIOD: MAY - OCTOBER
 SPECIES: TANUKI COD
 CONTEMPLATED CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CHAS FISHERY (2,727 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINES DRAWN BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 173° 00' W. LONG.; 56° 09' N. LAT. - 173° 00' W. LONG.;
 56° 09' N. LAT. - 166° 00' W. LONG. }

GEAR TO USED: CHAS POT

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

830

Permit Period MAY 1, 1977 -- Application No. JA-77-0830
 Applied For: NOVEMBER 31, 1977 For Use of Locality (111)

State: JAPAN

1. Name of Vessel: EISAN MARU
 2. Vessel No. Hull No. 50-101 Registration No. TK 1-427 (CHAS 101)
 3. Name and Address of Owner: Name and Address of Charterer
 NIPPON MARINE PRODUCTS CO., LTD. NIPPON SUISAN KAISHA, LTD.
 Address: 2-9-13, TOKUJI, 2-6-2, OTSUMACHI,
 CHUO-KU, TOKYO, JAPAN CHITODA-KU, TOKYO, JAPAN
 Cable Address: NISSUI TOKYO
 NMP. CO. LTD.

4. Homeport and State of Registry: TOKYO, JAPAN
 5. Type of Vessel: POT VESSEL (CHAS), INDEPENDENT
 6. Tonnage (Gross): 498.83 M.T. (Net):
 7. Length: 51.00 M. 8. Breadth: 9.00 M. 9. Draft: 3.80 M.
 10. Horsepower: 1200 shp. 11. Maximum Speed: 10.0 kt.
 11. Propulsion: Diesel (6), Steam (), Diesel/Electric (),
 Other
 12. Date Built: DEC. 1961
 13. Number and Nationality of Personnel: 30, JAPAN
 Officers: 7 Crew: 22 Other (Specify): 1, SUPER-INTENDENT
 14. Communications: VHF-FM (), AM/SSB, Voice (e), Telegraphy (F),
 Other
 International Radio Call Sign: 7LWJ
 Radio Frequencies Monitored: 500 KHZ
 Other Working Frequencies: A1 2075 KHZ
 Schedule WATCH TIME (G.M.T.): 20:00 TO 21:00, 01:00 TO 02:00

ATTACHED II

JA-77-0829

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) HIROSHI OHNO
 PRESIDENT,
 SAIYO FISHERY CO., LTD.

(ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)

(HOME ADDRESS)
 429 EAST 52ND ST. APT. 28E,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

16. Navigation Equipment: Loran A (), Loran C (), Omega (),
 Decca (), Navstar (), Radar (), Fathometer (),
 Other

17. Cargo Capacity (MT) 18. Cargo Space
 Number Name
 Salted Fish _____ Freezer 2, 3 SEE ATTACHED I
 Fresh Fish _____ Dry Hold
 Frozen Fish 20 M.T. Tanks
 Fish Meal _____ Other
 Other _____

19. Processing Equipment (Indicate daily capacity, MT)
 FREEZER 3 SETS 4 M.T./DAY (CONTINUED)

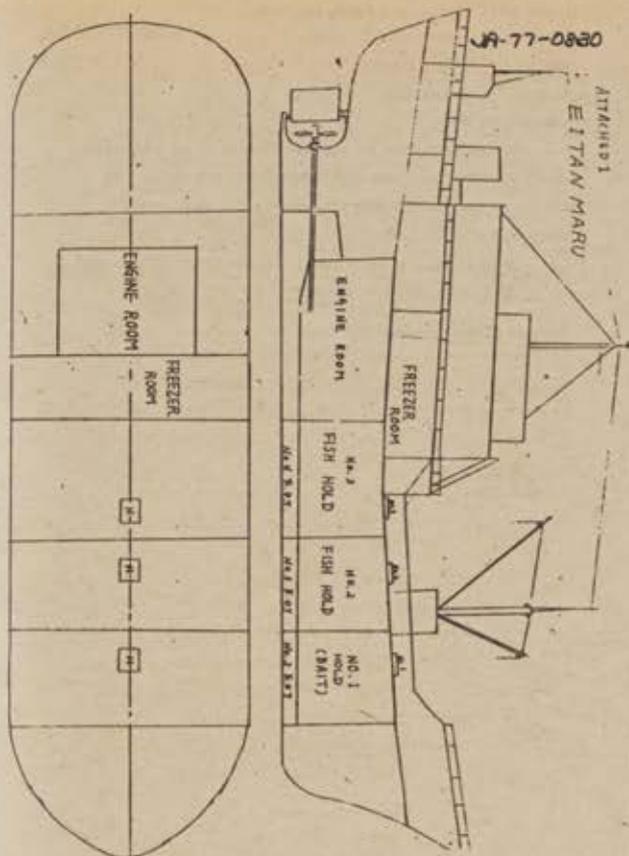
20. Fisheries for which Permit is Requested:

Ocean Area Permitted Species Contemplated Gear to be Used
 (From-To) Catch (MT)

SEE ATTACHED I

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

SEE ATTACHED I



ATTACHED X

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) MIJUNO OBUO
PRESIDENT,
TAIYO FISHERY CO., LTD.

(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4120)

(HOME ADDRESS)
429 EAST 52ND ST. APT. 28E,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

ATTACHED I

OCEAN AREA: BERING SEA AND ALASKIAN
PERIOD: MAY - OCTOBER
SPECIES: TANKER CRAB
CONTINGENT CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION TO THE JAPANESE INDEPENDENT CRAB FISHERY (2,127 TONS IN THE AREA LOCATED TO THE NORTH AND WEST OF STRAIGHT LINE DRAWN BETWEEN THE FOLLOWING COORDINATES:

56° 00' N. LAT. - 175° 00' W. LONG., 56° 09' N. LAT. - 175° 00' W. LONG.,
56° 09' N. LAT. - 168° 00' W. LONG.)

GEAR TO USED: CRAB POT

JA-77-0830

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

831

Permit Period MAY 1, 1977 Application No. JA-77-0830
Applied For: SEPTEMBER 21, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel KIKI MARU NO. 8
2. Vessel No. Hull No. 102 (CRAB 122) Registration No. TK 1-000
3. Name and Address of Owner SHIYUO LEASING CO., LTD. Name and Address of Charterer TAIYO FISHERY CO., LTD.
- Address 2-4-1, HANAJIYU-CHE, HIRATO-KU, TOKYO, JAPAN 1-5-1, HANUNOCHI, CHYODA-KU, TOKYO, JAPAN
- Cable Address LEASING ORIENT TOKYO OCEANFISH TOKYO
4. Homeport and State of Registry: TOKYO, JAPAN
5. Type of Vessel FISH VESSEL (CRAB), INDEPENDENT
6. Tonnage (Gross) 408.15 G.T. (Net) ---
7. Length 53.5 M. 8. Breadth 8.8 M. 9. Draft 3.8 M.
10. Horsepower 1000 chp. 11. Maximum Speed 10.5 kt.
11. Propulsion: Diesel (*), Steam (), Diesel/Electric (),
Other ---
12. Date Built OCT, 1968
13. Number and Nationality of Personnel 30, JAPAN
Officers 8 Crew 21 Other (Specify) ---
14. Communications: VHF-PH (), AM/SSB, Voice (*), Telegraphy (),
Other ---
- International Radio Call Sign JRXX
- Radio Frequencies Monitored 500 KHZ
- Other Working Frequencies 41 3015 FMS
- Schedule WATCH TIME (G.M.T) 08:00 TO 07:00, 01:00 TO 22:00

JA-77-0851

16. Navigation Equipment: Loren C (*), Loren A (*), Omega (),
Decca (), Havarat (), Radar (*), Fathometer (*).

Other NO EXHIBITION FISHERY

17. Cargo Capacity (MT) 18. Cargo Space
Number SEE ATTACHED I
Salted Fish - Freezer 1, 2, 3, 4
Fresh Fish - Dry Hold -
Frozen Fish 500 M.T. Tanks -
Fish Meal - Other -
Other -

19. Processing Equipment (Indicate daily capacity, MT)
FREESER 40000 T.M.T./DAY (COMBINED)

20. Fisheries for which Permit is Requested:
Ocean Area SEE ATTACHED I Period SEE ATTACHED I Species SEE ATTACHED I Contemplated Catch (MT) SEE ATTACHED I
Gear to be Used SEE ATTACHED I

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
SEE ATTACHED I

SNAIL FISHERY

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

851

JA-77-0851

Permit Period MAY 1, 1977 Application No. JA-77-0851
Applied For: TO DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel TAIHAN MARU NO.1
499 101

2. Vessel Fo. Hull No. (SHALL 101) 499 101 Registration No. TEL-875

3. Name and Address of Owner NAME AND ADDRESS OF CHARTERER
Name KOKUBAI OYOOTO KANSHUKI KAISHA
Address 2-5-8, IRIFUNE
CHUO-KU, TOKYO, JAPAN
Cable Address INTLFINCO TOKYO

4. Homeport and State of Registry: TOKYO, JAPAN

5. Type of Vessel POT VESSEL (SEA SNAIL), INDEPENDENT

6. Tonnage (Gross) 499.45 M.T. (Net) -

7. Length 42.25 M. 8. Breadth 6.20 M. 9. Draft 4.50 M.

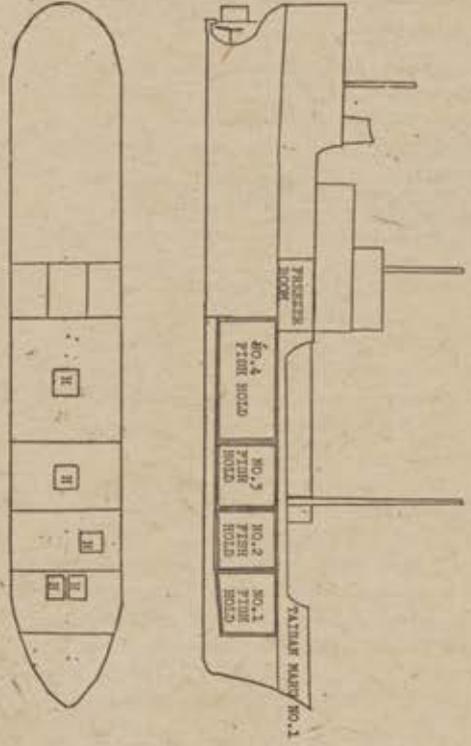
10. Horsepower 1150 shp. 11. Maximum Speed 12.5 Kt.

11. Propulsion: Diesel (*), Steam (), Diesel/Electric (),
Other -

12. Date Built JULY 16, 1968

14. Number and Nationality of Personnel 25, JAPAN
Officers 8 Crew 17 Other (Specify) -

15. Communications: VHF-FM (*), AM/SSB, Voice (*), Telegraphy (*),
Other -
International Radio Call Sign JRFF
Radio Frequencies Monitored 500 KHZ.
Other Working Frequencies AI 2070, 2075 KHZ.
Schedule WATCH TIME (G.M.T.) 00:00 TO 01:00; 06:00 TO 07:00



SEE ATTACHED I

JA-77-0851

THE ATTACHED II

FISHERIES FOR WHICH PERMIT IS REQUESTED

OCEAN AREA: BERING SEA AND ALUTTIAN ISLANDS
 PERIOD: MAY-DECEMBER, 1977
 SPECIES: SNAIL

CONTINGUATED CATCH: THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATION OF 3700 METRIC TONS (SEVING MEAT)

GEAR TO BE USED: SNAIL POT

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

852

Permit Period MAY 1, 1977 - Application No. JA-77-0852
 Applied For DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel HOKO MARU NO. 36
2. Vessel No.: Hull No. 7102(SNAIL 102) Registration No. KH 1-265
3. Name and Address of Owner HOKO FISHING CO., LTD Name and Address of Charterer
1-2-4, TOKIJI,
CHOO-KU, TOKYO, JAPAN
4. Homeport and State of Registry: TOKYO, JAPAN
5. Type of Vessel POT VESSEL(SNAIL), INDEPENDENT
6. Tonnage (Gross) 434.93 M.T
7. Length 45.00 M. B. Breadth 7.80 M. D. Draft 3.44 M.
10. Horsepower 800 shp. 11. Maximum Speed 10 kt.
11. Propulsion: Diesel (*), Steam (), Diesel/Electric (),
 Other _____
12. Date Built OCT. 13, 1959
14. Number and Nationality of Personnel 28, JAPAN
 Officers 7 Crew 21 Other (Specify) _____
15. Communications: VHF-FM (), AM/SSB, Voice (*), Telegraphy (*),
 Other _____
 International Radio Call Sign JRUX
 Radio Frequencies Monitored 500 KHZ
 Other Working Frequencies 41 2075 KHZ
 Schedule WATCH TIME(GMT): 06:00 - 07:00

ATTACHED I

JA-77-0851

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) MISURO ONO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.

(ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)

(HOME ADDRESS)
 429 EAST 52ND ST. APT. 28E,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

16. Navigation Equipment: Loran C (*), Loran A (*), Omega (),
 Decca (), Hoveat (), Radar (*), Fathometer (*),
 Other _____

17. Cargo Capacity (MT) 18. Cargo Space

	Number	Name
Salted Fish	Freezer 1, 2, 3, 4,	
Fresh Fish	Dry Hold	SEE ATTACHED I
Frozen Fish	Tanks	
Fish Meal	Other	
Other		

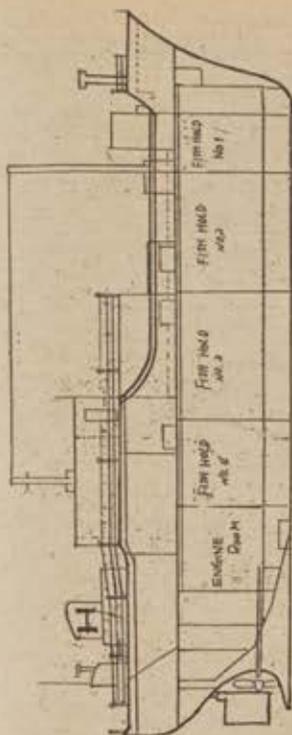
19. Processing Equipment (Indicate daily capacity, MT)
FRYSER 2 SETS 10 M.T/DAY (COMBINED)

20. Fisheries for which Permit is Requested:

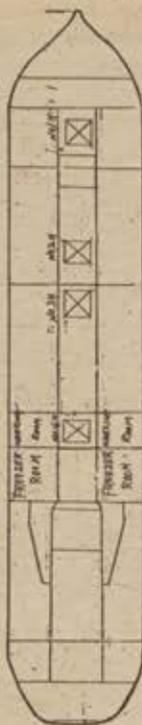
Ocean Area	Period (From-To)	Species	Continguated Catch (MT)	Gear to be Used
SEE ATTACHED II				

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
SEE ATTACHED I

ATTACHED I



JA-77-0852



ATTACHED II

JA-77-0852

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) HISAHO OHNO
PRESIDENT,
TAITO FISHERY CO., LTD.(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4100)(HOME ADDRESS)
429 EAST 52ND ST. APT. 28K,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

ATTACHED II

JA-77-0852

FISHERIES FOR WHICH PERMIT IS REQUESTED:

OCEAN AREA: BERING SEA AND ALUTIAN
PERIOD : MAY - DECEMBER, 1977

SPECIES : SNAIL

CONTEMPLATED CATCH:

THIS VESSEL APPLIES FOR FISHING A PORTION OF
THE ALLOCATION OF 2700 METRIC TONS (SHRIMP MEAT).
GRAB TO BE USED: SNAIL POTS

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

853

Permit Period MAY 1, 1977 — Application No. JA-77-0852
Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

- Name of Vessel EYUSHO MARU NO. 5
- Vessel No. Hull No. 77 105 Registration No. (SNAIL 105)
- Name and Address of Owner FUJI KAISHI CO., LTD. Name and Address of Charterer ROKUYO SHISAN CO., LTD.
5-9, NISHIKI-WACHI, 7-9-13, TSUKIJI, CHUO-KU,
KOJI-KU, KYUAKUSHU, TOKYO, JAPAN
FUKUOKA-KEN, JAPAN
- Cable Address ROKUYO SHISAN TOKYO
- Homeport and State of Registry: KYUAKUSHU, JAPAN
- Type of Vessel POT VESSEL (SEA SNAIL), INDEPENDENT
- Tonnage (Gross) 496.75 M.T. (Net) _____
- Length 52.20 M. E. Breadth 8.80 M. D. Draft 3.80 M.
- Horsepower 1100 shp. 11. Maximum Speed 11.0 kt.
- Propulsion: Diesel (X), Steam (), Diesel/Electric (),
Other _____
- Date Built FEB. 1960
- Number and Nationality of Personnel: 30, JAPAN
Officers 5 Crew 25 Other (Specify) SHIP-
INTENDENTS
- Communications: VHF-FM (), AM/SSB, Voice (), Telegraphy (),
Other _____

International Radio Call Sign JACC
Radio Frequencies Monitored 500 KHZ
Other Working Frequencies A1 2075 KHZ
Schedule WATCH TIME (G.M.T.): 00:00 TO 01:00, 06:00 TO 07:00

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

854

JA-77-0854

Permit Period MAY 1, 1977 — Application To JA-77-0854
 Applied For: DECEMBER 31, 1977 For Use of Issuing Officer

State: JAPAN

1. Name of Vessel SHISHO MARU

2. Vessel No./Hull No. 77 104 Registration No. TS 1-955
 (SHAIL NO.)

3. Name and Address of Owner Name and Address of Charterer
 Name FURUO SANGYO CO., LTD. HOEITO SUISAN CO., LTD.
 Address 219, YOKOSHA, 2-9-13, TUREIJI, CHUO-KU,
SHIMIZU, SHIZUOKA-KU, JAPAN TOKYO, JAPAN
 Cable Address _____ HOEITO SUISAN TOKYO

4. Homeport and State of Registry: TOKYO, JAPAN

5. Type of Vessel POT VESSEL(SMALL SNAIL), INDEPENDENT

6. Tonnage (Gross) 299.62 M.T. (Net) _____

7. Length 44.40 M. 8. Breadth 2.90 M. 9. Draft 3.10 M.

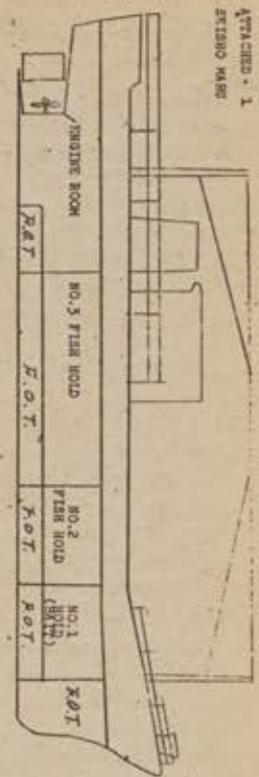
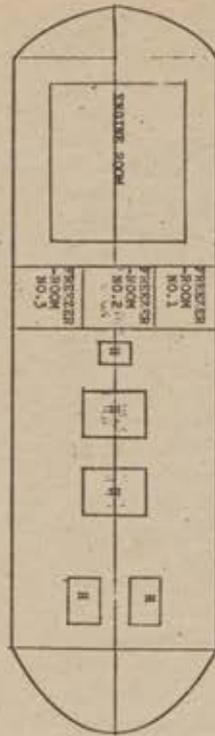
10. Horsepower 850 shp. 11. Maximum Speed 10.5 kt.

12. Propulsion: Diesel (D), Steam (S), Diesel/Electric (E),
 Other _____

13. Date Built FEB. 1968

14. Number and Nationality of Personnel 29, JAPAN
 Officers 5 Crew 25 Other (Specify): SUPPL. INTENDENT

15. Communications: VHF-FM (), AM/SSB, Voice (), Telegraphy (),
 Other _____
 International Radio Call Sign JFVU
 Radio Frequencies Monitored 500 KHZ
 Other Working Frequencies AL 2025 KHZ
 Schedule WATCH TIME (G.M.T.): 00:00 TO 01:00, 06:00 TO 07:00



ATTACHED - 1
 FISHING MAP

16. Navigation Equipment: Loran C (C), Loran A (A), Omega (O),
 Decca (D), Smeath (S), Radar (R), Fathometer (F),
 Other _____

17. Cargo Capacity (MT) 18. Cargo Space
 Number None

Salted Fish _____ Freezer 2, 3 SEE ATTACHED I
 Fresh Fish _____ Dry Hold _____
 Frozen Fish 100 M.T. Tanks _____
 Fish Meal _____ Other _____
 Other _____

19. Processing Equipment (indicate daily capacity, MT)
FREEZER 3 SETS 3 M.T./DAY (COMBINED)

JA-77-0854

JA-77-0854

ATTACHED I
 FISHERIES FOR WHICH PERMIT IS REQUESTED:
 OCEAN AREA : BEHIND SEA AND ALUTIAN
 PERIOD : MAY — DECEMBER
 SPECIES : SNAIL
 CONTEMPLATED CATCH:
THIS VESSEL APPLIES FOR FISHING
A PORTION OF THE ALLOCATION OF
2,700 METRIC TONS (GROSS MEAT)
 GEAR TO BE USED : SNAIL POT

20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contemplated Catch to be Used
 (From-To) (Catch (MT))

SEE ATTACHED I

21. Name and Address of Agent appointed to receive any legal
 process issued in the United States:
SEE ATTACHED I

JA-77-0855

ATTACHED I

FISHERIES FOR WHICH PERMIT IS REQUESTED:

OCEAN AREA : BERING SEA AND ALUTSIAN

PERIOD : MAY - DECEMBER

SPECIES : SNAIL

CONTINGENT CATCH:

THIS VESSEL APPLIES FOR FISHING

A PORTION OF THE ALLOCATION OF

2,700 METRIC TONS (EDIBLE MEAT)

GEAR TO BE USED : SNAIL POT

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

856

Permit Period MAY 1, 1977 - DECEMBER 31, 1977 Application No. JA-77-0856
 Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel TAKASHIRO MARU NO. 31

2. Vessel No./Hull No. 77/106 Registration No. MS 1-653
(SERIAL 106)

3. Name and Address of Owner Name and Address of Charterer
 Name TAKASHIRO MARU RONYO SUISAN CO., LTD.
KAIYU CO., LTD.
 Address 719-3, GOMASHOBUA 7-9-13, TSUKIJI, CHUO-KU,
MINAMI-MACHI, NATAHAI-GUN, TOKYO, JAPAN
KU-EHN, JAPAN
 Cable Address RONYO SUISAN TOKYO

4. Homeport and State of Registry: MIY, JAPAN

5. Type of Vessel POT VESSEL (SPA SNAIL), INDEPENDENT

6. Tonnage (Gross) 171.18 M.T. (Net)

7. Length 49.10 M. 8. Breadth 8.80 M. 9. Draft 3.26 M.

10. Horsepower 1000 shp. 11. Maximum Speed 10.8 kt.

12. Propulsion: Diesel (D), Steam (S), Diesel/Electric (E),
 Other _____

13. Date Built JUL. 21, 1960

14. Number and Nationality of Personnel 30, JAPAN
 Officers 5 Crew 23 Other (Specify) 2 SUPER-INTENDENTS

15. Communications: VHF-FM (F), AM/SSB, Voice (V), Telegraphy (T),
 Other _____
 International Radio Call Sign JPTL
 Radio Frequencies Monitored 500 KHZ
 Other Working Frequencies A1 2025 KHZ
 Schedule WATCH TIME (G.M.T.): 00:00 TO 01:00, 06:00 TO 07:00

ATTACHED I

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) MIZUHO OHNO
 PRESIDENT,
TAIYO FISHERY CO., LTD.(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4120)(HOME ADDRESS)
429 EAST 52ND ST. APT. 28E,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

JA-77-0855

16. Navigation Equipment: Loran C (C), Loran A (A), Omega (O),
 Decca (D), Navstar (N), Radar (R), Fathometer (F),
 Other _____

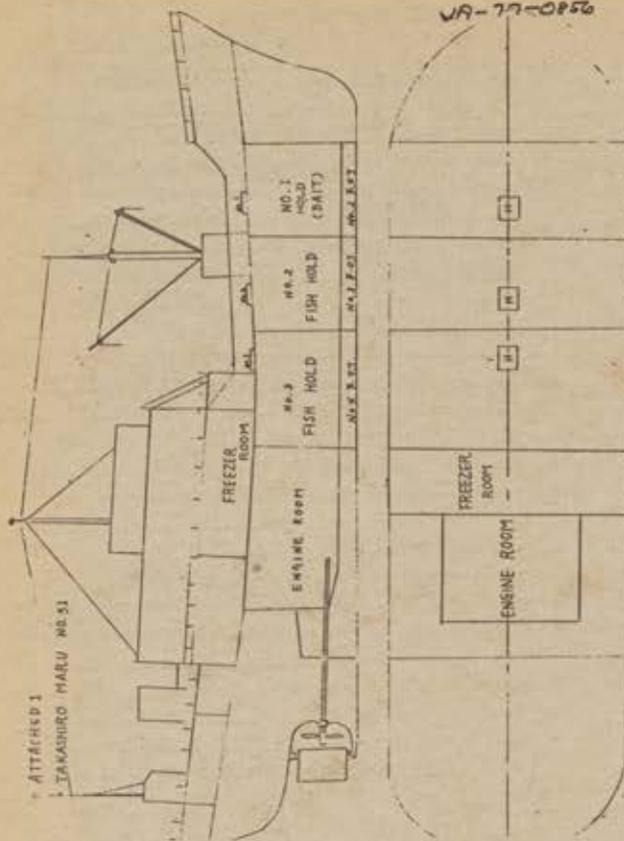
17. Cargo Capacity (MT) 18. Cargo Space
 Binnet _____ Bunk _____
 Salted Fish _____ Freezer 2, 3 SEE ATTACHED I
 Fresh Fish _____ Dry Hold _____
 Frozen Fish 160 M.T. Tanks _____
 Fish Meal _____ Other _____
 Other _____

19. Processing Equipment (Indicate daily capacity, MT)
FREEZER 3 SETS 3 M.T./DAY (COMBINED)

20. Fisheries for which Permit is Requested:
 Ocean Area Permit Species Contemplated Gear to be Used
 (From-To) Catch (MT)

SEE ATTACHED I

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
SEE ATTACHED II



ATTACHED I

FISHERIES FOR WHICH PERMIT IS REQUESTED:

OCEAN AREA : BERING SEA AND ALUTIAN

PERIOD : MAY - DECEMBER

SPECIES : SNAIL

CONTINGENT CATCH:

THIS VESSEL APPLIES FOR FISHING
A PORTION OF THE ALLOCATION OF
2,700 METRIC TONS (DOUBLE MEAT)

GEAR TO BE USED : SNAIL POT

JA-77-0856

ATTACHED II

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) RIZUO OHRO
PRESIDENT,
TAIYO FISHERY CO., LTD.

(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4120)

(HOME ADDRESS)
429 EAST 52ND ST. APT. 288,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

JA-77-0856

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

857

Permit Period MARCH 1, 1977 Application No. JA-77-0857
Applied For: TO FISHING For Use of Issuing Office

State: JAPAN

1. Name of Vessel TAIYO MARU NO. 51

2. Vessel No.: Hull No. 77 101 Registration No. YU-471

3. Name and Address of Owner YOSHIOKI SUZUKI Name and Address of Charterer
15 TRIPUNE FUMINIRACHO
FUMINIRACHO HONSHU JAPAN

Cable Address _____

4. Name and State of Registry: FUMINIRACHO JAPAN

5. Type of Vessel POT VESSEL (SEA SNAIL) INDEPENDENT

6. Tonnage (Gross) 311.74 MT. (Net) 188.21 MT.

7. Length 46.00 M. B. Breadth 8.20 M. D. Draft 3.00 M.

10. Horsepower 750 shp. 11. Maximum Speed 11.0 kt.

11. Propulsion: Diesel (), Steam (), Diesel/Electric (),
Other _____

13. Date Built JUL 1967

14. Number and Nationality of Personnel 24 JAPAN

15. Communications: VHF-FM (), AM/VHF, Voice (), Telegraphy (),
Other _____

International Radio Call Sign 8XN

Radio Frequencies Monitored 500 KHZ

Other Working Frequencies 2075

Schedule WATCH TIME (G.M.T.) 01:00 TO 10:30 15:30 TO 20:00

JA-77-0857

16. Navigation Equipment: Loran C (+), Loran A (+), Omega (),
 Decca (), Navstar (), Radar (+), Fathometer (+),
 Other _____

17. Cargo Capacity (MT) 18. Cargo Space
 Tonnage Tonnage Name

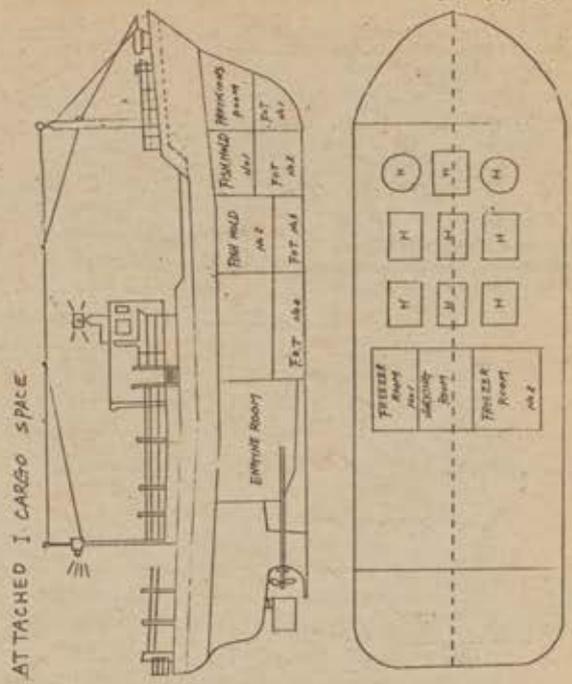
Salted Fish _____	Freezer	SEE ATTACHED I
Fresh Fish _____	Dry Hold	
Frozen Fish 300 M.T.	Tanks	
Fish Meal _____	Other	
Other _____		

19. Processing Equipment (Indicate daily capacity, MT)

20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contemplated Gear to be Used
 (From-To) Catch (MT)

SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal
 process issued in the United States:
 SEE ATTACHED III



JA-77-0857

16. Navigation Equipment: Loran C (+), Loran A (+), Omega (),
 Decca (), Navstar (), Radar (+), Fathometer (+),
 Other _____

17. Cargo Capacity (MT) 18. Cargo Space
 Tonnage Tonnage Name

Salted Fish _____	Freezer	SEE ATTACHED I
Fresh Fish _____	Dry Hold	
Frozen Fish 300 M.T.	Tanks	
Fish Meal _____	Other	
Other _____		

19. Processing Equipment (Indicate daily capacity, MT)

20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contemplated Gear to be Used
 (From-To) Catch (MT)

SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal
 process issued in the United States:
 SEE ATTACHED III

JA-77-0857

ATTACHED II
 FISHERIES FOR WHICH PERMIT IS REQUESTED:
 OCEAN AREA : BERING SEA AND ALUTIAN
 PERIOD : MAY — DECEMBER
 SPECIES : SNAIL
 CONTEMPLATED CATCH:
 THIS VESSEL APPLIES FOR FISHING
 A PORTION OF THE ALLOCATION OF
 2,700 METRIC TONS (EDIBLE MEAT)
 GEAR TO BE USED : SNAIL POT

ATTACHED II

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

JA-77-0857

(NAME) MIZUHO OHNO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 712-421-4120)
 (HOME ADDRESS)
 429 EAST 52ND ST. APT. 28E,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

16. Navigation Equipment: Logan C (), Logan A (), Omega (),
 Binnacle (), Heaveat (), Radar (), Fathometer (),
 Other _____

JA-77-0858

17. Cargo Capacity (MT) 18. Cargo Space (cubic ft) NAME

Salted Fish _____	Freezer _____	SEE ATTACHED I
Fresh Fish _____	Dry Hold _____	
Frozen Fish 300 M.T.	Trunks _____	
Fish Meal _____	Other _____	

19. Processing Equipment (Indicate daily capacity, MT)
 PACKING () SORTS () SORT/DAY (COMBINED) _____

20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contemplated Gear to be Used Catch (MT)

SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal process issued in the United States:
 SEE ATTACHED II

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

505

Permit Period MAY 1, 1977 Application No. JA-77-0858
 Applied For: TO: _____ For Use of Issuing Office

State: JAPAN

1. Name of Vessel KOMURENDO MARU NO. 48

2. Vessel No. Hull No. 47 108 Registration No. KEI-495

3. Name and Address of Owner Name and Address of Charterer
 Name TANIGUCHI LTD.
 Address 95 IRIYUNOCHO FURUBIRACHO
FURUBIRACHO KOKUBUNO JAPAN
 Cable Address _____

4. Homeport and State of Registry: FURUBIRACHO JAPAN

5. Type of Vessel POB VESSEL (SEA MAIL) INDEPENDENT

6. Tonnage (Gross) 148.11 GRT (Net) 121.96 GRT

7. Length 45.00 M. Breadth 8.10 M. Draft 3.90 M.

8. Horsepower 150 hp. 11. Maximum Speed 11.0 kt.

9. Propulsion: Diesel (), Steam (), Diesel/Electric (),
 Other _____

10. Date Built FEB. 1960

11. Number and Nationality of Personnel 23 JAPAN

12. Officers 5 Crew 18 Other (Specify) _____

13. Communications: VHF-FM (), AM/SSB, Voice (), Telegraphy (),
 Other _____

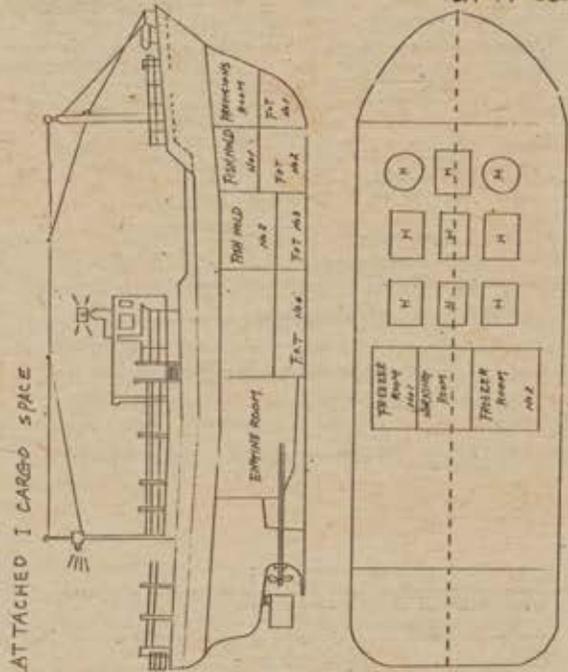
International Radio Call Sign None

Radio Frequencies Monitored 500 FHZ

Other Working Frequencies AM 2075

Schedule NATURAL VIBR (C.M.C.) 01:00 TO 10:30 16:30 TO 20:00

JA-77-0858



ATTACHED I

JA-77-0858

FISHERIES FOR WHICH PERMIT IS REQUESTED:

OCEAN AREA : BERING SEA AND ALUTYAN
 PERIOD : MAY - DECEMBER
 SPECIES : SNAIL

CONTINGENT CATCH:

THIS VESSEL APPLIES FOR FISHING
 A PORTION OF THE ALLOCATION OF
 2,700 METRIC TONS (EDIBLE MEAT)
 GEAR TO BE USED : SNAIL POT

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

859

Permit Period MAY 1, 1977 Application No. JA-77-0859
 Applied For: TO BEGIN ON 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel SHINJI YAMANO

2. Vessel No./ Hull No. (SNAIL 109) Registration No. PT-512

3. Name and Address of Owner SHINJI YAMANO Name and Address of Charterer
12-11 TOCHIMACHO YOSHICHO
YOSHICHO HOKKAIDO JAPAN
 Cable Address _____

4. Homeport and State of Registry: YOSHICHO JAPAN

5. Type of Vessel POT VESSEL (SEA SNAIL) INDEPENDENT

6. Tonnage (Gross) 349.63 MT. (Net) 189.51 MT.

7. Length 47.15 M. B. Breadth 8.30 M. D. Draft 4.00 M.

10. Horsepower 800 hp. 11. Maximum Speed 10.0 kt.

11. Propulsion: Diesel () Steam () Diesel/Electric ()
 Other _____

13. Date Built MAY 1962

14. Number and Nationality of Personnel 21 JAPAN
 Officers 7 Crew 14 Other (Specify) _____

15. Communications: VHF-FM () AM/SSB, Voice (), Telegraphy ()
 Other _____

International Radio Call Sign J 700
 Radio Frequencies Monitored 300 KHZ
 Other Working Frequencies 132 2075
 Schedule WATCH TIME (G.M.T.) 03:00 TO 10:30 16:30 TO 20:00

ATTACHED II

JA-77-0858

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY
 LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) MIZUO OHNO
 PRESIDENT,
TAIYO FISHERY CO., LTD.
 (ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4120)
 (HOME ADDRESS)
429 EAST 52ND ST. APT. 202,
RIVERSIDE NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

16. Navigation Equipment: Loran C (), Loran A (), Omega (),
 Beca (), Heave (), Radar (), Fathometer (),
 Other _____

17. Cargo Capacity (MT)

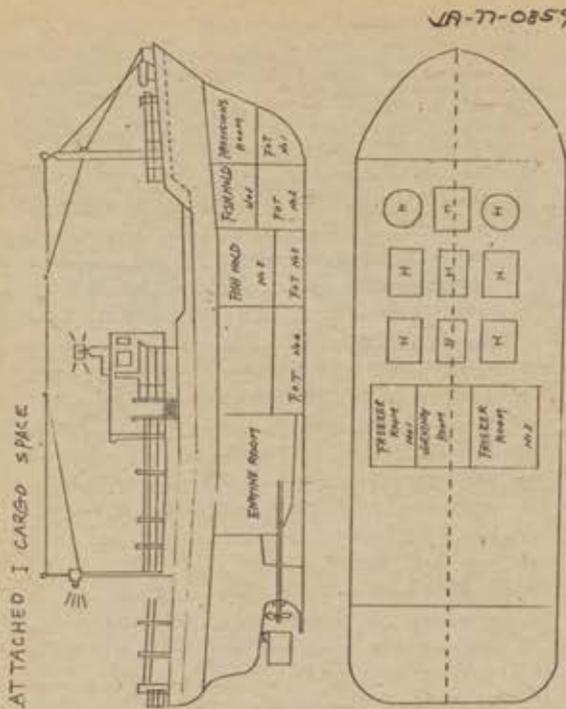
	18. Cargo Space Number	Remarks
Salted Fish _____	Freezer	SEE ATTACHED I
Fresh Fish _____	Dry Hold	
Frozen Fish <u>300 M.T.</u>	Tanks	
Fish Meal _____	Other	
Other _____		

19. Processing Equipment (Indicate daily capacity, MT)
FREEZER 3 BAYS 120 T/DAY (COMBINED)

20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contemplated Gear to be Used
 (From-To) Catch (MT)

SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal
 process issued in the United States:
 SEE ATTACHED III



JA-77-0859

ATTACHED III

JA-77-0859

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) HISUHO OHNO
 PRESIDENT,
 TAIYO FISHERY CO., LTD.
 (ADDRESS)
 277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)
 (HOME ADDRESS)
 429 EAST 52ND ST. APT. 28E,
 RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

ATTACHED I

JA-77-0859

FISHERIES FOR WHICH PERMIT IS REQUESTED:

OCEAN AREA : BERING SEA AND ALUTKIAN

PERIOD : MAY - DECEMBER

SPECIES : SNAIL

CONTEMPLATED CATCH:

THIS VESSEL APPLIES FOR FISHING
 A PORTION OF THE ALLOCATION OF
 2,700 METRIC TONS (60,000 LB.)

GEAR TO BE USED : SNAIL POT

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

861)

Permit Period: MAY 1, 1977
 Applied For: NOVEMBER 31, 1977
 Application No. JA-77-0859
 For Use of Issuing Office

State: JAPAN

- Name of Vessel: SHUNKA MARU NO 65
- Vessel No./Call No. (SMALL 110) Registration No. JKI-623
- Name and Address of Owner: OGAKA SYOYO KAMISHIRAKAWA
 Name and Address of Charterer:
1-11, YATOICHO
HEBURI-SHI HOKKAIDO JAPAN
 Cable Address: _____
- Homeport and State of Registry: HOKKAIDO, JAPAN
- Type of Vessel: _____
- Tonnage (Gross) 413.66 MT (Net) _____
- Length 42.60 M. B. Breadth 9.60 M. D. Draft 4.00 M.
- Horsepower 760 shp. 11. Maximum Speed 11.30 Kt.
- Propulsion: Diesel (S), Steam (), Diesel/Electric (),
 Other _____
- Date Built: OCT. 1969
- Number and Nationality of Personnel 27 JAPAN
 Officers 8 Crew 15 Other (Specify) _____
- Communications: VHF-FM (), AM/SBK, Voice (), Telegraphy (),
 Other _____

International Radio Call Sign: JMDH
 Radio Frequencies Monitored: 437 2182
 Other Working Frequencies: 41 2075 KHZ
 Schedule: HATCH TIME (GMT) 01:00-10:30 14:30-20:00

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

861

JA-77-0861

Permit Period: MAY 1, 1977 Application No. JA-77-0861
 Applied For: TO BEGINNING 31, 1977 For Use of Issuing Office

State: JAPAN

2. Name of Vessel: YUNOHU MARU No. 02

1. Vessel No.: Hull No. (SMALL 111) Registration No. HH1-678

3. Name and Address of Owner: Name and Address of Charterer
 Name: KOHICHI GOTOO KAMUHEKI KAIBA

Address: 8-55 WIRANAYAMA

KUSHIRO, HOKKAIDO, JAPAN

Cable Address: _____

4. Homeport and State of Registry: KUSHIRO, JAPAN

5. Type of Vessel: POT VESSEL (NO. DRILL) TENDERSHIP

6. Tonnage (Gross): 151.70 M.T. (Net) 93.07 M.T.

7. Length 34.40 M. B. Breadth 6.90 M. D. Draft 2.95 M.

10. Horsepower: 540 shp. 11. Maximum Speed: 10.0 kt.

11. Propulsion: Diesel (x), Steam (), Diesel/Electric (),
 Other _____

13. Date Built: APRIL 20, 1964

14. Number and Nationality of Personnel: 11, JAPAN

17. Officers: 3 Crew: 8 Other (Specify): _____

15. Communication: VHF-FM (), AM/SSB, Voice (*), Telegraphy (),
 Other _____

International Radio Call Sign: GRUY

Radio Frequencies Monitored: 500 KHZ

Other Working Frequencies: 453 2645 KHZ

Schedule: WATCH TIME (G.M.T.) 05:00 TO 10:30, 16:30 TO 20:00

16. Navigation Equipment: Loran C (), Loran A (), Omega (),
 Decca (), Navstar (), Radar (*), Tachometer (*),
 Other _____

17. Cargo Capacity (MT) 18. Cargo Space

	Number	Wane
Salted Fish	Freezer 1, 2.	SEE ATTACHED I
Fresh Fish	Dry Hold	-
Frozen Fish	Tanks	-
Fish Meal	Other	-
Other		

19. Processing Equipment (Indicate daily capacity, MT)

FREEZER 2 UNITS 5 M.T./DAY (COMBINED)

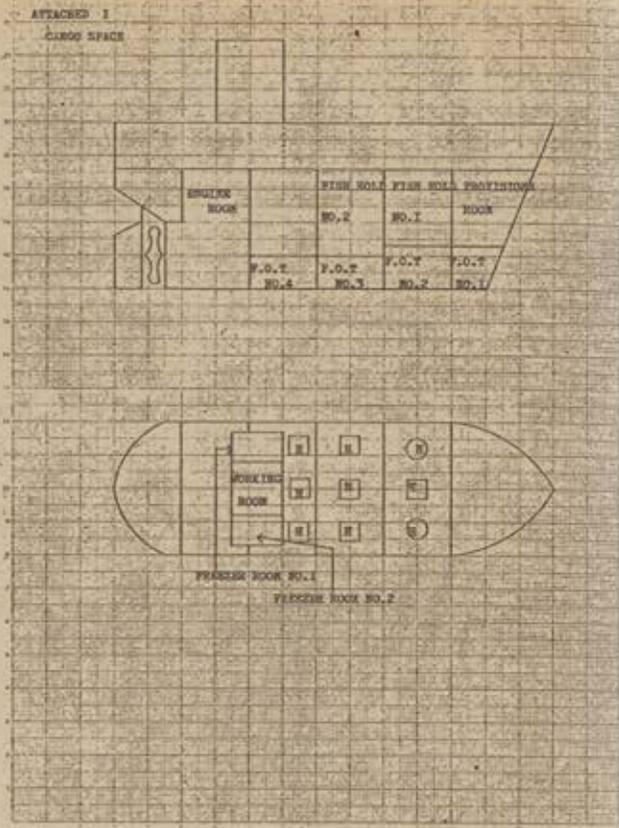
20. Fisheries for which Permit is Requested:

Ocean Area: _____ Period: _____ Species: _____ Contemplated Catch (MT): _____
 Gear to be Used: _____

SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

SEE ATTACHED III



ATTACHED I JA-77-0861

FISHERIES FOR WHICH PERMIT IS REQUESTED:
 OCEAN AREA : BERING SEA AND ALUTIAN
 PERIOD : MAY — DECEMBER
 SPECIES : SNAIL
 CONTEMPLATED CATCH:
 THIS VESSEL APPLIES FOR FISHING
 A PORTION OF THE ALLOCATION OF
 2,700 METRIC TONS (EDIBLE MEAT)
 GEAR TO BE USED : SNAIL POT

ATTACHED

III

JA-77-0801

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) MIDUNO OSUO
PRESIDENT,
TAIYO FISHERY CO., LTD.

(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4120)

(HOME ADDRESS)
409 EAST 50TH ST. APT. 20E,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

16. Navigation Equipment: Loran C (*), Loran A (), Omega (),
Decca (), Dwave (), Radar (*), Fathometer (),
Other _____

17. Cargo Capacity (MT) 18. Cargo Space Number Name

Salted Fish _____	Freezer 1,2,3	
Fresh Fish _____	Dry Hold	
Frozen Fish 15 MT	Tanks	SEE ATTACHED 1
Fish Meal _____	Other	
Other _____		

19. Processing Equipment (Indicate daily capacity, MT)

PREMIUM 3 FISHES, 15 MT/DAY (CONTINUED)

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species Contemplated Catch (MT)	Gear to be Used

SEE ATTACHED II

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

SEE ATTACHED III

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

862

Permit Period MAY. 1, 1977 Application No. JA-77-0862
Applied Port DUBLINER 31, 1977 For Use of Issuing Office

State: JAPAN

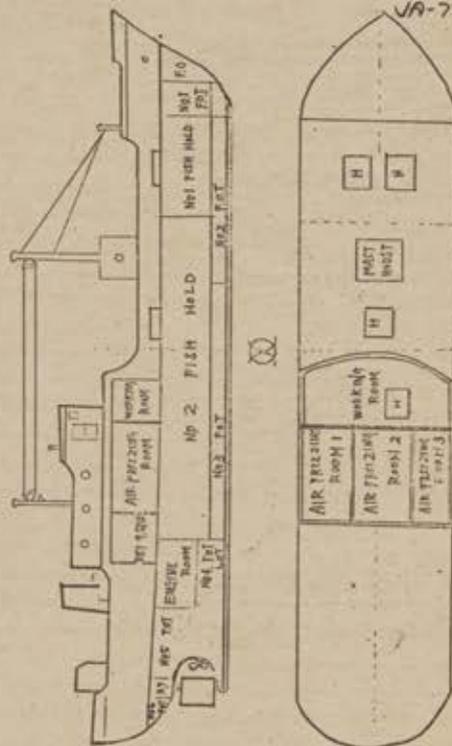
1. Name of Vessel HOYO MARU No 53
2. Vessel Soc. Bull. No. (REG. NO.) 7-113 Registration No. H01-737
3. Name and Address of Owner Name and Address of Charterer
Name HOYO SUIGAN KANSHUJI KATAMA
Address 1-2-17, SAKANA MACHI
KUREHAMA, HIYOGI-KU, JAPAN.
Cable Address _____

4. Homeport and State of Registry: KUREHAMA, JAPAN
5. Type of Vessel POT VESSEL (SEA SHIP) INDEPENDENT
6. Tonnage (Gross) 422.60 MT (Net) 221.52 MT
7. Length 48.60 M. B. Breadth 8.50 M. D. Draft 3.35 M.
8. Horsepower 1,050 shp. 11. Maximum Speed 11.00 kt.
9. Propulsion: Diesel (*), Steam (), Diesel/Electric (),
Other _____

10. Date Built JULY 16, 1967
11. Number and Nationality of Personnel 21 JAPAN
Officers 7 Crew 14 Other (Specify) _____
12. Communications: VHF-FM (), AM/SSB, Voice (), Telegraphy (),
Other _____

13. International Radio Call Sign JNKA
14. Radio Frequencies Monitored 500 KHZ
Other Working Frequencies 2075 KHZ
15. Schedule WATCH TIME (G.M.T) 08:00-08:30, 20:00-20:30

ATTACHED 1. HOYO MARU No63



ATTACHED I

JA-77-0862

FISHERIES FOR WHICH PERMIT IS REQUESTED:

OCEAN AREA : BERING SEA AND ALUTIAN

PERIOD : MAY — DECEMBER

SPECIES : SMAL

CONTINGENT CATCH:

- THIS VESSEL APPLIES FOR FISHING

A PORTION OF THE ALLOCATION OF

2,700 METRIC TONS (EDIBLE MEAT)

GEAR TO BE USED : SMAL POT

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period May.1.1977 Application no. JA-77-0863
Applied For: December.31.1977 For Use of Issuing OfficeState: Japan

1. Name of Vessel Euroshi Maru No.16
2. Vessel No: Hull No. (Small 115) Registration No. ITI-102
3. Name and Address of Owner Name and Address of Charterer
Name Euroshi Yoshida
Address 190-2 Tabata, 2-Ch Hirota Machi
Hikusan-Takata Shi Iwate Ken Japan
- Cable Address _____
4. Homeport and State of Registry: Hikusan-Takata Japan
5. Type of Vessel Pot Vessel (asssmall) Independent
6. Tonnage (gross) 252.53 M.T. (Net)
7. Length 26.70M. 8. Breadth 7.10 M. 9. Draft 3.40 M.
10. Horsepower 510 shp. 11. Maximum Speed 10.66 kt.
11. Propulsion: Diesel (*) Steam () Diesel/Electric ()
Other _____
12. Date Built Oct. 1959
13. Number and Nationality of Personnel 12 Japan
Officers 7 Crew 5 Other (Specify) _____
14. Communications: VHF-FM () , AM/SSB, VOICE (*) Telegraphy (*)
Other _____
International Radio Call Sign JN83
Radio Frequencies Monitored 2000KHz
Other Working Frequencies 2075KHz
Schedule Watch Time (G.M.T) 01:00 TO 10:00

ATTACHED

II

JA-77-0862

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

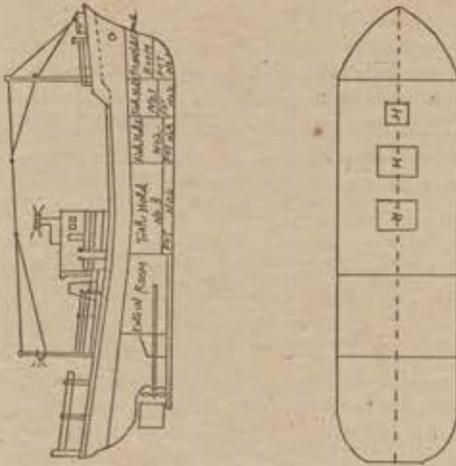
(NAME) KIYUO OHRO
PRESIDENT,
TATTO FISHERY CO., LTD.(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4120)(HOME ADDRESS)
479 EAST 52ND ST. APT. 2BR,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

JA-77-0863

16. Navigation Equipment: Loran A(*) Loran C(*) Omega (),
Decca (), Navsat () Radar (*), Fathometer (*),
Other _____
17. Cargo Capacity (MT) 18. Cargo Space
Number Name
Salted Fish _____ Freezer 1.2.) See Attached I
Fresh Fish _____ Dry Hold
Frozen Fish 20 MT Tanks
Fish Meal _____ Other
Other _____
19. Processing Equipment (Indicate Daily Capacity, MT)
Freezer 3 sets 10MT/ Day (combined)

20. Fisheries for which Permit is Requested:
Ocean Area Period Species Contemplated Gear to be Used
(From-To) (MT) Catch (MT)
See Attached II
21. Name and Address of Agent appointed to receive any Legal process issued in the United States:
SEE ATTACHED III

JA-77-0863



Attached I Cargo Space

ATTACHED III

JA-77-0863

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) MIZUHO OHNO
PRESIDENT,
TAIYO FISHING CO., LTD.

(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4120)

(HOME ADDRESS)
429 EAST 52ND ST. APT. 28B,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

Attached II

JA-77-0863

Fisheries for which permit is requested

Ocean Area : Bering Sea and Aleutian
Period : May-December
Species : Small

Contemplated Catch :

This Vessel Applies for fishing a portion
of the allocation of 2700 metric tons (Edible Meat)
Gear to be used: Small Pot

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

SG-1

Permit Period MAY. 1, 1977 Application No. JA-77-0863
Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

- Name of Vessel OOYUNATO MARU NO. A
 - Vessel No. (Hull) No. 77-115 Registration No. ITL-02
 - Name and Address of Owner Name and Address of Charterer
Name OOYUNATO JOSEKI TEREO
Address 1-1, HONDA OOPYUNATO CHO
OOYUNATO SHI IWATA, JAPAN
Cable Address _____
 - Homeport and State of registry: YOKOHAMA, JAPAN
 - Type of Vessel POT. VESSEL (SEA DRIFT) INDEPENDENT
 - Tonnage (Gross) 392.99 (Net) _____
 - Length 44.50 M. B. Breadth 8.00 M. D. Draft 3.90 M.
 - Horsepower 510 shp. 11. Maximum Speed 12.50 kt.
 - Propulsion: Diesel (*), Steam (), Diesel/Electric (),
Other _____
 - Date Built NOV. 11, 1959
 - Number and Nationality of Personnel 75 JAPAN
Officers 8 Crew 18 Other (Specify) _____
 - Communications: VHF-FM (), AM/SSB, Voice (*), Telegraphy (*),
Other _____
- International Radio-Call Sign ZMXX
Radio Frequencies Monitored A32 2180 KHZ
Other Working Frequencies A1 2091 KHZ
Schedule WATCH TIME 03:00-10:30 16:30-20:00

865

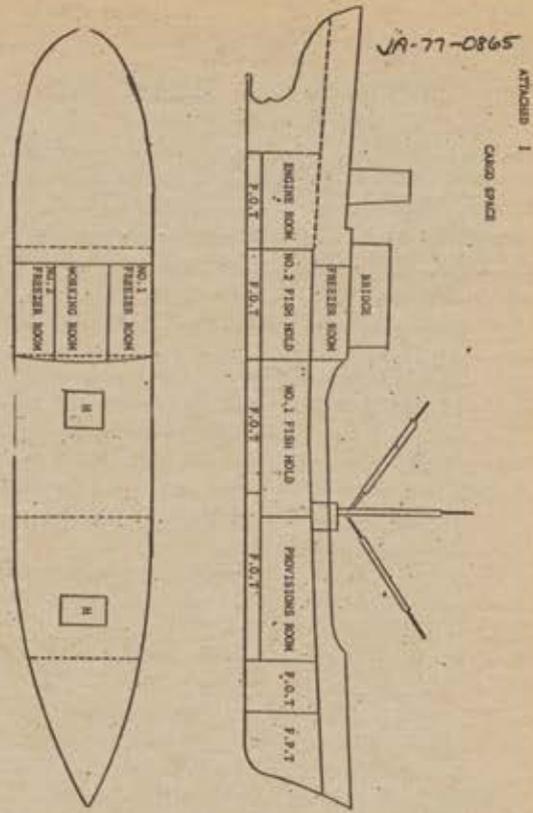
FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period MAY 1, 1977 - OCT 31, 1977 Application No. JA-77-0865
 Applied For: DECEMBER 31, 1977 For Use of Issuing Office

States: JAPAN

1. Name of Vessel EMOSHIO MARU NO. 17
 2. Vessel No./Hull No. 277 974 Registration No. ENI-421
 3. Name and Address of Owner Name and Address of Charterer
 Name WICHIRO CHICHO KAMOSHIKI SAISHU
 Address SHINYURAKUCHI BLDG.
1-12-1 YIMARU-CHO, CHIYODA, TOKYO, JAPAN
 Cable Address WICHIROCHO TOKYO

4. Homeport and State of Registry: YOKOSUKA, JAPAN
 5. Type of Vessel POT VESSEL (SEA SNAIL) INDEPENDENT
 6. Tonnage (Gross) 344.26 M.T. (Net) _____
 7. Length 47.60 M. S. Breadth 8.20 M. S. Draft 3.75 M.
 19. Horsepower 1,000 shp. 11. Maximum Speed 11.0 kt.
 11. Propulsion: Diesel (D), Steam (S), Diesel/Electric (E),
 Other _____
 13. Date Built SEP. 18, 1968
 14. Number and Nationality of Personnel 20, JAPAN
 Officers 7 Crew 13 Other (Specify) _____
 15. Communications: VHF-FM (F), AM/SSB, Voice (V), Telegraphy (T),
 Other _____
 International Radio Call Sign J J J Y
 Radio Frequencies Monitored 500 KHZ
 Other Working Frequencies A1 2070 KHZ
 Schedule WATCH TIME (G.M.T.) 05:30 TO 06:30, 22:00 TO 23:00



14. Navigation Equipment: Loran C (C), Loran A (A), Omega (O),
 Decca (D), Navsat (N), Radar (R), Fathometer (F),
 Other _____

17. Cargo Capacity (MT) 18. Cargo Space

	Number	Name
Salted Fish _____	Freezer 1, 2	SEE ATTACHED I
Fresh Fish _____	Dry Hold	
Frozen Fish <u>303 M.T.</u>	Tanks	
Fish Meal _____	Other	
Other _____		

19. Processing Equipment (Indicate daily capacity, MT)
FREEZER 2 SETS 12 M.T./DAY (COMBINED)

20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contemplated Gear to be Used
 (From-To) (Catch (MT))
SEE ATTACHED I

21. Name and Address of Agent appointed to receive any legal
 process issued in the United States:
SEE ATTACHED II

ATTACHED I

FISHERIES FOR WHICH PERMIT IS REQUESTED
 OCEAN AREA : BERING SEA AND ALEUTIAN
 PERIOD : MAY - DECEMBER
 SPECIES : SNAIL
 CONTEMPLATED CATCH :
 THIS VESSEL APPLIES FOR FISHING
 A PORTION OF THE ALLOCATION OF
2700 METRIC TONS (EDIBLE MEAT)
 GEAR TO BE USED : SNAIL POT

JA-77-0866

ATTACHED I

FISHERIES FOR WHICH PERMIT IS REQUESTED:

OCEAN AREA : BERING SEA AND ALUTIAN
 PERIOD : MAY - DECEMBER
 SPECIES : SNAIL

CONTINGENT CATCH:

THIS VESSEL APPLIES FOR FISHING
 A PORTION OF THE ALLOCATION OF
 2,700 METRIC TONS (EDIBLE MEAT)

GEAR TO BE USED : SNAIL POT

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

867

Permit Period MAY 1, 1977 Application No. JA-77-0867
 Applied For TO BEGINNING 31, 1977 For Use of Issuing Office
 State: JAPAN

1. Name of Vessel WIGO HANU NO. 8
 2. Vessel No./Hull No. 118 Registration No. 101-27
 3. Name and Address of Owner Name and Address of Charterer
 Name OKUBA GYOGO KANSHUKI KAISHA
 Address 7-2, BANBAIJIWA
WIGATA-CITY, WIGATA, JAPAN
 Cable Address _____
 4. Homeport and State of Registry: WIGATA, JAPAN
 5. Type of Vessel POT VESSEL (SEA SNAIL), INDEPENDENT
 6. Tonnage (Gross) 194.70 M.T. (Net) _____
 7. Length 37.80 M. B. Breadth 7.20 M. D. Draft 3.15 M.
 10. Horsepower 340 shp. M. Maximum Speed 10.5 kt.
 11. Propulsion: Diesel (D), Steam (S), Diesel/Electric (DE),
 Other _____
 13. Date Built DECEMBER 4, 1967
 14. Number and Nationality of Personnel 15, JAPAN
 Officers 5 Crew 9 Other (Specify) _____
 15. Communications: VHF-FM (F), AM/SSB, Voice (V), Telegraphy (T),
 Other _____
 International Radio Call Sign TKH
 Radio Frequencies Monitored 500 FREQ.
 Other Working Frequencies 41 2075 FREQ.
 Schedule WATCK TIME (G.M.T.) 00:00 TO 01:00, 06:00 TO 07:00

ATTACHED II

JA-77-0866

NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY
 LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) MISURO OHNO
 PRESIDENT,
TAIYO FISHERY CO., LTD.
 (ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
 (TEL. 212-421-4120)
 (HOME ADDRESS)
429 EAST 52ND ST. APT. 208,
RIVERCOURT NEW YORK, N.Y. 10022
 (TEL. 212-751-8216)

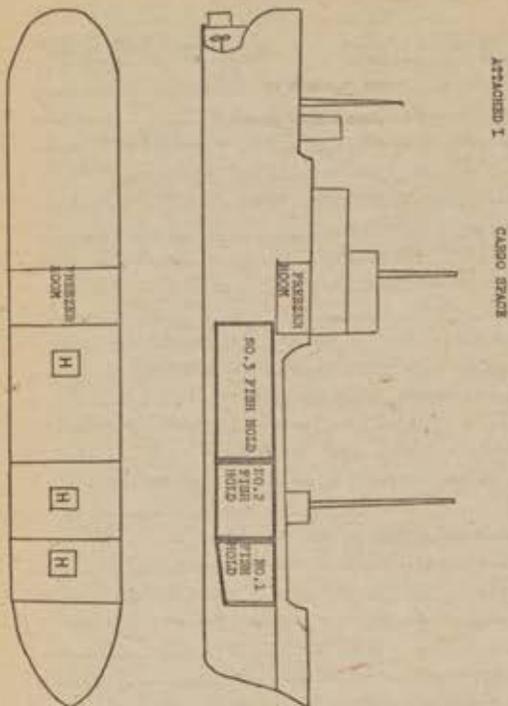
16. Navigation Equipment: Loran C (C), Loran A (A), Omega (O),
 Decca (D), Navstat (N), Radar (R), Pathometer (P),
 Other _____
 17. Cargo Capacity (MT) 18. Cargo Space None
 Salted Fish _____ Freezer 1, 2, 3
 Fresh Fish _____ Dry Hold _____
 Frozen Fish 60 M.T. Tanks _____
 Fish Meal _____ Other _____
 Other _____
 19. Processing Equipment (Indicate daily capacity, MT)
PROCESSOR 4 BPTS 60 T./DAY (CONTINUED)

 20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contingent Catch (MT) Gear to be Used
 (From-To) Catch (MT)
SEE ATTACHED II
 21. Name and Address of Agent appointed to receive any legal
 process issued in the United States:
SEE ATTACHED II

JA-77-0867

ATTACHED II

JA-77-0867



NAME AND ADDRESS OF AGENT APPOINTED TO RECEIVE ANY LEGAL PROCESS ISSUED IN THE UNITED STATES:

(NAME) HIROBU OHSO
PRESIDENT,
TAITO FISHERY CO., LTD.

(ADDRESS)
277 PARK AVE. NEW YORK, N.Y. 10017
(TEL. 212-421-4120)

(HOME ADDRESS)
429 EAST 52ND ST. APT. 208,
RIVERCOURT NEW YORK, N.Y. 10022
(TEL. 212-751-8216)

JA-77-0867

THE ATTACHED II

FISHERIES FOR WHICH PERMIT IS REQUESTED

OCEAN AREA: BERING SEA AND ALUTYAN ISLANDS

PERIOD: MAY-DECEMBER, 1977

SPECIES: SNAIL

CONTINGENTED CATCH: THIS VESSEL APPLIES FOR FISHING A PORTION
OF THE ALLOCATION OF 2700 METRIC TONS
(SNAILS MEAT)

GEAR TO BE USED: SNAIL POT

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period: MAY 1, 1977 Application No. JA-77-0868
Applied For: TO BEGINNING 31, 1977 For Use of Issuing Office

State: JAPAN

- Name of Vessel: BAINICHI MARU NO. 5
- Vessel No./Hull No. (SNAIL 119) Registration No. HGI-10
- Name and Address of Owner: KYUJI YANATA, 3205, YONBOCHO, NISHINAHATO-DORI, NIIGATA, JAPAN
Name and Address of Charterer: -
- Homeport and State of Registry: NIIGATA, JAPAN
- Type of Vessel: POT VESSEL (SEA SNAIL), INDEPENDENT
- Tonnage (Gross): 259.75 (Net): -
- Length: 37.50 M. B. Breadth: 7.20 M. D. Draft: 3.40 M.
- Horsepower: 500 shp. M. Maximum Speed: 10.00 kt.
- Propulsion: Diesel (), Steam (), Diesel/Electric (), Other: -
- Date Built: MAY 20, 1962
- Number and Nationality of Personnel: 14, JAPAN
Officers: 4 Crew: 10 Other (Specify): -
- Communications: VHF-FM (), AM/SSB, Voice (), Telegraphy (), Other: -
International Radio Call Sign: JHF430
Radio Frequencies Monitored: 437 2182 KHZ.
Other Working Frequencies: 437 2202 KHZ.
Schedule WORK TIME (G.M.T.): 00:00 TO 01:00, 06:00 TO 07:00

JA-77-1065

16. Navigation Equipment: Loran C (), Loran A (), Omega (),
Decca (), Jaxmat (), Radar (), Fathometer (),
Other _____

17. Cargo Capacity (MT) _____ 18. Cargo Space
Number _____ Date _____
Salted Fish _____ Process: SEE THE ATTACHED PAPER II
Fresh Fish _____ Dry Hold I, II, III, IV FROZEN FISH HOLD
Frozen Fish 605 M T Tacks
Fish Meal _____ Other
Other _____

19. Processing Equipment (Indicate daily capacity, MT)

20. Fisheries for which Permit is Requested:
Ocean Area Period Species Contemplated Catch to be Used Gear to be Used
(From-To) (MT)

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

SUPPORT VESSEL

Permit Period: MARCH 3, 1977 TO _____ Application No. JA-77-1065
Applied For: 2000720 31, 1977 For Use of Issuing Office

State: JAPAN

- Name of Vessel: TOSYAKU MARU
- Vessel No./Hull No.: _____ Registration No.: 363-491
- Name and Address of Owner: _____ Name and Address of Charterer:
Name: BANSHUICHIRO KAWANOJI KAPUSHIKI KAISHA
Address: 22-3, SHIBUYASHI 5-CHOME
MINATO-KU, TOKYO, JAPAN
Cable Address: _____
- Homeport and State of Registry: TOKYO, JAPAN
- Type of Vessel: REFRIGERATOR TRANSPORT
- Tonnage (Gross): 976.62 M/T (Net): 568.58 M/T
- Length: 68.44 M. B. Breadth: 11.00 M. D. Draft: 5.20 M.
- Enginepower: 1500 shp. 11. Maximum Speed: 11.0 kt
- Propulsion: Diesel (), Steam (), Diesel/Electric (),
Other: _____
- Date Built: AUGUST 1956
- Number and Nationality of Personnel: 34
Officers: 7 Crew: 9 Other (Specify): _____
- Communicational: VHF-FM (), AM/SSB, Voice (), Telegraphy (),
Other: _____
International Radio Call Sign: J H B C
Radio Frequencies Monitored: 500 KHZ
Other Working Frequencies: SEE THE ATTACHED PAPER I
Schedule: SEE THE ATTACHED PAPER I

PAPER I

FURIGANE MARK

JA-77-1065

OTHER WORKING FREQUENCIES

- F 1
- F 2 430, 425, 432, 454, 468, 480, 500, 512, 524
- F 3 2179, 6268.5, 8358, 12537, 14716, 22120, 4181.8, 6272.7, 8363.6, 12545.4, 14727.2, 22230, 4192.5, 6288.75, 8385, 12577.5, 1677, 22282.5, 4213.5, 6320.25, 8427, 12640.5, 16654, 22335, 22306.5 KHZ.

SCHEDULE

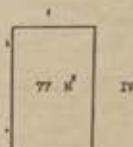
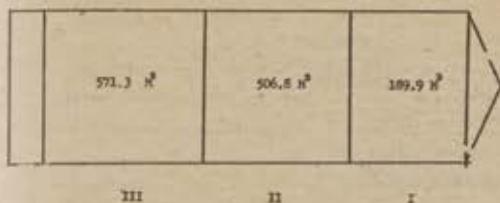
WATCH TIME

BEARING SEA AND ALBERTIAN ISLAND	01.00 TO 04.00 (GMT)
	20.00 TO 23.00 (GMT)
GULF OF ALASKA	18.00 TO 21.00 (GMT)
	23.00 TO 02.00 (GMT)
ATLANTIC	12.00 TO 15.00 (GMT)
	17.00 TO 20.00 (GMT)

PAPER 11

YUKIKAZE MARU

JA-77-1065



SOYO MARU FLEET
 (Previously approved with incomplete vessel
 identification data)

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

250

Permit Period MARCH 1, 1977 TO Application No. JA-77-0250
 Applied For: SEPTEMBER 21, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel YUKIKAZE MARU NO. 51

2. Vessel No./ Hull No. 235 Registration No. MEI-188
 (7000-250)

3. Name and Address of Owner Name and Address of Charterer
 Name TAIKAI GYOEN CO., LTD.
 Address 3-CHOMEI, HANAZONO-CHO,
MONBETSU-SHI, HOKKAIDO, 094, JAPAN
 Cable Address -

4. Homeport and State of Registry: MONBETSU, JAPAN

5. Type of Vessel STEEL TRAWLER

6. Tonnage (Gross) 200.38 M.T. (Net) 114.06 M.T.

7. Length 45.4 M. 8. Breadth 8.1 M. 9. Draft 3.8 M.

10. Horsepower 1200 shp. 11. Maximum Speed 12.75 kt.

11. Propulsion: Diesel (*) Steam () Diesel/Electric (),
 Other -

12. Date Built FEBRUARY, 1967

14. Number and Nationality of Personnel: NO JAPAN
 Officers 8 Crew 18 Other (Specify) -

15. Communications: VHF-FM () AM/SSB, Voice (*), Telegraphy (*),
 Other SI 3021 AM/SSB
 International Radio Call Sign J E U B
 Radio Frequencies Monitored AM 1648 KHZ (VIA FACTORY BARGE SHIP)
 Other Working Frequencies AM 2700.5 KHZ
 Schedule WATCH TIME; 0000-0400 (G.M.T.); BERING SEA AND ALUTIAN ISLANDS

16. Navigation Equipment: Loran C (*), Loran A (*), Omega (),
 Decca (), Navpac (), Radar (*), Fathometer (*),
 Other -

17. Cargo Capacity (MT)		18. Cargo Space	
		Number	Name
Salted Fish	-	Freezer	-
Fresh Fish	<u>304.00 M³ (HALF)</u>	Dry Hold	<u>I - II - III FISH HOLD</u>
Frozen Fish	-	Tanks	-
Fish Meal	-	Other	-
Other	-	<u>(SEE ATTACHED PAPER I)</u>	

19. Processing Equipment (Indicate daily capacity, MT)

-

-

-

20. Fisheries for which Permit is Requested:
 Ocean Area BERING SEA AND HAY TO SEA. Species CONTINGENT Gear to be Used Catch (IT)
 (From-To) Catch (IT)

BERING SEA AND HAY TO SEA. (SEE ATTACHED PAPER I) BERING TRAIL, ALUTIAN ISLANDS

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

JA-77-0250

ATTACHED PAPER I

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period MARCH 1, 1977 TO Application No. JA-77-0251
 Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel MITSU MARU NO. 22

2. Vessel No.: Hull No. REGD 234 # Registration No. REG-154
 (YOSU-234)

3. Name and Address of Owner Name and Address of Charterer
 Name MIYU GYOSEN CO., LTD.
 Address HIRASHI 6-1, KINAMI AIYO,
ARASHI-OHI, HONKAIDO, 002, JAPAN
 Cable Address _____

4. Homeport and State of Registry: ARASHI, JAPAN

5. Type of Vessel STERN TRAWLER

6. Tonnage (Gross) 228.78 M.T. (Net) 115.98 M.T.

7. Length 42.8 M. B. Breadth 8.1 M. 9. Draft 3.8 M. (DEPTH)

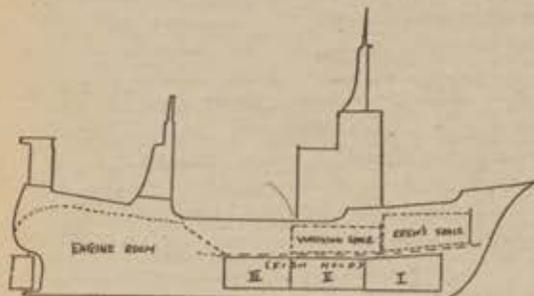
10. Horsepower 1800 shp. 11. Maximum Speed 18.0 kt.

11. Propulsion: Diesel (✓), Steam (), Diesel/Electric ().
 Other _____

12. Date Built FEBRUARY, 1967

14. Number and Nationality of Personnel 80, JAPAN
 Officers 8 Crew 82 Other (Specify) _____

15. Communications: VHF-FM (), AM/VSB, Voice (a), Telegraphy (a).
 Other BY KHZ AM/SSB
 International Radio Call Sign J D D A
 Radio Frequencies Monitored ADD 1048 KHZ (VIA FACTORY BASE UNIT)
 Other Working Frequencies AM STOR. 3 KHZ
 Schedule WATCH TIME, 0000-0400 (S.M.T.); BERING SEA AND ALUTIAN ISLANDS



ATTACHED PAPER II

JA-77-0250

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATIONS FOR THE SPECIES IN THE OCEAN AREAS DURING FROM MAY TO DEC. AS DESCRIBED BELOW:

BERING SEA AND ALUTIAN ISLANDS

SPECIES	QUANTITY	REMARKS
FOLLOCK	792,300 M.T.	
ROCKFISHES	9,300	} BY CATCH
BLACK COD	5,600	
YELLOWFIN SOLE	62,100	
OTHER FLOWNERS	61,500	
PACIFIC COD	86,100	
OTHER GROUNDFISH	63,500	
HERRING	5,800	
SQUID	10,000	

14. Navigation Equipment: Loran C (✓), Loran A (), Omega (),
 Decca (), Navstar (), Radar (✓), Fathometer (✓),
 Other _____

17. Cargo Capacity (MT) 18. Cargo Space
 Number Name
 Salted Fish _____ Freezer _____
 Fresh Fish 228.49 M.T. (GROSS) Dry Hold I - I - II FISH HOLD
 Frozen Fish _____ Tanks _____
 Fish Meal _____ Other _____
 Other _____ (SEE ATTACHED PAPER I)

19. Processing Equipment (Indicate daily capacity, MT)

20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contemplated Gear to be Used
 (From-To) Catch (MT)
 BERING SEA AND MAY TO DEC. (SEE ATTACHED PAPER II) BOTTOM TRAWL
 ALUTIAN ISLANDS

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

ATTACHED PAPER I

JA-77-0251

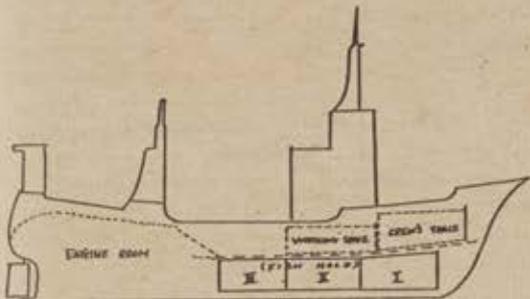
FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

072

Permit Period MARCH 1, 1977 TO Application No. JA-77-0252
 Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel TOHA MARU NO. 18
2. Vessel No.: Hull No. WHH 235 Registration No. HTI 218
(7000-235)
3. Name and Address of Owner Name and Address of Charterer
 Name NATSUMI SHIPPEN CO., LTD.
 Address 5-4-21, INAZU, CHU,
OTAMU-SHI, HONSHU, JAPAN
 Cable Address -
4. Homeport and State of Registry: OTAMU, JAPAN
5. Type of Vessel STEEL TRAWLER
6. Tonnage (Gross) 297.40 M.T. (Net) 111.04 M.T.
7. Length 39.0 M. B. Breadth 8.2 M. D. Draft 3.83 M.
(DEPTH)
10. Horsepower 1400 shp. 11. Maximum Speed 14.15 kt.
11. Propulsion: Diesel () Steam () Diesel/Electric (),
 Other -
13. Date Built APRIL, 1967
14. Number and Nationality of Personnel 20, JAPAN
 Officers 8 Crew 12 Other (Specify) -
15. Communications: VHF-FM (), AM/SSB, Voice (v), Telegraphy (t),
 Other BY WIRE/COAX
 International Radio Call Sign J P G A
 Radio Frequencies Monitored AM 1640 KHZ (VIA FACTORY BULK SHIP)
 Other Working Frequencies AM STORS 5 KHZ
 Schedule WATER VILE, 2000-2400 (G.M.T.), BERING SEA AND ALUTIAN ISLANDS



ATTACHED PAPER II

JA-77-0251

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATIONS FOR THE SPECIES IN THE OCEAN AREAS DURING FROM MAY TO DEC. AS INDICATED BELOW:

BERING SEA AND ALUTIAN ISLANDS

SPECIES	QUANTITY	REMARKS
POLLOCK	702,300 M.T.	} BY CATCH
SOCKFISHES	9,300	
BLACK COD	5,800	
YELLOWFIN SOLE	82,100	
OTHER FLOWERS	61,500	
PACIFIC COD	36,100	
OTHER GROUND FISH	42,500	
MERING	5,800	
SQUID	10,000	

JA-77-0252

16. Navigation Equipment: Loran C (), Loran A (), Omega (),
 Decca (), Navsat (), Radar (), Fathometer (),
 Other -
17. Cargo Capacity (MT) 18. Cargo Space

Item	Capacity (MT)	Number	Name
Salted Fish	-	-	-
Fresh Fish	<u>210,000 (DALE)</u>	Dry Hold	<u>I - I - I FISH HOLD</u>
Frozen Fish	-	Tanks	-
Fish Meal	-	Other	-
Other	-	(SEE ATTACHED PAPER I)	
19. Processing Equipment (Indicate daily capacity, MT)
-
-
-
20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species Contemplated	Catch to be Used (MT)
BERING SEA AND	MAY TO DEC.	(SEE ATTACHED PAPER I)	DOTTEN TRAWL
ALUTIAN ISLANDS			
21. Name and Address of Agent appointed to receive any legal process issued in the United States:
-
-
-

ATTACHED PAPER I

JA-77-0252

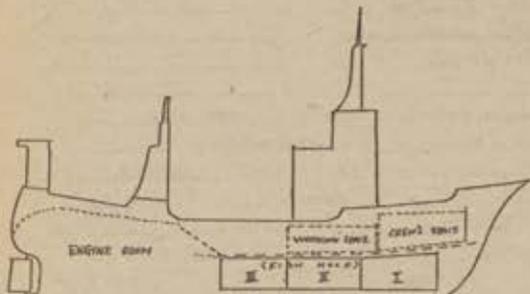
FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

253

Permit Period MARCH 1, 1977 TO Application No. JA-77-0253
 Applied For: BUCKINGH 01, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel: SEDOO KAMU NO. 21
 2. Vessel No./Hull No. 船名 236号 Registration No. 船-179
 (7000-236)
 3. Name and Address of Owner Name and Address of Charterer
 Name TAKED WATANABE
 Address 2-17-17, NAGAHASHI,
OTAHU-SUI, HONKAIDO, 047, JAPAN
 Cable Address _____
 4. Homeport and State of Registry: OTAHU, JAPAN
 5. Type of Vessel: STEER TRAWLER
 6. Tonnage (Gross): 200.42 M.T. (Net): 110.98 M.T.
 7. Length 43.4 M. B. Breadth 8.1 M. D. Draft 3.50 M.
 10. Horsepower 1800 shp. 11. Maximum Speed 12.55 kt.
 11. Propulsion: Diesel (D), Steam (S), Diesel/Electric (E),
 Other _____
 12. Date Built JANUARY, 1960
 14. Number and Nationality of Personnel: 20, JAPAN
 Officers 7 Crew 13 Other (Specify) _____
 15. Communications: VHF-FM (F), AM/SSB, Voice (V), Telegraphy (T),
 Other RT MOR/SSB
 International Radio Call Sign J R V C
 Radio Frequencies Monitored AM 1640 KHZ (VIA FACTORY BASE SHIP)
 Other Working Frequencies AM 2700.5 KHZ
 Schedule WATCH TIME; 0000-0400 (G.M.T.); BERING SEA AND ALUTIAN ISLANDS



ATTACHED PAPER II

JA-77-0252

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATIONS FOR THE SPECIES IN THE OCEAN AREAS DURING FROM MAY TO DEC. AS DESCRIBED BELOW:

BERING SEA AND ALUTIAN ISLANDS

POLLOCK	700,300 M.T.	} BY CATCH
ROCKFISHES	9,300	
BLACK COD	5,600	
YELLOWFIN SOLE	62,100	
OTHER FLOWNERS	61,500	
PACIFIC COD	26,100	
OTHER BRANNOFISH	63,500	
HEERING	8,800	
SQUID	16,000	

Navigation Equipment: Loran C (C), Loran A (A), Omega (O),
 Decca (D), Havarat (H), Radar (R), Yachtmeter (Y),
 Other _____

17. Cargo Capacity (MT) 18. Cargo Space
 Number Tonnage
 Salted Fish _____ Freezer _____
 Fresh Fish 204.80 M³ (WALK) Dry Hold I - X - H FISH BULD
 Frozen Fish _____ Tacks _____
 Fish Meal _____ Other _____
 Other _____ (SEE ATTACHED PAPER I)

19. Processing Equipment (Indicate daily capacity, MT)

20. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contemplated Gear to be Used
 (From-To) Catch (MT)
 BERING SEA AND MAY TO DEC. (SEE ATTACHED PAPER I) BOTTOM TRAIL
 ALUTIAN ISLANDS

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

ATTACHED PAPER II

JA-77-0253

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATIONS FOR THE SPECIES IN THE OCEAN AREAS DURING FROM MAY TO DEC. AS DESCRIBED BELOW:

BERING SEA AND ALEUTIAN ISLANDS

FISHERY	TONS, 1000 M.T.	BY CATCH
FALLOCK	200,000	
ROCKFISHES	0,000	
BLACK COD	5,000	
YELLOWFIN SOLE	82,100	
OTHER FLOUNDER	61,600	
PACIFIC COD	20,100	
OTHER GROUNDFIN	63,500	
HERRING	5,800	
SQUID	10,000	

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period MARCH 1, 1977 TO
Applied For: DECEMBER 31, 1977

Application No. **JA-77-0254**
For Use of Issuing Office

State: JAPAN

1. Name of Vessel: KANUMAI MARU NO. 20

2. Vessel No./Hull No.: REG. 2579 Registration No. ATI-15
(7000-207)

3. Name and Address of Owner: KANUMAI GYUO CO., LTD.
Name and Address of Charterer: _____
Address: KONOHA-2A HONIKIRI 80,
KONOHA-CHO, YUNI-GUN, AKITA-KEN,
018-02, JAPAN
Cable Address: _____

4. Homeport and State of Registry: KONOHA, JAPAN

5. Type of Vessel: OTSUBO TRAWLER

6. Tonnage (Gross): 200.54 M.T. (Net): 116.18 M.T.

7. Length: 43.4 M. 8. Breadth: 8.1 M. 9. Draft: 2.8 M.

10. Horsepower: 1000 shp. 11. Maximum Speed: 12.80 kt.

11. Propulsion: Diesel (), Steam (), Diesel/Electric (),
Other: _____

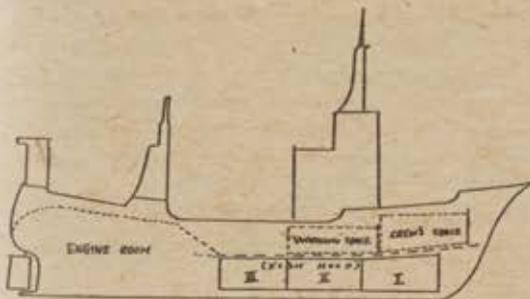
13. Date Built: DECEMBER, 1966

14. Number and Nationality of Personnel: 80, JAPAN
Officers: 8 Crew: 12 Other (Specify): _____

15. Communications: VHF-FM (), AM/SSB, Voice (), Telegraphy (),
Other: BY NAVY/COAS
International Radio Call Sign: J A Y A
Radio Frequencies Monitored: AM 1640 KHZ (VIA FACTORY MARK SHIP)
Other Working Frequencies: AM 2700.3 KHZ
Schedule: W/CH 7100, 3000, 6000 (G.M.T.), BERING SEA AND ALEUTIAN ISLANDS

ATTACHED PAPER I

JA-77-0253



16. Navigation Equipment: Loran C (*), Loran A (*), Omega (*),
Decca (*), Navsat (*), Radar (*), Fathometer (*),
Other: _____

17. Cargo Capacity (MT) 18. Cargo Space

	Number	Remarks
Salted Fish	-	Freezer -
Fresh Fish	<u>204,000 (BULK)</u>	Dry Hold <u>I, II, III</u> FISH HOLD
Frozen Fish	-	Benks -
Fish Meal	-	Other -
Other	-	(SEE ATTACHED PAPER I)

19. Processing Equipment (Indicate daily capacity, MT)

20. Fisheries for which Permit is Requested:
Ocean Area: BERING SEA AND MAY TO DEC. Species: CONVOLUTATED Gear to be Used: OTSUBO TRAWL
(From-To) Catch (MT)

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

ATTACHED PAPER I

JA-77-0254

FISHING VESSEL IDENTIFICATION FORM (FUNKUM)

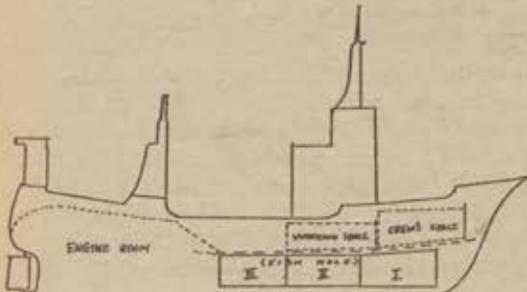
255

Permit Period MARCH 1, 1977 TO
Applied For: DECEMBER 31, 1977

Application No. JA-77-0255
For Use of Issuing Office

State: JAPAN

1. Name of Vessel FUJI MARU NO. 1
2. Vessel No./Hull No. 238 Registration No. TEL-200
(1968-69)
3. Name and Address of Owner FUJI STEEL CO., LTD.
Address 3088, HAMAHI-CHO,
KASHIHA-GUN, IBARAKI-KEN, 316-04,
JAPAN
4. Name and Address of Charterer _____
5. Cable Address _____
6. Homeport and State of Registry: HAMAHI, JAPAN
7. Type of Vessel STEEL TRAWLER
8. Tonnage (Gross) 209.90 M.T. (Net) 109.51 M.T.
9. Length 42.1 M. G. Breadth 8.1 M. D. Draft 2.8 M.
(DEPTH)
10. Horsepower 1200 shp. 11. Maximum Speed 13.20 kt.
12. Propulsion: Diesel (✓), Steam (), Diesel/Electric (),
Other _____
13. Date Built OCTOBER, 1960
14. Number and Nationality of Personnel 20 JAPAN
Officers 7 Crew 13 Other (Specify) _____
15. Communications: VHF-FM (), AM/SSB, Voice (✓), Telegraphy (),
Other BY WIRE/SEA
International Radio Call Sign J H D Y
Radio Frequencies Monitored AM 1640 KHZ (VIA FACTORY BASE UNIT)
Other Working Frequencies AM 2700.5 KHZ
Schedule WATER TWIN, 2000-2000 M.T., BERING SEA AND ALUTIAN ISLANDS



ATTACHED PAPER II

JA-77-0254

THIS VESSEL APPLIED FOR FISHING A PORTION OF THE ALLOCATIONS FOR THE SPECIES IN THE OCEAN AREAS DURING FROM MAY TO DEC. AS DESCRIBED BELOW:

BERING SEA AND ALUTIAN ISLANDS

SPECIES	QUOTA (M.T.)	BY CATCH
FOLLOCK	702,300 M.T.	} BY CATCH
ROCKFISHES	9,000	
BLACK COD	5,000	
YELLOWFIN SOLE	62,100	
OTHER FLOWERS	61,500	
PACIFIC COD	26,100	
OTHER GROUPEFISH	62,500	
HEADING	5,800	
SQUID	10,000	

JA-77-0255

16. Navigation Equipment: Loran C (), Loran A (), Omega (),
Decca (), Navstar (), Radar (), Fathometer (),
Other _____
17. Cargo Capacity (MT)
18. Cargo Space

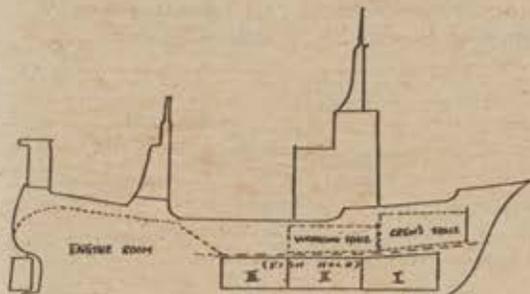
INDEX	NAME
Salted Fish	Freezer
Fresh Fish <u>200.11 M³ (WALK)</u>	Dry Hold <u>I-II</u>
Frozen Fish	Trunks
Fish Meal	Other
Other	(SEE ATTACHED PAPER I)
19. Processing Equipment (Indicate daily capacity, MT)
20. Fisheries for which Permit is Requested:

Open Area	Period (From-To)	Species Contemplated Catch (MT)	Gear to be Used
BERING SEA AND	MAY TO DEC.	(SEE ATTACHED PAPER I)	BOTTOM TRAWL
ALUTIAN ISLANDS			

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

ATTACHED PAPER I

JA-77-0255



FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

200

Permit Period MARCH 1, 1977 TO Application No. JA-77-0256
 Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel SHIKU MARU NO. 18

2. Vessel No./Hull No. 2399 Registration Co. MI-208
(1950-230)

3. Name and Address of Owner Name and Address of Charterer
 Name YAMADA SHIGEH KOODO CO., LTD.
 Address SHIGAHIRI 2 CHOME, KITA 3JO,
ARASHIRI-SHI, SHIKOKU, 692, JAPAN
 Cable Address _____

4. Homeport and State of Registry: ARASHIRI, JAPAN

5. Type of Vessel STERN TRAWLER

6. Tonnage (Gross) 229.32 M.T. (Net) 110.61 M.T.

7. Length 42.0 M. B. Breadth 8.1 M. B. Draft 2.0 M.
 (DEPTH)

10. Horsepower 1000 shp. 11. Maximum Speed 11.7 kt.

11. Propulsion: Diesel (x), Steam (), Diesel/Electric (),
 Other _____

12. Date Built MAY, 1967

14. Number and Nationality of Personnel: 80, JAPAN
 Officers 7 Crew 12 Other (Specify) _____

15. Communications: VHF-FM (), AM/SSB, Voice (x), Telegraphy (),
 Other RT MEX/SON
 International Radio Call Sign J D N L
 Radio Frequencies Monitored AM 1640 KHZ (VIA FACTORY BANG UNIT)
 Other Working Frequencies AM STOR. 6 KHZ
 Schedule WATCH TIME, 0000-0400 (G.M.T.), BERING SEA AND ALUTIAN ISLANDS

ATTACHED PAPER II

JA-77-0255

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATIONS FOR THE SPECIES IN THE OCEAN AREAS DURING FROM MAY TO DEC. AS DESCRIBED BELOW:

BERING SEA AND ALUTIAN ISLANDS

FOLLOX	792,500 M.T.
ROCKFISHES	9,000
BLACK COD	8,000
YELLOWFIN SOLE	62,100
OTHER FLOUNDER	21,500
PACIFIC COD	26,100
OTHER GROUNDFIN	63,000
HERRING	5,800
SQUID	10,000

BY CATCH

JA-77-0256

16. Navigation Equipment: Loran C (x), Loran A (x), Omega (),
 Dacca (), Decca (), Radar (x), Fathometer (x),
 Other _____

17. Cargo Capacity (MT) 18. Cargo Space
 Number 888

Salted Fish	Freezer	Dry Hold	Tanks	Other
_____	_____	<u>I - II - III</u>	_____	_____

FISH HOLD
 (SEE ATTACHED PAPER I)

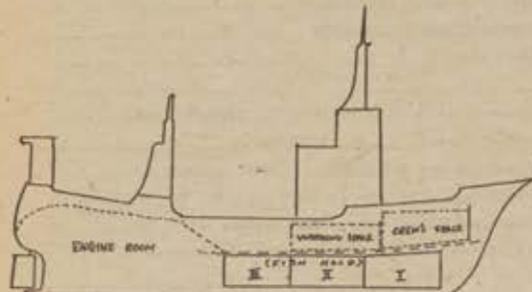
19. Processing Equipment (Indicate daily capacity, MT)

20. Fisheries for which Permit is Requested:
BERING SEA PERIOD Species Consolidated Gear to be Used
 (From-To) Catch (MT)
BERING SEA AND MAY TO DEC. (SEE ATTACHED PAPER I) BOTTOM TRAWL
ALUTIAN ISLANDS

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

ATTACHED PAPER I

JA-77-0256



FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

257

Permit Period MARCH 1, 1977 Application No. JA-77-0257
 Applied For: DECEMBER 31, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel KAIKO MASHI NO. 2

2. Vessel No./Hull No. YOSH 231 号 Registration No. HEI-150
(YOSH-231)

3. Name and Address of Owner Name and Address of Charterer
 Name HOKUTO CO., LTD. SHIRAJIN SHOTEN CO., LTD.
 Address 15-10, OMIYACHI BAKUDATE-3-10-10, YAMUYATA, AOMORI-SHI,
SHI, HOKKAI DO, 040, JAPAN AOMORI-KEN, 030, JAPAN
 Cable Address _____

4. Homeport and State of Registry: NAKOSHU, JAPAN

5. Type of Vessel STEER TRAWLER

6. Tonnage (Gross) 212.80 M.T. (Net) 150.48 M.T.

7. Length 44.31 M. B. Breadth 8.8 M. D. Draft 3.8 M.

8. Horsepower 1000 bhp. 11. Maximum Speed 12.10 kt.

9. Propulsion: Diesel () Steam () Diesel/Electric ()
 Other _____

10. Date Built AUGUST 1968

11. Number and Nationality of Personnel 00 JAPAN
 Officers 7 Crew 13 Other (Specify) _____

12. Communications: VHF-FM () AM/SSB, Voice () Telegraphy ()
 Other ST MHZ/SSB
 International Radio Call Sign S J C N
 Radio Frequencies Monitored ANJ 1645 KHZ (VIA FACTORY BULK SHIP)
 Other Working Frequencies ANJ 5700, 5 KHZ
 Schedule WATCH TIME: 2000-2400 (G.M.T.) BERING SEA AND ALUTIAN ISLANDS

ATTACHED PAPER II

JA-77-0256

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATIONS FOR THE SPECIES IN THE OCEAN AREAS DURING FROM MAY TO DEC. AS DESCRIBED BELOW:

BERING SEA AND ALUTIAN ISLANDS

SPECIES	QUANTITY	REMARKS
POLLOCK	700,000 M.T.	
ROCKFISHES	0,000	} BY CATCH
BLACK COD	5,000	
YELLOWFIN SOLE	60,100	
OTHER FLOORFISH	61,500	
PACIFIC COD	36,100	
OTHER GROUPELFISH	63,500	
HERRING	5,800	
SQUID	10,000	

JA-77-0257

16. Navigation Equipment: Loran C (), Loran A (), Omega (),
 Decca (), Navpac (), Radar (), Fathometer (),
 Other _____

17. Cargo Capacity (MT)

Item	Number	Name
Salted Fish	-	Freezer I - II - III FISH HOLD
Fresh Fish	-	Dry Hold
Frozen Fish <u>200,000 (DAK)</u>	-	Tanks
Fish Meal	-	Other
Other	-	(SEE ATTACHED PAPER I)

18. Processing Equipment (Indicate daily capacity, MT)
FLASH FREEZERS 10 M.T./DAY

19. Fisheries for which Permit is Requested:
 Ocean Area Period Species Contemplated Gear to be Used
 (From-To) (Catch) (MT)
BERING SEA AND MAY TO OCT. (SEE ATTACHED PAPER II) BOTTOM TRAWL
ALUTIAN ISLANDS

20. Name and Address of Agent appointed to receive any legal process issued in the United States:

ATTACHED PAPER I

JA-77-0257

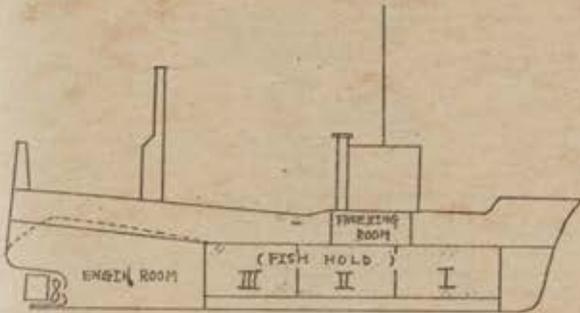
FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

253

Permit Period MARCH 1, 1977 Application No. JA-77-0258
 Applied For: BEFORE 21, 1977 For Use of Issuing Office

State: JAPAN

1. Name of Vessel KAIYO MARI NO. 2
2. Vessel No./Hull No. 2328 Registration No. SHI-230
(1950-532)
3. Name and Address of Owner Name and Address of Charterer
 Name HOMUTO CO., LTD. NAKODATE KUMAI OTSUDO CO., LTD.
 Address 18-19, OMACHI, 18-19, OMACHI, NAKODATE-SHI,
NAKODATE-SHI, MIYAZAKI, 840, JAPAN MIYAZAKI, 840, JAPAN
 Cable Address - KUMAI FISHERY TOKYO
4. Homeport and State of Registry: NAKODATE, JAPAN
5. Type of Vessel STEEL TRAWLER
6. Tonnage (Gross) 349.28 M.T. (Net) 184.24 M.T.
7. Length 49.40 M. 2. Breadth 8.8 M. 9. Draft 3.20 M.
10. Horsepower: 1500 shp. 11. Maximum Speed 12.98 kt.
11. Propulsion: Diesel (*), Steam (), Diesel/Electric (),
 Other -
13. Date Built: NOVEMBER, 1967
14. Number and Nationality of Personnel 20, JAPAN
 Officers 7 Crew 13 Other (Specify) -
15. Communications: VHF-FM (), AM/VHF, Voice (*), Telegraphy (*),
 Other ST MHL/SHI
 International Radio Call Sign JWSW
 Radio Frequencies Monitored 437 1648 kHz (VIA FACTORY BARK SHIP)
 Other Working Frequencies 437 1648 kHz
 Schedule WATCH TOWER, 2000-0400 (G.M.T.); BERING SEA AND ALUTSIAN ISLANDS



ATTACHED PAPER II

JA-77-0257

THIS VESSEL APPLIES FOR FISHING A PORTION OF THE ALLOCATIONS FOR THE SPECIES IN THE OCEAN AREAS DURING FROM MAY TO DEC. AS DESCRIBED BELOW.

BERING SEA AND ALUTSIAN ISLANDS

POLLOCK	792,000 M.T.	} BY CATCH
ROCKFISHES	9,300	
BLACK COD	5,600	
YELLOWFIN SOLE	62,100	
OTHER FLOWERS	61,500	
PACIFIC COD	26,100	
OTHER GRUNDLIFISH	83,500	
HERRING	5,800	
SQUID	10,000	

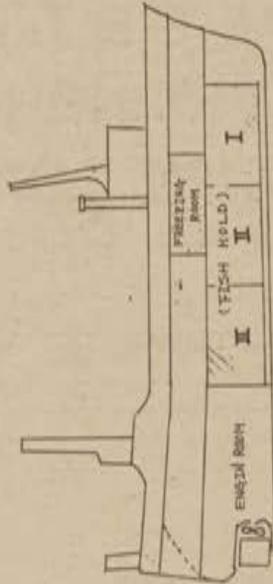
JA-77-0258

16. Navigation Equipment: Loran C (w), Loran A (w), Omega (),
 Decca (), Navstar (), Radar (*), Pathometer (*),
 Other -
17. Cargo Capacity (MT) 18. Cargo Space

Number	Name
Salted Fish <u>-</u>	Forester <u>I - II - III</u> FISH HOLD
Fresh Fish <u>-</u>	Dry Hold <u>-</u>
Frozen Fish <u>222.25 M.T. (MAX)</u>	Tanks <u>-</u>
Fish Meal <u>-</u>	Other <u>-</u>
Other <u>-</u>	(SEE ATTACHED PAPER I.)
19. Processing Equipment (Indicate daily capacity, MT)
FLASH FREEZING 12.8 M.T./DAY
20. Fisheries for which Permit is Requested:
Bering Area Trawl Trawl Continued Coast to be Used
 (From-To) (From-To) Catch (MT)
- BERING SEA AND MAY TO DEC. (SEE ATTACHED PAPER II) DOTYU TRAIL
 ALUTSIAN ISLANDS
21. Name and Address of Agent appointed to receive any legal process issued in the United States:
-
-
-

ATTACHED FIGURE I

JA-77-0058



ATTACHED FIGURE I

JA-77-0058

THIS VESSEL APPLIED FOR FISHING ALLOCATIONS FOR THE SPECIES IN THE OCEAN AREAS SHOWN FROM MAY TO DEC. AS SHOWN IN FIGURE I.

INDIAN SEA AND ADRIATIC OCEAN

700,000 G.T.

BLACK COD	9,000	NET CATCH
YELLOWTAIL SOLE	9,000	
OTHER FISHES	82,100	
PACIFIC COD	81,000	
OTHER GROUND FISH	36,100	
SHALLOW	82,000	
SQUID	8,000	
	10,000	

[FR Doc. 77-9021 Filed 3-29-77; 8:45 am]

Federal Register

WEDNESDAY, MARCH 30, 1977

PART IV



**DEPARTMENT
OF JUSTICE**

Antitrust Division

■

**UNITED STATES VS.
GENERAL ELECTRIC CO.
AND WESTINGHOUSE
ELECTRIC CORP.**

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. GENERAL ELECTRIC CO. AND WESTINGHOUSE ELECTRIC CORP.

Proposed Modification of Existing Judgments, Supporting Memorandum, Written Comments Upon the Proposed Modification and Department of Justice Responses Thereto

Notice is hereby given that a proposed modification of existing judgments and a memorandum in support thereof have been filed with the United States District Court for the Eastern District of Pennsylvania, Civil No. 28228. Filed on October 1, 1962, the existing consent judgments terminated a civil action in which the Department of Justice alleged that the General Electric Company, the Westinghouse Electric Corporation and Allis-Chalmers Manufacturing Company had conspired to fix the prices of steam turbine-generators. The proposed modification was filed on December 10, 1976, and is designed to enjoin certain marketing practices adopted by General Electric and Westinghouse after the entry of the existing judgments.

Since May of 1963, General Electric and Westinghouse have engaged in a pattern of conduct which, the Department of Justice believes, was designed to assure one another that each company would adhere to published price levels. The memorandum in support of the proposed modification describes more fully the defendants' marketing practices and sets forth the basis for the Antitrust Division's belief that the actions of General Electric and Westinghouse constituted a violation of the Sherman Act and of the existing consent judgments.

The injunctive provisions of the proposed modification embody four approaches intended to limit direct and indirect communication between General Electric and Westinghouse. The first approach is designed to prohibit the kind of public statement of pricing policy that is actually intended to signal or communicate an invitation from one manufacturer to the other to eliminate various elements of competition. The second enjoins certain specific practices that served to police or reinforce the defendants' common adherence to published price levels. The third is to restrict the nature and quantity of price-related information publicly disseminated by each manufacturer from which a general pricing policy may be inferred. The fourth approach is to prohibit each manufacturer in certain circumstances from examining price-related documents that the other manufacturer may distribute legitimately to individual customers.

After the proposed modification and supporting memorandum were filed, interested parties were given approximately twelve weeks in which to comment on the proposed modification. Several parties submitted comments to which the Department of Justice has responded.

Copies of the proposed modification applicable to General Electric, the supporting memorandum, the comments of interested parties and the responses of the Department of Justice are published below. Since the proposed modification applicable to Westinghouse is virtually identical to the one applicable to General Electric, only the General Electric proposed modification is reprinted.

Dated: March 25, 1977.

DONALD I. BAKER,
Assistant Attorney General,
Antitrust Division.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Civil No. 28228]

United States of America, Plaintiff, v. General Electric Company, Defendant.

STIPULATION

It is stipulated by and between the undersigned parties by their respective attorneys, that:

(1) The parties hereto consent that a Modification of the Final Judgment in this case in the form hereto attached may be filed and entered by the Court at any time after the expiration of sixty (60) days following the date of filing of this Stipulation without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein;

(2) The plaintiff may withdraw its consent hereto at any time within said period of sixty (60) days by serving notice thereof upon the other party hereto and filing said notice with the Court;

(3) In the event plaintiff withdraws its consent hereto, this Stipulation shall be of no effect whatever in this or any other proceeding and the making of this Stipulation shall not in any manner prejudice any consenting party in any other proceeding.

DONALD I. BAKER,
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For the General Electric Company.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

[Civil No. 28228]

United States of America, Plaintiff, v. General Electric Company, Defendant.

MODIFICATION BY CONSENT OF FINAL JUDGMENT ENTERED OCTOBER 1, 1962

The Court having retained jurisdiction of this matter pursuant to the Final Judgment dated October 1, 1962, and plaintiff and defendant General Electric Company having consented to the making and entry of a Modification thereof; and the Court having been fully advised with respect to the matter and having determined that entry of this Modification By Consent is in the public interest;

Now, therefore, based upon the Court's finding that entry of this Modification By Consent is appropriate in this case, without trial or adjudication of any issue of fact or law herein, and without this Modification constituting any evidence against or admis-

sion by any party with respect to any issue of fact or law in any action or proceeding;

Now, therefore, before any testimony has been taken, the Court being advised and having considered the matter it is hereby ordered, adjudged and decreed that the Final Judgment entered herein on October 1, 1962, is hereby modified as follows:

1. "Large turbine-generator" means an assembly of a turbine and a generator with an electrical rating of 100,000 kw or more used for the production or generation of electricity on land by the use of steam, but it does not include marine turbine-generators, gas turbines or gas turbine-generators, hydroelectric turbine-generators or hydraulic turbines.

2. That the defendant, its successors, assignees, transferees, and respective officers, agents, and employees, be enjoined and restrained from:

(a) Publishing or distributing any information intended to communicate directly or indirectly an invitation to agree, or willingness to agree, with any manufacturer of large turbine-generators (i) to raise, fix, maintain, stabilize, or otherwise affect the price or other terms and conditions for the sale of large turbine-generators, or (ii) to reduce or eliminate competition in the guaranteed or actual performance of large turbine-generators;

(b) Hereafter offering a price protection policy or entering into any agreement whereby the price of a large turbine-generator to any customer would be retroactively reduced or the defendant would be subject to any penalty or disadvantage as the direct result of offering or providing a lower price or more favorable terms and conditions of sale to any subsequent customer or potential customer;

(c) Beginning three months from the effective date of this modification, using any price book, price list, or compilation of prices for the sale of large turbine-generators other than a price book, price list, or compilation of prices:

(i) Compiled by the defendant after the effective date of this modification;

(ii) Based on the defendant's own individually determined criteria and costs; and

(iii) Not based on the prices in any price book, price list, or compilation of prices in effect during the period beginning May 20, 1963 and extending up to and including the effective date of this modification;

Provided, however, That this subsection 2(c) shall not be construed to prohibit the defendant from selling a large turbine-generator to a specific customer at any price it sees fit consistent with the provisions of this modification; and provided further, that defendant shall be allowed to use its price books issued prior to the date this provision takes effect solely for the purpose of calculating prices for turbine-generators ordered before that date;

(d) Preparing or using any price book or price list for large turbine-generators after the effective date of this modification that is related to any previous price book or price list by a uniform multiplier or percentage, or computing the price of a large turbine-generator by applying a uniform multiplier or percentage to any previous price book or price list, except where necessary to compute the price of a turbine-generator ordered prior to the effective date of this modification;

(e) Distributing or revealing to any person not employed by the defendant a price book or price list relating to large turbine-generators;

(f) Communicating to any persons not employed by the defendant;

(g) A policy regarding negotiation or bargaining involving the price or terms and conditions of sale for large turbine-generators;

(ii) A policy regarding performance guarantees for large turbine-generators;

(iii) A policy regarding negotiation or bargaining involving the price of spare parts for large turbine-generators;

(iv) A policy regarding the use of a formula or system for pricing large turbine-generators;

(v) A formula or system for pricing large turbine-generators, provided that nothing in this subsection 2(f)(v) shall be construed to prohibit the defendant from using price escalation clauses to adjust prices to reflect changes in costs or other economic indices between the date of order and the date of delivery or from selling large turbine-generators under a cost-reimbursement contract; and

(vi) Any change in the price of large turbine-generators, provided that the defendant shall not be prohibited from communicating to a specific customer, potential customer, or his agent, a change in a price previously furnished to such customer or agent for a particular large turbine-generator;

(g) Distributing or revealing to any person not employed by the defendant (i) prices and terms and conditions for the sale of large turbine-generators; (ii) the exhaust end load limits for large turbine-generators; and (iii) performance guarantees, including but not limited to heat rates for large turbine-generators.

Nothing in section 2(g) shall be construed to prohibit the defendant (1) from conveying to a specific customer or potential customer, or his agent, the information necessary to respond, in good faith, to a request from such customer or agent for the defendant to bid on, or to engage in negotiations regarding the purchase of, one or more large turbine-generators, or (2) from conveying information necessary to respond in good faith to a request from a customer or his agent for information in connection with discussions regarding the purchase of one or more large turbine-generators by that customer;

(h) (i) Expressing to any person not employed by the defendant the price of a large turbine-generator in terms of a multiple or percentage of a book or list price or a separately stated price or (ii) expressing to any person not employed by the defendant a relation of the price of a large turbine generator to a separately stated price or to a price furnished to a different customer;

(i) Publishing, or communicating directly or indirectly to any person not employed by the defendant, any compilation of (a) outstanding bids or quotations for the sale of large turbine-generators for a period of five years from the date such bids or quotations are made; or (b) prices and terms and conditions of sale quoted on transactions involving the sale of large turbine-generators for a period of thirty months from the date of such quotations;

(j) (i) Using or retaining a price book, price list, or compilation of list or book prices or standard terms and conditions, for the sale of large turbine-generators, prepared by Westinghouse after May 1, 1963, or a copy thereof;

(ii) Using or retaining a price book, price list, or compilation of list or book prices or standard terms and conditions, for the sale of large turbine-generators prepared after the effective date of this modification by a manufacturer other than Westinghouse, or a copy thereof;

(k) Receiving or examining any part of any document, prepared or distributed by Westinghouse, or copy thereof, and including prices, terms and conditions of sale, or performance guarantees regarding the sale of a large turbine-generator; provided, however, that a representative of the defendant may

be permitted to view a bid prepared by Westinghouse, at the option of the customer and prior to the award of the order, solely for the purpose of verifying, in good faith, representations made by the customer or its agent concerning the content of such Westinghouse bid; and provided further that independent counsel, acting on behalf of General Electric, may be employed to verify that an award of a public sealed bid is legal; such lawyer may employ independent technical advisers, so long as neither the lawyer nor technical advisers communicate to any General Electric employee the contents of such Westinghouse bid.

3. Nothing contained herein shall be construed to prohibit the defendant (a) from conveying information in compliance with any order, or in connection with participation in any proceeding, of a court, legislative body, or administrative agency; (b) from conveying information to any person retained by the defendant for a legitimate purpose, provided that, with regard to any such information that refers or relates to price, terms and conditions of sale, exhaust end load limits, and performance guarantees, the defendant shall secure from such person a legally binding commitment not to publish or re-use said information; (c) from using or conveying information in connection with the rendering of legal advice or participating in a legal proceeding; (d) from responding to competition by changing price or terms and conditions of sale furnished to a customer in a manner otherwise consistent with the provisions of this decree; or (e) from complying with contractual commitments to any customer undertaken prior to the effective date of this modification by:

(i) Expressing the price of a large turbine-generator in terms of (a) a price book or price list issued prior to the effective date of this modification or (b) a multiplier or percentage established prior to the effective date of this modification applied to any such price book or price list;

(ii) Expressing the price of any performance guarantee for a large turbine-generator in terms of a formula included or incorporated by reference in a contract entered into prior to the effective date of this modification.

4. The defendant is ordered to retain in its files records of calculations and determinations involved in the computation of a price for any large turbine general, or in the preparation of any price book or price list for such machines, for a period of five years after such computation or preparation.

5. The defendant, its successors, assignees and transferees, and its officers, agents and employees are ordered:

(a) To print conspicuously on each of its price books or price lists for the sale of large turbine-generators prepared after the effective date of this modification a notice that distribution of the price book or price list to persons not employed by the defendant will constitute a violation of this modification and that said violation may be punishable as contempt of court; and

(b) To number each of its price books or price lists for the sale of large turbine-generators prepared after the effective date of this modification, and maintain a log which shall indicate: (i) the name and position of every person to whom a price book or price list is distributed and (ii) the date of such distribution.

6. The provisions of this modification shall terminate fifteen years from its effective date, except that section 2(a) shall terminate twenty-five years from said date and section 2(k) ten years from said date.

7. Sections IV(D), V(A), and any other provision of the Final Judgment entered on October 1, 1962, which is inconsistent with

the provisions contained herein, are henceforth of no force and effect insofar as they pertain to large turbine-generators as defined herein.

Dated: December 10, 1976.

JOSEPH L. McGLYNN, Jr.,
United States District Judge.

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

[Civil No. 28228]

United States of America, Plaintiff v.
General Electric Company and Westinghouse
Electric Corporation, Defendants.

PLAINTIFF'S MEMORANDUM IN SUPPORT OF A
PROPOSED MODIFICATION TO THE FINAL
JUDGMENT ENTERED ON OCTOBER 1, 1962
AGAINST EACH DEFENDANT

The United States, by the undersigned, files this memorandum in support of its joint proposals with the General Electric Company and the Westinghouse Electric Corporation to modify the final judgment against each company in this action. The modification is designed to prohibit certain pricing practices which have occurred in the turbine-generator industry since 1963. Although the United States does not deem the Antitrust Procedures and Penalties Act, P.L. 93-528, 15 U.S.C. § 16 (b) through (h), applicable to this proceeding, it has sought in this memorandum to provide the Court and the public with the type of information ordinarily provided in a competitive impact statement filed pursuant to the Act.

I. NATURE AND PURPOSE OF THE PROCEEDING

On June 29, 1960, the Government obtained an indictment charging GE, Westinghouse and Allis-Chalmers Manufacturing Corporation, and four individuals, with fixing the prices of large turbine-generators. Contemporaneous with the indictment, the Government filed a civil action against the corporations in which it sought an injunction against further violations of Section 1 of the Sherman Act. Both the indictment and the civil complaint charged, among other things, that representatives of the defendants held meetings at which they agreed upon adjustments in the prices of certain turbine-generators, coordinated price increases, and determined which defendant would submit the winning bid to a given utility. The criminal case ultimately resulted in the entry of guilty pleas by the three corporate defendants, and pleas of nolo-contendere by the four individual defendants. All defendants were fined and one individual received a prison sentence. The civil action ended with the entry of consent decrees against the corporate defendants.

Filed on October 1, 1962, the consent decrees were designed to deal with the pricing situation that had developed during the 1950s. The decrees enjoined the defendants from fixing prices, allocating product and geographic markets, bid-rigging and refusing to deal with certain customers. It ordered the defendants not to communicate pricing information to one another until after the information had been released generally to the trade. The decrees also required that each defendant independently and individually review, determine, and announce its book prices for turbine-generators unless the defendant certified to the court that it had taken such action after June 29, 1960 but before the effective date of the decree. In essence, the goal of the 1962 decrees was to uproot the unlawful pricing behavior and replace it with pricing behavior founded on legitimate competitive considerations.

Price competition prevailed in the turbine-generator industry from 1960 to 1963. In the opinion of the Department, however,

prices since then have stabilized and there has been little or no discounting or negotiation regarding price. The Department of Justice has uncovered no evidence that, to achieve the present price stability, GE and Westinghouse reached an agreement through direct, covert communication. Instead, the Department's investigation has revealed that the elimination of price competition has been the result of identical policies deliberately adopted and published in 1963-64 and adhered to since.

The 1962 consent decrees allowed the publication of price books and the public exchange of competitive information. On the other hand, the decrees prohibited all price-fixing agreements regardless of where or how they were formed. Since 1963, the nature and content of the public communication of pricing intentions and the mechanics of the pricing system have been such that GE and Westinghouse have succeeded in assuring one another that they will not deviate from published price levels. In the opinion of the Department, this public exchange of assurances, with such intent, did constitute an agreement to stabilize prices which warranted the filing of a civil action by it alleging a violation of the Sherman Act or of the 1962 consent decrees.

To obtain an injunction against further use of these pricing policies, the Department was prepared to file a civil suit against GE and Westinghouse. When, as is customary, the Department notified counsel for the prospective defendants of its intention, the companies vigorously asserted their innocence. To avoid suit, however, they offered to accept, without admitting liability, a modification of the 1962 decrees which would prohibit the practices that the Department deemed objectionable. They also agreed that the modification would be effected in a manner consistent with the disclosure requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

The Department responded favorably to the modification offer primarily because it presented the opportunity immediately to secure substantially the same remedial relief that it would have sought in a civil action that probably would have taken years to complete and whose outcome could not be predicted. These and other reasons for the Department's decision are outlined below in Part VI of this Memorandum.

II. DESCRIPTION OF EVENTS AND PRACTICES GIVING RISE TO THE ALLEGED VIOLATION

Turbine-generator prices, which began a precipitous decline in 1958, continued to decline following the indictment of GE, Westinghouse and Allis-Chalmers for price fixing in 1960. By December, 1962 Allis-Chalmers had withdrawn from the market, but the industry continued to be plagued by over-capacity, and prices continued to decline. Relatively few sales are made in any year and the pressure to obtain any given order was substantial. Moreover, the product is not homogenous, and although the companies utilized price books, there was little adherence to published prices, and considerable discounting occurred on particular projects.

In May, 1963, GE announced a new pricing policy. The principal purpose of this policy was to end the discounting by establishing a new price level that would not be eroded in the market. GE published several documents on or about May 20, 1963 that communicated to its utility customers and to Westinghouse the purpose and the mechanics of the new pricing policy. In each of these publications, GE stated its intention to adhere to the new published price level by quoting only book prices on all transactions.

The new pricing strategy included a revised book which contained simplified procedures for pricing turbine-generators; the use of a published multiplier to be applied to book prices; the introduction of a price protection policy designed to implement the equal treatment philosophy; and the publication of outstanding orders and price quotations. Each of these features of the new pricing policy will be briefly outlined below to indicate what the Department believes their respective roles were in GE's effort to stabilize prices.

The 1963 price book was an essential feature of GE's new pricing policy. The book employed various formulas which greatly simplified the pricing of these highly complex and customized machines. The book also contained a series of pricing examples which explained the use of the formulas. Virtually all of the pricing information necessary to calculate the book price of any large turbine-generator (and other terms and conditions of sale including the level of various performance guarantees) was included.

Moreover, the price book set forth the so-called "exhaust end loading limits" for different types of turbine-generator blades. The publication of these limits made it possible to determine the specific size and type of turbine-generator that GE would bid in response to specifications provided by a utility customer.

To compute the actual published price in effect at any given time, GE employed a published multiplier—another key aspect of the 1963 strategy. The multiplier was expressed in terms of a percentage figure and was applied to book prices. For example, the price quoted to a customer in May, 1963 was computed by multiplying the book price by the multiplier of .76. The use of the multiplier permitted GE to make swift changes in price without the complexity—and possible source of misinterpretation by Westinghouse—inherent in printing an entirely new book.

The end result of the information contained in the 1963 price book combined with GE's public announcement that it would not deviate from published prices was that Westinghouse could ascertain the price that GE would employ in any given sales situation. This effectively removed a major source of uncertainty and a major stumbling block in the industry's attempt to stabilize prices for such a highly complex product. Moreover, GE's internal documents reveal, in the opinion of the Department, that such was the intent of GE in issuing the price book and the actual effect perceived by GE after the book was issued. Also, again in the opinion of the Department, internal documents of Westinghouse reveal that it perceived this to be the purpose and the effect of the GE pricing policy.

In any attempt to stabilize prices there is always the risk that one firm will seek to gain an advantage by employing selective secret discounts to win individual customers. Such behavior is often the source of the breakup of a price agreement. More to the point, the fear by one firm that another will seek to gain an advantage may lead the first to initiate the very strategy it fears from the other.

To deal with the problem of secret discounts, a third element in the pricing strategy announced by GE was the "price protection clause". This clause appeared in the price book and was to be included in all GE contracts for the sale of large turbine-generators. The clause was also described in GE's letter to utility presidents.

The price protection clause operated in such a way that, in the event price was lowered by GE for a particular customer, any buyer within the previous six-month period

would be given an identical discount retroactively upon request.¹ Hence selective price cuts could not be employed by GE without imposing a substantial penalty upon itself. The result of the price protection policy was to provide assurance to Westinghouse that GE would not give selective discounts. Westinghouse adopted a price protection clause in 1964.

The Department believes that internal documents of both GE and Westinghouse could have led a trier of fact to conclude that price protection was intended to and did provide the firms with assurance that each would avoid price competition.

The Marketing Information Letter issued in May, 1963 contained a fourth element of the pricing strategy. This was the publication by GE of all of the orders it had received and the quotations it had made before May 20 at the preexisting price levels. Unless Westinghouse knew that a quote at the lower price level had been made prior to the price increase, it would not be able to know for certain whether GE had "cheated" on the new price level. Since discounting had been prevalent prior to May, 1963, this information was necessary to assure Westinghouse that GE had followed through on its intention to stick to published price levels. Westinghouse adopted this practice in 1964 and both firms have used it over the years when price increases were announced. The Department believes that a court could have concluded from internal documents of both firms that the purpose and perceived effect of publishing outstanding orders and price quotations was to eliminate a potential source of disruption at the time of price changes.

Westinghouse learned of the new GE policy very soon after it was announced. Within days, it withdrew its own price book and began to use the new GE book, and the .76 multiplier, to compute its prices. As noted above, Westinghouse's next book, published ten months later, in March, 1964 was similar in many significant respects to GE's and enabled GE to predict the offering Westinghouse would make in a given situation.

In June, 1964, GE reduced its multiplier in response to what it believed was secret price-cutting by Westinghouse, but which evidently was a misinterpretation by Westinghouse of the GE book. Then, in July, Westinghouse announced a price increase, published for the first time a list of outstanding orders and quotations and, also for the first time, announced it would offer a price protection clause. Two months later, Westinghouse and GE were both back at the pre-June price level. Since then, both companies have used the same multiplier applied to identical book price levels.

The Department believes that internal Westinghouse documents reveal that Westinghouse perceived GE's actions as an invitation to stabilize prices. Moreover, these documents, in the opinion of the Department, reveal the extraordinary steps Westinghouse took to insure that the strategy was not upset intentionally or inadvertently.

Since the summer of 1964, GE and Westinghouse have applied the prevailing multiplier to book prices, resulting in a pattern of equal pricing in the sale of turbine-generators for fossil fuel power plants. The same pattern emerged in the pricing of turbine-generators for nuclear plants when, in October, 1964, GE applied this pricing policy to the marketing of those units.

¹The problem of secrecy was overcome by permitting buyers in any period to audit GE's books with respect to sales made in the subsequent six months.

Representatives of GE and Westinghouse, in meetings with the Antitrust Division, have disputed the government's factual and legal conclusions. They have argued that their conduct cannot form the basis of any unlawful agreement or understanding. They have denied that their behavior had the intent or the effect to stabilize prices. Instead they have emphasized that, for most of the time since 1963, they have been the only two domestic manufacturers of large turbine-generators, and that demand has climbed steadily. They have claimed that identical price levels have been the result of conscious parallelism, or the exercise of price leadership by GE. Such "interdependent" pricing, they say, has to be expected in a duopoly because each company's pricing decisions must take into account likely decisions of the other. Thus, it is argued, any identical pricing pattern has been the inevitable consequence of industry structure.

The Department believes that the differences between the behavior here and classic price leadership are extensive and important. The complexity of the product and the secretive and uncertain nature of the bidding process made it necessary for GE to go beyond the simple announcement of an intention to discontinue discounting if Westinghouse were to have the information concerning and confidence in GE's intentions to follow. Prior to May, 1963, there was no body of public data that would identify the "appropriate" price of a given turbine-generator or provide the assurance that such price would, in fact, be quoted by its seller. GE's 1963 policy and its subsequent adoption by Westinghouse neutralized competitive pressures resulting from these uncertainties.

The Department believes that Westinghouse's activities went beyond mere passive following of GE's lead. In addition to adopting the price increases, it published a book with the same format and formulas as GE's. It adopted the multiplier system, published lists of outstanding orders, and offered price protection. These acts reflect the painstaking effort of Westinghouse to manifest its acceptance of GE's strategy to stabilize turbine-generator prices.

In this context, the Department believes that, if it filed a civil action, a trial on the merits could lead a court to conclude that the public exchange of information and assurances by GE and Westinghouse that neither would cut prices violated Section 1 of the Sherman Act as well as the consent decrees entered in 1962. Such a case would, however, be quite complex and novel in the sense that the court would be asked to find a violation in the absence of proof of direct, covert communications between GE and Westinghouse.

III. THE PROPOSED MODIFICATION

As is discussed above, the publication and communication to third parties of detailed prices and other price-related information, coupled with public statements regarding future pricing intentions, permitted each manufacturer to know the price that the other would offer in individual transactions involving turbine generators. The result of this common knowledge of pricing intentions was that both manufacturers offered substantially identical prices and price competition between them was suppressed.

The injunctive provisions of the proposed modification take four approaches designed to limit direct and indirect communication by each manufacturer to the other.

The first approach is designed to prohibit the kind of public statement of pricing policy that is actually intended to signal or communicate an invitation from one manufacturer to the other to eliminate various elements of competition.

The second enjoins certain specific practices that served to police or reinforce the manufacturers' agreement, such as the price protection policy and the publication of outstanding quotations.

The third is to prohibit the nature and quantity of price and price-related information publicly disseminated by each manufacturer from which a general pricing policy or strategy can be inferred.

The fourth is to prohibit the examination by each manufacturer of price-related documents that the other manufacturer may legitimately distribute to individual customers, from which the one manufacturer might infer the pricing policy or strategy of the other.

The effect of the injunctive provisions of the proposed modification will be to create uncertainty on the part of each manufacturer regarding the prices, terms and conditions of sale, and performance guarantees offered by the other. This uncertainty is designed to foster competitive responses by the manufacturers to invitations to bid on turbine generators.

Section 2(a) of the proposed modification enjoins the manufacturers from publishing or distributing any information intended to communicate directly or indirectly an invitation to agree or willingness to agree with any other manufacturer to fix or stabilize prices, or to eliminate competition in the actual or guaranteed performance of large turbine generators. This provision is designed to prohibit the manufacturers from making public statements in any form, ostensibly directed at customers, which are in fact intended to signal to another manufacturer an invitation to agree or a willingness to agree to eliminate or lessen competition in the sale of large turbine generators.

As discussed above, an essential element in GE's invitation to Westinghouse to agree to stabilize prices was the introduction by GE of a price protection plan, under which each utility placing an order with GE was assured that in the six months following its order, it would receive the benefit of a lower price offered to any other utility. This had the effect of imposing a large financial penalty upon GE, in the form of a retroactive reduction in price on a number of orders, if it lowered a price to any single customer. Consequently, there was a strong incentive to GE not to deviate from its published levels. Westinghouse recognized this fact as well. Price protection thus served to assure that identical, published prices would be bid in individual transactions. To insure that similar conduct does not contribute to price stability in the future, Section 2(b) of the proposed modification enjoins the manufacturers from having a price protection policy or from offering individual most favored nation provisions in their contracts. Section 2(h) (ii) of the proposed modification is also relevant in this connection as it enjoins the relating of a price charged to one customer to the price charged another customer. This is designed to prevent the implicit communication of a policy of equal treatment.

Section 2(c) of the proposed modification enjoins each of the defendants from using internally any price book unless that book is compiled by the defendant after the effective date of the modification, is based on the defendant's individually determined costs and criteria, and is not based on past price books. This is another provision to insure that past practices are abandoned and that each defendant independently develops a new system of pricing. The provision does not interfere with each defendant's right to charge any price for a turbine-generator that it sees fit consistent with the other

provisions of the decree. Also, this provision explicitly provides for use by each defendant of its price books issued prior to the effective date of the decree to comply with contractual commitments concerning the computation of prices of turbine generators ordered prior to the effective date of the proposed modification.

Section 2(d) enjoins the defendants from preparing or using internally any price book or price list after the effective date of the proposed modification that is related to any prior price book by a uniform multiplier. This provision is designed to prevent the changing of price levels by simply changing one number, i.e., the multiplier to be applied to the price book in use at the time. As is discussed above, use of a uniform multiplier simplified price changes and thus permitted an immediate and identical response from one defendant to the price level changes of the other. In addition, Section 2(d) enjoins the defendants from computing the price of a large turbine-generator by applying a uniform multiplier or percentage to any previous price book or price list except where necessary to comply with contractual commitments relating to a turbine generator ordered prior to the effective date of the modification. This provision is designed to prevent the new price structure for any one defendant from being a simple extrapolation of an existing structure since such a structure could be readily discerned by the other defendant by reference to the existing books.

Section 2(e) of the proposed modification enjoins each defendant from distributing or revealing to any person not employed by it a price book or price list. Hence, any price book prepared by the defendant would be strictly for internal use. The purpose of this provision is to prevent the public dissemination of a schedule of prices by one defendant which will serve as the basis from which each will charge identical prices. This provision is viewed by the Department as necessary to break the pattern of identical price levels that has existed since 1963, which pattern would be likely to continue in the future even without such practices as price protection unless strict measures are undertaken to limit the amount of information available to each defendant concerning the other's prices.

In addition to the 1963 price book, General Electric's public statements concerning its pricing policies provided essential information that permitted Westinghouse to anticipate the prices, terms and conditions, and performance guarantees that General Electric would offer on individual transactions. These public policy statements enabled Westinghouse to charge prices and offer terms and conditions and performance guarantees consistent with those announced by General Electric with confidence that it would not be undercut by General Electric. To eliminate the certainty and confidence created by the public policy announcements of each of the companies, Section 2(f) has been included in the proposed modification. Thus Section 2(f) (i) enjoins each defendant from communicating to any person not employed by it a policy regarding negotiation or bargaining involving the price or terms and conditions of large turbine-generators. This will prevent the announcement, generally or to individual customers, of a policy of equal treatment or non-negotiation. Section 2(f) (ii) enjoins the communication of any policy regarding performance guarantees, thus precluding an announcement such as that made by General Electric in 1963 that all guaranteed heat rates would be calculated by using certain published formulas. Section 2(f) (iii) enjoins the communication of any policy regarding negotiation or bargaining with respect to the price of spare parts.

Section 2(f)(iv) enjoins the communication of any policy regarding the use of a formula or system for pricing large turbine generators. As is discussed above, General Electric's 1963 price book contained several formulas which simplified the computation of the prices of all large turbine generators but which did not directly reflect the changes in cost incurred in manufacturing turbine generators of different sizes or configurations. This use of formulas enabled each manufacturer, despite different costs and designs, to charge substantially identical prices for turbine generators of the same size and configuration. Prevention of the communication of any policy regarding formulas or systems to be used in computing prices will prevent the reinstatement of a simplified pricing system equally applicable to the turbine generators of each defendant.

Section 2(f)(v) prevents the communication of any formula or system for pricing large turbine generators to individual customers in bids because of the likelihood that each defendant would soon learn that such pricing formulas were being used by the other even without a public announcement. The only exceptions to Section 2(f)(v) are price escalation formulas to adjust prices to reflect changes in costs or other economic indices between the date of order and the date of delivery and the formula implicit in a cost-reimbursement contract. Neither of these formulas makes sufficient information available to each defendant from the other to enable a simplified method of pricing, leading to identical prices, to be used by both defendants.

Section 2(f)(vi) enjoins each defendant from communicating any change in the price of a large turbine generator. This prevents the defendants from making industry-wide announcements of price changes. However, Section 2(f)(vi) permits each manufacturer to communicate to a specific customer a change in a price previously furnished to that customer for a particular large turbine generator. This permits the defendants to inform their individual customers of price changes in the course of individual discussions or negotiations regarding the purchase of a large turbine generator.

Section 2(g) of the proposed modification enjoins each defendant from distributing or revealing to any person not employed by the defendant prices, terms and conditions of sale, exhaust end loading limits, and performance guarantees for large turbine generators. This provision is designed to prevent the public disclosure of these types of information by the defendants even if not in price book form. However, the provision specifically provides that the defendants may convey to a specific customer any information necessary to respond in good faith to a request from such customer to bid on, or to engage in negotiations regarding, the purchase of large turbine generators, or to respond in good faith to a request from a customer for information in connection with discussions regarding the purchase of large turbine generators. These exceptions to the general principle of nondisclosure of price information embodied in this modification recognize the necessity of disclosing such information to customers in the conduct of commercial affairs. However, these exceptions also emphasize that only that information which the defendants view in good faith as necessary to respond to the request of a customer for information may be disclosed to the customer.

Section 2(h) of the proposed modification enjoins the defendants from expressing the price of a large turbine generator in terms of a multiplier or percentage of a book or list price. The device of a published multiplier has been used to facilitate the communication of price changes from one manufacturer to the other. As a result, this pro-

vision is designed to eliminate the expression of any multiplier to customers so that the size of price level changes by one of the defendants will not be easily discernible by the other. The use of a publicly stated multiplier is also objectionable because internal book or list prices may become known by the expression of the actual bid price in terms of another price, which is likely to be a book price, and a multiplier. Expressing an implicit multiplier by the device of relating or comparing two prices is also enjoined by the modification.

Section 2(i)(a) of the proposed modification enjoins the communication to any person not employed by the defendants of any compilation of outstanding bids or quotations for the sale of large turbine generators for a period of five years from the date such bids or quotations are made. Section 2(i)(b) similarly enjoins the communication of the prices and terms and conditions of sale quoted on past transactions involving the sale of large turbine generators for a period of thirty months. The publication of lists of outstanding quotations and the price level at which such quotations were made was an important feature of the plan to maintain equal prices between the defendants on all transactions. When price levels were changed, the publication of such a list enabled each defendant to signal that it had bid each transaction on that list at the old price level, and similarly that it would bid the new price level on all other transactions. Thus, this provision is designed to prevent the communication of such a list of the customers bid at past price levels and the prices paid. In addition, the prohibition on the communication of prices on past transactions serves to prevent the dissemination of price information from which one defendant's internal price book or price system could be discerned by the other. Finally, the provision prevents the communication of a policy of equal pricing through the device of printing a list of past prices from which a pattern of equal prices may be observed.

Section 2(j)(i) of the proposed modification enjoins each of the defendants from using or retaining any price book, price list or compilation of prices prepared by the other since 1963. This provision is designed to prevent each of the defendants from being able to refer in any way to the other's past or future price books or any pricing system contained therein and thus to ensure that future turbine-generator pricing will not merely be a continuation of past practices.

Section 2(j)(ii) enjoins each of the defendants from using or retaining any price book prepared after the effective date of the modification by any manufacturer of large turbine generators other than itself. This measure is designed to prevent restoration of a system of identical prices based on a third manufacturer's price list.

Section 2(k) of the proposed modification enjoins each of the defendants from examining or receiving any document prepared by the other, or a copy thereof, which includes prices, or terms and conditions of sale, or performance guarantees for large turbine generators. This provision is designed to prevent either of the defendants from reconstructing the other's schedule of prices or any system of pricing by preventing each from obtaining precise information as to the prices bid or offered on individual transactions by the other. However, one specific exception to the injunction against examination by one defendant of documents prepared by the other has been included in the modification. A representative of one defendant may view a bid prepared by the other, at the option of the customer and prior to the award of the order, solely for the purpose of verifying, in good faith, a repre-

sentation made by a customer or its agent concerning the content of the second defendant's bid. This exception to Section 2(k) has been included in the modification to permit a customer, in an attempt to obtain a more favorable offer from the defendant, to disclose to one defendant the bid of the other.

Section 2(k) contains a second proviso that allows a defendant to exercise its right to challenge a successful bid of the other defendant under public procurement law. However, this can be done only by independent counsel and technical personnel who cannot communicate the contents of the bid to any employee of the defendant challenging its legality.

Section 3 permits the disclosure of price information under certain circumstances. Section 3(a) permits each defendant to convey price information if required to in the course of a proceeding in a court, legislative body or administrative agency. Section 3(b) enables the defendants to convey information regarding price to agents retained by them for a legitimate purpose as long as the defendants secure a legally binding commitment from such agents not to publish or reuse such information. Section 3(c) permits the defendants to use or convey price information in connection with the rendering of legal advice. Section 3(d) makes clear that defendants are permitted to respond to competition by changing prices or terms and conditions of sale furnished to a customer in a manner otherwise consistent with the provisions of the decree.

Section 3(e) permits the defendants to comply with contractual commitments to any customers undertaken prior to the effective date of the modification which involve the expression of price in terms of past price books and multipliers, or in terms of other formulas established prior to the effective date of the modification for computing prices or performance guarantees for large turbine generators. This provision permits activities otherwise forbidden by the proposed modification but required by contracts already entered into. The Department believes that it is unlikely that future competitive conditions will be adversely affected by defendants' use of price books, multipliers, or other formulas established prior to the effective date of this modification for the sole purpose of complying with contractual commitments made prior to the effective date of this modification.

Section 4 of the proposed modification requires each of the defendants to retain in its files the calculations involved in the computation of a price for a large turbine generator, or in the preparation of any price book for large turbine generators for a period of five years after such computation or preparation. This provision provides a record against which to check reports of identical pricing in future large turbine generator transactions.

Section 5 of the proposed modification is designed to provide a method of controlling the unauthorized dissemination of price books in two ways. First, it establishes a system to control the distribution of price books internally by requiring each book to be numbered, and all transfers of the book to be recorded in a log. Second, it provides that all price books prepared after the effective date of this modification bear a warning to all persons possessing such books to the effect that distribution of such books to persons not employed by the defendants will constitute a violation of the modified final judgment and be punishable as contempt of court.

Section 6 provides that the modification shall terminate fifteen years from its effective date, except that Section 2(a) shall terminate in twenty-five years and Section 2(k)

in ten years. The government might reconsider these time limits in the light of substantial changes in circumstances and their implications for the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

This modification may not be used in private litigation as prima facie evidence, pursuant to Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), that the antitrust laws have been violated. However, the right of potential private plaintiffs to bring suit for damages or injunctive relief arising from any violations of the antitrust laws occasioned by the defendants' conduct is not affected by the filing of this proposed modification.

V. PROCEDURES AVAILABLE FOR COMMENT ON THE PROPOSED MODIFICATION

This proposed modification is subject to a stipulation between the parties that the United States may withdraw its consent to it at any time within 60 days of the filing of the modification with the Court. Any person so desiring may submit written comments relating to the proposed modification for consideration by the United States to Mr. John W. Clark, United States Department of Justice, Antitrust Division, Washington, D.C. 20530. The Department of Justice will consider all such comments received.

VI. ALTERNATIVES TO THE PROPOSED MODIFICATION ACTUALLY CONSIDERED BY THE UNITED STATES

During the early stages of the government's investigation, it was determined not to pursue a criminal indictment against GE or Westinghouse because of the absence of covert, direct communication or other similar conduct traditionally associated with criminal sanctions.

Proposals actively considered by the United States consisted of the possibility of filing either a civil contempt petition alleging a violation of the 1962 consent decrees or a de novo § 1 Sherman Act civil case. Initiating a contempt action was rejected primarily because of the uncertainty that adequate relief would be available in such an action.

The filing of a civil action which alleged a violation of § 1 of the Sherman Act by GE and Westinghouse and which sought specific relief appeared to be the most appropriate and efficient way to remove the anti-competitive practices in the sale of turbine-generators revealed in the government's investigation. Accordingly, as is customary, GE and Westinghouse were informed of the government's intent to file a civil action seeking certain specific relief. GE and Westinghouse reacted to the government's decision by offering to accept the proposed relief, provided that the government forego the filing of a suit, and, instead, proceed by modifying the 1962 consent decrees to incorporate the desired relief provisions.

GE and Westinghouse offered several arguments in support of the decree modification alternative. First, both argued that the public exchange of competitive information had been explicitly allowed by the 1962 consent decrees. However, as discussed above, the decrees prohibited price-fixing agreements in any form. Otherwise permissible activity can be challenged if it is intended to and does violate the law, and the Department believes that public communication of competitive intentions and related information between competitors with the intent to restrain competition can be the basis for an illegal agreement under the Sherman Act.

Second, both firms argued that a de novo Sherman Act case or a contempt petition would be a novel application of the Sherman Act, since only indirect, public communication would have been alleged as the means of reaching an unlawful agreement. Inequity would result, it was argued, because the Department has been generally aware of the firms' behavior for some time. This contention has merit to the extent that the government would have relied exclusively upon public communication as the means by which the alleged unlawful agreement was reached. On the other hand, the case also would have involved evidence showing the intent of both parties and the effect that their behavior had in the turbine-generator market.

Finally, in support of the modification request Westinghouse argued that the mere filing of a government lawsuit, even one that Westinghouse regarded as without merit, would give rise to a public prejudgment of the issues that could incite what, in Westinghouse's opinion, would be a wave of groundless private antitrust suits. This, in conjunction with very large outstanding damage claims against it arising out of uranium supply contracts, would, according to Westinghouse, cast doubt upon Westinghouse's financial standing. As a result, Westinghouse argued, potential customers and lenders might well refrain from dealing with Westinghouse, which in turn could threaten its ability to remain a factor in the turbine generator business.

The government decided to take this course primarily because GE and Westinghouse offered to provide the relief desired by the government without the delay, risk, and cost of litigation. It was also influenced by other related factors including the unique nature of the case and the fact that the purpose of a civil suit is to obtain equitable relief, and not to punish wrongdoing. The government further was influenced by the Westinghouse situation: while the government was not convinced that what Westinghouse predicted would in fact happen, it recognized that this could happen. If it did, the filing of the government's civil case would have helped to create a domestic turbine generator monopoly.

This is a highly unusual situation, involving relationships with other litigation in a context of a two-firm industry. The government could avoid the risk, and receive the same relief, by pursuing the decree modification. Such an alternative would not have been considered had the government determined that the conduct involved justified criminal prosecution, for then the government would have had no equally satisfactory alternative. Nevertheless, the government advised the parties that in the event that their agreement to a decree modification could not be obtained by December 9, 1976, a complaint would be filed. Furthermore, the parties were advised that although the provisions of the Antitrust Procedures and Pen-

alties Act do not apply to a decree modification situation, a memorandum would be published and some or all of the notice provisions contemplated by the Act would be followed.

GEORGE A. HAY,
HENRY A. EINHORN,
MARK B. COHEN,
Economists, Department of Justice.
MARK P. LEDDY,
VINCENT ALVENTOSA,
FRANCIS P. NEWELL,
RENE A. TORRADO, JR.
JOHN W. CLARK,
Attorneys, Department of Justice.

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

Civil No. 28228

United States of America, Plaintiff, v. General Electric Company and Westinghouse Electric Corporation, Defendants.

COMMENTS AND RESPONSES THERE TO RELATING TO THE PROPOSED MODIFICATION BY CONSENT OF THE FINAL JUDGMENTS OF OCTOBER 1, 1962

The United States, by its attorneys, hereby files with the Court the submissions of the persons identified below, which constitute all comments and pleadings received by the United States relating to the Proposed Modification by Consent of the Final Judgments of October 1, 1962 in the above action. Appended to each comment or pleading is the response of the United States. A copy of each response has been mailed to the person submitting the corresponding comment or pleading.

1. Comment of Maynard Human on behalf of Western Farmers Electric Cooperative.
2. Comment of W. S. Lee on behalf of the Duke Power Company.
3. Comment of Jesse Mock on behalf of Electrical Week.
4. Comment of Herbert S. Sanger, Jr., Esq. on behalf of the Tennessee Valley authority.
5. Comment of Michael P. Graney, Esq. on behalf of Columbus and Southern Ohio Electric Company.
6. Petition of Philadelphia Electric Company for Leave to Participate as *amicus curiae*.
7. Comment of Ralph W. Brenner, Esq. on behalf of Commercial Machine Works.
8. Comment of Rafael Betancourt, Esq. on behalf of the Puerto Rico Water Resources Authority.
9. Objections of Richmond Power & Light of the City of Richmond, Indiana.
10. Application of Appalachian Power Company, Indiana & Michigan Power Company, Kentucky Power Company and Ohio Power Company ("AEP") to Appear as *amicus curiae*.
11. Comment of Berlack, Israels & Liberman filed in conjunction with the following utilities:

<i>Company</i>	<i>Counsel</i>
Atlantic City Electric Co.....	Lloyd, Megargee, Steedle & Connor; Henry P. Megargee, Jr., Esq.
Boston Edison Co.....	Dale Stoodley, Esq.
Central Hudson Gas & Electric Co.....	Gould & Wilkie; Walter Bossert, Esq. and Diane Danbeck, Esq.
Central Vermont Public Service Corp.....	Donald L. Rushford, Esq.
Cincinnati Gas & Electric Co.....	William J. Moran, Esq.
Consolidated Edison Co. of New York, Inc.....	Walter A. Morris, Jr., Esq. and Samuel Lerner, Esq.
Consumers Power Co.....	O. K. Petersen, Esq.
Dayton Power & Light Co.....	J. R. Newlin, Esq.

<i>Company</i>	<i>Counsel</i>
General public:	Berlack, Israels & Liberman: James B. Liberman and Douglas E. Davidson, Esq.
Utilities Corporation.....	
Jersey Central Power & Light Co.....	
Metropolitan Edison Co.....	
Pennsylvania Electric Co.....	
Iowa Power & Light Co.....	Lynn K. Vorbrich, Esq.
Long Island Lighting Co.....	Edward M. Barrett, Esq.
New England Electric System:	Richard B. Dunn, Esq. and Pasco Gasbarro, Jr., Esq.
Massachusetts Electric Co.....	
The Narragansett Electric Co.....	
New England Power Co.....	
Granite State Electric Co.....	
New York State Electric & Gas Corp.....	Huber Magill Lawrence & Farrell: Edward F. Huber, Esq. and Francis I. Fallon, Esq.
Northeast utilities:	Day, Berry & Howard: Gerald Garfield, Esq. and Richard M. Reynolds, Esq.
The Connecticut Light & Power Co.....	
The Hartford Electric Light Co.....	
Western Massachusetts Co.....	
Pacific Gas & Electric Co.....	Philip A. Crane, Jr., Esq.
Pacific Power & Light Co.....	Rives, Bonyhadi, Drummond & Smith: George D. Rives, Esq. and George K. Meier III, Esq.
Public Service Electric & Gas Co.....	Frederick M. Broadfoot, Esq. and Roger Nelson, Esq.
Public Service Co. of Colorado.....	Kelly, Stansfield & O'Donnell: Bryant O'Donnell, Esq. and Robert S. Gast, Jr., Esq.
Southern California Edison Co.....	Rollin E. Woodbury, Esq. and Robert J. Cahall, Esq.
Virginia Electric Power Co.....	Hunton & Williams: Evans B. Brasfield, Esq.

12. Comment of C. Hayden Ames, Esq., on behalf of San Diego Gas & Electric Company.

13. Comment of Robert A. Buettner, Esq., on behalf of Southern Company Services, Inc.

14. Comment of O. K. Petersen on behalf of Consumers Power Company.

15. Comment of Kimba Wood Lovejoy on behalf of: Maine Yankee Atomic Power Co., Middle South Utilities, Inc., Niagara Mohawk Power Corp., Orange & Rockland Utilities, Inc., and Potomac Electric Power Co.

16. Comment of Richard B. Dunn, Esq., and Pasco Gasbarro, Jr., Esp., on behalf of New England Power Service Company.

17. Comment of John O. Noel on behalf of Illinois Power Company.

18. Comment of Charles E. Robson, Esq., on behalf of Carolina Power & Light Company.

19. Comment of Milton Handler, Esq., on behalf of Appalachian Power Company, Indiana & Michigan Power Company, Kentucky Power Company and Ohio Power Company, which are operating subsidiaries of American Electric Power Company, Inc.

20. Comment of Lewis R. Bennett, Esq., on behalf of the Power Authority of the State of New York.

21. Comment of Harold E. Kohn, Esq., on behalf of Philadelphia Electric Company.

Dated: March 15, 1977.

JOHN W. CLARK,
Attorney, Department of Justice.

MARK LEDDY,
RENE A. TORRADO, JR.,
VINCENT ALVENTOSA,
FRANCIS P. NEWELL,
Attorneys, Department of Justice.

CERTIFICATE OF SERVICE

This is to certify that the undersigned served the attached submissions by interested persons and responses thereto by the plaintiff on the attorneys of record for defendants by hand.

Ira M. Milstein, Esq., Weil, Gotshal & Manges,
767 5th Ave., New York, N.Y. 10022.
Alan J. Hruska, Esq., Cravath, Swain & Moore,
1 Chase Manhattan Plaza, New York, N.Y.
10005.

Dated: March 15, 1977.

VINCENT ALVENTOSA,
Attorney, Department of Justice.

DUKE POWER COMPANY
POWER BUILDING, BOX 2176, CHARLOTTE, N. C. 28224

WILLIAM S. LEE
RECEIVED BY TELETYPE

the extent that utility purchasing executives wish to engage in this method of purchasing.

The proviso does permit each company, under very limited circumstances, to see pricing information prepared by the other. This may create the danger that the exchange of pricing information in bids will lead to price stability. However, the Department believes that the narrowness of the exception created by the proviso minimizes this danger. As noted above, disclosure of one company's bid to the other is completely in the discretion of the customer, who presumably will not make such disclosures unless it believes that price concessions will result. Additionally, any viewing of one company's bid by the other must be solely for the purpose of verifying specific representations concerning that bid by the customer. Thus, only those specific portions of a manufacturer's bid which have been the subject of representations by a customer may be viewed by the competing manufacturer. Any information so viewed can not be used for any purpose other than to verify those representations.

It should again be stressed that disclosure of the limited sort permitted by this section is solely in the discretion of the utility customer. Consequently, any ethical or equitable issues raised by the disclosure of the content of one competitor's bid to another would seem to be completely within the control of utility purchasing executives.

Thank you for the benefit of your views in this matter.

Sincerely yours,

John W. Clark
Acting Chief, Special Trial Section
Antitrust Division

January 18, 1977

Mr Rene A Torrado, Jr.
U S Department of Justice
Washington, D C 20530

Re: Modification of Turbine-Generator Decrees
JWC:EAT, 62-30-17

Dear Mr Torrado:

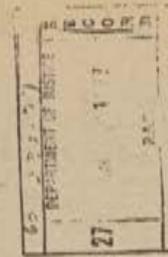
Referring to your letter of December 20, we have no specific comments on the modification of turbine-generator decrees. As a general thought, we are concerned that very tight constraints on the furnishing of technical and performance information will so encumber communications as to make our planning process more difficult and expensive.

Sincerely,



W S Lee

WSL/s



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Only in the
Division of Federal
and State in United States

JSC
60-230-77

March 11, 1977

Mr. William S. Lee
Executive Vice President
Duke Power Company
Power Building
Box 2178
Charlotte, North Carolina 28242

Re: Proposed Modification of Consent Decrees
in United States v. General Electric Co.,
et al., Civil No. 26228 (E.D. Pa.)

Dear Mr. Lee:

The Antitrust Division has received your letter of January 16, 1977 concerning the Proposed Modification of the Final Judgments entered October 1, 1962 in United States v. General Electric Company, et al., Civil No. 26228 (E.D. Pa.). You expressed some concern that the restraints on the communication of information found in the Proposed Modification could make the planning process of your utility more difficult and expensive.

In our Memorandum in Support of the Proposed Modification, we described the events and practices which we believe constituted an agreement between General Electric and Westinghouse to eliminate price competition in the sale of large turbine-generator units. That agreement, we said, was the result of a public exchange of price and other information intended as assurances that neither firm would cut prices. It was therefore essential in our view, that General Electric and Westinghouse be prohibited from maintaining or resuming this agreement in the same way in the future. This led to the injunctive provisions barring the general disclosure of price and other information.

During the process of formulating these injunctive provisions, the Antitrust Division was aware of the utilities' legitimate need for certain information for planning purposes. We sought to accommodate this need in the proviso to section 2(g), which permits each manufacturer to convey:

information necessary to respond in good faith to a request from a customer or his agent for information in connection with discussions regarding the purchase of one or more large turbine-generators by that customer.

This proviso is intended to allow a potential purchaser to receive whatever information it requires in connection with discussions regarding its purchase of a large turbine generator. The defendants can comply with a request for such information so long as that response is made "in good faith".

We recognize that the general ban on disclosure will compel some adjustment in the market by utilities as well as by the defendants, and that it could, at least initially, have the effect of complicating the planning process of some utilities. (Our investigation did reveal that a number of utilities had customarily obtained planning information directly from the manufacturers and thus had not relied on published information.) But we do not believe that the injunctive provisions will significantly affect either the cost or the length of the planning process. Further, we would expect that whatever additional cost or time that may be involved will be offset by the benefits of price competition in this industry.

The Antitrust Division appreciates your comments on the Proposed Modification.

Sincerely yours,

JOHN W. CLARK
Acting Chief, Special Trial Section
Antitrust Division

ELECTRICAL WEEK
1275 Avenue of the Americas
New York, New York 10020

January 21, 1977

Mr. John W. Clark
Chief of the Special Trial Section,
Antitrust Division
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Clark:

These comments relate to the proposed modification of the consent decree entered into by General Electric and Westinghouse (Civil No. 39278) as announced Dec. 10, 1976, by your department.

My name is Jesse Meek. I am editor of Electrical Week, a McGraw-Hill weekly newsletter providing news and commercial and technical information to the electric utility industry worldwide, the suppliers of goods and services to that industry, the regulators of that industry, and the consultants, associations, and portions of the financial community which have an interest in the electric utility industry.

While recognizing the unusual nature of the situation which the consent-decree modification seeks to change, I contend that the proposed modification as presently written and already agreed to by General Electric and Westinghouse could have a debilitating effect on the news media -- and particularly that segment of the media specializing in the heavy electrical industry. Specifically I contend that the proposed consent decree modification would:

1. Deprive me and other news persons similarly situated of vital news sources within the General Electric and Westinghouse organizations by subjecting such sources to contempt of court actions for conveying information or material relating not only to the prices of large steam turbine generators, but also even to a description of the performance guarantees of such units or the terms of sale.

2. Deprive Electrical Week and other news media of subscribers within the General Electric and Westinghouse organizations by prohibiting such subscribers from receiving or examining any document prepared or distributed by the other relating to prices, terms of sale or performance guarantees and by prohibiting such subscribers from "using or retaining a... compilation of list or book prices or standard terms and conditions for the sale of large turbine-generators" prepared by any manufacturer in the world.

3. Have a chilling effect on the gathering and dissemination of commercial information on numerous other products such as hydraulic turbines and generators, combustion turbine-power plants, direct-current transmission equipment, power transformers, and even distribution transformers where less than half a dozen manufacturers dominate the domestic market for each product. For if the stringent conditions of the proposed consent-decree modification can be applied to a product area dominated by two manufacturers today, then why not apply such conditions to a product area dominated by three or four tomorrow? And then by five or six the next day? And if we are deprived of subscribers in General Electric and Westinghouse by this consent decree modification, then what is to prevent us from being eventually crushed financially by the forced exit of larger numbers of our subscribers in other corporations?

My contention regarding the deprivation of news sources and vital information is based particularly on sections 2.(f)(vi) and 2.(g) and 2.(i) of the modification. My contention regarding the deprivation of subscribers is based particularly on sections 2.(j)(1) and (ii) and (iii) and 2.(k) of the modification.

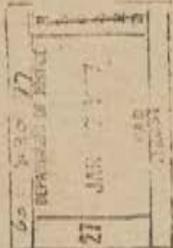
On the face of it, all "officers, agents, and employees" of Westinghouse and GE would be prohibited from "using or retaining" and "receiving or examining" any material relating to the price or terms of sale of the competing manufacturer -- even though such material might be gathered by a publication such as Electrical Week from public bidding and published as a routine news story.

In summary, it appears to me that the Antitrust Division, perhaps unknowingly, would severely restrict the free flow of legitimate news and deprive news publications of subscribers (and thus, revenue) -- thus violating the Constitution and the long-respected traditions of our society.

Sincerely,

Jesse Meek
Jesse Meek
Chief Editor

JW:sp





UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Envelope and Number

JWC
60-230-77

March 11, 1977

Mr. Jesse Mock
Chief Editor
Electrical Week
1221 Avenue of the Americas
New York, New York 10020

Dear Mr. Mock:

This is in response to your letter of January 21, 1977 in which you stated your views concerning the Proposed Modification of the Final Judgments entered October 1, 1962 against the General Electric Company and Westinghouse Electric Corporation.

In your letter you indicate that Electrical Week's First Amendment rights will be infringed by the injunctive provisions of the Proposed Decree which relate (1) to the publication of prices and other commercial information by General Electric and Westinghouse and (2) to the viewing of documents relating to prices and other commercial information prepared by one manufacturer by persons employed by the other manufacturer. Specifically, you contend that these injunctive provisions will deprive Electrical Week of sources of commercial news within GE and Westinghouse and will also deprive Electrical Week of subscribers. Furthermore, you contend that the existence of the Proposed Modification will have a chilling effect on the gathering and dissemination of commercial information relating to other electrical products because of the possibility that similar injunctive provisions may at some point in the future apply to manufacturers who produce these other electrical products.

The Government's position is that the Proposed Modification, while it may impact on Electrical Week to some extent, does not violate Electrical Week's First Amendment rights.

At the outset it should be noted that GE and Westinghouse have consented in the Proposed Modification to waive for a limited period of time any First Amendment rights they might have to publicly express prices or other commercial information. The Supreme Court has stated that "freedom of speech presupposes a willing speaker." Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 44 L.W. 4686, 4688 (1976)(May 24, 1976). By voluntarily agreeing to forego communicating commercial information publicly, GE and Westinghouse have become unwilling speakers with respect to this type of speech. Therefore, no freedom of speech issue arises for either GE or Westinghouse or for any potential receivers of information from the two companies because of the consensual nature of the modification and the voluntary limitation by the manufacturers of their speech.

Additionally, consideration of the purpose of the Modification leads to the conclusion that the injunctive provisions contained therein would be constitutionally valid absent the consent of GE and Westinghouse.

As we explained in our Memorandum in Support of the Modification, we believe that General Electric and Westinghouse reached an agreement to fix the prices and other commercial terms and conditions of large turbine-generators through public expressions of prices, price changes, future pricing intentions, and other commercial information. We believe that the dissemination of this information by each manufacturer was intended to, and did, assure the other that identical prices and other commercial features relating to large turbine-generators would be established by both companies and thus that competition between the two companies would be eliminated.

Under these circumstances, the Government was prepared to bring a civil suit against General Electric and Westinghouse. The suit would have asked the court to declare the conduct outlined above to be illegal under the Sherman Act and to enjoin the firms from continuing it and any similar conduct that eliminated competition between them. While GE and Westinghouse did not believe that their conduct was illegal, a lengthy lawsuit was avoided by agreement between the parties to modify the 1962 consent decree to incorporate all of the specific injunctive provisions that the Government would have sought in a lawsuit. It is to these provisions,

which are designed to prevent the continuation of a violation of the antitrust laws which the Government believes has existed since 1963, that Electrical Week objects.

It is well settled that the First Amendment does not prohibit an injunction against speech when the speech used is an integral part of conduct which violates a valid statute. *Giboney v. Empire Storage and Ice Company*, 336 U.S. 490 (1949). Here, the manufacturers' speech, i.e., announcements of price lists, price changes, future pricing intentions and other commercial announcements, was, in the Government's view, intended to be the means by which illegal conduct -- price fixing in violation of the Sherman Act -- would be accomplished. Thus, the dissemination of price and other commercial information may constitutionally be enjoined as speech used as an integral part of conduct in violation of a statute.

It is also well settled that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally. *Pell v. Procunier*, 417 U.S. 817, 833-834 (1974); *Saxe v. Washington Post*, 417 U.S. 843, 850 (1974); *Brandenburg v. Hayes*, 408 U.S. 662, 684 (1972). Since GE and Westinghouse may constitutionally be prohibited from continuing their conduct by publicly expressing prices and other commercial information, the public generally has no right to receive such information. The Supreme Court has stated that "it would be frivolous to assert . . . that the First Amendment, in the interest of receiving news or otherwise, confers a license on either the reporter or his news source to violate valid criminal laws." *Brandenburg v. Hayes*, 408 U.S. 665, 691 (1972). Consequently, Electrical Week has no right of special access to GE and Westinghouse as sources.

You also contend that the Proposed Modification will cause Electrical Week to lose subscribers within GE and Westinghouse. You contend that this loss of subscribers will occur because each manufacturer's personnel are prohibited under section 2(k) from receiving or examining information prepared by the other relating to the price or terms of the other's large turbine generators. While this provision may prohibit either GE or Westinghouse from examining an account in Electrical Week which describes a bid submitted to a utility from the other, it is highly speculative to conclude that many subscribers within the two

companies will cancel their subscriptions. That conclusion assumes that there is no information in Electrical Week that is of use or interest to GE and Westinghouse personnel other than analyses of large turbine-generator bids. In any case, the Supreme Court has stated that "it is clear that the First Amendment does not invalidate every incidental burdening of the press that may result from the enforcement of civil or criminal statutes of general applicability."

Brandenburg v. Hayes, 408 U.S. 665, 682 (1972). This potential loss of subscribers is just such an incidental burden that does not affect Electrical Week's right to publish what it sees fit.

Finally, you contend that Electrical Week may potentially lose subscribers, and presumably sources of information, in companies which manufacture other heavy electrical equipment, if similar injunctive provisions are entered against such companies. First, it must be said that the unilateral publication or dissemination of commercial information by a manufacturer, standing alone, is not an antitrust violation and would not subject that manufacturer to an antitrust suit. Therefore, a manufacturer would only be subject to an antitrust suit and injunctive provisions similar to those involved here if it were discovered that public commercial communications were an integral part of a course of conduct intended to violate the antitrust laws. It is highly speculative, then, that any other electrical equipment manufacturer will be subject to the same types of provisions in the future.

We are sympathetic to the concerns you have expressed. Publications such as Electrical Week provide an important, and often procompetitive, service to industry. For the reasons stated above, we believe that the Proposed Modification will not affect in any significant way the operations of your publication, nor will it abridge your First Amendment rights.

Thank you for the benefit of your views in this matter.

Sincerely yours,

JOHN W. CLARK
Acting Chief, Special Trial Section
Antitrust Division

TENNESSEE VALLEY AUTHORITY
KNOXVILLE, TENNESSEE 37902

JAN 31 1977

John W. Clark, Esq.
Chief of the Special Trial Section
Antitrust Division
United States Department of Justice
Washington, D.C. 20530

Re: United States v. General Electric
Company, et al.
Civil Action No. 28228
Eastern District of Pennsylvania

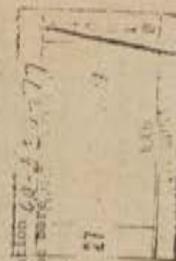
Dear Mr. Clark:

This is with reference to the proposed Modifications By Consent of Final Judgments entered October 1, 1962. In the above case, which were filed by the United States, Westinghouse, and General Electric Company, together with a supporting memorandum prepared by the United States. If they become effective, the proposed modifications will regulate the marketing practices and policies of GE and Westinghouse with respect to turbine-generators.

The Tennessee Valley Authority is a Federal agency and, pursuant to the Tennessee Valley Authority Act of 1933, 48 Stat. 58, as amended, 15 U.S.C. §§ 831-831dd (1970; Supp. V, 1975), we operate the Nation's largest electric power system which serves an 80,000 square mile power service area covering portions of 7 states and containing almost 7 million persons. To serve the needs of our consumers, we operate over 60 large steam turbine-generators at 12 coal-fired steam plants and 1 nuclear plant. We also have, in various stages of design and construction, 7 other nuclear plants which will employ 14 more turbine-generators.

Although antitrust policy and the enforcement of the antitrust laws involve issues which go beyond our areas of responsibility, as a major purchaser of turbine-generators, we wish to make a few comments concerning the proposed modifications.

On page 25 of the Justice Department's memorandum in support of the modifications, it is stated:



Finally, in support of the modification request Westinghouse argued that the

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filing of a government lawsuit, even one that Westinghouse regarded as without merit, would give rise to a public prejudice of the issues that could incite what, in Westinghouse's opinion, would be a wave of groundless private antitrust suits. This, in conjunction with very large outstanding damage claims against it arising out of uranium supply contracts, would, according to Westinghouse, cast doubt upon Westinghouse's financial standing. As a result, Westinghouse argued, potential customers and lenders might well refrain from dealing with Westinghouse, which in turn could threaten its ability to remain a factor in the turbine generator business.

The memorandum goes on to indicate that in agreeing to the proposed modifications, the Government was influenced by this argument.

The argument is not a new one for Westinghouse. On May 23, 1963, the United States and TVA entered into an agreement with Westinghouse in effect compromising our claims against it in 10 related antitrust actions (Civil Action Nos. 28379, 28488, 28489, 28490, 31731, 28491, 28492, 28493, 31730, and 31732, in the Eastern District of Pennsylvania) which arose out of the same anticompetitive practices which formed the basis for the Government's complaint in the action in which the present modifications are proposed. Paragraph 6 of that settlement agreement read:

6. Westinghouse represents, and has furnished US with detailed financial information in support thereof, that the payment of sums in an amount greater than the total amount payable under this Agreement, together with the payments which Westinghouse anticipated it would have had to make in disposing of the private damage suits filed against it, could have seriously impaired the effectiveness of Westinghouse as a competitive factor in those branches of the electrical equipment industry in which it is engaged.

At the present time, Westinghouse is again advancing that same argument in the litigation TVA and numerous other electric generating organizations have pending against it following Westinghouse's attempted

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reputation of its contractual obligation to fully perform its contracts to supply fuel for the operation of nuclear generating equipment purchased from it.

In this connection, we were interested to see that The Wall Street Journal reported in its December 22, 1976, article on Westinghouse's consent settlement of charges brought by the Security and Exchange Commission arising out of the company's failure to timely disclose its uranium shortage, that Westinghouse apparently had made the same argument about potentially serious financial harm in its settlement negotiations with the SEC.

It seems to us that this argument may be becoming Westinghouse's standard device for seeking to avoid the consequences of its actions. We also question whether Westinghouse would in fact be lost as a competitor in the turbine-generator industry if the Government pressed its case. In any event, we are not accepting this argument in the pending litigation referred to above, and we felt that we should call the situation to the attention of the Antitrust Division for your consideration in connection with matters that may arise in the future.

We also want to point out to you, as we have discussed with others in the past, that GE and Westinghouse, now the only two domestic turbine-generator manufacturers, have objected to the terms and conditions requested by TVA for the purchase of such equipment. These manufacturers have each informed TVA on several occasions that it is their corporate policy not to sell this type of equipment under a contract, such as TVA demands, that would expose them to liability for damages resulting from delay in delivery of equipment or failure of equipment to perform as specified. The manufacturers have stated that the terms and conditions under which TVA purchases turbine-generators are not required by other power suppliers who purchase such equipment and that, therefore, TVA should not insist on buying turbine-generators on that basis either. Because of the lack of competition in this area, the manufacturers have been free to adopt a "take it or leave it" attitude. This attitude is disruptive of competition; buyers should be able to specify the terms and conditions upon which they wish to buy equipment, and sellers should be willing and able to price their sales accordingly. As you know, price, in large part, is a function of the terms and conditions under which equipment is sold. Because of this problem, we believe

John W. Clark, Esq.

the proposed modifications should clearly specify that each manufacturer shall independently determine the terms and conditions upon which it will sell turbine-generators and that each shall negotiate or bid to reasonable terms and conditions on a case-by-case basis. We are enclosing copies of portions of the Congressional Record which contain an exchange of correspondence among Congressman Robert W. Edgar, TVA, and the manufacturers, setting forth our respective views on this issue.

Finally, we are concerned about the effect the proposed modifications might have on our future purchases of turbine-generators. TVA's purchasing is conducted under the provisions of the TVA Act which provide that, except in certain well-defined situations, all purchases shall be made after advertising. Under our general procedures for advertising, bids are received in response to an invitation to bid that contains the terms, conditions, and specifications of the contract to be awarded. After bids are received, they are opened and read in public. Various provisions of the proposed modifications could inhibit GE and Westinghouse from bidding to TVA invitations for turbine-generators since the bids are opened and read in public. We suggest that the modifications specifically provide that nothing therein is intended to limit or prohibit GE and Westinghouse from bidding in situations such as ours.

We recognize, of course, that our public-bidding procedures could allow the manufacturers to bid with the intention, not of providing TVA the best offer in an effort to obtain the contract, but of establishing a position with other potential purchasers or of signaling their marketing practices and policies to their competitors. Given the fact that our purchase contracts are all publicly available, we do not know how either GE or Westinghouse can be prevented from knowing the other's bid or TVA invitations, although we would be happy to work with you on any reasonable solution to this problem.

If you have any questions, please call us.

Sincerely yours,

Herbert S. Sampet, Jr.
Herbert S. Sampet, Jr.
General Counsel

Enclosures

TENNESSEE VALLEY AUTHORITY
N. AVY, J. TENNESSEE 37902

FEB 2 1977

John V. Clark, Esq.
Chief of the Special Trial Section
Antitrust Division
United States Department of Justice
Washington, D.C. 20530

Re: United States v. General Electric
Company, et al.
Civil Action No. 28128
Eastern District of Pennsylvania

Dear Mr. Clark:

This supplements our letter of January 11.

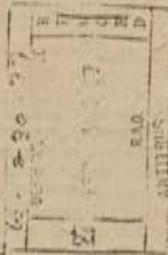
We have just received notice from Westinghouse that it has agreed with the American Electric Power System to settle AEP's claims arising out of the same turbine-generator marketing practices and policies to which the Department of Justice objected. In its news release announcing the settlement, AEP stated:

[I]n waiving claims for damages, the Company took into account, among other things, a statement by the Government in its proposed modifications to the 1962 consent decree to the effect that it was desirous of avoiding a threat to Westinghouse's position as a competitor in the turbine-generator market.

This confirms our suspicion, as we stated in our earlier letter, that this argument is becoming Westinghouse's standard device for seeking to avoid the consequences of its actions.

Sincerely yours,

Herbert S. Sanger, Jr.
Herbert S. Sanger, Jr.
General Counsel



An Equal Opportunity Employer

CONTRACT INVESTIGATION CONTINUES

HON. ROBERT W. EDGAR
(of Pennsylvania)

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 18, 1976

Mr. EDGAR. Mr. Speaker, I recently launched an investigation into circumstances surrounding the awarding of a Tennessee Valley Authority turbine generator contract to the Swiss firm, Brown Boveri. Earlier, I inserted a statement in the Record regarding this problem which I feel if unresolved, could cost thousands of American jobs. Also inserted were copies of the correspondence I exchanged between TVA, and three American manufacturers who were deemed nonresponsive bidders.

The three American companies—General Electric, Westinghouse, and Allis Chalmers—were all interested in obtaining a lucrative TVA turbine generator contract which has a value of nearly \$200 million for four generators, plus options for further purchases. However, the terms of TVA's bid invitation included liabilities for defective products and late delivery at a maximum of 40 percent of the contract price. None of the American companies felt that they could accept penalties of this magnitude. Brown Boveri's offer did satisfy the terms of the bid invitation, and this firm was awarded the contract.

The previous statement concerning my investigation appeared in the daily issue of the Record on page E6607 on December 10, 1975. Since that time, I and my staff have met with the staff of the General Accounting Office and the Subcommittee on Investigations and Review of the Public Works and Transportation Committee for advice and assistance in remedying this apparent stalemate.

Mr. Speaker, the following is a letter which I received from the Chairman of the Board of the Tennessee Valley Authority, Mr. Aubrey J. Wagner, responding to the letters I received from the three American firms. Also is a letter which I wrote to the General Accounting Office raising issues which could help mitigate the effects of confrontation, and transform this into a situation of constructive cooperation with healthy competition:

TENNESSEE VALLEY AUTHORITY,
Knoxville, Tenn., February 2, 1976.

HON. ROBERT W. EDGAR,
The House of Representatives,
Washington, D.C.

DEAR MR. EDGAR: This is in reply to your letter of December 10, 1975, enclosing for our comments copies of letters you received from Allis-Chalmers Power Systems, Inc., General Electric Company, and Westinghouse Electric Corporation, concerning the purchasing procedures involved in our purchase of turbine generators from Brown Boveri Corporation. We appreciate the opportunity to give you our comments on the matters discussed in these letters.

The principal argument advanced in these three letters is that TVA, unlike other purchasers of generating equipment, insists on unreasonable terms and conditions in its contracts which impose unbearable risks on manufacturers. One manufacturer, Westinghouse, characterized TVA's terms and conditions as "penalties." However, rather than being "penalties" the terms and conditions limit the liability that a manufacturer would otherwise have under general principles of law for breach of contract. The fundamental principle of the law of damages is that a party injured by a breach of contract is entitled to fair and just compensation commensurate with the loss sustained as a result of the breach; the injured party is

entitled to recover full indemnity for his loss and to be placed as near as may be possible in the condition which he would have occupied had the contract not been breached.

The turbine generators purchased are for use with nuclear units presently planned by TVA. In the event the contract performance dates for the generators are not met or the generators fail to operate as specified, the damages that will be sustained by TVA will be substantial. Such damages could include loss of generating capacity and the resulting dire consequences, including loss of revenues, inability of TVA to meet its power requirements, and increased power costs. If TVA and a manufacturer were to contract on a basis without the terms and conditions that these manufacturers find onerous and unreasonable, the manufacturer might then, under general principles of law, be liable for the whole of the damages sustained by TVA.

We find the objections of GE and Westinghouse to our terms and conditions difficult to understand since many of their terms and conditions for purchases provide contract obligations that are asserted to be onerous and reasonable in contracts where GE or Westinghouse is the seller and TVA is the purchaser. Moreover, all three manufacturers bid responsively under TVA invitations to bid on other types of equipment where the terms and conditions are substantially the same as the ones complained about for turbine generators. In addition, in the past, TVA has purchased turbine generators under invitations to bid which contained no express limit on special or consequential damages. Under these invitations the matter of special or consequential damages was not addressed and the extent of the contractor's liability for such damages would be ultimately determined by the courts. Westinghouse bid in response to such invitations for a time, but informed TVA prior to the issuance of the invitation to purchase the turbine generators in question that it would not bid responsively unless the invitation contained a complete waiver or liability for special or consequential damages. GE has not bid responsively to invitations of this nature.

We recognize that the imposition on a manufacturer of the total liability which may result from a delay in delivery of the equipment or failure of the equipment to operate properly could be substantial. Accordingly, we have limited the manufacturer's liability and provided for the assumption by TVA of a substantial part of the risks. The manufacturers, however, find these limitations onerous and unreasonable and demand to be released of virtually all liability for the consequences of late delivery or failure of their equipment to operate as specified. In essence, the manufacturers seek to shift to the purchaser the risks that under general principles of law are borne by the manufacturer. However, the manufacturer, rather than the purchaser—TVA, is solely responsible for and in control of the design, quality control, manufacturing schedule, and all other facets of the work required to produce a product within the time and with the operating characteristics promised. Accordingly, it is our view that the manufacturer should bear some responsibility in the event such promises are not fulfilled. Since only the manufacturers can know whether their promises of performance and delivery are promises which they can reasonably be expected to achieve, a complete waiver of all aspects of liability as the manufacturers apparently demand would, in our view, reduce or remove any incentive for them to take the steps necessary to insure that their promises are met. Therefore, TVA feels that allocation of the risks associated with failure of a manufacturer to meet its promised delivery date or

failure of the equipment to perform as promised is proper and equitable. For TVA to assume all the risks would be to act irresponsibly toward its ratepayers who would ultimately bear the total costs associated with a manufacturer's failure to perform as promised.

Westinghouse states in its letter that "In our opinion, penalties for late shipment can be counter productive because they do not reward the manufacturer who has done a good job in shipping on time; rather, they reward the manufacturer who is willing to make promises about the future at a price that cannot possibly recompense the purchaser." We do not agree with Westinghouse's view of the nature of contracts and of the responsibilities for failure to comply with their provisions. The delivery of equipment on the schedule promised in the contract is the very essence of a contract and the manufacturer's reward is the receipt of the full purchase price. Westinghouse's letter also describes "the great interest which Westinghouse has in obtaining business from TVA, and the significant benefits to TVA in selecting Westinghouse above other manufacturers." However, the recent action taken by Westinghouse in repudiating its contracts and obligations to fully perform its nuclear fuel contracts with TVA (and other power suppliers) and the statements concerning contractual obligations made in its letter cannot help but create serious concern about its attitude toward performing its contracts. On the one hand manufacturers insist that they sell their products on terms and conditions dictated by them, which in essence relieve them of virtually all responsibility for the consequences of a defective product or failure to perform the contract by the time specified, while on the other hand some manufacturers simply walk away from their contractual obligations and claim excuse from the performance thereof if a contract once entered into is later not to their liking. It is this kind of situation that TVA and, we are sure, other power suppliers face in attempting to provide an adequate supply of electric power for the Nation at a reasonable cost.

In regard to the argument advanced in the letters that the contractual obligations insisted upon by TVA are not required by other power suppliers, we are not fully aware of the basis on which other power suppliers contract. Stated another way, the manufacturers are saying to TVA that everyone else has acquiesced to our demands, why not you? However, if such a statement is accurate, we feel it is so, not because the utilities choose this to be the case, but because the position of the domestic manufacturers results in substantially similar terms and conditions. Because of the lack of competition in this area, manufacturers are free to adopt a "take it or leave it" attitude. In this regard, the utilities have apparently not been pleased with such an arrangement but have had little success in litigation when attempting to obtain some compensation for the delivery of a defective product. See, for example, *Potomac Elec. Power Co. v. Westinghouse Elec. Corp.*, 385 F. Supp. 572 (D.D.C. 1974); *Royal Indem. Co. v. Westinghouse Elec. Corp.*, 385 F. Supp. 520 (S.D.N.Y. 1974). On the other hand, TVA has successfully enforced the remedies provided in its contracts in situations similar to those in the foregoing cases. TVA's rates are substantially below national averages for electric power supply. While we do not claim that holding manufacturers to limited responsibilities for equipment they produce is the primary reason for TVA's favorable rate situation, it is a factor, and one which we feel is required in carrying out our responsibilities.

The point is also made in the letters that TVA's purchasing procedures are inflexible and that contracts should be negotiated. As you know, TVA was created by and operates under the provisions of the Tennessee Valley Authority Act of 1933, as amended. Section 9(b) of that Act requires that all purchases, except in certain well-defined situations, be made only after advertising. It is a general principle of advertising that all bids, in order to be considered for award of a contract, must be based on the same terms and conditions. Accordingly, TVA cannot award a contract after advertising on the basis of a bid that takes a material exception to the terms and conditions contained in the invitation; nor can TVA negotiate a contract when advertising is required.

The statement is also made that TVA paid a significant price premium to Brown Boveri for the protection afforded by TVA's terms and conditions. This statement is incorrect. Although the bids of General Electric, Westinghouse, and Allis-Chalmers submitted in response to the invitation could not be considered for award of a contract since each took material exceptions to the terms and conditions of the invitation and were thereby nonresponsive, TVA did, for comparison purposes, evaluate all the bids to determine the relative cost of each unit offered. The evaluation took into account unit efficiency, unit size, building costs, terms of payment, and price escalation. The evaluated bid prices were as follows:

Brown Boveri, Model TC6F-52 (7-HTR Cycle), \$193,623,015; Model TC6F-52 (6-HTR Cycle), \$196,892,340.

Westinghouse, Model TC6F-40 (7-HTR Cycle), \$206,062,844; Model TC6F-44 (6-HTR Cycle), \$206,515,637; Model TC6F-44 (7-HTR Cycle), \$203,891,903.

Gen. Electric, Model TC6F-43 (T-HTR Cycle), \$212,230,245.

Allis-Chalmers, Model TC6F-44.6 (6-HTR Cycle), Excessive due to high escalation.

Therefore, on an evaluated cost basis, the cost of four Brown Boveri units was approximately \$7 million to \$10 million less than the cost of four Westinghouse units. In addition, the contract awarded to Brown Boveri contained those terms and conditions which the three domestic manufacturers find unreasonable and onerous. Rather than paying a price premium, TVA contracted for the units at a cost much less than the units of the domestic manufacturers. In addition, the contract is on a basis that provides TVA a measure of protection, not offered by the domestic manufacturers, in the event the units are late in delivery or do not perform as specified.

TVA's position with respect to the Buy American Act and the executive orders and executive policies promulgated thereunder is described in our October 2, 1975, letter. Our experience in contracting with General Electric and Westinghouse is that they frequently acquire from foreign sources major components for inclusion in the equipment or systems sold in the United States. For example, as part of TVA's Browns Ferry Nuclear Plant, General Electric supplied three sets of reactor vessel internals manufactured in Holland, two reactor vessels partially fabricated in Japan, and core spray motor operated valves manufactured in Canada. As part of TVA's Sequoyah and Watts Bar Nuclear Plants, Westinghouse furnished four reactor vessels fabricated in Holland, two sets of reactor coolant loop fittings manufactured in Japan, and numerous steam turbine blades from Japan.

We are happy to add these comments to the ones previously supplied in our letter of October 2, 1975. We feel that competition on turbine generators is desperately needed; however, we also feel that manufacturers should recognize that it is the prerogative of

the purchaser to describe the equipment it wants to buy and the conditions on which it desires to contract. While we recognize that manufacturers do not have to sell their products to a particular purchaser, we think it is the very nature of the sales process for a manufacturer to recognize what the purchaser desires and to price it accordingly. As we stated in our letter of October 2, TVA has modified its terms and conditions in an effort to accommodate the desires of the domestic manufacturers. We hope that these domestic manufacturers will choose to bid responsibly on TVA's future invitations to bid for turbine generators.

We shall be glad to provide any further comments or information you may wish on this matter.

Sincerely yours,

AUBREY J. WAGNER,
Chairman of the Board.

HOUSE OF REPRESENTATIVES,
Washington, D.C. February 17, 1976.

Mr. VINCE GRIFFITH,
Legislative Attorney,
General Accounting Office,
Washington, D.C.

DEAR Mr. GRIFFITH: Thank you for meeting with me on January 20, 1976, to discuss my concerns about the awarding of a TVA turbine generator contract to Brown Boveri.

I received a letter this month from the Tennessee Valley Authority responding to the letters I sent to them from the three American companies that were responsible, although nonresponsive bidders to the TVA invitation. A copy is enclosed for your inspection.

I find it unfortunate that such business by a government agency is conducted by hostile confrontation rather than cooperation. Certainly, there must be a solution which will be better for our unemployment problem, and our nation's taxpayers than the existing situation of awarding a large contract to a foreign manufacturer when domestic firms could do the job. I can see the possibility of compromise, but the refusal of both parties to do so will result in no progress. I can understand the unwillingness of American companies to accept a liability of this magnitude, considering the projects of this complexity often result in delays beyond the reasonable control of the manufacturer. However, the arguments advanced by TVA in support of limiting their own liability also seem reasonable to me.

Could a compromise be for a third party to accept all or part of the liability? Such an organization would have an interest in assuring that liability penalties would be minimized, providing benefits to all parties. Such an organization could be a private firm, or a quasi-governmental corporation, perhaps, established to fulfill the need called for by this stalemate situation which may be costing thousands of American jobs.

I am convinced that the lack of creative action to solve this problem will result in "non-business as usual." The expertise of the General Accounting Office could be very helpful in suggesting alternatives to having only one foreign responsive bidder to future TVA contract invitations.

It would be very helpful to me if GAO would answer the following questions:

(1) What are the capabilities of TVA, the American companies, and foreign competitors to accept liabilities for defective products and late delivery?

(2) How can Brown Boveri accept this liability while American companies refuse?

(3) Could this liability be assumed by a third party, for a fee?

(4) Could a governmental or quasi-governmental agency be established for this purpose? What would be its organization, its rules, and the services it would provide? Are there private firms or consortiums which would find this arrangement an attractive investment?

(5) How does GAO assess the apparently non-retractable positions on the issue of liability by the American firms and TVA? Are these positions reasonable or too inflexible?

(6) If liability could be assumed by a third party, would the cost of this service to American companies, added to their bid, result in an American company obtaining turbine generator contracts?

(7) If no compromise can be worked out, what are the prospects for competition for future TVA contract invitations?

(8) In general, what strategies, both regulatory and legislative, could resolve this stalemate and result in an equitable solution for TVA, domestic companies, and the American taxpayer?

Thank you again for meeting with me, I hope that our efforts in this matter will be helpful to the parties involved.

Cordially,

ROBERT W. EDGAR.

TVA GENERATOR CONTRACT INVESTIGATION
CONCLUDES ON POSITIVE NOTE

HON. ROBERT W. EDGAR (of Pennsylvania)

IN THE HOUSE OF REPRESENTATIVES

Friday, April 9, 1976

Mr. EDGAR, Mr. Speaker, I have previously informed our colleagues about my investigation of the awarding of a sizeable TVA turbine generator contract to a foreign manufacturer. The RECORD statements pertaining to this investigation appear in the daily RECORD on page E6607 on December 10, 1975, and on page E703 on February 18, 1976.

These contracts are worth as much as \$200 million for four generators. Millions of skilled Americans are seeking employment. Unemployment has contributed many more times to the extent of our Federal deficit than wasteful Government spending. To reduce this drain on our economy and relieve the personal tragedies which result from unemployment and underemployment, I feel that the effort to resolve differences between the TVA and the American manufacturers is very important. Thousands of American jobs may be stake.

Since last September, I have been involved in the delicate process of encouraging negotiations between TVA and General Electric, Westinghouse, and Allis-Chalmers, three domestic manufacturers with the capability to build these turbine generators. I am pleased to report that both sides have reached agreement concerning liability terms in the contracts which have discouraged responsive bidding by the American firms. The firms have expressed their intent to bid responsibly to the existing contract offer. The bids will be opened on May 11.

On March 2, I met with staff of the GAO to update me on the progress of these talks. A summary of this briefing was sent to me yesterday. This summary provides an excellent background of the problem, and I believe it merits the attention of my colleagues.

Because there has been excellent progress in resolving the stalemate, I will conclude my formal investigation at this time. I do intend to monitor the results of the bidding. I will also work closely with my colleagues and staff to facilitate the resolution of similar problems which rob this Nation of American jobs.

At this point, Mr. Speaker, I wish to insert the summary provided for me by the General Accounting Office:

U.S. GENERAL ACCOUNTING OFFICE,
Washington, D.C., April 5, 1976.

HON. ROBERT W. EDGAR,
House of Representatives.

DEAR MR. EDGAR: In letters dated December 16, 1975 and February 17, 1976, you asked our Office to evaluate the bidding terms for a turbine generator contract awarded by the Tennessee Valley Authority (TVA) in March 1974 to a Swiss firm, Brown Boveri Corporation. On March 2, 1976, we briefed you and, as requested, this letter summarizes the information given in the briefing.

BACKGROUND

Domestic turbine manufacturers and TVA have had disputes about contract terms and conditions at least as far back as 1959. The basic disagreement concerns the amount of risk that should be assumed by contractors who build and install turbine generators. Under TVA's desired terms and conditions, damages would be assessed against the manufacturers if the generators were delivered late or failed to operate as described. The contractors would also be liable for any related damages attributed to their equipment. The contractors contended that these terms and conditions created greater risks than they were willing to accept.

Various compromises were made by TVA and the contractors prior to 1971. But on December 8, 1971, and May 10, 1973, General Electric and Westinghouse, respectively, notified TVA that they would no longer be responsive to TVA's liability terms. Consequently, General Electric was declared non-responsive on their last three bids. On the last bid—the one that prompted your request—Westinghouse and Allis-Chalmers were also declared non-responsive.

Brown Boveri has consistently bid to TVA's terms and conditions. On the last bid, they were the only contractor to do so.

CONTRACT TERMS IN DISPUTE

Although other terms and conditions have been debated, most of the controversy has involved three liability clauses. Following is a general discussion of each.

LIQUIDATED DAMAGES

This clause states essentially that the contractor will pay TVA a certain dollar amount, based on rated capacity of the turbogenerator, for each day delivery of major components exceeds the delivery date specified in the contract. If more than one component is delayed, however, damages are assessed only against the component having the highest applicable rate.

This clause has been omitted on all but two contracts, and these were awarded to Brown Boveri. The March 1974 contract limited liquidated damages to 25 percent of the contract price whereas the previous contract, awarded in 1959, did not specify a limit.

OPERATING ASSURANCE

This clause provides that the contractor will pay TVA a dollar amount for each hour a generator is out of service during a specified assurance period. The contract provides a certain number, e.g. 700, of "grace" hours before the charges start. There is also a limit on the total payment under this clause.

The Operating Assurance clause has been in three contracts, including the latest with Brown Boveri. It was included in prior contracts with General Electric and Brown Boveri. The last contract limited damages under this clause to 25 percent of the contract price.

SPECIAL OR CONSEQUENTIAL DAMAGES

Special or Consequential Damages include but are not limited to such damages as loss of profits or revenue, cost of capital,

cost of purchased or replacement power, and claims of customers for service interruptions.

This clause was included in two early contracts with General Electric and Brown Boveri. The contract stated, however, that the manufacturers would not be liable for damages resulting from their efforts to exceed the scope of proven development in the industry.

Contracts awarded to General Electric, Westinghouse, and Brown Boveri during 1966-1968 stated that the contractors would not be liable to TVA for any special or consequential damages.

Contracts awarded to Westinghouse and Brown Boveri in 1971 were silent regarding special or consequential damages. In effect, any damage claim would be settled by the courts and the contractor's liability was not expressly limited.

The most recent contract with Brown Boveri limited special or consequential damages to 30 percent of the contract price. The contract also limited maximum damages under all clauses to 40 percent of the contract price.

CONTRACTOR VERSUS TVA POSITION

TVA contracts for power generators about 6 years ahead of the anticipated power demands. Substantial losses may be incurred if the power demands materialize and the generators are not available or do not operate properly. In one such case, General Electric was about 3 years late in delivery, and installation of generators for TVA's Browns Ferry Project. TVA estimated that power purchasers, generation from more expensive sources, and related expenses amounted to about \$300 million. However, because of the limited nature of the liability clauses under the contract, TVA settled with General Electric for \$20 million. Who should be liable, and to what extent, for damages such as these has been the basic issue between TVA and the domestic contractors.

The contractor position evolved from negotiation of liability clauses to a point where the contractors rejected any conditions contrary to their standard terms of sale. They contended that other utilities accept these terms and, as a matter of equity, TVA should not be offered more favorable terms.

The contractors' standard terms of sale omit the Operating Assurance and Liquidated Damages clauses. They also require a specific exclusion of rights to special or consequential damages.

TVA has contended that the contractor controls all factors required to meet the delivery schedule with a product that will operate as promised; if these goals are not met, the contractor should bear an equitable share of any related losses.

Recent court decisions which awarded substantial damages to several utilities under an implied warranty apparently prompted the domestic contractors to demand a contractual exclusion of this liability. On the last invitation to bid, TVA agreed to limit special or consequential damages to 30 percent of the contract price but refused to exclude them altogether. TVA also refused to omit the Liquidated Damages and Operating Assurance clauses. In their bids the domestic contractors took exception to these terms and were, therefore, declared non-responsive and the contract was awarded to Brown Boveri, the only responsive bidder.

PENDING LITIGATION

We understand that there are numerous pending court cases: including an antitrust suit by four domestic utilities against General Electric and Westinghouse, charging them with eliminating and suppressing price competition; establishing and maintaining uniform prices, pricing methods, and terms

and condition of sale; submitting noncompetitive price quotations and bids; establishing and maintaining a noncompetitive price structure to maintain market shares and monopolistic conditions; and willfully acquiring power to control turbine prices and sales and to exclude competition in the United States.

General Electric filed a countersuit denying the charges and entering a counterclaim for \$30 million, alleging that the four utilities conspired to boycott General Electric turbine generators.

There is presently an appeal of a lower court decision which dismissed damage claims of \$10.2 million by three utilities against Westinghouse. The case was dismissed because the contract terms relieved Westinghouse of any liability for consequential damages. The appeal is based in part on a claim that the utilities and Westinghouse were not negotiating with "equal bargaining power" in arriving at the contract terms.

Allegheny Power Systems has filed a \$17 million suit against Westinghouse for a series of generator failures and at the same time seeks to strip the limited liability protection from the standard generator contracts. Allegheny contends that the terms should be declared "unconscionable and therefore negated".

The tremendous costs and complexities associated with present power generating facilities carry with them an almost incredible loss potential. Both purchaser and seller are understandably reluctant to assume any more of the liability for these losses than they have to. With the pending suits and countersuits, it appears that the courts will eventually resolve the matter.

RECENT DEVELOPMENTS

Subsequent to our meeting in your office, we discussed the turbine generator problem again with TVA's Director of Purchasing. He advised us that, in their current invitations to bid, TVA has deleted the Liquidated Damages clause and has given the contractors an option on the Operating Assurance and Special or Consequential Damages clauses. He said that \$2 million will be added to the total evaluated cost of two units—for purposes of bid comparison only—for each of the clauses not offered in the bids. Thus a contractor's bid will be increased a total of \$4 million if his bid offers neither.

The invitation requires a 36-month warranty rather than the 21-month warranty required in the last contract. We were told that both General Electric and Westinghouse have agreed informally to accept the 36-month warranty.

The bid opening is scheduled at 10 a.m., May 11, 1976, at Chattanooga, Tennessee. TVA hopes that with these concessions the domestic contractor's bids will be responsive to the current invitation and competition will return to the turbine generator market.

Sincerely yours,
HENRY ESCHWECK,
Director.

AWARDING OF CONTRACT INVESTIGATION STARTED

HON. ROBERT W. EDGAR of Pennsylvania
Wednesday, December 10, 1975

Mr. EDGAR, Mr. Speaker, in March of 1974, TVA awarded a \$184,435,400 contract to a Swiss company, Brown Boveri, for the purchase of four turbine generators. Three American companies—General Electric, Allis-Chalmers, and Westinghouse—all expressed interest in obtaining the contract, and submitted bids conditional to the deletion of certain clauses concerning operating assurances and liquidated damage provisions. Because the terms requested by the three American companies differed materially from

the terms in the invitation for bids, the three bids were rejected. Brown Boveri's bid was the sole one responsive to the terms of the invitation, and this company was awarded the contract.

Mr. Speaker, I am very concerned that the terms of the bidding invitation by TVA may have been inflexible, considering the needs of both the TVA and American industry. I have launched an investigation into the circumstances of the awarding of this contract. For the benefit of my colleagues, Mr. Speaker, I am inserting the correspondence which I have received and sent out on this issue. First is a letter I received from the chairman of the TVA responding to my request for a history of the bidding and the awarding of the contract. The reply was sent to the management of Allis-Chalmers, General Electric, and Westinghouse. The second, third, and fourth letters are the comments which I received from these three companies. Today, I sent a letter to Mr. Wagner asking him to comment on these three letters. This exchange will be printed in the Record when it is received. The letters follow:

TENNESSEE VALLEY AUTHORITY,
Knoxville, Tenn., October 2, 1975.

HON. ROBERT W. EDGAR,
Cannon House Office Building,
Washington, D.C.

DEAR MR. EDGAR: This is in response to your request during the hearings conducted by the House Public Works Committee on September 19, 1975, that we furnish you information on the purchasing procedures which TVA is required to follow, and specifically on TVA's purchase of turbine generators from Brown Boveri Corporation of Switzerland earlier this year.

Section 9(b) of the TVA Act (16 U.S.C. § 831h(b)) requires that, except in certain limited situations not relevant to this question, all purchases and contracts for supplies or nonpersonal services made by TVA shall be made after advertising. This involves the issuance of invitations to bid which contain a description of the product or service to be procured and terms and conditions regarding performance of any contract resulting from acceptance of a bid under the invitation. It is a fundamental principle of formal advertising that all bidders must bid to the same terms and conditions. Accordingly, if a bidder takes a material exception to a term or condition of the invitation or deviates in a material manner from the specifications its bid is nonresponsive to the invitation and a contract cannot lawfully be awarded to such a bidder. To consider such a bid would, of course, be unfair to the other bidders since it would allow one bidder to bid to different terms, conditions, or specifications than other bidders and would constitute a purchase made without advertising.

In determining whether to award a particular contract to a foreign bidder or to allow foreign firms to participate as subcontractors to a domestic supplier, TVA follows the guidelines laid down by Congress and the President for the United States Government as a whole. The principal guidelines in this respect are the Buy American Act and Executive Order 10582, as amended by Executive Order 11051. As you know, the Buy American Act provides that purchases shall be made from domestic sources unless the prices quoted by domestic suppliers are unreasonable or the foreign purchases are otherwise inconsistent with the public interest. The act does not specify what constitutes an unreasonable price or when a purchase is inconsistent with the public interest, and Executive Orders 10582 and 11051 were issued to provide uniform standards for determining those questions. On the question of price, Executive Order 10582 provides that a domestic bid shall be deemed unreasonable and its

acceptance deemed inconsistent with the public interest if the amount of the domestic bid exceeds the amount of the foreign bid by more than six percent. In accordance with a recommendation of the Council on Foreign Policy, a 12-percent differential is used when the domestic bidder is located in an area classified by the Secretary of Labor as one of labor surplus. A 12-percent differential is also used when the low domestic bidder is a small business firm.

In January of 1974, TVA invited bids for the purchase of four turbine generators. The invitation to bid for this equipment contained, as do all of TVA's invitations to bid, terms and conditions specifying the extent the prospective contractor will be liable to TVA in the event the equipment to be supplied under the invitation is defective or is not delivered in accordance with the contract performance dates. While in most of TVA's invitations to bid a contractor's liability for special or consequential damages is limited to the contract price, this invitation specifically limits the contractor's liability for such damages to only 15 percent of the contract price.

In addition to other provisions describing the warranty to be furnished with the equipment and certain efficiency guarantees of the equipment, the invitation to bid also contained an Operating Assurance clause which specifies the extent of the contractor's liability in the event the equipment fails to operate properly during the first 12 months of operation, and a Liquidated Damages clause which establishes the amount TVA will be damaged if the equipment is late in being delivered. The contractor's maximum liability under these two provisions is 25 percent of the contract price. Bids were received under this invitation to bid from Brown Boveri Corporation, Allis-Chalmers Power Systems, Inc., General Electric Company, and Westinghouse Electric Corporation. Allis-Chalmers, General Electric, and Westinghouse each conditioned their bid on deletion of the Operating Assurance and Liquidated Damages clauses and on a complete waiver of special or consequential damages.

In addition, Allis-Chalmers took other exceptions to the provisions contained in the invitation, including the warranty and efficiency guarantee. General Electric Company also stated that its "Conditions of Sale" (which differ materially from the terms and conditions of the invitation) would prevail and that any provision contained in the invitation and not in General Electric's "Conditions of Sale" was unacceptable. Westinghouse also excepted to the warranty contained in the invitation. Since the bids of Allis-Chalmers, General Electric, and Westinghouse contained material exceptions to the terms and conditions of the invitation, their bids could not be considered for award of a contract. Brown Boveri Corporation's bid was the only bid fully responsive to the invitation, and in March 1974 TVA awarded a contract to that company at a firm price of \$184,435,400.

It has been TVA's experience in recent years that exceptions to the liability provisions of invitations to bid for turbine generators have increased. If TVA were to contract on this basis, all or substantially all of the risk would be shifted to TVA, and any expenses or costs occasioned by late delivery of the equipment or failure of the equipment to operate properly would be for TVA, the purchaser, rather than the manufacturer. However, TVA has reviewed this situation and on several occasions has modified its terms and conditions to further reduce a contractor's potential liability while maintaining some degree of protection for TVA. We feel that the terms and conditions contained in the invitation to bid for these turbogenerators represented an equitable allocation of the risks.

The contract awarded Brown Boveri contained an option to purchase two additional machines at a firm price of \$107,654,616 for delivery in 1978-1981. A comparison of this price, in January 1975, with published handbook prices of domestic turbine generator manufacturers showed that significant savings would inure to TVA from the exercise of its option with Brown Boveri. In addition, TVA will realize other benefits and cost savings because of the economies in purchasing two additional machines which duplicate those purchased last year. Accordingly, the decision was made to exercise the option.

While we do not know the exact value of subcontracts to be placed with U.S. firms, Brown Boveri has informed us that a substantial portion of the work necessary to fulfill the turbogenerator contracts will be done by its plant in Richmond, Virginia, and by Foster Wheeler Corporation at its plants in New Jersey and Texas. In addition, the Brown Boveri price includes import duties on the six turbine generators of about \$14 million to be paid by the contractor to the United States Treasury.

If we can provide you with any further information, please let us know.

Sincerely yours,

AUBREY J. WAGNER,
Chairman of the Board.

ALLIS-CHALMERS POWER SYSTEMS, INC.,
West Allis, Wis., November 18, 1975.

HON. ROBERT W. EDGAR,
U.S. House of Representatives, 117 Cannon
House Office Building, Washington, D.C.

DEAR MR. EDGAR: Mr. David C. Scott, Chairman and Chief Executive Officer of one of our parent companies, Allis-Chalmers Corporation, has asked me to respond to your letter of October 9, 1975. In particular he asked me to comment on the letter to you from Mr. Wagner, Chairman of the Board of TVA, that was enclosed with your letter.

Allis-Chalmers Power Systems, Inc., is a jointly-owned company of Allis-Chalmers and Kraftwerk Union of West Germany that was formed in 1970 to serve the United States turbine generator market. The turbine generator design that we offer has been a proven success in other parts of the world, but is unique in the United States market. Since our formation in 1970 we have been successful in obtaining orders for thirty turbine generator units from both private and publicly owned utilities in vigorous competition with both domestic and foreign suppliers.

You can well appreciate that since we are a relatively new company with a small share of the turbine generator market, we must exercise considerable caution regarding the terms and conditions under which we accept turbine generator orders (especially those of the magnitude of the TVA order) to avoid assuming excessive legal liabilities which could endanger the fiscal well-being of our entire company. None of the contracts for the orders we have received contain the onerous terms and conditions set forth in TVA's invitation to bid. The acceptance of the terms and conditions proposed by TVA would, in our opinion, have imposed an unacceptable risk on our company.

While we generally concur with the thrust of Mr. Wagner's letter that there must be equitable allocation of risk between the contractor and the user of this kind of equipment, I am sure that you can appreciate the difficulty of properly evaluating where to place the risk for the failure of a piece of equipment that is designed to be an integral part of an extremely large and complex electrical power generation and distribution system. Thus, it is frequently a question of who is in the best position to minimize this risk, and there are valid arguments on both sides of this issue. We believe that our terms

and conditions define an equitable distribution of this risk. However, we have demonstrated our willingness to consider the position of the utilities by negotiating unique clauses covering warranties, efficiencies and special damages in some of our contracts for sale of our turbine generator units.

We believe that some of the comments in Mr. Wagner's letter require added comment for the benefit of people not intimately familiar with TVA's procedures and past practices. For example, the specific TVA clauses relating to warranties, operating assurances, liquidated damages and consequential damages are not a requirement of other major electric utilities and, in fact, are significantly different from the clauses contracted for by other utilities. Furthermore, the TVA's requirement of absolute adherence to their terms and conditions of sale did not permit the negotiation of a mutually acceptable distribution of risk. TVA has been unwilling to utilize the practice of weighing the contractor's terms and conditions as part of their procedure in evaluating bids, a practice which is common among other utilities in the United States. We hope that TVA will modify their practice in this regard to encourage more competitive bidding in the future.

While TVA has eased its conditions in certain limited areas, on balance the total change made has been relatively minor. Unlimited liabilities continue to be a part of the overall specifications which we consider unacceptable.

In conclusion, we would like to reaffirm that we share your concern that large orders from government owned utilities, such as TVA, especially in these highly critical technology areas, are awarded to offshore suppliers for manufacture outside the United States. A-CPSI is willing to mutually determine a proper sharing of risk as illustrated above. This procedure of negotiating terms and conditions of sale would eliminate the need for TVA to demand unreasonable terms and conditions of sale, which too often have resulted in offshore suppliers being the only responsive bidder, thus forcing TVA to buy critical equipment without due and proper consideration of the far more important technical and service considerations of United States manufactured equipment.

It is interesting to note that BBC has not submitted a responsive bid to a United States utility for a turbine generator unit since receiving the TVA order.

Although this has been somewhat of a summary response for evaluation of Mr. Wagner's letter, we believe it outlines our thoughts rather completely.

Very truly yours,

ROBERT J. DINEEN.

GENERAL ELECTRIC CO.,
Fairfield, Conn., October 29, 1975.

HON. ROBERT W. EDGAR,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN EDGAR: Paul Hessemer and I have exchanged correspondence on your good work in the House and I am looking forward to an early opportunity to visit with you in your offices. In your letter of October 9, 1975 you requested my comments on the TVA purchase of several steam turbine-generators from Brown Boveri.

TVA has been one of General Electric's most important customers for power generation equipment for many years, so naturally we have been disappointed to see them purchase so many large steam turbine-generators from offshore. These large purchases cannot help but have a detrimental effect on U.S. balance of payments and employment levels. Further, and perhaps equally significant, we sincerely doubt that TVA's best long

range interests are served by these purchases. This is so because, at least based on past experience, GE turbine-generators could be expected to be significantly more reliable than the units purchased.

During the past year our people have had numerous discussions with TVA personnel concerning the terms of sale and specifications for turbine-generator purchases. These discussions have been very beneficial, and we believe both TVA and GE have a much better mutual understanding of each other's concerns. We have, however, insisted that we must continue to take exception to terms requiring GE to accept liability for consequential damages and to accept other terms which would result in our assuming unreasonable risks. Let me add that the terms to which we take exception are not required by other U.S. utilities. We are continuing our negotiations with TVA, and we are hopeful that these discussions will enable us to submit responsive bids which will be evaluated in the future. I will be able to elaborate on these efforts when we visit together.

We deeply appreciate your interest in this matter and assure you that we will do everything within reason, consistent with sound business judgment, to obtain future turbine-generator business from TVA and to serve their needs in this vital area.

Sincerely,

REGINALD H. JONES.

WESTINGHOUSE ELECTRIC CORP.,
Pittsburgh, Pa., November 25, 1975.

HON. ROBERT W. EDGAR,
House of Representatives, Cannon House
Office Building, Washington, D.C.

DEAR CONGRESSMAN EDGAR: Thank you for your letter of October 9, 1975 to Mr. Burnham who has forwarded it to me for reply.

We also are quite concerned that Brown-Boveri obtained orders for six 1,268,000 kilowatt nuclear turbine-generators from TVA in preference to domestic competition. It is our view that the situation surrounding TVA's turbine-generator purchases is relatively unique. TVA has insisted upon unreasonable contract conditions which place the manufacturer in a very difficult position. Although the utility is willing to pay a substantial price premium for a manufacturer's acceptance of these burdensome conditions, that premium can never be commensurate with the risk the manufacturer must assume.

TVA's specifications required a thirty month warranty and also required that the manufacturer accept the following penalties:

- Up to 15% of the price of each unit for special or consequential damages,
- Up to 25% of the price of each unit for excessive outage time, and
- Up to 25% for late delivery.

(The total assessment for any combination of penalties a, b, and c were not to exceed 40%.)

It is of interest that the above penalties are not normally included in specifications issued by TVA for nuclear steam supply systems; nor are such penalties generally written into the specifications issued by other domestic electric utilities for turbine-generators.

It has been the position of Westinghouse that special and consequential damages which accrue to the utility apart from damages in the turbine-generator itself are rightly in the scope of the utility who has the opportunity for profit commensurate with the risks associated with their business. It is impractical for us to include in our price, the costs associated with the downtime of the entire project. Similarly, we are not able to obtain nor expect, consequential damages from the electric utilities

who supply electrical energy to our many plants. Typically, in American industry, the purchaser of major apparatus assumes the risks of consequential damages.

It is not our practice to assume responsibility for liquidated damages for late shipment. Manufacture and delivery of a turbine-generator is a highly complex project beset with many unknowns, requiring close co-operation between Westinghouse and many suppliers. In our opinion, penalties for late shipment can be counter productive because they do not reward the manufacturer who has done a good job in shipping on time; rather, they reward the manufacturer who is willing to make promises about the future at a price that cannot possibly recompense the purchaser.

As an alternate to the request for a thirty month warranty, we did offer TVA a warranty of eighteen months from initial synchronization. This compares to our standard warranty of twelve months from initial synchronization with a provision that the warranty can be extended by the length of time associated with any warranty outages up to a maximum of eighteen months from initial synchronization.

It is interesting that TVA paid a significant price premium to Brown-Boveri for these six turbine-generators. It is our understanding that the total value of the Brown-Boveri contract (including options exercised by TVA) is \$407,754,808. We also understand that Brown-Boveri offered a price reduction of approximately \$31,000,000 for a contract which would more nearly correspond to the contract which Westinghouse proposed. This offer was not accepted, but it indicates that the Brown-Boveri price for a contract equivalent to that offered by Westinghouse was approximately \$377,000,000. The equivalent Westinghouse price, including a thermal performance adjustment for the physically smaller Westinghouse low pressure turbines, but not including Buy America credit, would have been approximately \$330,000,000.

You might be interested also, in some information relative to the economic impact associated with manufacturing six turbine-generators of this size in the United States, based on Westinghouse data for the calendar year 1975.

Approximately 9,100 man-months of effort by Westinghouse employees (including manufacturing, engineering and administrative) and an additional 4,050 man-months effort by our first level major suppliers are required to produce one unit. Thus, six units would result in 6,575 man-years of productive employment for U.S. citizens, not including minor subcontractors.

We estimate that an order for one turbine-generator of this type as an incremental addition to this year's business, would result in an incremental addition to federal income taxes by Westinghouse of approximately \$5,000,000.

In addition, the average federal and state income tax withheld is approximately \$1,025 and \$135, respectively, per employee. Thus, the total tax benefit associated with the placement of this order with Westinghouse would have been approximately \$87,500,000.

The award to Brown-Boveri by TVA was a serious blow to Westinghouse and its employees. Future steam turbine-generator purchases by TVA will be equally important; two units plus an option for two units will be placed within the next year. Therefore, we are having on-going discussions with TVA in which we review the necessity that TVA assume risks normally borne by the utility purchaser, the great interest which Westinghouse has in obtaining business from TVA, and the significant benefits to TVA in selecting Westinghouse above other manufacturers.

Sincerely,

R. E. KUBY.

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Only to the
Director, Antitrust
and Public Utilities Division

JAC
60-230-77

March 11, 1977

Herbert S. Sanger, Jr., Esq.
General Counsel
Tennessee Valley Authority
Knoxville, Tennessee 37902

Re: Proposed Modification of Consent Decrees
in United States v. General Electric Co.,
et al., Civil No. 28228 (E.D. Pa.)

Dear Mr. Sanger:

The Antitrust Division has received your letters of January 31 and February 2, 1977 concerning the Proposed Modification of the Consent Decrees entered October 1, 1962 in United States v. General Electric Company, Civil No. 28228 (E.D. Pa.).

In your letters, you raised three areas of particular concern to the Tennessee Valley Authority. The first of these related to the extent to which the Antitrust Division was persuaded to agree to modifications of the existing consent decrees, rather than file suit, because of Westinghouse's claim that institution of a civil antitrust action would have resulted in harm to the financial condition of the corporation. The second area of concern pertained to the unwillingness of both GE and Westinghouse in the past to grant certain commercial terms requested by the TVA. Your third concern dealt with the extent to which the Proposed Modification may inhibit GE and Westinghouse from bidding to TVA invitations for turbine-generators.

As is stated in the Antitrust Division's Memorandum in Support of the Proposed Modification, our decision to proceed in this manner was influenced by Westinghouse's claim concerning its financial standing, but that claim was not the principal reason for the Division's action.

The Proposed Modification was and remains desirable primarily because it offers the Government the opportunity to obtain immediately the same relief it would have sought had it filed a de novo civil antitrust suit. Moreover, the outcome of such a suit was uncertain. Although the Government viewed the activities of GE and Westinghouse, described in its memorandum as constituting a violation of §1 of the Sherman Act, there was no evidence of the kind of direct, covert communication traditionally associated with a price-fixing case. Under these circumstances, and especially in view of our success in obtaining the desired relief via the modification route, it was thought unnecessary to incur any risk, however slight, that the filing of a suit would have the effect predicted by Westinghouse, e.g., its exit from the market and the consequent monopoly position of GE.

The Department shares your concern regarding the apparent identity of terms and conditions offered by GE and Westinghouse. As you note in your letter, terms and conditions are often an integral part of the price of a turbine-generator. For this reason, many of the injunctive provisions of the Proposed Modification apply to terms and conditions as well as price. These include paragraphs 2(a), (b), (f)(i), (g), (j), and (k).

We believe that the decree enjoins the publication, receipt, and use of information regarding terms and conditions in the same way as it enjoins the disclosure and use of price information. Each approach has the same purpose, to wit, to create uncertainty and to promote competition in terms and conditions of sale as well as in price.

You suggest that the Modification be amended to require each manufacturer independently to determine the terms and conditions upon which it will sell turbine-generators. We believe that the Proposed Modification will result in independent determination by each manufacturer of its terms and conditions, since neither is permitted to use nor retain any terms and conditions prepared by the other after May 5, 1963 (para. 2(j)), to receive or examine any document prepared or distributed by the other containing terms or conditions (para. 2(k)), or to communicate to any other person a policy regarding negotiation or bargaining involving terms or conditions (para. 2(f)(i)).

The Antitrust Division appreciates the benefit of your views.

Sincerely yours,

JOHN W. CLARK
Acting Chief, Special Trial Section
Antitrust Division

You further suggest that each manufacturer be specifically required to "negotiate or bid to reasonable terms and conditions on a case-by-case basis." While we are sympathetic to your concern in this regard, we believe that such a provision would improperly inject the Antitrust Division and the Court into the bidding process. One or both would be involved, it seems, whenever the "reasonableness" of terms and conditions was in question. The purpose of the decree - and of the antitrust laws - is to promote competition, not government regulation or judicial oversight. This, we believe, will produce prices and terms and conditions more "reasonable" than the judgment of any third party.

In the opinion of the Antitrust Division, the continuous exchange of public information between GE and Westinghouse enabled each to predict with confidence that the other would not make concessions on commercial terms to the TVA. Consequently, neither firm deviated from its standard terms and conditions of sale. The aim of the proposed Modification is to diminish substantially the public exchange of information between the manufacturers and thereby create an atmosphere of uncertainty. In this atmosphere the large turbine-generator industry should perform competitively. The prospect of obtaining a substantial order from the TVA might appeal to the independent self-interest of each manufacturer and induce it to be responsive to the commercial terms desired by TVA.

In view of the public-bidding procedures of TVA, it is understandable that you are concerned about the potentially inhibiting effect of the Proposed Modification upon the willingness of GE and Westinghouse to submit bids. However, the Antitrust Division does not believe that it is necessary to add a provision stating the intent of the Proposed Modification with respect to public bids. Nothing in the Modification is intended to limit or prohibit GE and Westinghouse from submitting public bids. Moreover, the proviso to section 2(k) of the Proposed Modification allows GE and Westinghouse to employ independent counsel and technical advisors to verify the legality of a public, sealed bid. That proviso, which was inserted at the request of the manufacturers, is indicative of their understanding that the intent of the Modification is not to discourage the submission of bids to agencies such as the TVA.

John W. Clark, Esq.
February 18, 1977
Page Two

years prior to shipment, as adjusted by the Contractor's Price Adjustment Policy in effect five years prior to shipment.

If C&SOE takes delivery of the generator in July of 1983, the company is unable to determine how the "market price" of the unit can be verified by C&SOE. Further, C&SOE does not know how it can determine the "Contractor's Price Adjustment Policy" in effect five years prior to shipment, i.e. July, 1978.

We assume from paragraph 3(c) that the proposed Modification is not intended to disturb existing contractual commitments. We have also inferred from Paragraph 2(i) of the proposed Modification that 30 months after the date of a sale, a turbine generator supplier may, without violating the terms of the Modification, make public prices, terms and conditions for that sale. However, C&SOE is unsure how it will, under the procedures contemplated by the Modification, verify "market price" in effect three years prior to the shipment of a unit. Further, C&SOE does not believe that it will be able to determine the contractor's market price in effect five years prior to shipment, as adjusted by the contractor's price adjustment policy in effect five years prior to shipment. It would appear that defendants may not, by reason of paragraph 2(e), communicate a pricing "policy" to C&SOE.

C&SOE would appreciate it if you would consider these practical problems and suggest solutions. If the Department has in mind procedures which will deal with these questions, it might be appropriate to file a memorandum of understanding with the Court. In the memorandum, the parties could explain how purchases under existing contracts will be handled.

Thank you for your consideration of this request.

Very truly yours,

Michael P. Graney

MFG/pb

PORTER, STANLEY PLATT & ARTHUR
37 WEST BROAD STREET
COLUMBUS, OHIO 43215

February 18, 1977

John W. Clark, Esq.
Antitrust Division
United States
Department of Justice
Washington, D.C. 20530

Re: United States of America v.
General Electric Company and
Westinghouse Electric Corporation

United States District Court
Eastern District of Pennsylvania
Civil No. 28228

(Proposed MODIFICATION BY CONSENT OF
FINAL JUDGMENT ENTERED OCTOBER 1, 1962)

Dear Mr. Clark:

This firm represents Columbus and Southern Ohio Electric Company (C&SOE), an electric utility with its principal place of business located in Columbus, Ohio.

C&SOE has been and expects to continue to be a purchaser of turbine generators from General Electric and Westinghouse. C&SOE has reviewed the proposed Modification in an effort to determine how it will affect the Company's purchasing practices. A question has arisen with regard to an existing contract for the purchase of a turbine generator from General Electric. C&SOE has agreed to purchase a unit which will probably be delivered in July, 1983. The purchase contract contains a "price adjustment clause" which states in relevant part:

Shipments February, 1979 and later will have billing prices established by the Contractor's market price in effect three years prior to shipment, but said price will not be in excess of Contractor's market price in effect five

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

March 14, 1977

JMC
60-230-77

Michael P. Graney, Esquire
Porter, Stanley, Platt & Arthur
37 West Broad Street
Columbus, Ohio 43215

Re: Proposed Modification of the Final Judgment in United States v. General Electric Co., et al., Civil No. 29228 (E.D. Pa.)

Dear Mr. Graney:

The Antitrust Division has received your letter of January 31, 1977 regarding the Proposed Modification of the Final Judgment entered October 1, 1962 in this action. On behalf of the Columbus and Southern Ohio Electric Company, you expressed concern over the effect of the Proposed Modification upon the determination of the price of a large turbine-generator which, pursuant to an existing contract, is due to be delivered in approximately 1983.

The Proposed Modification is designed to permit the manufacturers substantially to comply with existing contracts in a way that does not involve the communication of the type of information which, the Antitrust Division believes, has enabled the manufacturers to coordinate their pricing strategies. We believe that the determination of the billing price of a large turbine-generator under the "price adjustment clause" in an existing purchase contract can be accomplished in a manner consistent with the overall intent of the decree.

As you noted in your letter, under paragraph 2(i) of the Proposed Modification the manufacturer may publish or communicate prices and terms of conditions of sale quoted on transactions involving the sale of large turbine-generators beginning 30 months after such quotations. Thus, it will be possible for your client to have access to the actual prices and terms and conditions quoted by the manufacturer at the relevant times, and from these it may have sufficient information to be able to determine the "contractor's market price" and the "contractor's price adjustment policy" then in effect.

It appears that the Proposed Modification will require some adjustment by those who have outstanding contracts with the defendants. However, the Department feels strongly that whatever inconvenience this adjustment causes will be more than offset by the benefit to purchasers, and to the public generally, of the increased price competition the Proposed Modification should induce.

The Antitrust Division appreciates your comments on the Proposed Modification.

Sincerely yours,

JOHN W. CHAFF
Acting Chief, Special Trial Section
Antitrust Division

KOHN, SAVETT, MARION & GRAF, P.C.
224 IVB BUILDING, 1700 MARKET STREET
PHILADELPHIA, PENNSYLVANIA 19103

February 4, 1977

Ira M. Milstein, Esquire
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10th & Constitution Avenue
Washington, DC 20530

RE: United States of America v. General Electric
Company and Westinghouse Electric Corporation
Civil Action No. 28228

Gentlemen:

Enclosed herewith are copies of the Petition of Philadelphia Electric Company for leave to participate as amicus curiae in the proposed modification by consent of final judgment entered October 1, 1962, and memorandum in support thereof in the above case, the originals of which have been filed with the Court today.

Sincerely,

Joseph P. Roda
Joseph P. Roda
62-230-5
FEB 7 1977

dk
Enclosure

IN THE UNITED STATES DISTRICT COURT FOR
EASTERN DISTRICT OF PENNSYLVANIA

[Civil Action No. 28228]

United States of America, Plaintiff v. General Electric Company and Westinghouse Electric Corporation, Defendants.

PETITION OF PHILADELPHIA ELECTRIC COMPANY FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE IN THE PROPOSED MODIFICATION BY CONSENT OF FINAL JUDGMENT ENTERED OCTOBER 1, 1962

Petitioner Philadelphia Electric Company, by its undersigned attorneys, respectfully petitions this Court for leave to participate as an *amicus curiae* in the proposed Modification by Consent of the Final Judgment of October 1, 1962 in the above action; to file the proposed amendments attached hereto as Exhibit "A" to such proposed Modification; and to present evidence at a hearing on such proposed Modification.

In support of this petition, petitioner avers as follows:

1. On October 1, 1962, a Consent Decree was entered in the above action enjoining the defendants from, *inter alia*, fixing the prices of large turbine generators.

2. Notwithstanding said Consent Decree, the United States Department of Justice determined in an investigation conducted during the period 1972 through 1976 that General Electric and Westinghouse had eliminated price competition in the turbine generator industry as the result of practices begun in 1963 and continued since that time in violation of the above Consent Decree and the Sherman Act, 15 U.S.C. § 1.

3. Although the Department of Justice had concluded that such practices by defendants warranted its filing of a civil action, the Department now has chosen to forego filing such civil action because General Electric and Westinghouse have offered to agree, without admitting liability, to a modification of the aforesaid Consent Decree to add thereto express prohibitions of the practices found by the Department to be in violation of such decree and the Sherman Act.

4. Between 1963 and the present, petitioner expended sums totalling \$73,328,000 for the purchase of large turbine generators from the defendants.

5. In its purchases of large turbine generators from defendants, petitioner was damaged by defendant's illegal activities in that it was compelled to pay higher prices for such generators than it would have paid had defendants not thereby eliminated free and open competition in turbine generator sales.

6. Petitioner, along with all other utilities which purchase turbine generators from defendants, was a party for whose benefit the aforesaid Consent Decree was entered and is entitled to recompense for defendants' violations of that decree.

7. Petitioner thus has a substantial and direct interest in these proceedings, in the activities of defendants which have led to the proposed modification of the Consent Decree and in the protection and preservation of its rights to compensation and recovery of the damages it has sustained.

8. Petitioner's interests and rights will best be protected and preserved by allowing petitioner to participate as an *amicus curiae* in the proposed modification of the 1962 Consent Decree herein.

9. Petitioner's interests herein are consistent with and in furtherance of the interests of the public and petitioner's participation herein as an *amicus curiae* will serve the public interest.

10. Attached hereto as Exhibit "A" and made a part hereof are petitioner's proposed supplemental provisions to the proposed Modification of the Consent Decree of October 1, 1962 in which petitioner proposes that:

(a) restitution be made by defendants to petitioner and other affected purchasers for damages suffered as the result of defendants' elimination of price competition in turbine generator sales since 1963; and

(b) documents and other evidence obtained by the United States in the course of its recently completed investigation of defendants' turbine generator pricing practices be preserved and made available to petitioner and other affected purchasers.

11. As set forth in the attached Memorandum in Support of this Petition, such proposed supplemental provisions are reasonable, necessary, consistent with federal law and policy and in furtherance of the interests of justice.

Wherefore, Philadelphia Electric Company respectfully moves this Court to grant its petition for leave to participate as *amicus curiae* in the proposed Modification by Consent of the Final Judgment of October 1, 1962 in the above action; to file its Proposed Supplemental Provisions to such proposed Modification; and to present evidence at a hearing on the aforesaid proposed Modification.

KOHN, SAVETT, MARION & GRAF, P.C.

By: Harold E. Kohn, David H. Marion, Joseph F. Roda, 1214 IVB Bldg., 1700 Market Street, Philadelphia, Pa. 19103; attorneys for Philadelphia Electric Company.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

[Civil Action No. 78228]

Philadelphia Electric Company, Plaintiff, v. General Electric Company and Westinghouse Electric Corporation, Defendants.

SUPPLEMENTAL PROVISIONS PROPOSED BY PHILADELPHIA ELECTRIC COMPANY TO PROPOSED MODIFICATION OF CONSENT DECREE

Philadelphia Electric Company, by its undersigned attorneys, moves that the following provisions be added to the Proposed Modification by Consent of Final Judgment entered October 1, 1962 in the above matter:

"8. The defendants shall pay to each purchaser who files with this Court an appropriate petition setting forth its purchases of large turbine generators from either or both defendants during the time period 1963 to the present, the difference between what such purchaser paid defendants for such turbine generators and what such purchaser would have paid for such turbine generators in the absence of the practices of said defendants enjoined here in, such amounts to be determined by this Court upon the presentation of evidence or upon stipulation by the parties.

"9. The United States shall impound all documents and other evidence obtained in the course of its investigation of defendants concerning the practices enjoined herein, and shall make such documents and other evidence available to each purchaser of large turbine generators from defendants during the time period 1963 to the present who petitions the United States or this Court for access to such documents and evidence."

HAROLD E. KOHN,
DAVID H. MARION,
JOSEPH F. RODA,

Kohn, Savett, Marion & Graf, P.C., 1214 IVB Bldg., 1700 Market Street, Philadelphia, Pa. 19103; attorneys for petitioner, Philadelphia Electric Company.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

[Civil Action No. 28228]

United States of America, Plaintiff v. General Electric Company and Westinghouse Electric Corporation, Defendants.

MEMORANDUM IN SUPPORT OF PETITION BY PHILADELPHIA ELECTRIC COMPANY FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE IN MODIFICATION BY CONSENT OF FINAL JUDGMENT ENTERED OCTOBER 1, 1962

Petitioner Philadelphia Electric Company, by its undersigned attorneys, respectfully moves this Court for leave to participate as an *amicus curiae* in the proposed Modification by Consent of the Final Judgment of October 1, 1962, in the above action; to file the proposed supplemental provisions to such Proposed Modification attached hereto as Exhibit "A"; and to present evidence at a hearing on such Proposed Modification.

That it is appropriate to accord *amicus curiae* status to private parties in the formulation of consent decrees in antitrust cases brought by the government, has been recognized by the Courts. See, e.g., *United States v. Automobile Manufacturers Association, Inc.*, 307 F. Supp. 617 (C.D. Cal. 1969), aff'd 397 U.S. 248 (1970); *United States v. Gillette Co.*, 406 F. Supp. 713 (D. Mass. 1975); *United States v. Blue Chip Stamp Co.*, 272 F. Supp. 432 (C.D. Cal. 1967), aff'd sub. nom. *Thrifty Shoppers Scrip Co. v. United States*, 389 U.S. 580 (1968).

The policy underlying the grant of *amicus curiae* status is clear. A consent decree must be treated as a judicial determination, to be made in the public interest, and not as a contract between the parties. *United States v. Swift & Co.*, 286 U.S. 106, 115 (1931). The Court must assure that such a decree protects the public no less than the defendants, and should not allow the government's representatives to "accept less than the public interest demands". *United States v. Swift & Co.*, 189 F. Supp. 885, 907 (N.D. Ill. 1960). *Dabney, Antitrust Consent Decrees*, 68 Yale L.J. 1391 (1959).

While the consent decree has a proper place in government prosecutions of antitrust cases.

"* * * it should not be effected without judicial inquiry. It is a judicial function and an exercise of the judicial power to render judgment on consent". *Pope v. United States*, 323 U.S. 1 (1944). When the court approves such a decree it becomes the adjudication of the court. *Brunswick Corporation v. Chrysler Corporation*, 408 F. 2d 335 (7th Cir. 1969). Thus, while an agreement between parties can facilitate and advance a judicial determination which would, otherwise, be arrived at in an adversary proceeding, (the Court is) nevertheless not relieved from examining the same and inquiring into any matter which in equity should have been considered had the matter proceeded in adversary fashion." *United States v. Ling-Temco-Vought, Inc.*, 315 F. Supp. 1301, 1308-1309 (W.D. Pa. 1970).

The Court in *Ling-Temco* went on to underscore that judicial scrutiny of consent decrees in antitrust cases is essential because:

"* * * the public interest in preserving a free, competitive economy cannot be outweighed by any private interest." 315 F. Supp. at 1309; *United States v. Ingersoll-Rand Co.*, 218 F. Supp. 530 (W.D. Pa. 1963), aff'd 320 F. 2d 509 (3d Cir. 1963). 315 F. Supp. at 1309.

In this case, petitioner's request to participate as *amicus curiae* fully accords with the precedents and policy above set forth. Furthermore, it is here manifest that the public

interest demands more than what the parties have agreed to when it is considered that a consent decree was entered in 1962, and within the very next year the parties had embarked upon an elaborate scheme to violate it which was not discovered for ten years and may not be remedied for many more years. Surely defendants' readiness to have another consent decree entered against them after such events must be viewed with both suspicion and alarm. As stated in the Memorandum filed by the Department of Justice in support of the Proposed Modification of the Consent Decree:

"Price competition prevailed in the turbine generator industry from 1960 to 1963. In the opinion of the Department, however, prices since then have stabilized and there has been little or no discounting or negotiation regarding price * * *. The Department's investigation has revealed that the elimination of price competition has been the result of identical policies deliberately adopted and published in 1963-64 and adhered to since."

"The 1962 Consent Decrees allowed the publication of price books and the public exchange of competitive information. On the other hand, the decrees prohibited all price-fixing agreements regardless of where or how they were formed. Since 1963, the nature and content of the public communication of pricing intentions and the mechanics of the pricing system have been such that GE and Westinghouse have succeeded in assuring one another that they will not deviate from published price levels. In the opinion of the Department, this public exchange of assurances, with such intent, did constitute an agreement to stabilize prices which warranted the filing of a civil action by it alleging a violation of the Sherman Act or of the 1962 Consent Decrees."

"To obtain an injunction against further use of these pricing policies, the Department was prepared to file a civil suit against GE and Westinghouse." (Page 3)

The Department has decided against filing such action, however, because of concern for the financial stability of Westinghouse and because both defendants have agreed to the Proposed Modification of the 1962 Consent Decree, now before this Court, which would prohibit the illegal practices which the government found.

Petitioner, a public utility, seeks leave to propose supplemental provisions to the proposed modified Consent Decree in order to preserve and protect its interests and rights, which will in turn protect the interests and rights of millions of customers served by petitioner and other utilities. Petitioner expended \$73,328,000 in purchases of turbine generators from GE and Westinghouse between 1963 and the present. To the extent the non-competitive prices charged by GE and Westinghouse exceeded those which would have existed in a competitive market, petitioner was overcharged and is entitled to restitution. Moreover, petitioner and all other utilities purchasing turbine generators from defendants were parties for whose benefit the 1962 Consent Decree was entered, and are entitled to recompense for defendants' violation of that Decree.

Accordingly, petitioner's proposed supplemental provisions attached hereto as Exhibit "A" provide for restitution to petitioner as well as the preservation and disclosure of all documents and other evidence gathered by the government in the course of its investigation. Simple restitution for petitioner's actual loss is hardly too much to ask of defendants who would be liable for those damages trebled in a private antitrust action. Moreover, there has already been one Consent Decree providing only injunctive measures, which the government has determined defendants proceeded to violate within a year

of its entry. The remedy for such subsequent violation should not be merely another modified Consent Decree calling only for further injunctive relief. Combining the period of violation which led to the 1962 Consent Decree and the subsequent period of violations since 1963, defendants have engaged in an almost unbroken series of antitrust violations for more than twenty years. If there is to be any hope of deterrence of further violations by defendants, not to mention simple fairness and justice to the parties, like petitioner, damaged by such violations, restitution for overcharges is an essential element of any judicial decree purporting to remedy defendants' violations.

Disclosure of the government's documents and other evidence of defendants' violations is both reasonable and necessary. Petitioner will be obliged to enforce its right to restitution herein or in a private action, and the Memorandum filed by the government in support of the Proposed Modification reveals that the documents and evidence in possession of the government would be of central relevance, and necessary as proof in such action. As the government's Memorandum states:

"The end result of the information contained in the 1963 price book combined with GE's public announcement that "it would not deviate from published prices was that Westinghouse could ascertain the price that GE would employ in any given sale situation. This effectively removed a major source of uncertainty and a major stumbling block in the industry's attempt to stabilize prices for such a highly complex product. Moreover, GE's internal documents reveal, in the opinion of the Department, that such was the intent of GE in issuing the price book and the actual effect perceived by GE after the book was issued. Also, again in the opinion of the Department, internal documents of Westinghouse reveal that it perceived this to be the purpose and the effect of the GE pricing policy." (Page 6) (emphasis added)

At Page 8, discussing the price protection policy offered by GE and imitated by Westinghouse, the Memorandum states:

"The Department believes that internal documents of both GE and Westinghouse could have led a trier of fact to conclude that price protection was intended to and did provide the firms with assurance that each would avoid price competition." (emphasis added)

Again at Page 8, discussing the practice of publishing all orders received prior to the date of implementation of new price levels, the Department's Memorandum states:

"The Department believes that a court could have concluded from internal documents of both firms that the purpose and perceived effect of publishing outstanding orders and price quotations was to eliminate a potential source of "disruption at the time of price changes." (emphasis added)

At Page 9, in discussing Westinghouse's response to GE's initiation of the new pricing practices, the Memorandum continues:

"The Department believes that internal Westinghouse documents reveal that Westinghouse perceived GE's actions as an invitation to stabilize prices. Moreover, these documents, in the opinion of the Department, reveal the extraordinary steps Westinghouse took to insure that the strategy was not upset intentionally or inadvertently." (emphasis added)

This Court should order the protection and preservation of such documents and evidence because it cannot be assumed these documents will be available from or fully produced by defendants should petitioner file suit. Less than full production of documents, as well as document disappearance or

destruction, inadvertent or intentional, unfortunately seems to occur all too frequently in major litigation. See, e.g., *A. C. Becken Co. v. Gemex Corp.*, 314 F. 2d 839 (7th Cir. 1963), cert. denied, 375 U.S. 816; *United States v. Curcio*, 279 F. 2d 681 (2d Cir. 1960), cert. denied, 364 U.S. 824 (1960); Comments of Donald I. Baker, Assistant Attorney General of the Antitrust Division, Antitrust Trade & Regulation Report No. 789, p. A-5 (November 16, 1976).

An order for disclosure by the government of documents and evidence obtained in the course of an antitrust investigation has ample precedent. See, e.g., *United States v. National Bank and Trust Co.*, 319 F. Supp. 930 (E.D. Pa. 1970); and *United States v. Automobile Manufacturers Association*, 307 F. Supp. 617 (C.D. Ca. 1969), aff'd 397 U.S. 248 (1970). Recently the government was required to give all interested persons the names of the economists who had worked for the government in connection with an antitrust investigation. See, *United States v. Associated Milk Producers, Inc.*, 394 F. Supp. 29 (W.D. Mo. 1975), aff'd 534 F. 2d 113 (8th Cir. 1976). The Antitrust Penalties and Procedures Act ("APPA"), 15 U.S.C. § 16 expressly provides for disclosure of government "documents and materials" prior to the entry of a consent decree.¹ The policy underlying this requirement is clearly stated in the House Report to the APPA, which reads:

"The Committee believes that in the majority of instances the interest of private litigants can be accommodated without the risk, delay and expense of the government going to trial. For "example, the Court can condition approval of the Consent Decree on the antitrust division's making available information and evidence obtained by the government to potential, private plaintiffs which will assist in the effective prosecution of their claims." House Report at 6539 quoting Senate Report at 6-7 (emphasis added).

For the above reasons, petitioner respectfully submits that its request for leave to participate as an *amicus curiae* in these proceedings, to file its Proposed Supplemental Provisions to the proposed Modification of the 1962 Consent Decree and to present evidence at a hearing on such proposed Modification are necessary and appropriate, in compliance with law and consistent with the public interest and the dictates of fundamental fairness and justice. Petitioner accordingly urges that it be granted *amicus curiae* status and permitted to present evidence at a hearing, and that its proposed supplemental provisions be incorporated in the proposed Modification to Consent Decree.

Respectfully submitted,

HAROLD E. KOHN,
DAVID H. MARION,
JOSEPH F. ROBA

Kohn, Savett, Marion & Graf, P.C., 1214 IVB Bldg., 1700 Market Street, Philadelphia, Pa. 19103; attorneys for petitioner, Philadelphia Electric Company.

¹ The United States contends that the APPA does not strictly apply in these proceedings because they involve the modification of an existing Consent Decree rather than the enactment of a new one after the filing of a complaint. The United States has, however, recognized the applicability of at least the policy of the APPA by largely following its provisions in these proceedings. Thus, the Memorandum filed by the government in support of the Proposed Modification to the 1962 Consent Decree follows the provisions of APPA subparagraph (b) (1), which requires the filing of a "competitive impact statement" by the government with the filing of a proposed consent decree.

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

[Civil No. 28228]

United States of America, Plaintiff, v. General Electric Company and Westinghouse Electric Corporation, Defendants.

MEMORANDUM OF UNITED STATES IN RESPONSE TO PHILADELPHIA ELECTRIC COMPANY'S PETITION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE IN THE PROPOSED MODIFICATION BY CONSENT OF FINAL JUDGMENTS ENTERED OCTOBER 1, 1962

The Government does not oppose the petition of Philadelphia Electric Company (hereinafter "PE") to this Court for leave to appear as *amicus curiae* for the purpose of commenting on the Proposed Modification by Consent of the Final Judgments of October 1, 1962. Nor does the Government object to a hearing, if the Court wishes to hold one, at which PE may present its views on whether the Proposed Modification is in the public interest. However, the Government takes exception to PE's proposed supplemental paragraphs 8 and 9 as contrary to the public interest. Accordingly, the Government urges the Court to deny PE's petition that entry of the Proposed Modification be conditioned upon the parties' acceptance of these supplemental paragraphs.

I. PROPOSED SUPPLEMENTAL PARAGRAPH 8 SHOULD BE REJECTED AS AN ATTEMPT TO CIRCUMVENT THE STATUTORY FRAMEWORK OF THE ANTI-TRUST LAWS AND AS CONTRARY TO THE PUBLIC INTEREST

PE's proposed paragraph 8 would have the defendants agree to pay damages to all purchasers of large turbine generators during the period 1963 to the present.¹ The amount of such damages would be determined by the Court upon the conclusion of evidentiary hearings or upon stipulation by the parties.

A. Conditioning Entry of the Proposed Modification Upon Defendants' Payment of Restitution Would Violate the Statutory Scheme Which Provides Remedies for Private Parties That Are Separate and Distinct From Those Available to the Government

Paragraph 8 should be rejected as an attempt to circumvent the clear and specific statutory framework of the antitrust laws. The antitrust statutes provide that in civil actions brought by the Government it may secure an injunction (15 U.S.C. § 4.25). Private parties who believe they have been injured by antitrust violations may sue, and, if successful, may obtain an injunction (15 U.S.C. § 26) and/or damages (15 U.S.C. § 15). If damages are obtained, they are trebled (*Id.*). As the Supreme Court has remarked in other, but similar, contexts:

(T)he scheme of the statute is sharply to distinguish between Government suits, either criminal or civil, and private suits for injunctive relief or for treble damages. Different policy considerations govern each of these. *United States v. Bendix Home Appliances, Inc.*, 10 F.R.D. 73, 77 (S.D.N.Y. 1949), quoted approvingly in *Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 689 (1961) and *United States v. Borden Co.*, 347 U.S. 514, 518-19 (1954).

This clear statutory distinction between the remedies available to the Government

¹In its petition PE nominally seeks the equitable remedy of "restitution." However, the relief desired—recovery for past losses resulting from alleged violations of the antitrust laws—is a claim for damages cognizable only in a private suit brought under section 4 of the Clayton Act, 15 U.S.C. § 15. See *Washington v. Automobile Mfrs. Ass'n*, 538 F.2d 231, 234 (9th Cir. 1976), and discussion *infra*.

and to private persons would be violated if a private petition for damages were cognizable in a Government enforcement action. The legislative history of the Sherman Act underscores this conclusion. In 1911 Senator LaFollette introduced a bill to amend the Sherman Act to provide for relief similar to that which PE seeks by its proposed supplemental paragraph 8. The bill would have permitted a private party to intervene in any civil suit brought by the United States and to secure damages to the extent they would have been available had an independent treble damage action been brought. S. 3276, 82d Cong., 1st Sess. § 13 (1911). See 47 Cong. Rec. 4183-84, 4189-90 (1911). The fact that this bill failed to become law is a clear indication that Congress intended private parties to seek relief independently of Government actions. PE's proposal is contrary to that intent and to the statutory scheme in effect for more than 60 years.

There is additional, more particular authority in the case law for the proposition that damages are not available to private parties in Government enforcement actions. In *United States v. Loew's, Inc.*, 189 F. Supp. 373 (S.D.N.Y. 1960), *rev'd on other grounds*, 371 U.S. 38 (1962), the United States brought a civil action against several motion picture distributors charging a violation of section 1 of the Sherman Act. The Government alleged that the defendants illegally conditioned the licensing of one film on the licensing of another. Following a trial on the merits, the court held for the United States. As part of the relief to be included in the final decree, the Government sought a provision directing the defendants to renegotiate their contracts with television stations in order to give the stations an opportunity to license films on an individual basis. The proposed provision would also have required the defendants to pay for each film dropped from a license and to reimburse the station for any prints it had purchased of the eliminated films. The court held that such a decree would be without legal foundation in light of the precise and distinct statutory remedies available to the Government and to potential private plaintiffs. The court said:

(T)he law provides that the Government may prevent a continuing violation of the law by securing an injunction and that private parties may be reimbursed for damages resulting from past violations of the law. Nowhere in the statute, however, is there any authority to require a defendant in a government antitrust case to refund that which it has received, even under an illegal contract, and to pay that amount to a private party not a party to the action. As one court has pointed out:

* * * The Government's responsibility in bringing cases of this nature is to vindicate the public interest in preserving a competitive economy rather than to redress private wrongs and recover damages for injuries sustained by individuals. *United States v. Safeway Stores, D.C.N.D.Tex.1957*, 20 F.R.D. 451, 456. *United States v. Loew's, Inc.*, *Supra* at 398-99.

The court also commented on the proper course of action to be pursued by those who feel they are entitled to damages:

If the television stations are entitled to recoup some money they have an adequate remedy for damages in a suit specifically for that purpose. But we must remember that in such a suit the defendants would be entitled to a trial by jury, which they did not have in the present action. Furthermore, questions of venue, jurisdiction and the statute of limitations would have to be considered in a way that did not arise in the present action. *United States v. Loew's, Inc.*, *supra* at 399.

The case for damages presented in *Loew's* is certainly more compelling than that

argued here by PE. The court in *Loew's*, after a trial on the merits, found that the defendants had violated section 1 of the Sherman Act. Moreover, the court found that some private persons had been victims of the unlawful conduct of the defendants. Nevertheless, the court refused to permit damages or reimbursement to these parties. In the proceeding before this Court, there has been no adjudication of liability nor any finding of injury. Therefore, just as damages were denied to non-parties in the context of *Loew's*, PE's request for "restitution" as part of the Government's relief should likewise be denied.

B. Conditioning Approval of the Proposed Modification Upon Restitution Is Not in the Public Interest

Congress has charged the Government with enforcing the antitrust laws on behalf of the public. 15 U.S.C. § 4, 25. As part of this duty the Government has authority and responsibility to speak for and to protect the public interest. *Sam Fox Publishing Co. v. United States*, 366 U.S. 683 (1961); *United States v. Borden Co.*, 347 U.S. 514 (1954); *Buckeye Coal & Ry. v. Hocking Valley Ry.*, 269 U.S. 42 (1925); *United States v. Associated Milk Producers, Inc.*, 534 F.2d 113 (8th Cir. 1976). The public interest to be protected by the Government in its enforcement of the Sherman Act and other antitrust statutes is the preservation of competition. See, e.g., *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 262 (1972); *Northern Pac. Ry. v. United States*, 356 U.S. 1, 4 (1958).

Here, on the other hand, a private party seeks damages as part of a Government enforcement proceeding. It must be concluded that PE's paragraph 8 is an effort to enhance PE's self interest, and not an attempt to promote the public interest. The Supreme Court has recognized this clear distinction:

The sole function of an action for injunction is to forestall future violations. It is so unrelated to punishment or reparations for those past that its pendency or decision does not prevent concurrent or later remedy for past violations by indictment or action for damages by those injured. *United States v. Oregon Medical Soc'y*, 343 U.S. 326, 333 (1952).

Similar attempts by private parties to condition entry of a Government consent decree upon the addition of provisions enhancing their damage claims have been denied as relating only to private interests and not to any alleged public interest. *United States v. National Bank & Trust Co.*, 319 F. Supp. 930 (E.D. Pa. 1970); *United States v. Automobile Mfrs. Ass'n*, 307 F. Supp. 617 (C.D. Cal. 1969), *aff'd per curiam sub nom. City of New York v. United States*, 397 U.S. 248 (1970). See *United States v. Associated Milk Producers, Inc.*, *supra* at 116 n.3; *United States v. Atlantic Richfield Co.*, 50 F.R.D. 396 (S.D.N.Y. 1970), *aff'd per curiam sub nom. Bartlett v. United States*, 401 U.S. 986 (1971).

In both *National Bank & Trust Co.* and *Automobile Manufacturers Association*, the respective petitioners sought the inclusion in a Government consent decree of an admission of liability which would have had *prima facie* effect in their private damage actions. In both cases the petitions were denied.² In *United States v. National Bank & Trust Co.*, this Court said:

It is clear that the relief petitioner seeks to secure through intervention relates solely

²In those cases the private parties attempted to achieve their goals through intervention in Government actions. Here PE seeks only to appear as *amicus curiae*. The relief PE seeks, however, is substantially the same as sought in the above cases and should be denied for the same reasons.

to petitioner's private interest and not to any alleged public interest. *United States v. National Bank & Trust Co.*, supra at 932.

Thus, PE's paragraph 8 is not in the public interest, and could be at odds with it in this case. The consent decree procedure has been recognized by Congress and the courts as an effective and efficient way in which the Government can serve the public by eliminating anticompetitive practices without the cost, delay, and risk of litigation. *United States v. CIBA Corp.*, 50 F.R.D. 507, 514 n.3 (S.D.N.Y. 1970); *United States v. National Bank & Trust Co.*, supra at 933; *United States v. Blue Chip Stamp Co.*, 272 F. Supp. 432, 440 (C.D. Cal. 1967), *aff'd per curiam sub nom. Thrifty Shoppers Scrip Co. v. United States*, 389 U.S. 580 (1968). In its Proposed Modification of the 1962 Consent Decrees the Government has attempted to enjoin what it views as a continuing violation of the law. As such, the modification is consistent with its enforcement obligation and in the public interest. On the contrary, PE's petition for restitution, if allowed, will be adverse to the public interest in that it will delay or prevent entry of the modification.

There is little doubt that if paragraph 8 were required to be made part of the decree there would be no modification. It is highly unlikely that an agreement could be reached which would be satisfactory to the parties and to the multitude of potential private plaintiffs. This result would clearly be contrary to the public interest, in view of the fact that the Government has obtained by consent substantially all the relief that it would have sought in a suit.

In similar contexts, courts have denied intervention to private parties in Government antitrust cases where, as here, such participation would delay and prejudice adjudication of the matter or defeat the entry of a consent decree. *United States v. Associated Milk Producers, Inc.*, supra at 118 n.3; *United States v. Atlantic Richfield Co.*, supra at 372; *United States v. CIBA Corp.*, supra at 514; *United States v. National Bank & Trust Co.*, supra at 933; *United States v. Automobile Mfrs. Ass'n*, supra at 619-20. See generally *Sam Fox Publishing Co. v. United States*, supra, at 693, wherein the Supreme Court recognized "the unquestionably sound policy of not permitting private antitrust plaintiffs to press their claims against alleged violators in the same suit as the Government."

Accordingly, for the reasons stated above, entry of the Proposed Modification, which is designed to foster prompt restoration of competitive conditions to the large turbine generator industry, should not be conditioned upon restitution.

II. PROPOSED SUPPLEMENTAL PARAGRAPH 9 SHOULD BE REJECTED AS UNWARRANTED AND UNNECESSARY IN THE CIRCUMSTANCES OF THIS PROCEEDING

Petitioner's proposed paragraph 9 would require the United States to preserve and disclose all documents and other evidence it has obtained in the course of its investigation which relate to the practices to be enjoined by the Proposed Modification. PE desires this unrestricted access to the Government's evidentiary material for the purpose of either pressing its claim to restitution in this proceeding or conducting an independent private damage action. See PE Memorandum at 6.

For the reasons outlined previously, restitution is unavailable to PE as part of this modification proceeding. Therefore it cannot be used as a justification for access to the Government's evidence. Further, PE has filed no treble damage action to which the Government's materials would relate. If PE at some future time does institute a damage action, there exists a repository of relevant documents coextensive with that made avail-

able to the Government to which PE, through designated attorneys, already has been afforded access and which must be preserved by the defendants for at least one year under an agreement between the defendants and PE.³ Accordingly, the Government objects to PE's request that entry of the Proposed Modification be conditioned upon the acceptance of paragraph 9.

A. Case Law Does not Support the Proposition That Entry of the Proposed Modification Should be Conditioned Upon Disclosure and Preservation of the Government's Evidentiary Documents

There is no case law for the proposition that entry of the Proposed Modification should be conditioned upon disclosure by the Government of its evidentiary documents and materials. *United States v. National Bank & Trust Co.* and *United States v. Automobile Manufacturers Association* cited by PE in arguing for disclosure, involved situations in which the respective courts entered orders providing only for the preservation of documents and materials in the possession of the Department of Justice.⁴ Furthermore,

³ GE and Westinghouse have entered into contracts with PE (as well as with over fifty other utilities) arising out of the antitrust suit filed against GE and Westinghouse by American Electric Power Company ("AEP"). That suit, filed on December 29, 1971, charged GE and Westinghouse with violations of sections 1 and 2 of the Sherman Act. The case has been settled, contingent upon the entry of this Proposed Modification.

The subject contracts (See GE-PE Contract appended hereto as Exhibit "A") require GE and Westinghouse to conduct their respective document retention programs as if PE had filed a complaint similar to AEP's. The document retention programs are to be continued during the life of the agreements, which are still in effect, and for one year subsequent to effective notice of their termination. See ¶ 2 of GE-PE Contract. Therefore, even if it is assumed that the defendants will terminate the agreements following settlement of the private action, PE is assured that for a minimum period of one year thereafter GE and Westinghouse will preserve the documents relied upon by AEP in its private suit and the Government in this enforcement proceeding.

Furthermore, from the time PE entered into the "standstill" agreement, its attorneys have had access to the very documents it seeks from the Government. Specifically, the contracts provide that PE may designate as its representative the law firm of Winthrop, Stimson, Putnam & Roberts, New York, New York, which shall have the same right as the attorneys for AEP to examine and copy all documents filed in the AEP case and all responses given by GE and Westinghouse to discovery subpoenas and requests (including interrogatory answers and transcripts of depositions) for the purpose of reporting to PE on the progress of that litigation. See ¶ 7 of GE-PE Contract. This access terminates if and when the respective contracts terminate. See ¶ 6 of GE-PE Contract. As noted above, however, even after termination of the agreements, GE and Westinghouse are required to preserve their documents for an additional year. *Id.* Within that period, PE should have sufficient time to file an action, if it intends to, and seek whatever discovery orders it deems appropriate to protect its interests.

⁴ In both cases it was made clear that potential treble damage plaintiffs were to achieve disclosure through appropriate orders or subpoenas arising from their private litigation. *United States v. National Bank & Trust Co.*, supra at 933; *United States v. Automobile Mfrs. Ass'n*, supra at 620.

the two cited cases do not even establish the principle that a court must withhold its approval of a consent decree if the Government does not agree to preserve relevant documents. In both cases, the Government did not object to the petitions of non-parties for an impoundment order. Thus, the orders were entered as adjuncts to proposed consent decrees and not as conditions of their approval. *United States v. National Bank & Trust Co.*, supra at 933; *United States v. Automobile Mfrs. Ass'n*, supra at 620.

Finally, it bears noting that the contexts in which the Government refrained from objecting to preservation orders in *National Bank & Trust Co.* and *Automobile Manufacturers Association* were significantly different from that in which PE finds itself. In those cases private parties had no contractual agreements with the defendants providing for the preservation of documents, nor did they have the right to designate attorneys who would have access to evidentiary materials for the purpose of reporting on the merits of outstanding litigation.

B. If the Antitrust Procedures and Penalties Act Were To Govern This Modification Proceeding, It Would Not Require Disclosure of the Government's Evidentiary Documents

The Government maintains that the Antitrust Procedures and Penalties Act (hereinafter "APPA"), Pub. L. 93-528, 15 U.S.C. § 16 (b) through (h), applies by its terms only to consent decree proceedings instituted subsequent to the filing of a complaint and does not govern the modification of an existing consent decree. However, even if the APPA were to apply to modification proceedings, it would not require disclosure of the Government's evidentiary material.⁵

The APPA requires only that the United States file with the district court "materials and documents which the United States considered determinative in formulating [the] proposal [for a consent judgment]." 15 U.S.C. § 16(b) (emphasis added). That is, only those documents which conclusively or authoritatively influenced the nature of the proposed relief need be disclosed. If Congress had contemplated disclosure of the mass of substantiated documents upon which the Government

⁵ PE erroneously relies upon a portion of the House Report to the APPA (PE Memorandum at 9-10) as supporting its interpretation of the "determinative document" disclosure requirement in the Act (15 U.S.C. § 16(b)). That part of the report does not relate to section 16(b) but to a different subsection (15 U.S.C. § 16(e)). This latter provision relates to the matters to be considered by the court in its determination whether entry of the decree is in the public interest. The language quoted by PE may allow the Court to condition approval upon disclosure but does not compel it. Further, the quoted language is immediately preceded in the same paragraph by the following:

Nor is Section 2(e) (15 U.S.C. § 16(e)) intended to force the government to go to trial for the benefit of potential private plaintiffs. The primary focus of the Department's enforcement policy should be to obtain a judgment—either litigated or consensual—which protects the public by insuring healthy competition in the future. H.R. Rep. No. 93-1463, 93d Cong., 2d Sess. 8 (1974), quoting S. Rep. No. 93-298, 93d Cong., 1st Sess. 6 (1973).

It is clear from this language that Congress expressly intended the Government to concentrate its enforcement policy on protecting the public interest in competition, not the interests of potential private plaintiffs.

relied for evidence in its antitrust cases, it surely would have chosen adequately descriptive language to that effect. Furthermore, under the scheme of the APPA, whatever "determinative documents" are disclosed must also be listed in advertisements published repeatedly in various newspapers, 15 U.S.C. § 16(c)(3). Again, it is a highly dubious proposition that Congress intended a listing of the Government's evidentiary documents and materials—often a huge mass in antitrust cases—to be published in that manner.

In any case, whatever policy is embodied in the APPA regarding disclosure of documents to private parties, PE, by virtue of its pre-existing contractual arrangement with GE and Westinghouse, has been assured preservation or and its designated attorneys have been provided access to the documents at issue here. Therefore, the Court should reject PE's petition that approval of the Proposed Modification be conditioned upon the Government's preservation and disclosure of its evidentiary documents.

Notwithstanding the Government's position that PE is not entitled to disclosure or preservation of the relevant evidentiary materials, the Government intends to preserve those materials for its own purposes and will of course comply with any lawful order regarding them.

CONCLUSION

The Government does not oppose PE's petition to appear as *amicus curiae*. For the reasons stated above, however, PE's petition that entry of the Proposed Modification be conditioned upon the addition of PE's proposed supplemental provisions should be denied.

Dated: March 14, 1977.

Respectfully submitted,

MARK LEDDY,
FRANCIS P. NEWELL,
VINCENT ALVENTOSA,
RENE A. TORRADO, JR.,
JOHN W. CLARK,

Attorneys, U.S. Department of Justice.

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

[Civil No. 28228]

United States of America, Plaintiff, v. General Electric Company and Westinghouse Electric Corporation, Defendants.

Exhibit "A"

GENERAL ELECTRIC COMPANY—PHILADELPHIA
ELECTRIC COMPANY CONTRACT

Agreement dated as of March 15, 1972, between General Electric Company (herein "GE") and Philadelphia Electric Company (herein "Utility").

GE has been named as defendant in an action alleging violations of the antitrust laws brought by the Appalachian Power Company, Indiana & Michigan Power Company, Kentucky Power Company and Ohio Power Company in the United States District Court for the Southern District of New York (Civil Action No. 71 Civ. 5677) (hereinafter the "AEP case").

GE and Utility desire to preserve certain rights under the antitrust laws pending the outcome of the AEP case.

In consideration of the premises and of the mutual covenants herein contained, it is hereby agreed as of March 15, 1972 (hereinafter referred to as "the date of this Agreement"):

1. This Agreement relates to (a) any cause of action not barred as of the date of this Agreement which may have accrued to Utility by said date with respect to any alleged violation of the United States antitrust laws

of GE affecting or relating to the sale by GE or others of steam turbine generators having a capacity of 44 m.w. or greater, and (b) any cause of action not barred as of the date of this Agreement which may have accrued to GE by said date with respect to any alleged violation of the United States antitrust laws by Utility affecting or relating to the sale of steam turbine generators having a capacity of 44 m.w. or greater.

2. In any action commenced within 90 days after the receipt by Utility of notice from GE of the termination of the AEP case or within 90 days after the effective date of the notice provided for in paragraph 6, whichever time period expires first, in which either GE or Utility asserts a claim against the other on a cause of action described in paragraph 1, neither will interpose a statute of limitations or laches defense based on the failure of the other to assert such claim during the period from the date of this Agreement to the date of commencement of such action. GE will, within 45 days from the termination of the AEP case, give notice to Utility informing it of said termination. If either party to this Agreement commences litigation based on a cause of action described in paragraph 1 during the applicable time period specified in this paragraph 2, it is further agreed that if the defendant in that litigation within 90 days of the filing of such litigation asserts any claim, therein or in a separate legal proceeding, based on a cause of action described in paragraph 1, it shall be considered as having been asserted on the same date as that litigation was commenced. During the period from the execution of this Agreement to the effective date of the notice provided for in paragraph 6, and for one year thereafter, Utility and GE shall conduct their respective document retention programs as if Utility had filed a complaint similar to the complaint in the AEP case and GE had filed a counterclaim or countersuit similar to any counterclaim or countersuit filed in or to be filed in or in connection with the AEP case.

3. Until the receipt of a notice following the termination of the AEP case as provided for in paragraph 2 or the effective date of a notice as provided for in paragraph 6, whichever shall come first, neither GE nor Utility will commence a legal proceeding against the other based on any cause of action described in paragraph 1.

If a class action is instituted by a third party in which either GE or Utility is a defendant based on any cause of action described in paragraph 1, GE or Utility, whichever is the defendant in that action, will promptly notify the other of the institution of the action unless subject to a court order prohibiting such notice. Unless the party so notified informs the other that the class action is not one described in paragraph 1, twenty days after notice is sent, GE or Utility may represent to the court that the other requests to be excluded from the class.

In any event, if a class action is instituted by a third party in which either GE or Utility is a defendant based on any cause of action described in paragraph 1, GE or Utility, as the case may be, will, upon receipt of notice designating it as a member of the plaintiff class (pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure or similar rule or statute), request exclusion from any such class action.

If a third party should commence a legal proceeding based on a cause of action described in paragraph 1 in which either GE or Utility is a defendant and seek to join as a party plaintiff whichever of either GE or Utility is not a defendant in such action, GE or Utility, whichever is the party sought to be joined, will resist such joinder.

4. The provisions of this Agreement shall not limit or affect any defense of the statute

of limitations or laches to any cause of action described in paragraph 1, which defense exists as of the date of this Agreement; nor shall the provisions of this Agreement limit or affect any other defense to any cause of action described in paragraph 1.

5. This Agreement shall not be construed to render any determination of law or fact which shall be made in the AEP case binding upon GE or Utility in any litigation between GE and Utility, nor shall it be construed as a waiver of any rights which may otherwise exist with respect to any such determination.

6. Either party, by giving notice to the other, may terminate all obligations under this Agreement except that (a) the provisions of paragraph 2 shall survive with respect to an action commenced within the applicable time period therein and (b) the provisions of paragraph 3 shall survive if, within 6 months after the effective date of such notice given by GE, GE shall enter into any agreement with any plaintiff in the AEP case in settlement of the claims asserted in that case by such plaintiff. The effective date of such notice shall be the 30th day after mailing.

7. Utility may designate Messrs. Winthrop, Stimson, Putnam & Roberts (hereinafter "designated attorneys"), who shall have the right to examine, at an office in New York City to be specified by GE, all documents filed in the AEP case and all responses given by GE to discovery subpoenas and requests (including interrogatory answers and transcripts of depositions) in that case, except insofar as such documents and responses are subject to an agreement, stipulation or court order restricting disclosure. To the extent that GE documents or responses are subject to such an agreement, stipulation or court order, the designated attorneys shall have the same rights and be subject to the same limitations as the attorneys for the plaintiffs in the AEP case with respect to such documents or responses. Subject to such limitations, the designated attorneys shall have the right, upon reasonable notice, to examine such documents and responses and to have copies made at Utility's expense. The designated attorneys may make reports to Utility on the progress of the litigation, but in making such reports shall be subject to the same limitations as the attorneys for the plaintiffs in the AEP case with respect to the disclosure of any such documents or responses.

8. In the event that GE enters into any agreement with any plaintiff in the AEP case in settlement of the claims asserted in that case by such plaintiff, GE will give Utility notice of such settlement and a copy of the agreement within 45 days thereof. If such settlement is made prior to the entry of judgment and involves, in respect of those claims alone, consideration measurable in monetary terms in excess of that reasonably related to factors of costs and expenses of litigation, GE will offer Utility a settlement either on the same basis or, at the option of GE, on the basis of a formula equitably related to such settlement; provided, however, that GE may make any offer conditional upon acceptance by utilities then representing up to 75% of the total generating capacity of all utilities with which GE has executed agreements similar to this Agreement.

9. GE will advise Utility promptly regarding the terms of any equitable decree proposed to the Court to be entered in the AEP case, and will not oppose any application to the Court by Utility to be heard with respect to the terms of such proposed decree. GE will request the Court not to sign any such proposed decree until 15 days after GE

has given notice of the proposed decree-to-Utility.

10. GE will advise Utility promptly regarding any modification proposed to the Court of the consent decree entered October 1, 1962, in the United States District Court for the Eastern District of Pennsylvania in the case *United States v. General Electric Company et al.*, Civil No. 28228. GE will not request the Court to sign any such proposed modification until 15 days after it has been proposed to the Court.

11. Notice to either party under any provision of this Agreement shall be given by registered or certified mail, return receipt requested, addressed as follows:

In the case of GE:

General Electric Company, Counsel, Power Generation Sales Division, 345 Park Avenue, New York, New York 10022.

LAW OFFICES
MONTGOMERY, McCracken, WALKER & RHODES
THREE PARKWAY
PHILADELPHIA, PA. 19102
TELEPHONE 3-0860
TWX 310-670-0472 CABLE "ROMOCK"

March 1, 1977

John W. Clark, Esquire
Chief Special Trial Section
Starr Building
11th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

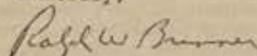
Re: U.S.A. v. General Electric Company
and Westinghouse Electric Company
Eastern District of Pennsylvania
Civil Action No. 28228

Dear Mr. Clark:

I enclose herewith the Objections of Commercial Machine Works, a Division of Alco Standard Corporation to the Proposed Modification by Consent of Final Judgment Entered October 1, 1962, U.S.A. v. General Electric Company and Westinghouse Electric Corporation United States District Court for the Eastern District of Pennsylvania, Civil Action No. 28228. We submit these Objections today pursuant to the extension of time within which to comment, obtained from the Court by the Department of Justice.

If you or your staff desires further comment by Commercial Machine Works on any of the issues raised by the enclosed Objections, please contact me. Commercial Machine Works will provide, to the best of its ability, any documentary evidence or testimony requested of it.

Sincerely,


Ralph W. Brenner

Enc.

cc: Mark P. Leddy, Esquire
Raymond Midgett, Esquire
Henry W. Sawyer, III, Esquire
(with Enc.)

Hand Delivered

reb

In the case of Utility:

Edward G. Bauer, Jr., Vice President and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101.

12. This Agreement contains the entire agreement of the parties and may not be modified in any way except by written consent of authorized representatives of the parties hereto. Neither the execution of this Agreement nor anything herein contained is intended to be, nor shall be deemed to be, an admission of any liability to anyone or an admission of the existence of facts upon which liability could be based.

GENERAL ELECTRIC COMPANY.

Executed on January 8, 1973.

PHILADELPHIA ELECTRIC COMPANY.

Executed on December 27, 1972.

SUBURBAN OFFICE
480 NEW SCHUPLER ROAD
SPRING CITY, PA. 18776
TEL. 948-2888

EUROPEAN OFFICE
27 BOLTUN STREET
LONDON W1P 3PL, ENGLAND
PHONE 01-861-8818
TELEX 2343

AFFILIATED IN NEW JERSEY WITH
REINER AND DAVIS
240 BOWEN STREET
CAMDEN, NEW JERSEY 08104
REX: 343-7000

OBJECTIONS OF COMMERCIAL MACHINE WORKS, A DIVISION OF ALCO STANDARD CORPORATION TO THE PROPOSED MODIFICATION BY CONSENT OF FINAL JUDGMENT ENTERED OCTOBER 1, 1962, U.S.A. v. General Electric Company and Westinghouse Electric Corporation, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, CIVIL ACTION No. 28228

Commercial Machine Works, a division of Alco Standard Corporation, by its attorneys, Montgomery, McCracken, Waiker & Rhoads, respectfully submits the following objections relating to the proposed Modification by Consent of Final Judgment Entered October 1, 1962 ("proposed Modification"), pursuant to the provisions of 15 U.S.C. 16(d).

I. DESCRIPTION OF COMMERCIAL MACHINE WORKS

Commercial Machine Works is a division of Alco Standard Corporation. The principal offices of Commercial Machine Works are located at 1099 Touhy Avenue, Elk Grove Village, Illinois 60007.

Commercial Machine Works (hereinafter referred to as "CMW" or "Commercial Machine") is engaged in the business of inspection, on site and shop repair of large industrial equipment. CMW has served the electrical utility industry for many years in connection with steam turbine maintenance and repair.

II. SUMMARY OF RELIEF REQUESTED

The United States of America, by its attorneys, proposes to consent to a Modification of the Final Judgment in the case of *U.S.A. v. General Electric Company and Westinghouse Electric Corporation*, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 28228. By order requested by the Department of Justice and granted by the Honorable Joseph L. McGlynn, Jr., any person desiring that the United States withdraw its consent to the proposed Modification may submit written comments relating to the proposed Modification to the United States on or before March 2, 1977. Commercial Machine Works requests that the government withdraw its consent to the proposed Modification and propound to defendants General Electric Company and Westinghouse Electric Corporation in its place, an alternative Modification by Consent of Final Judgment Entered October 1, 1962 for the reasons set forth in the Discussion below. Exhibit "A", attached hereto, sets for the necessary amendments to the proposed Modification.

III. DISCUSSION

A. Procedural History

As set forth in Plaintiff's Memorandum in Support of a Proposed Modification to the Final Judgment Entered on October 1, 1962 Against Each Defendant ("Plaintiff's Memorandum") of record herein, on June 29, 1960 the Government obtained an indictment charging General Electric Company, Westinghouse Electric Corporation and Allis-Chalmers Manufacturing Corporation, and four individuals, with fixing the prices of large generators and contemporaneously filed a civil action against the corporations which sought an injunction against further violations of Section 1 of the Sherman Act. The criminal case resulted in the entry of guilty pleas by the three corporate defendants. The civil action ended with the entry of consent decrees against the corporate defendants which decrees enjoined the defendants from fixing prices, allocating product and geographical markets, bid-rigging and refusing to deal with certain customers.

The Government determined that subsequent to the entry of the decree, price competition has been eliminated as a result

of " * * * identical policies deliberately adopted and published in 1963, 64 and adhered to since." (Plaintiff's Memorandum at 3). It further concluded that GE and Westinghouse have intentionally and successfully endeavored, through public dissemination of information, to agree to stabilize prices and that such action warrants the filing of a civil action alleging a violation of the Sherman Act or of the 1962 consent decree (plaintiff's Memorandum at 3). After informing the defendants of its intention, the Government agreed to the parties' request for a Modification of the 1962 decree because in so doing they felt they would " * * * secure substantially the same remedial relief that (the Government) would have sought in a civil action that probably would have taken years to complete " * * * (Plaintiff's Memorandum at 4).

As discussed in Plaintiff's Memorandum, the remedial provisions of the proposed Modification are intended to: (1) prohibit public statement actually intended to communicate an invitation to eliminate various elements of competition; (2) enjoin specific practices that reinforce the manufacturers' pricing agreements; (3) prohibit public dissemination of price and price-related information from which a general pricing policy can be inferred; and (4) prohibit examination by one manufacturer of the price-related documents of the other form which pricing policy may be inferred, where such documents may be legitimately distributed to individual customers (Plaintiff's Memorandum at 13).

The result desired by the Government, as set forth in the Memorandum is " * * * to foster competitive responses by the manufacturers to invitations to bid on turbine generators." (Plaintiff's Memorandum at 12-13). The defendants have admitted that Westinghouse and General Electric have been the only two domestic manufacturers of large turbine generators since 1963 (Plaintiff's Memorandum at 9).

B. Effects of Proposed Modification

In setting forth a procedure which would result in the desired effects set forth above, the effects of the specific procedures on the various after-markets involving turbine generators have not been considered. As set forth more fully in the following section, there is a market for the inspection, evaluation and repair of rotors of large turbine generators. Inspection, evaluation and repair of such rotors can be performed at a cost usually between two and ten percent of the cost of replacement. However, to perform such services a variety of information concerning the turbine generators is needed. In the past, defendants have engaged in various anti-competitive practices aimed at destroying or monopolizing this market, including denying utility customers information necessary to obtain independent analysis and repair of turbine and generator rotors. If the proposed Modification were to be entered in its present form, CMW believes that the defendants would attempt to rely on it, to justify future refusals to supply such information requested by customers.

Whatever the merits of the proposed procedure in remedying the pricing violations, CMW believes that a concurrent and undesirable result of the non-disclosure provisions will be that the defendants will be able to rely on the terms of the proposed Modification to foreclose competition in the inspection and repair of large turbine generators. The language, though not the intent, of the present Modification may provide the manufacturers with a legal excuse to resist all requests from their customers for information necessary to inspect, evaluate and repair turbine generators. This will result in the creation of two independent totally monopolistic

markets in the inspection, evaluation and repair of turbine generators subject to the Modification: only Westinghouse will be capable of inspection, analysis and repair of a Westinghouse turbine generator; only General Electric will have the requisite information to inspect, analyze and repair a General Electric turbine generator.

The following provisions of the proposed Modification may be relied upon by the defendants to resist requests for information concerning generators previously purchased from them. Proposed Section 2(f)(1) enjoins each defendant from communicating to any person not employed by it a policy regarding the price or terms and conditions of sale for large turbine generators. Section 2(f)(2) enjoins communication of policy regarding performance guarantees, such as heat rates. Section 2(f)(3) enjoins communication of pricing policy regarding spare parts. Section 2(f)(4) enjoins communication of pricing formulas which rely on, *inter alia* size and configuration of the generator (Plaintiff's Memorandum at 16). Finally, Section 2(g) enjoins revealing to any person not employed by defendants, terms and conditions of sale, exhaust end load limits and performance guarantees of large turbine generators. Further, the Government states "This provision is designed to prevent the public disclosure of these types of information by the defendants even if not in price book form." (Plaintiff's Memorandum at 17) (emphasis supplied).

Notably, the exceptions to nondisclosure are limited to communication of information needed by the customer in connection with the negotiation of a purchase of a large turbine generator, not inspection, evaluation and repair (Plaintiff's Memorandum at 18). Even more damaging is the fact that it is the defendant who decides whether to respond to the customer's request or to hide behind the cloak of a judicial order of non-disclosure.

"However, these exceptions also emphasize that only that information which the defendants view in good faith as necessary to respond to the request of a customer for information may be disclosed to the customer." (Plaintiff's Memorandum at 18) (emphasis supplied).

The Court has the power to grant in the context of this consent decree, such relief as will prevent the lessening of competition. Lessening of competition results from defendants' past conduct of thwarting independent repair, testing and evaluation of rotors as well as defendants' expected future conduct should it be permitted to hide behind the cloak of a consent decree.

It is within the "large discretion" of the District Court to fit the anti-trust decree to the special needs of the individual case. *Ford Motor Co. v. U.S.*, 405 U.S. 562, 573 (1972). In *International Salt Co. v. U.S.*, 332 U.S. 392, 401 (1947), the Supreme Court stated:

"Antitrust relief should unfetter a market from anti-competitive conduct and 'pry open' to competition a market that has been closed by defendant's illegal restraints."

Under 15 U.S.C. 16(e) the Court, before entering the modification by consent, may consider the impact of the entry of the judgment upon the public generally. Based on the information contained herein, the proposed decree should neither be consented to nor ordered unless amended as set forth in Exhibit "A" or, in the alternative, the Court should not order the Modification until after taking testimony of such experts or other persons as the Court may deem appropriate with respect to the matters raised by these objections.¹

¹ Commercial Machine Works is prepared to present to the Department of Justice or the Court oral testimony and documentary evidence in support of each factual averment in these Objections.

C. The Relevant Market—Turbine and Generator Rotor Inspection and Repair

The turbine and generator rotor shafts are principle components of the large turbine generator, as defined by the proposed Modification. These shafts must be periodically inspected. Where defects exist, they must be repaired, if possible, or the entire rotor must be replaced. Operating failure of these shafts can cause catastrophic damage to property and personnel.

Assuring the metallurgical integrity of rotor forgings is among the most important of large turbine generator inspections and repairs but, as an assembled component of the turbine generator, is perhaps the most difficult to thoroughly inspect and repair, especially on site. A crucial examination of the integrity of a turbine generator rotor is an examination from within the bore of the shaft. A rotor is inspected from bore by the following four step procedure: (1) a small amount of material may be removed from the surface of the bore to prepare it for inspection; (2) the bore surface and the shaft is inspected by some method; (3) using the results of the inspection, stress analysis is performed to determine whether and, if so in what manner, the rotor should be repaired; and (4) the rotor is repaired by bottle boring or overboring (in many instances, information concerning how much the bore can be enlarged by bottle boring without adversely affecting the integrity of the rotor is sufficient and full scale stress analysis is not needed).

It has been known that inclusions and other stress points concentrate near the center line of a forged shaft during initial manufacture and it has been the practice to remove them by drilling a hole, typically three to six inches in diameter, down the center of the shaft. Bottle boring and overboring are done to new rotors and those which have been in use for some time to eliminate inclusions and other stress points in the forged shaft of the turbine and generator which have not been removed by the original bore and/or have propagated with time. Bottle boring and overboring are done by mechanically reaching into the bore of the rotor and using a cutting tool to bore out the area containing the defects (inclusions, impurities, discontinuities). In 1972, Commercial Machine Works developed procedures to perform overboring and bottle boring of the shafts of turbine rotors on site. Since the turbine generator unit is inoperable during the period of repair, on site repair and its attendant reduction in downtime is highly desirable.²

Inspection of the rotor shaft, listed above as step 2, has proved difficult. For some time, the industry has been capable of inspecting the rotor shaft by magnetic particle inspection and by limited ultrasonic inspection, but these techniques are not sufficient to detect and define all flaws beneath the surface of the bore. Commercial Machine pioneered in refining the capability of ultrasonic inspection from within the rotor bore. CMW developed an on site ultrasonic inspection system, "BorSonic", conducted from within the rotor bore, to provide precise data from which an evaluation of the rotor shaft can be made and a decision reached as to whether the rotor can continue to run with proper repairs or must be scrapped. BorSonic, more than any other available

method, has the capability to adequately evaluate the entire volume of the rotor.³

On site honing, boring and bottle boring techniques, together with the BorSonic inspection system afford opportunity for preparation, inspection and correction of the rotor bore in a matter of weeks. Benefits to the utilities include reduction of downtime requirements, elimination of hazardous handling and shipping and control of equipment and schedules within the station.⁴ In addition, the BorSonic system provides the utility with reproducible data for direct comparison with identical inspections at regular intervals throughout the life of the turbine. Thus, owners have their historical record available to indicate any changes or propagation of existing flaws, inclusions or discontinuities. These records, together with other relevant information concerning the rotors and other components of the turbine generators permit the utilities to decide whether the equipment can be utilized safely or should be derated (in terms of capacity) or scrapped. However, this evaluation procedure, "stress analysis" requires both the information obtained from the BorSonic or other investigation and information concerning the physical and mechanical properties of the turbine generator. The latter information must be obtained in most instances from the manufacturers.

As set forth in plaintiff's Memorandum and conceded by the defendants, General Electric and Westinghouse have been since 1963 the sole manufacturers of large turbine generators. The utility customers must rely totally on their manufacturer to supply information concerning the rotors, warranty protection, service and perhaps most important, new rotors and parts. These same manufacturers of large turbine generators also appear to intend to monopolize the repair of rotors of these generators. They are able to monopolize repairs because in their capacity as manufacturers, they control the data necessary to perform the inspections and repair. If this data is withheld, the inspection and analysis described above can only be performed by the manufacturer, thus preventing any competition in the inspection and repair aftermarket. In these circumstances, the utilities will have no basis to make decisions, independent of the manufacturers, concerning the integrity and future performance of the rotors, hence the entire turbine generator.

As set forth below, General Electric and Westinghouse in whole or in part have refused to supply information to their utility customers when requested by them in connection with a preparation, inspection, analysis or repair by Commercial Machine Works. Furthermore, some of this information is required in order to bid on a bore preparation, inspection, analysis or repair. Thus, by

² BorSonic, the through-the-bore ultrasonic inspection system developed by Commercial Machine has been patented by the Company. Patent no. 3,960,006, "Non Destructive Test Apparatus and Method for a Material Having a Cavity Therein" covers the method and apparatus for applying and controlling multiple ultrasonic scanning modes within the turbine rotor bore. Patent no. 3,952,581, "Ultra Sonic Flaw Detecting Apparatus for Turbine Rotors" improves on the original apparatus.

⁴ Downtime required for shop inspection ranges from two months to five months, and often involves shipping equipment, weighing from 15 to more than 50 tons over a thousand miles. An on site inspection takes an average of two to four weeks. When a turbine is out of operation it costs the utility about \$20,000.00 to in excess of \$100,000.00 a day.

controlling the basic data, in many instances, General Electric and Westinghouse are locking the utilities into a one bid situation where only General Electric can bid on a General Electric turbine generator procedure and only Westinghouse can bid on a procedure for a Westinghouse turbine generator.

Attached Exhibit "B" is a schedule of information needed to conduct each of the four procedures listed above. This information includes bore dimensions, critical flaw size and location, temperature distribution in the rotor from the steam inlet through the exhaust during start-up and changes in loading and load cycling, major rotor dimensions and location and overall dimensions of turbine wheels and blades. Much of this information falls within the general definitions used in Section 2 of the proposed Modification to describe information which, under the terms of the Modification, could not be communicated to the utility customer.

The substantiality of the potential rotor inspection and repair market is evidenced by data in Electrical World, directory of Electric Utilities, 1976-1977. There are at least 1,200 steam turbine generators of fifty megawatts and larger, nonnuclear, in investor owned and public utilities in the United States. Of the 1,200 steam turbine generating units, representing more than 2,400 individual rotors, about 50% are within the age range where inspection and repair would be probable.⁵ Bore inspection probability is determined by several factors including: age of the unit and flaw probability; conditions of service; steam temperature and pressure; base or intermittent loading; unit size; and the inclination of the utility to proceed with an inspection.

However, as substantial as this repair market is, it cannot compare to the corresponding market for the sale of new turbine generators if the described rotor inspection and repairs were not performed since it is estimated that the cost of preparation, inspection, analysis and repair of a rotor averages only from two to ten percent of the cost of replacement. Thus, the multi-million dollar sale of a new rotor is preferred by the manufacturer to the repair of an old one. Therefore, the utilities understandably desire an additional opinion where the manufacturer condemns a rotor. If there is no independent company capable of performing the inspection initially or available to perform the test and render a second opinion on a condemned rotor, the utilities are at the mercy of parties whose past history clearly illustrates the advantage they would take of the situation. The end result of precluding the release of this information would be that the utilities will be forced to accept at face value the dictates of the manufacturer as to when a turbine generator must be scrapped and replaced by a new one. This is precisely the situation which General Electric and Westinghouse have been manipulating to maintain.

D. Summary of the Actions of General Electric Company

GE has exercised its control over its utility customers to exclude Commercial Machine from the GE manufactured rotor repair market. GE has refused to evaluate ultrasonic inspection data obtained by others. GE has also refused to supply its customers with information necessary for CMW to bid on or repair a rotor, or for an independent laboratory to perform stress analysis based on data compiled by anyone but GE. This is so even where GE has inspected and con-

⁵ Rotors manufactured prior to the use of current casting and forging techniques are within the age range where inspection and repair would be probable.

³ Commercial Machine Works has developed and patented boring apparatus (patent no. 3,854,839 "Bottle Boring Tool") and has applied for a patent which is expected to issue shortly to cover its method of bottle boring (application no. 493,787 "Method of Bottle Boring").

demned a rotor and the customer has requested the information so that it might obtain a second opinion. GE's refusal has meant that the utility is unable to evaluate the report of GE that a rotor has condemning defects except by having the rotor destructively tested after it is taken out of use. On at least one occasion where this was done, an independent testing house found no condemning defects in the rotor. On other occasions where analysis was capable of being performed, generators condemned by GE were, as a result of BorSonic examination by CMW, found to have no condemning defects and are presently in operation. However, upon completion of the independent analysis, GE nonetheless refused to reevaluate the rotors. In one such situation the utility attempted to cancel its order for a replacement rotor and was told that there would be an 80% cancellation charge. Since the utility could not economically cancel the order, it accepted the new rotor and placed it in storage. As late as January, 1977, CMW was informed that the rotor condemned by GE was still in operation.

General Electric has attempted to further monopolize the market by representing, falsely, that it alone has the capability of doing repairs on its rotors, hiring key CMW personnel and making overtures to purchase Commercial Machine. GE also used its position as supplier of related parts and equipment to force the customer to acquiesce to GE's refusal to supply the information. For instance, CMW was informed by a customer that the customer would not protest GE's refusal to supply information necessary to perform a BorSonic examination because of its concern that doing so might result in delays in the delivery of much needed nuclear equipment supplied by GE.

Finally, GE offers its utility customers the "service" of soliciting quotations to perform on-site machining of rotors. GE frequently does this by soliciting Commercial Machine and others to quote on specific work to be done on GE's recommendation for an unnamed utility. Commercial Machine and others respond to this request because they have no knowledge of the identity of the utility company or the customer's need. GE has the benefit of receiving Commercial Machine's prices before submitting it to the utility together with GE's price and recommendation.

This situation is even more onerous than it appears since the need for inspection and boring depends largely on the age and wear of the rotor and only the manufacturer has access to the information concerning the age, location and use of the various rotors in place at its utility customers' facilities. Thus, GE can suggest to a utility that it is "time" to consider an inspection, offer to solicit bids, compare the bids to its own price, make a final "recommendation" to the customer, together with attendant threats concerning availability spare parts, start ups, etc. and effectuate a contract, all before Commercial Machine would have any particular access to information that the rotor involved was being considered for inspection and repair.

E. Summary of the Act of Westinghouse

Westinghouse's anticompetitive activities have been more varied than GE's. Commercial Machine has for some years been a Westinghouse subcontractor in the field of inspection, bottle boring and overboring. Westinghouse has used this relationship to learn of and attempt to copy Commercial Machine's procedures and equipment (since Westinghouse was incapable of developing its own). It, like GE, has used its position as manufacturer to prevent Commercial Machine from developing contractual rela-

tionships with utility customers, while permitting subcontracts to be awarded to Commercial Machine and using its position as contractor to obtain the knowledge of Commercial Machine's equipment and procedures necessary to duplicate them. Thus, customers who have directly solicited Commercial Machine to perform bore preparation and/or bore inspection and/or bore repair have been induced and coerced with threats of delayed deliveries by Westinghouse into contracting with Westinghouse to perform the work. In numerous instances, the utilities agreed to contract with Westinghouse to perform the work with the precondition that Westinghouse would subcontract to Commercial Machine.

Like GE, Westinghouse has refused to supply its utility customers with information needed to perform rotor inspection, analysis and repair. Only when Commercial Machine has performed as the subcontractor, rather than contractor, has Westinghouse been willing to provide the information necessary to evaluate the results of the BorSonic investigation. Westinghouse has also threatened utilities with tardy evaluation of inspections performed by Commercial Machine as opposed to prompt actions if those same inspections were performed by Commercial Machine through Westinghouse as a Westinghouse subcontractor. (Where Commercial Machine performs as a subcontractor, it charges Westinghouse its normal price to which Westinghouse adds its standard markup which is believed to be in the order of 35% of Commercial Machine's price.)

In addition, Westinghouse has made representations which are the converse of GE's but no less untrue; Westinghouse has represented to potential Commercial Machine customers that Commercial Machine will not perform services in connection with services performed by Westinghouse. Since the utilities do not have the information necessary to perform a stress analysis and can only obtain it from Westinghouse, the effect of this false representation is to restrain a utility from requesting Commercial Machine to bid on a job since the results of a Commercial Machine inspection could not be translated into data meaningful to the utility—i.e. an evaluation of the reparability of the rotor. Finally, like GE, Westinghouse possesses and has used its leverage as manufacturer of the turbine generator to preclude efficient and economical evaluation and repairs. For instance, CMW has been informed that Westinghouse has asserted that shop repairs of other aspects of the equipment require that a rotor be returned to Westinghouse and that, once returned, it has recommended ultrasonic inspection. CMW has subsequently determined that the repair work could have been done on site. Therefore, CMW believes that Westinghouse insisted upon shop repair as a method of insuring Westinghouse off-site ultrasonic inspection where Westinghouse did not have the capability or inclination to perform the ultrasonic inspection on site.

F. Summary of Need for Changes in Proposed Modification

The actions of GE and Westinghouse as set forth in these Objections show that GE and Westinghouse intend to divide customers and monopolize the inspection and repair of rotors. Whether this be done by actual combination or "conscious parallelism" is irrelevant since GE and Westinghouse, individually, are attempting to monopolize the inspection and repair market with respect to each manufacturer's own equipment and do not seek to inspect, analyze or repair rotors manufactured by the other.

The Modification as presently proposed by the parties will enable GE and Westinghouse to monopolize inspections and repairs by providing a legal excuse for their refusal to provide information necessary for an independent organization to perform these procedures.

The alternative Modification provisions proposed by CMW would avoid the adverse effects of the proposed Modification on the inspection, analysis and repair market and would foster competition in that market. The changes set forth in Exhibit "A" are needed if the intent of the Government in obtaining remedial relief is to be fully realized. Without the suggested changes, the proposed Modification will be an anticompetitive instrument which may be used by the defendants to monopolize the inspection and repair market.

The terms of the attached Exhibit "A" will foster competition in the sale of turbine generators to a greater extent than the original proposed Modification. This is necessarily so since the manufacturer's monopoly of the inspection, analysis and repair market will create an artificially increased demand for the purchase of new turbine generators and since competition in the inspection and repair aftermarket will reduce the number of rotors which otherwise would be condemned if such repair services were performed solely by the manufacturers. Thus, the changes proposed by CMW will increase the probability that the Government's objective in entering into the consent decrees will be achieved.

Respectfully submitted,

RALPH W. BRENNER,
CAROL A. MAGER,

Attorneys for
Commercial Machine Works.

AMENDMENTS TO MODIFICATION BY CONSENT OF FINAL JUDGMENT ENTERED OCTOBER 1, 1962

Commercial Machine Works requests that paragraphs 3-7 of the Modification by Consent of Final Judgment Entered October 1, 1962 in the cases of *United States of America v. General Electric Company and United States of America v. Westinghouse Electric Corporation*, be amended to state as follows:¹

3. Nothing contained herein shall be construed to prohibit the defendant: (a) From conveying information in compliance with any order, or in connection with participation in any proceeding, of a court, legislative body, or administrative agency; (b) from conveying information to any person retained by the defendant for a legitimate purpose, provided that, with regard to any such information that refers or relates to price, terms and conditions of sale, exhaust end load limits, and performance guarantees, the defendant shall secure from such person a legally binding commitment not to publish or re-use said information; (c) from using or conveying information in connection with the rendering of legal advice or participating in a legal proceeding; (d) from responding to competition by changing price or terms and conditions of sale furnished to a customer in a manner otherwise consistent with the provisions of this decree; or (e) from complying with contractual commitments to any customer undertaken prior to the effective date of this modification by:

(1) Expressing the price of a large turbine-generator in terms of: (a) a price book or price list issued prior to the effective date of this modification, or (b) a multiplier or percentage established prior to the effective date of this modification applied to any such price book or price list;

¹ Changes from the proposed Modification by Consent of Final Judgment Entered October 1, 1962 are italicized.

(ii) Expressing the price or any performance guarantee for a large turbine-generator in terms of a formula included or incorporated by reference in a contract entered into prior to the effective date of this modification.

(f) From using or conveying information to a customer in connection with a request by that customer for information of the type enumerated in paragraph 4 hereof with respect to a large turbine generator purchased from defendant previous to the date of said request.

4. The defendant, its successors, assignees and transferees are ordered to supply upon the request of a customer the following information with respect to any turbine or generator rotor of a large turbine generator purchased from defendant by said customer:

- (a) all bore dimensions,
- (b) all flange(s) dimensions,
- (c) major rotor dimensions,
- (d) location and overall dimensions of turbine wheels,
- (e) gross dimensions and weight of turbine blades,
- (f) metallurgical properties of the rotor for purposes of ultrasonic calibration,
- (g) critical flaw size and location,
- (h) temperature distribution in the rotor from steam inlet through exhaust during start-up and changes in loading,
- (i) rotational speeds during conditions of cold start,
- (j) speed changes from on-line to standby condition,
- (k) rotor material chemistry,
- (l) yield strength, elongation characteristics, fracture toughness and other mechanical properties,
- (m) stage torques,
- (n) load cycling,
- (o) recommended stock removal and bore surface finish,
- (p) criteria for acceptable bore condition,
- (q) data from previous internal and/or external inspections.

5. The defendant is ordered to retain in its files records of calculations and determinations involved in the computation of a price for any large turbine-generator, or in the preparation of any price book or price list for such machines, for a period of five years after such computation or preparation.

6. The defendant, its successors, assignees and transferees, and its officers, agents and employees are ordered:

(a) To print conspicuously on each of its price books or price lists for the sale of large turbine-generators prepared after the effective date of this modification a notice that distribution of the price book or price list to persons not employed by the defendant will constitute a violation of this modification and that said violation may be punishable as contempt of court; and

(b) To number each of its price books or price lists for the sale of large turbine-generators prepared after the effective date of this modification, and maintain a log which shall indicate: (i) the name and position of every person to whom a price book or price list is distributed, and (ii) the date of such distribution.

7. The provisions of this modification shall terminate fifteen years from its effective date, except that section 2(a) shall terminate twenty-five years from said date and section 2(k) ten years from said date.

8. Sections IV(D), V(A), and any other provision of the Final Judgment entered on October 1, 1962, which is inconsistent with the provisions contained herein, are henceforth of no force and effect insofar as they pertain to large turbine-generators as defined herein.

Dated: -----

United States District Judge.

INFORMATION NEEDED TO PERFORM PREPARATION, INSPECTION, ANALYSIS AND REPAIR OF TURBINE AND GENERATOR ROTORS

Performance of the following functions requires the information listed below each function:

BORE PREPARATION

- All flange(s) dimensions.¹
- All flange(s) dimensions.¹
- Major rotor dimensions.¹
- Recommended stock removal and bore surface finish.¹
- Criteria for acceptable bore conditions.¹

INSPECTION

- Dimensions as requested in bore prep category.¹
- Location and overall dimensions of turbine wheels.
- Metallurgical properties of the rotor for purposes of ultrasonic calibration.¹
- Critical flaw size and location.
- Data and information from previous internal and/or external inspections.
- Criteria for acceptable bore condition.

ANALYSIS

- Dimensional information as requested in each category.¹
- Gross dimensions and weights of turbine blades.
- Temperature distribution in the rotor from steam inlet through exhaust during start-up and changes in loading.
- Rotational speeds during conditions of cold start.
- Speed changes from on-line to standby condition.
- Rotor material chemistry.
- Yield strength, elongation characteristics, fracture toughness and other mechanical properties.
- Stage torques.
- Load cycling.
- Critical flaw size and location.
- Data and information from previous and current internal and/or external inspections.

ROTOR BORE REPAIR

Bore Enlargement/Bottle-boring

- Dimensions and criteria requested in bore preparation category.¹
- Dimensional recommendations and critical limitations resulting from the analysis category.¹

Localized polishing and/or grinding

- Criteria for acceptable bore condition.¹
- Recommendations resulting from the inspection category.¹
- Recommendations and critical limitations resulting from the analysis category.¹

¹ This information is needed to quote competitively on the function under which it is listed.

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Serial and Number

JRC
60-120-77

March 11, 1977

Ralph W. Brenner, Esquire
Montgomery, McCracken, Walker & Rhoads
Three Parkway
Philadelphia, Pennsylvania 19102

* Dear Mr. Brenner:

This is in response to your letter of March 1, 1977 in which you submit the objections of Commercial Machine Works to the Proposed Modification by Consent of the Final Judgments entered October 1, 1962 against General Electric Company and Westinghouse Electric Corporation.

Your main objection is that the defendants may utilize the existence of the injunctive provision of the Proposed Modification as a justification for their refusal to provide certain types of information to utility customers. You contend that this potential withholding of information by the defendants will adversely affect Commercial Machine Works in its business of inspecting and repairing large turbine generators. Additionally, you claim that such withholding will serve to create a monopoly for each defendant in the inspection and repair of its own large turbine generators.

In order to eliminate the possibility that the defendants will use the Proposed Modification as the basis for refusing to provide this information to utility customers, you suggest that the Modification be amended to include a new Paragraph 4. This new paragraph would require the defendants to provide certain technical information to customers upon request.

The Department believes that nothing in the Proposed Modification as it presently stands prohibits the defendants from supplying to a customer any of the technical information set forth in your suggested paragraph 4. The injunction against communication of information by the defendant is limited to commercial information such as price, performance guarantees,

and terms and conditions. It does not include information relating to actual performance or other technical data. Therefore, the Proposed Modification does not change the status quo with respect to the communication to customers of technical information by the defendants and they cannot justifiably rely upon it as the basis for withholding such information in the future.

It is clear that your proposed paragraph 4 seeks to go beyond mere assurance that the defendants will not rely on the Proposed Modification as a basis for withholding information. Under your amendment the defendants would be required to divulge information which they presently do not disclose. This is designed to prevent the continuation of allegedly anticompetitive conduct. The Department believes, however, that it would not be appropriate to attempt to remedy that situation in this modification proceeding. The conduct which is the subject of the Proposed Modification involves the sale of large turbine generators, while the conduct you complain of involves the inspection and repair of those machines. These are separate markets, even though the same machinery is involved. Further, the injunctive provisions in the Proposed Modification are directed toward what the Government believes to be an agreement between GE and Westinghouse, achieved by the public exchange of pricing information, eliminating competition between them in the sale of those machines. (The 1962 Final Judgments in this action dealt with similar agreements, reached through direct, covert communication.) The conduct you complain of, on the other hand, appears to be wholly unrelated to agreements to fix prices, and involves unilateral actions by each company. The Department presently has no basis to conclude that the two types of conduct are part of the same agreement or understanding.

It may be, of course, that defendant's past activities in the inspection and repair of large turbine generators are themselves anticompetitive and constitute one or more anti-trust violations. But those activities were not part of this case. Consequently, relief aimed at eliminating these alleged anticompetitive activities does not appear to be appropriate at this time. To the extent that defendants may have engaged in anticompetitive conduct in the inspection and repair business, such conduct can be best investigated and proceeded against separately and not as part of this proceeding.

Finally, it is our view that the public interest in the restoration of price competition in the turbine-generator industry is best served by entry of the Proposed Modification at this time. Your proposal would surely delay entry of a decree that, in our view, would not adversely impact on your client.

Thank you for the benefit of your views in this matter.

Sincerely yours,

John W. Clark
Acting Chief, Special Trial Section
Antitrust Division

EN 22-1187

COMMONWEALTH OF PUERTO RICO

Puerto Rico Water Resources Authority
San Juan, Puerto Rico

CABLE ADDRESS
PRWA

G. P. O. BOX 4287
SAN JUAN, P. R. 00904

February 1, 1977

Mr. John W. Clark
United States Department of Justice
Antitrust Division
Washington, D. C. 20530

Dear Mr. Clark:

Please refer to the letter of your Department dated December 22, 1976, signed by Mr. Mark Leddy, Assistant Chief of the Special Trial Section, regarding the stipulation that on December 16, 1976, the Department of Justice, the General Electric Company and the Westinghouse Electric Corporation jointly filed with a view to obtain a modification of the final judgment entered against these two companies, in October 1962, by the Federal District Court in Philadelphia.

We want to inform you that we, in coordination with the Purchasing Division of this Authority, have studied the copy of the proposed decree modification and the copy of the memorandum filed by the government which outlines the reasons why a modification was sought--same were enclosed with the above mentioned letter--and concluded that the aforesaid proposed modification, as filed, provided the desired relief, that is, to hinder the two firms from price fixing and other forms of collusion in the sale of turbine generators and other products.

Since, in our opinion, the proposed modification is appropriate and satisfactory to us, we do not have any comments or suggestions to offer concerning the modification.

Thanks for your consideration.

Cordially yours,

Rafael Betancourt
Rafael Betancourt
General Counsel
23-41
27
R.A.O.

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530



Admission to the
Building is limited
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JhC
60-230-77

March 11, 1977

Mr. Rafael Betancourt
General Counsel
Puerto Rico Water Resources
Authority
G. P. O. Box 4267
San Juan, Puerto Rico 00936

Re: Proposed Modification of Consent Decrees
in United States v. General Electric Co.,
et al., Civil No. 28228 (E.D. Pa.)

Dear Mr. Betancourt:

The Antitrust Division has received your letter of February 1, 1977 regarding the Proposed Modification of the existing consent decrees involving the General Electric Company and the Westinghouse Electric Corporation. We are pleased to learn that you are satisfied with the terms of the Proposed Modification.

Thank you for the benefit of your views.

Sincerely yours,

JOHN W. CLARK
Acting Chief, Special Trial Section
Antitrust Division

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

[Civil No. 28228]

United States, Plaintiff, v. General Electric
Company, et al., Defendants.

OBJECTIONS OF RICHMOND POWER & LIGHT OF
THE CITY OF RICHMOND, INDIANA TO THE
PROPOSED MODIFICATION OF FINAL JUDGMENT
ENTERED OCTOBER 1, 1962

Richmond Power & Light of the City of
Richmond, Indiana ("Richmond") hereby
objects to the adoption by this Court of the
Proposed Modification by Consent of Final
Judgment Entered October 1, 1962 in this
case filed by General Electric Company,
Westinghouse Electric Company, and the
United States Department of Justice.

BACKGROUND

Richmond is a municipally-owned electric
system serving more than 24,000 customers
in and about Richmond, Indiana. It pur-
chases electricity, at wholesale, from a
privately-owned utility and in addition, owns
generating facilities with which it also pro-
vides service. Richmond's interest in this case
stems from its purchase after 1962 of a new
60 megawatt (mw) General Electric turbine
generator. This purchase made Richmond a
potential antitrust plaintiff against General
Electric on grounds similar to those relied
upon by American Electric Power Company in
its antitrust action against General Electric
and Westinghouse filed on December 29, 1971
in the United States District Court for the
Southern District of New York, Civil Action
No. 71 Civ. 5677. In an effort to avoid a multi-
plicity of suits, General Electric and Westing-
house proposed to waive the statute of limita-
tions in return for an agreement by utilities
which were potential plaintiffs to forbear
from filing suit until after final disposition
of the *American Electric Power Company*
case. Such agreements between Richmond
and General Electric and between Richmond
and Westinghouse were executed effective as
of March 15, 1972. Both agreements provided
for notification of Richmond by General
Electric and Westinghouse of any modifica-
tion of the 1962 Consent Decree.

Pursuant to these agreements, Richmond
was informed of the proposed modification
by letter of December 10, 1976, and further
informed by letter of January 26, 1977 that
Westinghouse proposed to settle the *Ameri-
can Electric Power* antitrust case. Settle-
ment of this case is contingent on the
approval by this Court of the proposed
modification of its 1962 Consent Decree.

As noted earlier, Richmond is engaged in
the generation and distribution of electricity
at retail. Richmond self-generates a portion
of its requirements and purchases the re-
mainder at wholesale from Indiana and
Michigan Electric Company, a wholly-owned
subsidiary of American Electric Power Com-
pany (hereafter "AEP"). Richmond's genera-
tion plant consists of the 60 mw unit in-
stalled in 1973 and a 33 mw unit installed
in 1955. Because its peak load has increased
to 106 mw in January 1977 and because its
33 mw unit is over 20 years old, Richmond
must in the near future purchase additional
generation or power from an entity having
generation. Since Richmond may be present-
ly barred from participation in large gener-
ating units under Indiana law, it is therefore
a potential purchaser of combined cycle gener-
ating units.

Richmond objects to the proposed modi-
fication on grounds that the proposed ex-
emption of gas turbines, turbine-generators
and hydroelectric turbine-generators as well
as all generating units with an electrical
rating of 100 mw or less would allow General
Electric and Westinghouse to engage, with-

out restriction, in possibly anticompetitive
communications with respect to precisely
the types of generating units Richmond and
other like-sized systems might be likely to
buy. As will be explained in greater detail
below, so-called combined cycle (consisting
of a gas turbine plus a steam turbine) gener-
ating units are extremely important not
only to municipal utilities such as Richmond
but to larger investor-owned utilities as
well. The proposed exclusions of the modi-
fication serve no discernible public interest
and in fact, as elaborated below, work against
the legitimate interests of public entities
such as Richmond. Accordingly, Richmond
respectfully requests this Court either to
reject the proposed modification in its en-
tirety or to modify the definition of "Large-
Turbine-Generator" so that gas turbine
units and hydroelectric turbines as well as
units of 100 mw or less rating are covered
by the protective provisions of the decree.

ARGUMENT

**A. The Proposed Modification by Consent of
Final Judgment (Entered October 1, 1962
in United States v. Westinghouse, et al.,
Civil No. 28228, U.S. District Court) Im-
properly Denies Protection To Transac-
tions in Small Electric Generating Units**

The proposed modifications would exclude
from the decree covering "Large Turbine-
Generator" units both gas turbines and
hydroelectric turbine generators specifically.
The modification provides for the following
definition of "Large Turbine-Generator":

"An assembly of a turbine and a generator
with an electrical rating of 100,000 kw or
more used for the production or generation
of electricity on land by the use of steam,
but it does not include marine turbines or
marine turbine-generators, gas turbines or
gas turbine generators, hydroelectric turbine
generators or hydraulic turbines."

From the standpoint of municipal electric
systems and rural electric cooperatives in
the same size class and circumstances as
Richmond, the proposed modification to the
1962 Consent Decree expressly leaves un-
protected two especially important products:
combined cycle units and hydroelectric tur-
bine units.¹

Richmond is engaged in generating its own
capacity and energy on a scale smaller than
that engaged in by investor-owned utilities
("IOUs"), which are able to install larger
units economically. The vast majority of

¹ Richmond is limiting its comments here-
in to the combined cycle units. However, the
exclusion of hydroelectric turbine units
could be significant to publicly-owned elec-
tric systems which are in a position to pursue
their interest in licensing old hydroelectric
plants subject to renewal under the Federal
Power Act or new hydro sites. Also, under
federal laws, municipal systems are generally
entitled to a preference over privately-owned
electric systems in the purchase of federally-
generated hydroelectric power. Except in the
case of TVA, U.S. Government projects which
generate electricity rely almost exclusively
upon hydro-electric turbine generators. Ac-
cordingly, the exclusion of hydroelectric tur-
bines and generators from the definition of
Large Turbine Generators would deny the
protection of the Proposed Modification to
the Federal Government and other entities
planning to undertake hydroelectric proj-
ects. To the extent that anticompetitive
sales practices increase the sales price of
hydroelectric turbines, public power entities
would be charged excessive prices. If projects
were deferred or cancelled, public power
entities and their customers would be
denied an inexpensive and competitive
source of power.

systems like Richmond purchase all or part
of their power needs at wholesale for resale
from IOUs. As the loads of these smaller
systems grow, the economic balance often tips
in favor of their ownership and operation of
generating units for serving at least part of
their loads instead of purchasing their entire
requirements at wholesale. When installation
of self-generation is undertaken, it is neces-
sarily added in small amounts, either com-
bustion turbines or a small portion of a large
unit being built by other systems. In a pe-
riod of increasing fuel uncertainties, there is
a clear need for many smaller systems to in-
stall combustion turbines or other small gen-
erating units for purposes of assuring reli-
ability to their customers and to enable them
to purchase shares in larger units.²

B. Combined Cycle Units Should Be Covered By The Decree

Combined cycle generation of electricity
requires the use of exhaust gases from com-
bustion turbines³ to raise steam to drive a
steam turbine. Combustion turbines are char-
acterized by low capital costs and high oper-
ating costs (as compared with steam tur-
bines), which makes combustion turbines
ideal for serving that portion of a system's
electric load which occurs cyclically and for
only short periods, i.e., for peaking purposes.
Nearly all electric systems have such loads.
However, combustion turbines are not as re-
liable or efficient as steam turbines nor can
they be run for as many hours of sustained
operation, principally because they must start
and stop so frequently in normal operation.
For example, steam turbines are designed to
operate up to 8,000 hours per year and pro-
duce a kilowatt-hour ("kwh") from 9,000
BTU's of heat input. Combustion turbines,
by comparison, typically operate 800-1500
hours per year and use 12,000 BTU's per
kwh generated.

Over time, an electric utility system which
has purchased combustion turbines (CT's) for
a few years of peaking services may incor-
porate those CT's into a combined cycle unit
to improve the efficiencies of its system. How-
ever, when used in combined cycle units, the
GE and Westinghouse equipment for CT and
steam turbines are not interchangeable, so a
utility must of necessity purchase the same
brand for the entire installation. In this situ-
ation a buyer is particularly vulnerable to
overcharges on the second item purchased.
Thus, it is essential that neither supplier
company be able to utilize the incompatibil-
ity of equipment to shelter its prices from
the protective impact intended by the origi-
nal decree.

CONCLUSION

For the foregoing reasons, Richmond re-
spectfully requests that the Proposed Modi-
fications be amended to eliminate the exemp-
tion of combustion turbines, hydroelectric
turbines and other small generating units
from the coverage of the consent decree.

Respectfully submitted,

ROBERT A. ROSIN,
GEORGE SPIEGEL,
JAMES N. HORWOOD,
FRANCIS E. FRANCIS,
*Attorneys for Richmond Power and
Light of the City of Richmond,
Indiana.*

² Where a smaller system buys "unit"
power or a portion of a large unit, it must
still provide reserves to "back up" its pur-
chase.

³ A combustion turbine is essentially a jet
engine. For many years, Pratt & Whitney sold
its jet engines for use as prime movers for
electric generating units and was a major
force in the market for such prime movers.

Of Counsel: Robert A. Rosin, Esq., Room 1600, 2 Penn Plaza, Philadelphia, Pennsylvania (215) LO4-4190; Spiegel & McDiarmid, 2600 Virginia Avenue, N.W., Washington, D.C. 20037 (202) 333-4500.

FEBRUARY 8, 1977.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party to this proceeding by deposit in the United States mail, first class or airmail, postage prepaid, this 8th day of February, 1977.

FRANCES E. FRANCIS.

Law offices of: Spiegel & McDiarmid, 2600 Virginia Avenue, N.W., Washington, D.C. 20037. (202) 333-4500.

FEBRUARY 8, 1977.

IN THE UNITED STATES DISTRICT COURT OF THE EASTERN DISTRICT OF PENNSYLVANIA

[Civil No. 28228]

United States, Plaintiff, v. General Electric Company, et al. Defendants.

AMENDED OBJECTIONS OF RICHMOND POWER & LIGHT OF THE CITY OF RICHMOND, INDIANA TO THE PROPOSED MODIFICATION OF FINAL JUDGMENT ENTERED OCTOBER 1, 1962.

Richmond Power & Light of the City of Richmond, Indiana ("Richmond") previously filed on February 8, 1977 objections to the adoption of the Proposed Modification to Consent Decree ("Proposed Modification"). Pursuant to Rule 15(a), Fed. R. Civ. P., Richmond hereby amends its prior objections to (i) eliminate all reference to and discussion of hydroelectric turbine generators and (ii) protest the lack of express controls in the Proposed Modification upon Defendants' use or disposal of documents and information turned over to the United States Department of Justice as part of its investigation of post-1962 anticompetitive conduct of defendants. Richmond also protests the exclusion of internal combustion turbines potentially useable in combined cycle units from coverage in the Proposed Modification. In addition, Richmond protests the exemption of certain steam turbine-generator units from the coverage of the Proposed Modification. The currently effective Consent Decree covers all steam turbine-generators. The Proposed Modification would exempt all units rated 100 megawatts or less. For the reasons stated in its February 8, 1977 Opposition to the Proposed Modification, Richmond requests that this Court reject all changes in the Decree (such as the 100 megawatt exemption in the Proposed Modification) which would deny small electric utility systems the protection otherwise available under the Decree.

Section IV of the Proposed Modification is intended to preserve the right of potential private plaintiffs "to bring suit for damages or injunctive relief arising from any violations of the antitrust laws occasioned by Defendants' conduct." However, the Proposed Modification would place no express restraint upon Defendants' use or destruction of documents and information furnished the Department of Justice as part of the Department's investigation. Moreover, no Justice Department studies have been released with the Department's memorandum in support of modification of the 1962 Decree.

Were a plaintiff to undertake a suit against Defendants for post-1962 price-fixing, considerable funds would have to be expended unnecessarily in pursuit of documents and information from Defendants and for having studies conducted by experts. Unless this Court orders Defendants to preserve documents furnished by Justice, there can be no assurance that data made available to the

Department would be preserved for possible examination by potential plaintiffs.

CONCLUSION

Accordingly, Richmond urges this Court (i) to order Defendants and the Department of Justice to preserve all records, data, communications and other evidence in any medium used for recording written or printed words and numbers that relate to the Department's investigation of Defendants' post-1962 pricing activities; (ii) to eliminate the exemption for certain steam turbine-generators in the Proposed Modification and (iii) to alter the blanket exemption for combustion turbines so that the Consent Decree would apply to the sale of combustion turbines used or useable as part of a combined cycle plant.

Respectfully submitted,

ROBERT A. ROSIN,
JAMES N. HORWOOD,
FRANCES E. FRANCIS,

Attorneys for Richmond Power & Light of the City of Richmond, Indiana.

Of Counsel: Robert A. Rosin, Esq., Room 1600, 2 Penn Center Plaza, Philadelphia, Pa. (215) LO4-4190; Spiegel & McDiarmid, 2600 Virginia Avenue, N.W., Washington, D.C. 20037.

MARCH 2, 1977.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party to this proceeding by deposit in the United States mail, first-class or airmail, postage prepaid, this 2nd day of March, 1977.

ROBERT A. ROSIN.

Of Counsel: Robert A. Rosin, Esq., Room 1600, 2 Penn Center Plaza, Philadelphia, Pa. (215) LO 4-4190

MARCH 2, 1977.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Civil No. 28228]

United States of America, Plaintiff, v. General Electric Company and Westinghouse Electric Corporation, Defendants.

GOVERNMENT'S RESPONSE TO OBJECTIONS OF RICHMOND POWER & LIGHT

The Government, by its attorneys, files its response to the objections of Richmond Power & Light of the City of Richmond, Indiana (hereinafter "Richmond") to the Proposed Modification of the Final Judgments entered herein on October 1, 1962. The Government does not oppose Richmond's participation in this action as *amicus curiae* but will object to any motion by it to intervene as a party to this action. Also, the Government does not concur in Richmond's objections, and believes that the Proposed Modification is in the public interest and should be entered.

I. INTRODUCTION

On June 29, 1960, the Government obtained an indictment charging GE, Westinghouse, and Allis-Chalmers Manufacturing Corporation with fixing the prices of turbine-generators. Contemporaneous with the indictment, the Government filed a civil action against the corporations in which it sought an injunctive relief. The criminal action eventually resulted in the imposition of fines and, in certain instances, prison sentences. The civil action was terminated by the entry of consent decrees on October 1, 1962. The definition of "turbine-generator" contained in the indictment and complaint was essentially the same as the following definition contained in the 1962 consent decrees:

"Turbine-generator unit" means an assembly of a turbine and a generator used in the production or generation of electricity on land by the use of steam, but it does not include marine turbines or marine turbine-generators, gas turbines or gas turbine-generators, hydro-electric turbine-generators or hydraulic turbines. (Emphasis added.)

On December 10, 1976, the Government, General Electric Company and Westinghouse Electric Corporation filed a Proposed Modification of the 1962 decrees. Paragraph 1 of the Proposed Modification states:

Large turbine-generator means an assembly of a turbine and a generator with an electrical rating of 100,000 KW or more used for the production or generation of electricity on land by the use of steam, but it does not include marine turbine-generators, gas turbines or gas turbine-generators, hydro-electric turbine-generators or hydraulic turbines. (Emphasis added.)

Paragraph 7 of the Proposed Modification provides in pertinent part:

*** any *** provision of the Final Judgment entered on October 1, 1962, which is inconsistent with the provisions contained herein, are henceforth of no force and effect insofar as they pertain to large turbine-generators as defined herein. (Emphasis added.)

On February 9, 1977, Richmond filed objections to the Proposed Modification. The utility objected to the definition of "large turbine-generator" because the definition excludes gas-turbines, gas turbine-generators, hydroelectric turbine-generators, and turbine-generators with an electrical rating of less than 100,000 kilowatts. On March 2, 1977, Richmond amended its objections, eliminating all references to hydroelectric turbine-generators, and protesting

*** the lack of express controls in the Proposed Modification upon Defendants' use or disposal of documents and information turned over to the United States Department of Justice as part of its investigation of post-1962 anticompetitive conduct of defendants.

In support of its objections regarding the definition of "large turbine-generator," Richmond relies primarily on the importance of combined cycle units to small utilities. A combined cycle unit employs both a gas turbine and a steam turbine-generator; the exhaust from the gas turbine is used to produce steam which, in turn, drives the steam turbine-generator. Since a comparatively small utility like Richmond does not purchase large steam turbine-generators, it must purchase its power needs at wholesale from a large utility. When Richmond does install generating equipment, it purchases gas turbines or gas turbine-generators to produce additional power during the hours of the day when consumption of electricity is the highest, i.e., peak load periods. After a few years, such a utility might purchase a steam turbine-generator rated at less than 100,000 kw, and use it in conjunction with the gas turbine as a combined cycle unit. Because Richmond anticipates that it might need to purchase gas turbines and steam turbine generators smaller than 100,000 kw for use in a combined cycle unit, the utility desires that the benefit of the Proposed Modification be extended to these units.

II. DISCUSSION

A. Inclusion in the Proposed Modification of Gas Turbine-Generators and Steam Turbine-Generators Rated at Less Than 100,000 kw is Not Warranted

The 1962 consent decrees entered in *U.S. v. General Electric Company*, Civil No. 28228 (E.D. Pa.) expressly exclude "gas turbines or gas turbine-generators." Insofar as "gas turbines or gas turbine-generators" are concerned, the scope of the Proposed Modifica-

tion is identical to that of the 1962 consent decrees. Richmond thus seeks to expand the coverage of the existing consent decrees by urging that the Proposed Modification apply to gas turbines.¹

As Richmond acknowledges, the economies of the utility industry are such that large steam turbine-generators comprise a distinct line of commerce. Gas turbine-generators are smaller, utilize a different technology, are used for different purposes and, perhaps most importantly for the purposes of discussing Richmond's objections, are marketed separately from steam turbine-generators. For example, defendants' price books covering steam turbine-generators, which were the focus of the illegal agreements which the Government believes existed, did not include gas turbines. Also, as Richmond acknowledges, there are more sellers of gas turbines than steam turbines. There were no allegations of wrongdoing concerning gas turbines, and therefore the Department had no reason to include gas turbines in its investigation. Absent such an investigation, and absent evidence of illegal conduct regarding such turbines, the Department submits that expanding the scope of the Proposed Modification and the 1962 consent decrees is unwarranted.

Some of these same considerations apply to the exclusion from the proposed Modification of turbine-generators rated at less than 100,000 kw. While GE and Westinghouse have accounted for the very great portion of the sales of these larger machines in past years, the defendants are subject to more competition from other sellers, domestic and foreign, in the sale of machines under 100,000 kw. Such a market structure makes it less likely that these two firms could implement and maintain the kind of understanding which the Government believes was reached regarding the larger machines.

In addition, the important practical concerns of enforcement and compliance were factors in the decision to exclude small machines. The Proposed Modification imposes comprehensive restrictions on printed publications and oral statements by corporate officials and salesmen. It also requires extensive reorganization of internal records and pricing mechanisms. The decision to limit the Proposed Modification to steam turbine-generators over 100,000 kw was based on a desire to reduce to manageable proportions the

problems of enforcement and compliance associated with these extensive provisions, while at the same time not compromising the objectives of the decree. Presently, there are several different departments, plants, and marketing groups within GE and Westinghouse associated in some way with the sale of steam turbine-generators. By limiting the Proposed Modification to large turbine-generators, it was possible to reduce the number of affected plants and personnel without affecting significantly the scope of the decree.

Also, steam turbine-generators under 100,000 kw constitute a very small portion of total turbine-generator sales. Of the 572 generating units scheduled for addition after October, 1975, 14 turbine-generators, including those used in combined cycle units, or less than 3%, were rated at less than 100,000 kw.

Further, even though the Proposed Modification does not apply to gas turbines and turbine-generators smaller than 100,000 kw, the modification should have an effect on the manner in which GE and Westinghouse market these products. The Proposed Modification, and the memorandum filed in support thereof, describe the type of conduct which the Government believes violates Section 1 of the Sherman Act as well as the existing consent decrees. It is the intention of the Antitrust Division to scrutinize similar conduct in the marketing of other products, and take whatever action is warranted. Consequently, the deterrent effect of the Proposed Modification should provide a measure of protection to small utilities like Richmond which purchase gas turbines and turbine-generators rated at less than 100,000 kw.

Finally, the Proposed Modification will not affect the scope of the existing decrees. Paragraph 7 of the Proposed Modification only rescinds provisions of the 1962 decree which are inconsistent with the new provisions. Since the new decrees apply only to turbine-generators of over 100,000 kw, all of the provisions of the 1962 decrees will remain in full force and effect with respect to units under that size.

B. Richmond Now Has Access to the Documentary Evidence Relied Upon by the Government and Is Assured of Preservation of That Evidence by Defendants For At Least One Year

In its amended objections, Richmond requests that the Court order defendants and the Government to preserve documents furnished to the Department for use by Richmond in any private damage suit it may bring against GE and Westinghouse. The Govern-

ment has responded to a similar request by Philadelphia Electric Company (PE), which was made as a part of PE's petition to participate as *amicus curiae* in these proceedings.² We noted that PE and more than 50 other utilities have entered into agreements with GE and Westinghouse which give the utilities access to a repository of defendants' documents coextensive with that made available to the Government. The agreements permit the utilities, through designated attorneys, to examine and copy all documents filed and all responses by defendants to discovery subpoenas and requests in the private antitrust suit brought against GE and Westinghouse by American Electric Power Company. The agreements, which are still in force, require GE and Westinghouse to retain such documents for one year after the effective notice of termination of the agreements.

Richmond has entered into such agreements with GE and Westinghouse, as Richmond acknowledges in its objections. Thus, Richmond has had access to the documents at issue, and those documents will be preserved by defendants for at least one more year. The documents will therefore be available to Richmond should it decide to bring its own private action. It is therefore not necessary to condition the entry of the Proposed Modification upon preservation and disclosure of the Government's documents. Nevertheless, as is stated in the Government's response to PE's petition, the Government intends to preserve those materials for its own purposes and will of course comply with any lawful order regarding them.

III. CONCLUSION

Richmond Power & Light's objections to the Proposed Modification should be overruled. The Proposed Modification to the existing decrees in *United States v. General Electric Co.*, Civ. No. 28228, are in the public interest and should be entered.

Dated: March 14, 1977.

JOHN W. CLARK,
Attorney, Department of Justice.
MARK LEDDY,
VINCENT ALVENTOSA,
RENE A. TORRADO, JR.,
FRANCIS P. NEWELL,
Attorneys, Department of Justice.

² See Petition of Philadelphia Electric Company For Leave to Participate as *Amicus Curiae* in the Proposed Modification By Consent of the Final Judgment Entered October 1, 1962, and the Government Memorandum in response thereto.

¹ In its objections, Richmond uses the terms "gas turbines" and "combustion turbines." Both terms refer to the same product.

KAYE, SCHOLLER, FIERMAN, HAYS & HANDLER
425 PARK AVENUE NEW YORK, N. Y. 10022

John W. Clark, Esq.
Chief of the Special Trial Section
Antitrust Division
U.S. Department of Justice
Washington, D. C. 20530

Re: United States v. General Electric
and Westinghouse -- Civil No. 26228

Dear Mr. Clark:

Enclosed for your information is a copy of an application to appear as amicus curiae in the proceedings relating to modification of the consent decrees, which we have filed with the Federal Court in Philadelphia on behalf of AEP.

Sincerely,

David Klingsberg

David Klingsberg

DK:rad
Enc.



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

[Civil No. 28228]

United States of America, Plaintiff, v. General Electric Company and Westinghouse Electric Corporation, Defendants.

APPLICATION OF APPALACHIAN POWER COMPANY, INDIANA & MICHIGAN POWER COMPANY, KENTUCKY POWER COMPANY AND OHIO POWER COMPANY ("AEP") TO APPEAR AS AMICUS CURIAE

Appalachian Power Company, Indiana & Michigan Power Company, Kentucky Power Company and Ohio Power Company are operating subsidiaries of American Electric Power Company, Inc. and are collectively referred to herein as "AEP". They seek leave of Court to appear in the above proceeding as *amicus curiae* and in that capacity to present their views with respect to the proposed modifications of the consent decrees as well as to participate in any hearings on the aforesaid modifications which the Court decides to hold.

The Department of Justice has stated that it has no objections to AEP being heard as *amicus curiae* if the Court determines to do so.

AEP's operating subsidiaries are investor-owned electric utilities serving consumers and industrial users in a seven state area running from southwestern Michigan in a southeasterly direction through parts of Indiana, Ohio, Kentucky, West Virginia and Virginia and a small portion of Tennessee. AEP has purchased, and will continue to purchase, large quantities of turbine-generators in order to produce the electricity required by the public in its service area. It therefore has a substantial interest in the restoration of competition to the turbine-generator industry which the proposed decretal modifications are designed to achieve.

In addition, as shown more fully below, the present proposed consent decree modifications have resulted largely from the efforts of AEP and its counsel. Thus, AEP has taken the lead in the effort to bring competition to the domestic sale of turbine-generators.

Some nine years ago, in 1968, AEP complained to the Justice Department with respect to price identity and the absence of competition in the sale of turbine-generators. In December 1971, four of AEP's operating subsidiaries filed a private antitrust suit against GE and Westinghouse in the Southern District of New York. (The Complaint in that action, entitled, *Appalachian Power Company, et al. v. General Electric Company, et al.*, C.A. No. 71 Civ. 5677 (S.D.N.Y.) is attached hereto for the Court's reference as Exhibit A.) Based upon an exhaustive pre-suit factual, economic and legal investigation, AEP concluded that, beginning in May 1963 GE and Westinghouse adopted pricing policies and practices which suppressed competition in violation of the Sherman Act and the 1962 consent decrees. At the time AEP commenced its suit, its counsel met with Justice Department attorneys and explained the bases for its action.

AEP substantiated the allegations in its complaint through extensive discovery, including production of some 350,000 GE and Westinghouse documents and some 30 depositions of their executives. Beginning in 1972, by agreement with the defendants, the documents produced in AEP's action were made available to the Department of Justice. When AEP's counsel began to take depositions in 1974, copies of the transcripts and exhibits were similarly furnished to the Department. During 1974, 1975 and 1976, AEP's counsel had numerous conferences to review the evidence obtained in AEP's case with Department of Justice personnel first

in the Philadelphia office and then in Washington.

In order to secure promptly the injunctive relief that is sorely needed in the turbine-generator market, AEP recommended to the Department of Justice that it consider proceeding by way of modification of the 1962 consent decrees and thus avoid the delay inherent in a plenary suit. We also supplied pertinent legal authorities supporting the validity of this procedure. In addition we submitted memoranda recommending specific decretal provisions (including many of those included in the proposed modifications).

It is obvious that the Department of Justice has relied upon the evidence we furnished in fashioning the instant proposed consent decree modifications. Indeed, the Department's Memorandum in support of the modifications sets forth findings that are similar to those alleged in AEP's Complaint and developed in the course of its litigation.

AEP and its counsel have had a great deal of experience in dealing with GE and Westinghouse's antitrust violations in the turbine-generator industry even prior to the present phase of the defendant's conspiracy. Thus, AEP operating companies were also plaintiffs in the prior cases based upon the 1939-1969 turbine-generator price fixing conspiracy, and its lawyers were among the lead counsel for the utility plaintiffs in that litigation as well as trial counsel in the turbine-generator conspiracy trial on behalf of the Ohio Valley Electric Corporation (OVEC). *Ohio Valley Electric Corporation v. General Electric*, 244 F. Supp. 914 (S.D.N.Y., 1965).

AEP wishes to appear as *amicus curiae* to lend its wholehearted support to the proposed modifications to the consent decrees. We are strongly of the view that the entry of these modifications by the Court will be in the public interest. Because of our familiarity with the facts, we are in a position to appreciate the immense value of the proposed consent decree modifications to the utility industry, to consumers of electricity and to the nation generally. We know, based upon our long years of effort in obtaining and analyzing the relevant evidence, that each of the proposed decretal provisions is aimed at a specific anticompetitive practice which has been detrimental to utilities and the public and which is part and parcel of the overall conspiracy which the Justice Department describes in its Memorandum.

We are aware, however, that others who do not have access to the relevant evidence may not have a basis for understanding the nature and effects of the anticompetitive restraints at which the modifications are directed. Without the benefit of a meaningful factual background, a party might be unable to appreciate why specific types of conduct, which might be unobjectionable if viewed in isolation or in other circumstances, are opposed to the public interest in the context of the turbine-generator industry. Consequently, it might be helpful to the Court, other utilities and the public if AEP were afforded the opportunity to respond to comments raised by others and to explain why the modifications are necessary to restore competition.

Besides affording it a familiarity with the relevant facts, AEP's private action also gives it a special interest in the present proceeding since the proposed modifications would provide injunctive relief similar to what AEP was seeking in its own case; and AEP has consequently agreed to conditionally settle its private action contingent upon the final entry of the instant proposed consent decree modifications.

Because of its unique ability to assist the Court in a matter of intense public concern and its strong interest in this proceeding, AEP should be permitted to appear as *amicus curiae* in accordance with the common practice in this Circuit. See, e.g., *Richardson v. United States*, 465 F. 2d 844 (3rd Cir. 1972), cert. denied, 410 U.S. 955 (1973); *Super Tire Engineering Co. v. McCorkle*, 469 F. 2d 911 (3rd Cir. 1972), rev'd on other grounds, 416 U.S. 115 (1974); *Allegheny Airlines, Inc. v. Pennsylvania Public Utility Commission*, 465 F. 2d 237 (3rd Cir. 1972), cert. denied, 410 U.S. 943 (1973); *Rosen v. Public Service Electric and Gas Co.*, 409 F. 2d 775 (3rd Cir. 1969); *Tanzer v. Huffines*, 408 F. 2d 42 (3rd Cir. 1969); *Mississippi River Fuel Corp. v. Federal Power Commission*, 202 F. 2d 899 (3rd Cir. 1953).

Participation by *amici* is particularly appropriate where the Court has the responsibility for protecting the public interest in passing upon the proposed settlement of a Government antitrust action. Indeed, private parties have frequently appeared as *amici curiae* in consent decree proceedings in civil antitrust suits brought by the Justice Department, see, e.g., *United States v. Automobile Manufacturers Association, Inc.*, 307 F. Supp. 617 (C.D. Cal. 1969), *aff'd per curiam sub nom.*; *City of New York v. United States*, 397 U.S. 248 (1970); *United States v. Blue Chip Stamp Co.*, 272 F. Supp. 432 (C.D. Cal. 1967), *aff'd per curiam sub nom.*; *Thrifty Shoppers Scrip Co. v. United States*, 389 U.S. 580 (1968), as well as in criminal antitrust prosecutions where a defendant has sought to change its plea from guilty to *nolo contendere*. *United States v. Darling-Deleware Inc.*, 1972 Trade Cas. ¶ 73,818 (S.D.N.Y. 1971).

In addition to the foregoing generally applicable principles of law, AEP should be allowed to participate as *amicus curiae* in this proceeding under the pertinent provisions of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"). Thus the Justice Department has expressly recognized that while the Act itself may not be applicable, the policies underlying its central provisions should be followed. At p. 1 of its memorandum, the Department states:

"Although the United States does not deem the Antitrust Procedures and Penalties Act, Pub. L. 93-528, 15 U.S.C. § 16(b) through (h), applicable to this proceeding, it has sought in this memorandum to provide the Court and the public with the type of information ordinarily provided in a competitive impact statement filed pursuant to the Act."

Then, at p. 4 of its Memorandum, the Department indicates that it exacted from the defendants their agreement that "the modification would be effected in a manner consistent with the disclosure requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16."

The Justice Department also recognized the importance of the principles of public notification and participation in consent decree proceedings which are embodied in the APPA when it recently moved to extend for three weeks the period within which it could receive comments on the proposed modifications. See Motion To Extend The Period After Which The Court May Enter The Proposed Modifications Of The Final Judgments, filed February 1, 1977.

The same policy considerations which led to the application of the foregoing portions of the APPA in this proceeding likewise support the application of Subsection (f) (3), which provides that the Court may:

"Authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance *amicus curiae* * * *" (emphasis added)

As demonstrated above, AEP is clearly an "interested person" who should be permitted to participate in this proceeding as *amicus curiae* under the APPA as well as under generally applicable legal standards.

CONCLUSION

For all the reasons set forth herein, AEP's application to appear in this proceeding as *amicus curiae* should be granted.

Dated: February 17, 1977.

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

MILTON HANDLER,
DAVID KLINGSBERG,
MICHAEL D. BLECHMAN.

Attorneys for Appalachian Power Company, Indiana & Michigan Power Company, Kentucky Power Company and Ohio Power Company, 425 Park Avenue, New York, New York 10022, 212-759-8400; Goodman & Ewing, 1700 Market St., Philadelphia, Pa. 19103, 215-864-7700. By: Carole Handler Schoenbach.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[Civil Action No. 71 Civ. Complaint]

Appalachian Power Company, Indiana and Michigan Power Company, Kentucky Power Company and Ohio Power Company, Plaintiffs, against General Electric Company and Westinghouse Electric Corporation, Defendants.

Plaintiffs, by their attorneys, Kaye, Scholer, Fierman, Hays & Handler, bring this action against the defendants named herein and complain and allege as follows:

I. JURISDICTION AND VENUE

1. This action arises under Sections 4 and 16 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 731, 737, as amended (15 U.S.C. §§ 15, 26), commonly known as the Clayton Act, to recover three-fold the damages sustained by plaintiffs as a result of their being injured in their business and property by reason of defendants' violations, as herein-after alleged, of the antitrust laws and more particularly of Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15 U.S.C. §§ 1 and 2), commonly known as the Sherman Act, and to prevent and restrain the continuing violation by the defendants of the antitrust laws.

2. Each defendant transacts business and is found within the Southern District of New York.

II. THE PARTIES

3. (a) Plaintiff Appalachian Power Company is a corporation incorporated under the laws of the Commonwealth of Virginia.

(b) Plaintiff Indiana & Michigan Power Company is a corporation incorporated under the laws of the State of Indiana.

(c) Plaintiff Kentucky Power Company is a corporation incorporated under the laws of the State of Kentucky.

(d) Plaintiff Ohio Power Company is a corporation incorporated under the laws of the State of Ohio.

(e) Each plaintiff is suing on account of all purchases of turbine-generator units as hereinafter described made by itself or by any other company whether or not specifically named herein to which it now is a successor in interest through consolidation, acquisition or otherwise. As used herein "plaintiff" includes all such companies to which a plaintiff is a successor in interest.

(f) All of the common stock of the foregoing plaintiffs is owned by American Elec-

tric Power Company, Inc., a corporation incorporated under the laws of the State of New York.

(g) Each of the plaintiffs is and at all relevant times has been engaged among other things in the generation, transmission, and distribution of electric energy.

4. (a) Defendant General Electric Company (hereinafter referred to as "GE") is a corporation incorporated under the laws of the State of New York, is qualified to do business in the State of New York and maintains a place of business at 570 Lexington Avenue, New York, New York.

(b) Defendant Westinghouse Electric Corporation (hereinafter referred to as "Westinghouse") is a corporation incorporated under the laws of the Commonwealth of Pennsylvania, is qualified to do business in the State of New York and maintains a place of business at 200 Park Avenue, New York, New York.

III. NATURE OF INTERSTATE TRADE AND COMMERCE AND BACKGROUND TO THE VIOLATIONS ALLEGED

5. As used herein, "turbine generator" means an assembly of a turbine and a generator including accessories used in the production or generation of electricity on land by the use of steam. It does not include marine turbines or marine turbine generators, hydro-electric turbine generators, hydraulic generators or any unit having a rated capacity of less than 44 mw.

6. Turbine generators are used to produce the major part of the electric energy used in the United States. The principal purchasers and users of these turbine generators are electric utility companies, including the plaintiffs, and also various governmental agencies and industrial companies.

7. Each defendant is and has been for many years engaged in the manufacture and sale of turbine generators in interstate trade and commerce to customers throughout the United States. Since in or about 1965, and continuing to the date of the filing of this complaint, the defendants have manufactured 100% of the total production of turbine generators in the United States. Since in or about November 1962, when Allis-Chalmers Manufacturing Company (hereinafter referred to as "Allis-Chalmers") stopped accepting orders for the manufacture of turbine generators in the United States, defendants have been the only companies accepting such orders.

8. During the period of the violations alleged herein, turbine generators of the size ordered by plaintiffs were made to order by the defendants and normally required between three and four years for completion. The pricing of turbine generators has been based on price books issued by the manufacturers. The price books contain prices, commonly referred to as "book," "list" or "published" prices, for different types of turbine generator units as well as units with various components, specifications and accessories. The price books also contain terms and conditions of sale. Actual selling prices historically have been at book price or at prices below the book price level, based on a percentage discount or multiplier applied to the book price. Prices also have been subject to adjustment between the date of order and the date of delivery of the turbine generator based on intervening changes in book price or published discount.

9. The history of the behavior of turbine generator prices is reflected in the following table which sets forth changes for illustrative units during the period 1948 to date:

PUBLISHED PRICE CHANGES.—1948-62—Average book price changes for turbine generators—substantially all sizes

Date of GE change	Date of Westinghouse change	Percentage change
Dec. 27, 1948	Dec. 30, 1948	+10.0
Oct. 16, 1950	Oct. 21, 1950	+10.1
Dec. 21, 1951	Dec. 20, 1951	+2.5
Mar. 30, 1953	Apr. 10, 1953	+10.0
Sept. 12, 1955	Sept. 16, 1955	+10.0
Apr. 30, 1956	June 11, 1956	+10.1
Sept. 24, 1956	Sept. 28, 1956, Dec. 31, 1956	+4.9
July 1, 1957	July 5, 1957	+5.0
Dec. 23, 1957	Jan. 7, 1958	+2.5
Apr. 28, 1958	May 12, 1958	+3.1
July 10, 1959	July 13, 1959	-6.0
Oct. 26, 1959	Oct. 27, 1959	-5.9
Mar. 27, 1961	Apr. 10, 1961	-12.5

1963-1971—Changes in book price and published discount for 737.61 MW, tandem compound, 4-flow turbine generator without side exhaust

Date	GE actual selling price	Date	Westinghouse actual selling price	Percentage change
May 20, 1963	\$10,722,042	Dec. 2, 1963	\$10,722,042	
Jan. 16, 1964	11,286,360	Jan. 21, 1964	11,286,360	+5.26
June 8, 1964	11,004,201			-2.50
		July 9, 1964	11,850,678	+3.00
		Aug. 18, 1964	11,286,360	-4.76
				+2.36
Sept. 21, 1964	11,286,360			
Oct. 28, 1965	11,817,499	Nov. 1, 1965	11,817,499	+4.71
July 11, 1966	12,566,514	July 12, 1966	12,566,514	+6.24
Oct. 28, 1966	13,305,721	Feb. 1, 1967	13,305,721	+5.88
May 15, 1967	14,245,135	May 19, 1967	14,245,135	+7.06
Aug. 5, 1968	14,857,829	Aug. 7, 1968	14,857,829	+4.30
June 30, 1969	15,733,337	Aug. 9, 1969	15,733,337	+5.89
Feb. 9, 1970	16,658,827	Feb. 23, 1970	16,658,827	+5.88
Dec. 21, 1970	17,584,318	Jan. 14, 1971	17,584,318	+5.56
Aug. 2, 1971	18,201,312	Aug. 6, 1971	18,201,312	+5.21

During the period from 1949 through 1958, book prices of both defendants rose steadily and, except for minor variations, in approximately the same amounts. During this period, the turbine generator book prices of GE and Westinghouse, as well as Allis-Chalmers, were substantially the same. During 1949 through mid-1959, the average discount off book price given to buyers for all units was less than 5%.

10. In the period from mid-1959 to in or about 1963, book prices declined, and substantially larger discounts were granted from book prices, causing actual selling prices to decline even more than book prices did. The average discount from book in the first quarter of 1961 was 36.5% in contrast to the largest average discount for any quarter prior to 1959 of 10.3%.

11. The existence of a combination and conspiracy in restraint of trade in violation of Section 1 of the Sherman Act, beginning at least as early as 1952 and continuing up to mid-1959, affected the level of prices for turbine generators and prevented larger discounts which might have resulted from intentional price reductions or inadvertent price errors. The purpose of the conspiracy was to establish uniform book prices and to maintain actual selling prices as close as possible to book.

12. The widening of discounts off book and the resultant price drop after 1959 is attributable, at least in substantial part, to competitive market forces which were permitted to operate freely following the interruption of conspiratorial activities brought about by the following governmental actions: On June 29, 1960, in the United States District Court for the Eastern District of Pennsylvania, the United States instituted Criminal Action No. 20,401 and Civil Action No. 28,228 against the defendants named herein and Allis-Chalmers alleging a combination and conspiracy to fix prices in violation of Section 1 of the Sherman Act. On December 8, 1960, the defendants herein pleaded guilty in the criminal action, and on February 13, 1961, judgment was entered as to each of them. On October 1, 1962, the United States District Court for the Eastern District of Pennsylvania entered a consent judgment in the civil action, which set forth defendants' obligations under the antitrust laws in the marketing and sale of turbine generators. Thus, the decree prohibited defendants, among other things, from directly or indirectly entering into any contract, arrangement, understanding, plan or program to eliminate or suppress unreasonably competition; allocate or divide markets; maintain prices, pricing methods or terms and conditions of sale; submit non-competitive bids or quotations; or hinder third party competitors or those buying from them. The judgment also directed each defendant, not later than one year from the effective date thereof, individually and independently, to review and determine its book prices for turbine generators based upon lawful considerations. Plaintiffs herein, being purchasers of turbine generators, were persons who had suffered by reason of the combination and conspiracy that was the subject of the judgment and for whose benefit the judgment was entered by consent of the parties thereto in order to restore and maintain competitive conditions in the market.

13. In February 1961, shortly before a March book price reduction, GE's pricing personnel for large steam turbine generators decided that "new quotations would be made at book price and prices would not be negotiated below this level." Nevertheless, after GE published its new book prices in March 1961 and until early 1963, discounts continued to be negotiated competitively to levels which averaged approximately 30%, and selling prices continued to decline. It was thus apparent

that independent or unilateral action by the defendants could not increase prices above the competitive market levels to which they had declined after government proceedings had interrupted their conspiratorial activity.

14. On or about May 18, 1963 and December 2, 1963, GE and Westinghouse successively instituted new price books which were substantially the same. GE announced that it would quote all turbine generators at 24% below the new book prices. Similarly, Westinghouse put into effect a new selling policy pursuant to which it would not grant discounts greater than 24% off the new book prices. In order to assure Westinghouse, as well as customers, that it would not deviate from its new practice of refusing to negotiate from the book price and single published discount, GE included a "price protection policy" in each of its turbine generator sales contracts pursuant to which it would impose substantial penalties on itself for any such deviation. Under this provision, GE obligated itself, in the event it quoted a price below the book price and published discount, to grant that lower price retroactively to all purchasers who ordered turbine generators in the preceding six months. GE also announced that it would certify in writing to each purchaser that its price was in compliance with the "price protection" policy, and that it would allow purchasers to cause an audit to be made of GE's quotations to others in order to verify such compliance.

15. Since 1963, on information and belief, defendants have suppressed competition in price by following a practice of not deviating from their uniform book prices and single published discount for any reason including design, type, quantity or time of delivery. Through their joint efforts defendants have resumed their combination and conspiracy to fix prices and terms and conditions of sale for turbine generators, and they have controlled the price of turbine generators, maintained book prices and published discounts that are essentially the same, raised book and actual selling prices in uniform amounts and have sold turbine generators at uniform prices, all in violation of the antitrust laws, as alleged in detail below. As a result of defendants' acts and practices subsequent to the various government and private litigations against them, the purpose of the judgments therein, to restore price competition in the sale of turbine generators, was never achieved.

IV. VIOLATIONS ALLEGED

16. Beginning at least as early as May 1963 and continuing thereafter up to and including the date of filing of this complaint, the defendants, in violation of Sections 1 and 2 of the Sherman Act, have entered into contracts and engaged in a combination and conspiracy in reasonable restraint of the aforesaid interstate trade and commerce in the sale of turbine generators; and have combined and conspired and attempted to monopolize and have monopolized such trade and commerce. The defendants threaten to and will continue such violations unless the relief hereinafter prayed for is granted.

17. The aforesaid violations of the antitrust laws have consisted of a continuing agreement, understanding, concert of action, plan and course of dealing by and between the defendants, the substantial terms and purposes of which have included, among other things:

(a) The elimination and suppression of price competition in the sale of turbine generators.

(b) The establishment and maintenance of uniform prices, pricing methods, and terms and conditions of sale for turbine generators, as well as increasing prices to purchasers, including the plaintiffs.

(c) The submission of non-competitive price quotations and bids for turbine generators to purchasers, including the plaintiffs.

(d) The establishment and maintenance of non-competitive price structures so that competition would be restrained or eliminated, existing market shares would be maintained, and monopolistic conditions would prevail.

(e) The willful acquisition and maintenance of the power to control prices and terms and conditions of sale for turbine generators, and to exclude competition in the sale of turbine generators in the United States.

18. The defendants intended to exercise the power which they sought to and did acquire as alleged in paragraph 17 above.

V. EFFECTS

19. Defendants' violations hereinabove alleged have, among other things, had the following effects:

(a) The defendants established book prices which were and continue to be substantially the same.

(b) The defendants established a pricing method consisting of the application of a single uniform discount or multiplier to the book price whereby, on information and belief, actual prices have been determined without deviation for any reason including design, type, quantity or time of delivery.

(c) Book prices and actual selling prices were increased steadily by both defendants in approximately the same amounts at or about the same time as indicated in paragraph 9 above. On information and belief, book and actual prices have been increased substantially more than the increase in the cost of manufacturing turbine generators.

(d) In order to bring about substantially the same result as if the price changes had been precisely simultaneous, on information and belief, the defendants have honored pre-increase quotations to customers for periods of about thirty or sixty days after a price increase, thus avoiding the competitive effect of any apparent temporary difference in prices between the date of GE's price increase and the announcement of a similar change by Westinghouse.

(e) The defendants simplified and revised their price books to ensure that actual prices would be uniform and inadvertent pricing errors, which could lead to price reductions, would be avoided.

(f) Material terms and conditions of sale of the defendants, including price escalation, terms of payment, warranty against defects, obligation to repair or replace defective equipment and definition of delivery for purposes of payment, were essentially the same.

(g) Non-competitive bids and quotations were submitted to purchasers including plaintiffs, and defendants have refused to negotiate or bargain competitively. For example, in or about the latter part of 1965 and early 1966, each of the defendants, despite their express policy of adhering to prior quotations for a specified period following price increase announcements, refused to sell plaintiffs more than one turbine generator at prices quoted prior to the defendants' parallel book price increases effective as of October 28, 1965 and November 1, 1965. Whereas either manufacturer could have obtained an order for at least two units if it had been willing to make the earlier price available on all, the result was that the order was divided between them. Each defendant also has refused to deviate from its book prices and published discount for a sale of two or more turbine generators, although the sale to the same customer at the same time of two or more turbine generators of like design would have permitted considerable savings by the manufacturer.

(h) Actual and potential competition in the manufacture and sale of turbine generators to purchasers in the United States, including plaintiffs, has been adversely affected by the violations.

(i) Purchasers, including plaintiffs, have been deprived of the benefits of free competition in the determination of prices and terms and conditions of sale for turbine generators, as required by both the consent judgment and the antitrust laws.

(j) Defendants have monopolized and continue to monopolize the aforesaid interstate trade and commerce.

VI. DAMAGES

20. During the four year period prior to the date of the filing of this complaint, the plaintiffs purchased or received delivery of a minimum of six turbine generators from the defendant GE and one turbine generator from the defendant Westinghouse. The total price of such equipment purchased from GE is approximately \$87,000,000; and the price of such equipment purchased from Westinghouse is approximately \$12,000,000. The prices of all of plaintiff's purchases of turbine generators were adversely affected by defendants' aforesaid violations of the antitrust laws.

21. During the four year period prior to the date of the filing of this complaint, the plaintiffs purchased or received delivery of four turbine generators from suppliers other than the defendants, the prices of which were adversely affected by defendants' aforesaid violations of the antitrust laws.

22. Each plaintiff, by reason of defendants' violations of the antitrust laws, paid or contracted to pay for each turbine generator referred to in paragraphs 20 and 21 a price higher than the price it would have paid or contracted to pay had defendants' violations not occurred. The difference between the price paid or to be paid and the price payable had the violations not occurred, together with such additional expenses (including applicable taxes, insurance premiums, interest, etc.) as were incurred as a result of such excessive price, constitutes injury to the business and property of each plaintiff and is the damage arising out of the purchase. The exact amount of each plaintiff's damages cannot now be stated precisely pending completion by each plaintiff of its discovery and analysis of the pertinent records and other evidence including information to be obtained from the defendants and other persons to determine the amount of the overcharge paid or to be paid by it for each turbine generator.

23. Plaintiffs must continue to purchase turbine generators in order to supply electric power to their customers, and such purchases will continue to be adversely affected by the violations hereinabove alleged unless the relief prayed for below is granted.

Wherefore, each plaintiff prays:

(1) That it be adjudged and decreed that the defendants and each of them have contracted, combined and conspired to restrain interstate trade and commerce in turbine generators and have monopolized, combined and conspired to monopolize and have attempted to monopolize such trade and commerce in violation of Sections 1 and 2 of the Sherman Act.

(2) That judgment be entered in favor of each plaintiff in an amount three-fold the amount of the damages sustained by it as a result of defendants' violations of Sections 1 and 2 of the Sherman Act together with the costs of this action, including a reasonable

attorney's fee, all as provided by Section 4 of the Clayton Act.

(3) That the defendants and all persons acting on their behalf be permanently enjoined and restrained from, in any manner, directly or indirectly, continuing the aforesaid contracts, combination and conspiracy to restrain and monopolize, the attempt to monopolize, and monopolization of interstate trade and commerce, as hereinabove alleged, and from carrying out the aforesaid agreements, understandings, arrangements and plans, and from adopting or following any practice, plan, course of dealing, program or method of pricing which would have the effect of restraining or monopolizing such trade and commerce.

(4) That the Court grant such relief by way of divestiture and reorganization with respect to the business and properties of each of the defendants as may be considered necessary or appropriate to dissipate the effects of each defendant's unlawful activities as hereinabove alleged, and to restore competitive conditions to the turbine generator market.

(5) That the defendants be required to take such other action as the Court may deem necessary and appropriate to dissipate the effects of the unlawful activities, as hereinabove alleged, and to permit and restore free and open competition in the interstate trade and commerce for the sale of turbine generators.

(6) That each plaintiff be granted such other and further relief as to the Court may seem just and proper.

Dated: December 29, 1971, New York, N.Y.

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

By Milton Handler, attorneys for Plaintiffs, 425 Park Avenue, New York, N.Y. 10022, (212) PL 9-8400.

Of counsel for plaintiffs: James B. Henry, Esq., 2 Broadway, New York, N.Y. 10004.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Civil No. 28228]

UNITED STATES OF AMERICA, PLAINTIFF, V. GENERAL ELECTRIC COMPANY AND WESTINGHOUSE ELECTRIC CORPORATION, DEFENDANTS

MEMORANDUM OF UNITED STATES IN RESPONSE TO APPLICATION OF APPALACHIAN POWER COMPANY, INDIANA & MICHIGAN POWER COMPANY, KENTUCKY POWER COMPANY AND OHIO POWER COMPANY ("AEP") TO APPEAR AS AMICUS CURIAE

The Government does not oppose the application of Appalachian Power Company, Indiana & Michigan Power Company, Kentucky Power Company and Ohio Power Company ("AEP") to this Court for leave to appear as *amicus curiae* for the purpose of commenting on the Proposed Modification by Consent of the Final Judgments of October 1, 1962 in the above action. Nor does the Government object to AEP's participation as *amicus curiae* in any hearing which the Court may decide to hold.

The Government has studied the comments made by AEP in its Application and agrees that prompt entry of the Proposed Modification is in the public interest.

Respectfully submitted,

MARK P. LEDDY,
JOHN W. CLARK,
Attorneys,

United States Department of Justice.

BERLACK, ISRAELS & LIBERMAN
 26 BROADWAY
 NEW YORK 10004

February 22, 1977

Department of Justice
 Washington, D. C. 20530

Attention: Mr. John W. Clark
Antitrust Division

Re: JWC:ML
60-230-77

Dear Sirs:

In response to the Department's invitation, dated December 22, 1976, we are herewith forwarding to you on behalf of 27 electric utilities comments on the proposed Modifications to the 1962 Final Judgment Against General Electric Company and Westinghouse Electric Corporation. The electric utilities submitting such comments serve more than 21 million electric utility customers in portions of 19 States and their securities are held by several million investors.

We are contemporaneously sending a copy of this letter and its enclosures to counsel for American Electric Power Company, General Electric Company and Westinghouse Electric Company.

Very truly yours,

Barbara Liberman
 BERLACK, ISRAELS & LIBERMAN

MEMORANDUM

FEBRUARY 22, 1977.

To: Department of Justice, Washington, D.C. 20530.

Attention: Mr. John W. Clark, Antitrust Division.

Re: JWC:ML, 60-230-77.

This memorandum is submitted on behalf of the undersigned electric utilities in response to the Department's invitation, dated December 22, 1976, to submit comments on the proposed Modifications to the Final Judgments against General Electric Company ("GE") and Westinghouse Electric Corporation ("Westinghouse") provided for in the Stipulations between the Department and GE and Westinghouse filed with the United States District Court for the Eastern District of Pennsylvania on December 10, 1976.

The undersigned are among the electric utilities having so-called "stand-still" agreements with GE and Westinghouse which provide for the waiver of the statute of limitations for claims and counterclaims of the type involved in the litigation initiated by the American Electric Power companies against GE and Westinghouse. Such agreements are identical and provide for the designation of common "monitoring counsel" to review developments in that litigation. Since the proposed Modifications grow out of the same matters as those involved in the American Electric Power litigation, the undersigned concluded that they could be of greatest assistance to the Department and the Court if they jointly reviewed the proposed Modifications. They advised the Department and GE and Westinghouse of their intent to do so and understood that there was no objection to that course of action.

It would, of course, be feasible for each of the undersigned to submit individual comments. However, since the undersigned understand that it is the intention of the Department to transmit to the Court the comments received by it and possibly to advise the Court of the Department's views with respect thereto, individual comments would have substantially and unnecessarily burdened the Department and the Court. In that light, the undersigned concluded that the submission of joint comments would best serve all interests.

The undersigned are not parties to the proceeding in which the Final Judgment was entered and in which the Modifications are proposed to be entered. However, they and their consumers and investors are clearly among those intended to be benefitted by the proposed Modifications. In that sense, the undersigned view themselves as submitting these comments on behalf of the more than 21 million consumers (residing in 19 States) whom they serve and for the several million investors in their securities.

1. Both the original Final Judgments of 1962 and the proposed Modifications have as their objective the creation of competitive market conditions in the sale of large turbine generators. The proposed Modifications reflect the Department's view that the 1962 Final Judgments did not achieve that result. While the undersigned are wholly in accord with the objective of the proposed Modifications, they do not have—and they do not believe that anyone can have—assurance that the proposed Modifications will be successful in achieving such objectives. It may well be that further experience will demonstrate that other steps than those provided for in the proposed Modifications are necessary to that end. In that light, the purchasers of large turbine generators will, at best, have great difficulty in learning whether competitive conditions do in fact exist in view of the restrictions on disclosures to them by GE and Westinghouse provided for by the proposed Modifications. The under-

signed believe that the objective of the proposed Modifications would not be compromised, and that the effectiveness of the proposed Modifications in achieving their intended objective could be measured, if the proposed Modifications were amended to provide for the following:

(a) Periodic reporting by GE and Westinghouse to the Department of the proposals submitted by each of them to prospective customers and of the sales actually made; and

(b) Monitoring by the Department and periodic reporting by the Department to the Court of the Department's views as to whether the proposed Modifications were effective in providing competitive conditions.

The undersigned recognize that it may be necessary or desirable for such reporting by GE and Westinghouse to the Department to be done in such fashion that their detailed reports to the Department will not be subject to disclosure under the Freedom of Information Act, and the undersigned believe that, if their suggestion for such amendments is adopted, the Court's order could so provide. However, access to the Department's overall views and the factual basis for them when and as reported to the Court is vital to the continuing ability of utility purchasers to protect the interests of their customers and investors. It is requested that the right of such access be preserved for the utility purchasers by the Court in such order.

2. In this same context, the undersigned are not clear whether the proposed Modifications will serve as a bar, for the various time periods specified in the proposed Modifications, to possible efforts on the part of the Department to seek other and further relief, or to amend the provisions of the proposed Modifications. If experience demonstrates that the proposed Modifications are not achieving their intended purpose, it clearly is in the public interest that the Department not be so barred. The undersigned, therefore, suggest that the proposed Modifications be amended to assure that there is no such bar.

3. The Department's memorandum reflects an expectation that competition will develop as a result of the proposed Modifications. In order to have effective competition, however, in a market characterized by (a) duopoly on the supply side with constant involvement in marketing efforts and (b) several hundred potential customers on the purchasing side who are only sporadically involved in purchases, it is important that the purchasers have access to information sufficient to make them informed purchasers. Under the proposed Modifications they will not be able to obtain such information from GE or Westinghouse. The natural other source of such information would have recently purchased or are contemplating the purchase of similar equipment. However, there is no reason to be concerned that GE, Westinghouse or the Department might take the position that such communications between actual and potential purchasers would be inconsistent with the purposes of the proposed Modifications and possibly violative of the antitrust laws.

Given the history that led to the 1962 Final Judgments and to the proposed Modifications, the purpose of the proposed Modifications, the inequality of access to information, and the public interest in assuring that regulated electric utilities and governmental power systems have adequate information to enable them to purchase turbine generators on a cost-effective basis, it does not appear to the undersigned that it would be unreasonable if the Court were to require that GE and Westinghouse made clear on the record that they will not seek to inhibit such communications between actual and potential purchasers. The

undersigned are not suggesting that the Court should sanction the creation of a monopoly or collusive actions by a group of buyers. The undersigned are suggesting, however, that, since the effect of the proposed Modifications will be to make unavailable to prospective purchasers essential information concerning price, warranties and other terms and conditions for large turbine generators that GE and Westinghouse, as sellers, will possess in substantial measure, it should be made clear that GE and Westinghouse may not attempt to keep prospective purchasers in complete ignorance by threats of antitrust actions if a prospective purchaser should seek information from others similarly situated.

4. If effective competition in the supply of large turbine generators is to be created, it may well be necessary that there be others than GE and Westinghouse who are active on the supply. The capital and experience required for successful entry into the business present enormous barriers. The most likely source of such competition is from foreign manufacturers or their U.S. affiliates, who have heretofore penetrated the U.S. market to only a modest degree. If they were to step up their efforts substantially, it is reasonable to anticipate that GE and/or Westinghouse would respond by filing dumping charges and that the potential threat of such charges would be a significantly inhibiting factor on the efforts of foreign suppliers. The undersigned's suggestion in this respect is that the proposed Modifications be amended to provide that GE and Westinghouse would be required, at least for a period, to obtain the Court's consent before the filing of dumping charges against foreign suppliers so that the Court, with the advice of the Department, could assess whether the effect of such dumping charges would be to frustrate the intent of the proposed Modifications.

5. One of the major elements that has precluded the development of effective competition in the supply of large turbine generators has been the insistence of GE and Westinghouse in "bundling" the equipment materials and services that are components of a large turbine generator. Some components are not supplied by GE or Westinghouse from their own manufacture, but GE and Westinghouse have traditionally refused to make available to purchasers a breakdown of components by their suppliers or by price. This becomes particularly important in the case of replacement parts since the purchaser is then necessarily confined to a single supplier. The Department and the courts have required unbundling in other contexts and, at a minimum, the monitoring, reporting and reservation to the Department of the right to seek further relief should have this possibility in mind.

6. The proposed Modifications go too far in prohibiting not only general price protection policies but also in prohibiting individual agreements that provide for retroactive price adjustments based on prices paid by others. There may be individual situations in which this is necessary to achieve equity. For example, a particular utility may be willing to pay first-of-a-kind costs for the development of a new technology or application but expect a retroactive price reduction if the development leads to sales to others at lower prices. To this end, the undersigned suggest that section 2(b) of the proposed Modifications be revised to read as follows:

"(b) Hereafter offering a general price protection policy whereby the prices of large turbine-generators would be retroactively reduced or the defendant would be subject to any penalty or disadvantage as the direct result of offering or providing lower prices or more favorable terms and conditions of sale to subsequent customers or potential cus-

tomers; provided, however, that nothing in this section 2(b) shall preclude the defendant from entering into an agreement with an individual customer whereby the price of a large turbine generator may be retroactively reduced or more favorable terms and conditions of sale may be provided as a direct result of offering or providing a lower price or more favorable terms and conditions of sale to a subsequent customer or potential customer under circumstances and conditions which are reasonably designed to maintain the confidentiality of information concerning the price, terms and conditions of sale so offered or provided to a subsequent customer or potential customer."

7. The undersigned believe that the proviso in subsection 2(f)(v) of the proposed Modification is too narrow and suggest revision of that subsection along the following lines:

"(v) A formula or system for pricing large turbine-generators, provided that nothing in this subsection 2(f)(v) shall be construed to prohibit the defendant from using price adjustment clauses to adjust prices to reflect changes in defendant's costs (as specifically determined by the defendant or as determined by reference to one or more economic indices) between the date of order or a subsequent date and the date of delivery, or from selling large turbine-generators or components or spare parts under a contract in which price is based upon reimbursement of costs plus, if the defendant elects, other specified factors."

The undersigned further believe that the proviso following section 2(g) should also be applicable to subsection 2(f)(v).

(8) The impact of the Proposed Modifications on outstanding contracts, orders and offers requires clarification, in several respects:

(a) Some outstanding contracts for future shipments provide that the price for the particular turbine-generator shall be the supplier's market price in effect three years prior to the shipment. While clause (e) of Section 3 presumably seeks to address this situation, it is by no means clear to the undersigned that it does so in a manner that can be practically applied or verified.

(b) While clause (e) of Section 3 refers to "contractual commitments" and a "contract," other provisions of the proposed Modifications (subsections 2(c), 2(d), and 2(f)(v)) dealing with related aspects refer to turbine-generators "ordered" prior to the effective date of the proposed Modifications and to escalation between the date of the "order" and the date of delivery. Frequently, a purchaser of a large turbine-generator invites offers (which are to remain open for acceptance to a specified date), selects a supplier after evaluation of the offers and places an order, and then proceeds with detailed negotiation of a contract which may require a long period. Presumably, subsections 2(c) and 2(d) and clause (e) of Sec-

tion 3 are all intended to have the same applicability, but any ambiguity on this score should be eliminated.

(c) In the same vein, it would be desirable and appropriate to clarify that an offer that was received by a prospective purchaser prior to December 10, 1976 which is still outstanding and subject to acceptance by the purchaser, will be regarded as an "order" and/or "contractual commitment" if it should be accepted by the prospective purchaser by a specified future date. The solicitation, receipt and evaluation of offers is time-consuming and expensive; it would be unfortunate and contrary to the public interest if offers outstanding on December 10, 1976 and accepted after the effective date of the proposed Modifications are not accorded the same status as "orders" and "contractual commitments."

The undersigned realize that the proposed Modifications were the result of extensive negotiations between the Department and GE and Westinghouse. It was presumably necessary for the Department to undertake

such negotiations without participation therein by the utilities that would be directly affected. However, now that a general framework has been established by the proposed Modifications, it may well be desirable for the Department to have the benefit of detailed discussions with a representative panel of utility personnel experienced in the procurement of large turbine-generators. In this way, the Department could gain greater insight into the problems likely to arise in the practical application of the proposed Modifications and possibly could fashion means of dealing with those problems without compromising the objectives of the proposed Modifications. If the Department believes that this could be a productive course to follow, the undersigned would be more than willing to make personnel available to the Department for inclusion in such a panel.

We appreciate the opportunity that has been afforded to us to submit comments on the proposed Modifications.

Respectfully submitted,

Company	Counsel
Atlantic City Electric Co.....	Lloyd, Megargee, Steedle & Connor: Henry P. Megargee, Jr., Esq.
Boston Edison Co.....	Dale Stoodley, Esq.
Central Hudson Gas & Electric Co.....	Gould & Wilkie: Walter Bossert, Esq. and Diane Danbeck, Esq.
Central Vermont Public Service Corp.....	Donald L. Rushford, Esq.
Cincinnati Gas & Electric Co.....	William J. Moran, Esq.
Consolidated Edison Company of New York, Inc.	Walter A. Morris, Jr., Esq. and Samuel Lerner, Esq.
Consumers Power Co.....	O. K. Petersen, Esq.
Dayton Power & Light Co.....	J. R. Newlin, Esq.
General Public Utilities Corporation.....	Beriack, Israels & Liberman: James B. Liberman, Esq. and Douglas E. Davidson, Esq.
Jersey Central Power & Light Co.....	
Metropolitan Edison Co.....	
Pennsylvania Electric Co.....	
Iowa Power & Light Co.....	Lynn K. Vorbrich, Esq.
Long Island Lighting Co.....	Edward M. Barrett, Esq.
New England Electric System:	Richard B. Dunn, Esq. and Pasco Gasbarro, Esq.
Massachusetts Electric Co.....	
The Narragansett Electric Co.....	
New England Power Co.....	
Granite State Electric Co.....	
New York State Electric & Gas Corp.....	Huber Magill Lawrence & Farrell: Edward F. Huber, Esq., Francis I. Fallon, Esq.
Northeast Utilities:	Day, Berry & Howard: Gerald Garfield, Esq., Richard M. Reynolds, Esq.
The Connecticut Light & Power Co.....	
The Hartford Electric Light Co.....	
Western Massachusetts Electric Co.....	
Pacific Gas & Electric Co.....	Philip A. Crane, Jr., Esq.
Pacific Power & Light Co.....	Rives, Bonyhadi, Drummond & Smith: George D. Rives, Esq., George K. Meier, III, Esq.
Public Service Electric & Gas Co.....	Frederick M. Broadfoot, Esq.
Public Service Co. of Colorado.....	Roger Nelson, Esq.
Southern California Edison Co.....	Kelly, Stansfield & O'Donnell: Bryant O'Donnell, Esq., Robert S. Gast, Jr., Esq.
Virginia Electric Power Co.....	Rollin E. Woodbury, Esq.
	Robert J. Cahall, Esq.
	Hunton & Williams: Evans B. Brasfield, Esq.

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Attorney for the
 Defendants and Plaintiff
 JWC
 65-250-77

March 11, 1977

Berlack, Israels & Liberean
 26 Broadway
 New York, New York 10004

Dear Sirs:

This is in response to your letter of February 22, 1977 in which you have submitted, in behalf of a group of 27 utilities, a number of suggestions concerning the proposed Modification of the Final Judgment entered October 1, 1962 against the General Electric Company and Westinghouse Electric Corporation. We have carefully considered these extensive suggestions. We share many of the concerns you have expressed, and we were conscious of them during the extensive negotiations which resulted in the Proposed Modification.

We feel that the modification provides adequate protection regarding most of the issues you raise. However, a few of your suggestions, we believe, may either weaken the decree or are not directly related to the conduct of the defendants which is the subject of the Proposed Modification.

Our response to each suggestion is as follows:

1. Your first suggestion is that the Proposed Modification be amended to provide for periodic reporting by GE and Westinghouse of the bids submitted and the sales made by each. You also propose that the modification be amended to provide for the Department to monitor the industry and submit its views concerning the success of the Proposed Modification to the Court.

As you probably know, the 1962 decrees require the defendants to give the Government access to their records upon request for the purpose of determining whether the

decrees are being observed. Indeed, it was through these provisions that the Government obtained much of the information which resulted in the Proposed Modification. These 1962 provisions remain in effect, and therefore it will be possible for the Government to obtain the information you would have the defendants report to us.

We believe, however, that to require such reporting by the defendants would impose an undue burden on the Department and the Court, and is inconsistent with the purpose and intent of the modification and of the antitrust laws. The intent of the Proposed Modification is to restore competition to the large turbine generator industry. The public policy embodied in the antitrust laws recognizes that a competitive market is more efficient and, where possible, preferable to government regulation or oversight. For the Department to regularly monitor and analyze the bids of both defendants would be difficult and time-consuming, and would substitute, to some extent, government regulation for a competitive market.

Finally, it would seem that the utilities would be in the best position to determine whether the bids received by them indicate a lack of price competition. The Department is always willing to meet with industry representatives regarding competitive conditions in the market.

2. You have also expressed concern over the Department's ability to further modify the decree in the future. The Department believes that the entry of the Proposed Modification does not serve as a bar to any attempt by the Government to modify the current decree, either occasionally with the defendants or unilaterally, in the future. Nor would entry bar a CE nor action under the antitrust laws. It is not necessary for the Government to expressly reserve these rights in the Proposed Modification.

3. You have suggested that the defendants be required to make clear on the record in this proceeding that they will not seek to inhibit the exchange of price information by purchasers of large turbine generators. In view of the conduct that led to the Proposed Modification, and its purpose and scope, we believe that such a requirement of the defendants is unnecessary. The Proposed Modification is designed to prevent the exchange of price information between the defendants in order to interrupt and terminate what the Government

views as an agreement between them to eliminate price competition. The modification is not aimed at, and does not reach, the exchange of price information between purchasers. The only exception would be an exchange made for the purpose of enabling the defendants to communicate with each other in violation of the decree. This could subject those purchasers to liability for contempt of court. In general, however, the defendants are free to communicate to a customer or potential customer any information considered by defendants necessary, in good faith, to respond to the customer's needs (see para. 2(c)) and that customer is free to use or convey that information as it deems necessary, subject, of course, to other applicable laws, including the antitrust laws.

Therefore, we conclude that the propriety of exchanges of price information between purchasers is unaffected by the Proposed Modification. Under these circumstances, it would be improper at this time to prohibit defendants from asserting any antitrust claims based on the exchange of information by purchasers.

4. You have suggested that the Proposed Modification be amended to require the defendants to obtain the Court's consent before the filing of dumping charges against foreign large turbine generator manufacturers. The Department believes that the suggested amendment is not warranted by the facts upon which we based our decision to act in this case. The filing of dumping charges or threats of such charges by the defendants were not part of the conduct upon which the Department based its determination to seek modification of the 1962 consent decrees. Further, it has not been alleged to us that the defendants have used sporadic dumping charges as a method of excluding competitors. Under these circumstances, the Department believes that it is an unnecessary burden upon the defendants and the Court to have the Court monitor all future dumping charges filed by the defendants. The defendants should be permitted to file whatever dumping charges they consider appropriate and have such charges resolved on their merits.

In addition, the Department presently monitors anti-dumping charges filed with the Department of the Treasury and often intervenes in dumping proceedings before the International Trade Commission in order to express its views on the competitive issues involved. In view of the defendants' past conduct and the purpose of the proposed

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modification, it is likely the Department would be involved in any antitrust proceedings brought by either defendant relating to large turbine generators.

5. You suggest appropriate relief may require that the defendants be prevented from "bundling" the equipment, materials, and service that are components of a large turbine generator. Once again, however, bundling is not a part of the conduct which the Department believed to be in violation of the antitrust laws and which prompted this modification. We are not aware of any evidence tending to show that GE and Westinghouse agreed with each other to employ such tactics. Consequently, the Department believes that it is inappropriate to consider unbundling as possible relief in this proceeding at this time.

6. You also suggest that the Proposed Modification be amended to permit provisions on an individual basis in large turbine generator contracts whereby the price to one purchaser of a large turbine generator would be reduced as a result of the granting of a lower price to a subsequent purchaser. This amendment would be designed to permit individual "most favored nation" clauses if the confidentiality of the subsequent purchase price could be maintained.

The Government opposes this proposed amendment. We believe that the GE price protection policy adopted in 1963 was an essential element of what we consider a scheme to fix prices. Adoption of the policy by GE gave assurance to Westinghouse that GE would not cut prices, and additionally provided a great disincentive for GE to reduce prices. Consequently, we believe that to eliminate the disincentive to reduce prices created by the use of price protection, all most favored nation clauses in large turbine generator contracts should be prohibited for a limited period of time.

The greater the number of most favored nation clauses in outstanding contracts, the greater the disincentive to reduce prices in an individual transaction. If individual most favored nation clauses could be used, it is possible that such clauses could become as widespread as under the former price protection policy. Under such circumstances, the disincentive to reduce prices would remain. The possibility that permitting such clauses will result in effects similar to those that existed as a result of the price

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protection policy leads us to conclude that to effectuate the purposes of the modification, most favored nations clauses must be prohibited for a period of time until competitive conditions are reestablished.

7. Your proposed revision of subsection 2(f)(v) contains language which slightly broadens the proviso, but it is not clear to us why you propose these changes. We believe that use of pricing formulas by the defendants served to identify identical pricing and was an important element in the alleged conspiracy to eliminate price competition. Consequently, we have attempted to eliminate communication of price formulas to the extent possible. However, we recognize that defendants may need to adjust their prices to reflect changes in their costs, and that may require the use of price formulas. We do not believe that use of escalation provisions and cost plus pricing can serve as a basis for collusive behavior in the same way that other pricing formulas do. Therefore, we have permitted the communication of these specific types of formulas. We see no reason to broaden the proviso to permit the communication of other formulas that may have an undesirable competitive effect.

8. You also raise a number of questions concerning the interpretation of several paragraphs of the Proposed Modification and their effect upon outstanding contracts, orders, and offers.

(a) You have indicated that the Proposed Modification will create difficulty for utilities in ascertaining the price of large turbine generators purchased pursuant to contracts under which the price of a large turbine generator is the supplier's market price three years prior to shipment. Paragraph 2(i) permits the defendants to communicate to purchasers the prices quoted in past transactions involving the sale of large turbine generators beginning 30 months after such quotations. Therefore, the Proposed Modification will not prohibit purchasers at the time of shipment from obtaining information from the manufacturers from which the market price three years prior to shipment can be determined.

In addition, there may be other ways in which these contractual provisions can be observed in a manner consistent with the decree. The Antitrust Division is not now willing to prescribe specific procedures for dealing with this and

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involving the sale of large turbine generators beginning 30 months after such quotations. Therefore, the Proposed Modification will not prohibit purchasers at the time of shipment from obtaining information from the manufacturers from which the market prices three years prior to shipment may be determined.

It is clear that the Proposed Modification may require some adjustment by those who have contracts outstanding with the defendants. However, the Department feels strongly that whatever inconvenience this adjustment causes will be outweighed by the benefit to purchasers, and to the public generally, of the increased price competition the Proposed Modification should induce.

(b) You also have indicated that the use of the word "order" in paragraph 2(c), 2(d) and 2(f)(v) and the words "contract" or "contractual commitment" in paragraph 3(e) creates ambiguity as to the applicability of paragraph 3(e) during the period after an order is placed but prior to the signing of a final contract. The Department intended that the words "contract" and "contractual commitment" be interpreted according to their general meaning in the law and not in the sense of the final contract for the purchase of a large turbine generator. Therefore, a contractual commitment may exist prior to the signing of a final contract. Consequently, paragraph 3(e) would apply under such circumstances.

(c) You have also suggested that the Proposed Modification should be amended to provide a specific cutoff date by which offers made by the defendants prior to December 10, 1976 must be accepted to ensure that such offers will receive the same treatment as orders placed and contracts entered into prior to the effective date of the modification. The Department believes that the effective date of the modification is the most acceptable cutoff date for purposes of determining which transactions will be covered by the previously used pricing system. The purpose of the Proposed

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LAW OFFICES OF
CHICKERING & GREGORY
ONE ELEVEN BUTTER STREET
SAN FRANCISCO 94104

February 25, 1977

Mr. John W. Clark
United States Department of Justice
Antitrust Division
Washington, D.C. 20530

Dear Mr. Clark:

San Diego Gas & Electric Company ("SDG&E") concurs wholeheartedly with the concept of a competitive market for large steam turbine generators. The recently proposed Modifications to the Final Judgment entered October 1, 1962 by the United States District Court for the Eastern District of Pennsylvania in Civil No. 28228 involving General Electric Company and Westinghouse Electric Company, will be most helpful in that regard.

However, the precise wording of the Modifications does raise several concerns. These concerns are more a matter of interpretation requiring clarification of intent. Therefore, we suggest that the Justice Department may be able to clarify these matters by amplifying its accompanying memorandum, concerning the following:

1. As a purchaser of large steam turbine generators, SDG&E is fearful that the Modifications may be used by the defendants, possibly out of genuine concern with contempt exposure and possibly as a negotiating maneuver, to inhibit complete disclosure of price and cost information to an individual potential purchaser concerning a particular sale of a large steam generator. While the latter portion of Section 2(g) of the Modifications appears to recognize this problem, a similar exception does not appear in Section 5 which threatens individual "officers, agents and employees" with contempt of court for distributing a "price list". It would clearly be inconsistent with the goal of these Modifications if the sellers refused to provide detailed, separate prices on turbine generator sets and their components, claiming that disclosing such price

Modifications is to create a break with the past and establish new, more competitive methods for pricing large turbine generators. In order to minimize the disruption to purchasers and manufacturers caused by the implementation of a new pricing system, some exceptions to the injunctive provisions were made to provide for past transactions. We see no reason to expand the group of transactions covered by the old pricing system. This is especially so since there was a minimum period of 60 days from December 10, 1976 before the Proposed Modification could go into effect (which period has since been expanded) in which purchasers could accept offers made prior to that date.

We appreciate your offer to participate in further consultations with Department personnel regarding problems which may arise in the practical application of the Proposed Modification. As you probably know, we have had many useful discussions with utility executives during our investigation and during the process of formulating the proposed relief. Those discussions were immensely valuable to us. Such industry cooperation was essential in our effort to understand the complex problems involved. It is for this same reason that we invited comments on the Proposed Modification from the industry, even though in our view our consideration of such comments was not required by law. After reviewing all of the comments received, however, we do not feel that additional discussions are necessary at this time. As noted above, we will always be willing to meet with any industry representative to discuss competitive conditions in this market.

Thank you very much for the benefit of your views.

Sincerely yours,

JOHN W. CLARK
Acting Chief, Special Trial Section
Antitrust Division

69-220-45

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CHICKERING & GREGORY

Mr. John W. Clark

February 25, 1977

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SDG&E's interest (as well as its customers) in your efforts in this area are obvious. We would appreciate your consideration of our comments.

Very truly yours,

CHICKERING & GREGORY

By 
C. Hayden Ames
Attorneys for
San Diego Gas & Electric Co.

cc: Robert F. Pugliese, Esq.
Vice President and General Counsel, Secretary Westinghouse Electric Corporation

Roland C. Radice, Esq.
Counsel
General Electric Company

Milton Handler, Esq.
Kaye, Scholer, Pierman, Hays & Handler

CHICKERING & GREGORY

Mr. John W. Clark

February 25, 1977

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information might be construed as distribution of a "price list".

2. The prohibition against distribution of price books and price lists necessarily requires a potential customer to obtain detailed price information on components in addition to an overall price at the time of contracting for the turbine generators because no reference back to published price lists will be available when subsequent changes in specifications or ordering of spare parts are negotiated. It is therefore important that the Modifications not be used as an excuse by the sellers for "bundling" (i.e., giving an overall price without component price breakdown). It should be made clearer that this certainly is not the intent of the Modifications.

3. SDG&E has entered into a contract for steam turbines with the Westinghouse Electric Company to be delivered in the future for use in a nuclear power plant. The contract has an alternative pricing provision allowing SDG&E to take advantage of the then existing market price if it is lower than the alternate escalated price stated in the contract. This provision, we believe, is not uncommon in other purchase contracts with defendants. If the competition goals of the Justice Department are successful it is quite likely that the future market price for these turbine generator sets will be lower than the contract formula price. The Modifications in a number of instances make exceptions to its restrictions where existing contractual relations are involved. (Section 26, 2d and 3) SDG&E feels it should be made clear that among these exceptions (or "grandfathering") is preservation of the right of buyers, and in the long run, the utilities' ratopayers, to take advantage of this future market price provision. In order to accomplish this, the seller will have to reveal then current prices and quotations so the buyer can verify the seller's market price for the turbines.



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Only in the
Division of
and Entry to Records and Number

JWC
69-230-77

March 14, 1977

C. Hayden Amas, Esquire
Coakering & Gregory
One-Eleven Sutter Street
San Francisco, California 94104

Re: United States v. General Electric Company
and Westinghouse Electric Corporation

Dear Mr. Amas:

This responds to your letter of February 25, 1977, regarding the recently filed Proposed Modification to The Final Judgment entered October 1, 1962 in United States v. General Electric Co., et al., in the Eastern District of Pennsylvania, Civil No. 8228. You state that SDG&E concurs wholeheartedly with the concept of a competitive market for large steam turbine generators and that the Proposed Modification will be most helpful in that regard. In addition, you express three concerns regarding specific provisions of the Proposed Modification.

1. Your first concern is that the defendants could use the Proposed Modification, out of fear of contempt or as a negotiating maneuver, to withhold information from a customer "concerning a particular sale of a large steam turbine generator". You note that the proviso to Section 2(g) appears to recognize this problem, but are concerned that Section 5, which threatens officials of the defendants with contempt for distributing price books or price lists, could be relied upon to withhold such information.

The Department does not believe that Section 5 should inhibit disclosure of price information about a particular turbine-generator to the customer purchasing or interested in purchasing that machine. Section 2(g) contemplates the

disclosure by defendants of information necessary to respond to a utility's legitimate planning and purchasing requirements. A price book or price list, on the other hand, constitutes more of a generalized reference source than a document responsive to a particular customer's request for information about its potential requirements for large steam turbine generators. Consequently, we do not believe that the restrictions upon publication of a price book or price list will inhibit the defendants from disclosing information "concerning a particular sale of a large steam turbine-generator".

2. SDG&E's second concern is that the prohibitions against distribution of price books and price lists in the Proposed Modification could be used as an excuse by the sellers for "bundling", i.e., giving an overall price without component price breakdown. This practice was not part of the conduct investigated in this case and thus the Proposed Modification does not deal with it. It is not the intention of the Proposed Modification to encourage "bundling". The prices of individual components may be requested and obtained under the circumstances specified in the proviso to Section 2(g).

3. Your last comment relates to a contract between SDG&E and Westinghouse for a number of large steam turbine generators. The following description of the contractual provisions which concern you is based both on your letter and on conversations with representatives of both your firm and Westinghouse initiated by the Department to learn more about the contract in question.

It appears that the contract gives SDG&E an option to select between two alternate methods of pricing the units involved. These alternative methods of pricing can be generally described as follows:

- (1) The contract price subject to specified adjustment provisions for changes in labor and material cost during construction of the unit;

(2) The price Westinghouse is quoting to other customers at the time the engineering plans are released.

SDG&E must choose between these alternates within thirty days of the time that engineering specifications are released. Since the Proposed Modification would prohibit Westinghouse from publishing its price quotations to anyone other than the customer receiving them, SDG&E is concerned that the second alternative method of pricing will be unavailable to it if the Proposed Modification is entered.

The Department agrees that SDG&E will be unable to refer to current published prices at the time it must exercise its option. While SDG&E does not expressly recommend that the Proposed Modification be amended to allow for published prices, it is clear SDG&E would prefer to keep its contractual options open if possible.

As SDG&E acknowledges in its letter, the concept of a competitive market for large steam turbine-generators will be aided by the Proposed Modification. The Department believes that elimination of published prices is essential to the successful operation of the Proposed Modification. If the defendants were allowed to publish current price levels, even for the purpose of complying with existing contracts, the pattern of parallel pricing could continue indefinitely.

It is clear that the Court has the power to uproot all parts of an alleged scheme - the valid as well as the invalid - in order to rid the trade or commerce of all taint of conspiracy. Thus, the Court has the power to prohibit the method of determining contract prices set forth in specific contracts by prohibiting Westinghouse from having published prices. United States v. Loew's, Inc., 371 U.S. 38, 51, 53 (1962); United States v. Paramount Pictures, Inc., 334 U.S. 131, 148 (1948); United States v. Sausch & Lomb Co., 321 U.S. 707, 724 (1944).

The Department believes that although Westinghouse cannot furnish SDG&E with the prices Westinghouse is currently quoting to other customers, SDG&E may nonetheless be able to obtain its contractual options. The Proposed Modification does not prevent SDG&E from seeking information on market prices from sources other than Westinghouse, e.g., from a customer receiving a quotation at the time the engineering plans are released.

Also, pursuant to section 2(i)(b) of the Proposed Modification, Westinghouse may publish prices quoted on transactions involving the sale of large turbine generators beginning thirty months after the date of such quotations. From these past quotations SDG&E may have sufficient information to determine Westinghouse's market prices thirty months earlier. Thus, it would seem that Westinghouse and SDG&E could agree to modify the provision requiring SDG&E to elect its pricing alternative at about the time the engineering plans are released, to permit SDG&E to make that election thirty months from that date.

We offer the foregoing as suggestions only, and not as in any way determinative of the parties' rights and obligations under this contract.

It appears that the Proposed Modification will require some adjustment by those with contracts outstanding with the defendants. The Department feels strongly that whatever inconvenience results will be more than offset by the benefits to purchasers, and to the public generally, of the increased price competition the Proposed Modification should induce.

The Antitrust Division appreciates your comments on the Proposed Modification.

Sincerely yours,

JOHN W. CLARK
Acting Chief, Special Trial Section
Antitrust Division

600 NORTH 167TH STREET
POST OFFICE BOX 308
BIRMINGHAM, ALABAMA 35201

February 24, 1977

John W. Clark, Esq.
U. S. Department of Justice
Antitrust Division
Washington, D. C. 20530

Re: United States v. General Electric
Company and Westinghouse Electric
Corporation, Civil No. 28228,
District Court, Eastern District
of Pennsylvania

Dear Mr. Clark:

Southern Company Services, Inc., an engineering service company authorized by the Securities and Exchange Commission under the Public Utility Holding Company Act to provide engineering and other services to the operating companies of the Southern Company system, is concerned as to the impact which the proposed modification to the 1962 consent decree in the above-styled matter will have on existing contracts which such companies have for the purchase of large turbine generators. We therefore request clarification of the proposed modified decree.

The long lead times for procurement of equipment and construction of steam electric generating plants has necessitated the purchase of turbine generators for delivery well in the future. This is particularly true where the plant in question is planned as a multi-unit plant with staggered in-service dates utilizing a standard design, since it necessitates placing the turbine generator order for all planned units at the same time. The pricing policy



John W. Clark, Esq.
February 24, 1977
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of turbine generator manufacturers has been such that with respect to turbine generators scheduled for shipment beyond a certain date following the quotation, firm prices could not be obtained. Prices for such units were predicated on the manufacturer's published prices in effect three years prior to shipment.

To police the reasonableness of the price to be established under these open-ended price arrangements, turbine generator purchasers had two mechanisms: (1) The manufacturer's published price, together with its certification that no lower price had been quoted within six months after the date as of which the price was established, provided some assurance that the price established was as low as could be obtained for such unit, and (2) the purchaser could employ an independent certified public accounting firm to review the records of the manufacturer to assure that no lower price had been quoted to other purchasers during the six months following the date as of which price was determined.

The proposed modification of the 1962 consent decree would destroy the first mechanism since no longer will published prices be available for review. Thus, if the modified consent decree is made effective, purchasers of turbine generators which are now under contractual commitments but are scheduled for shipment more than three years from the effective date of the modification are left to rely solely on the second policing mechanism referred to above; that is, to have an independent party certify that the price established constituted the lowest price quoted by the manufacturer during the period of 36 months to 30 months prior to the date of shipment.

Paragraph 2(i) of the proposed modification to the consent decree appears to impact on the availability of this second policing mechanism. That paragraph would appear to permit disclosure by the manufacturer to the independent certified public accounting firm quotations made by the manufacturer in the 36- to 30-month period prior to shipment if the quotation involved "a sale." However, the paragraph would appear to preclude revelation to the independent certified public accounting firm of quotations not involving a sale which were made in the 36- to 30-month period prior to shipment.

BALCH, BINGHAM, BAKER, HAWTHORNE, WILLIAMS & WARD

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

John W. Clark, Esq.
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Page Three

Address Reply to the
Division Enclosed
and Refer to Initials and Number

March 14, 1977

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69-230-77

We are concerned, therefore, that the modified consent decree diminishes the protection afforded in pricing arrangements for existing orders where shipment is scheduled more than three years from the effective date of the order. To alleviate our concern, we would propose that the proposed consent decree be modified by adding to Paragraph 3(e) the following subparagraph:

"(iii) revealing to an independent certified accounting firm, all records or quotations of prices, terms and conditions made by defendant during any period necessary to permit verification of defendant's compliance with the provisions of contractual commitments entered into prior to the effective date of this modification."

Incorporation of this provision would not compromise the objectives of the Department, in seeking the proposed modification, and would clearly permit the manufacturer to comply with the substance of existing contractual commitments.

Yours very truly,

Robert A. Buettner
Robert A. Buettner

RAB:rv

Robert A. Buettner, Esquire
Balch, Bingham, Baker, Hawthorne,
Williams & Ward
600 North 18th Street
Post Office Box 306
Birmingham, Alabama 35201

Re: United States v. General Electric Company
and Westinghouse Electric Corporation

Dear Mr. Buettner,

This responds to your letter to the Department of Justice, dated February 24, 1977, in which you submitted comments on the Proposed Modification of the Final Judgments in the above-referenced action on behalf of Southern Company Services, Inc.

Your letter expressed concern about the impact of the Proposed Modification on a "price protection" particular provision in existing contracts between operating companies of the Southern Company system and the defendants. You question whether that provision, which gives you the benefit of the lowest price quoted within six months from the date the price is to be established, can be fully applied under the Proposed Modification.

Specifically, you noted that the long lead times for procurement and construction of generating plants necessitated the purchase of turbine-generators for delivery well into the future. Since firm prices for these machines could not be obtained from the manufacturers at the time they were ordered, contract prices have been predicated on the manufacturer's published prices in effect three years prior to shipment. You described two contractual mechanisms aimed at policing the reasonableness of the price to be so established. First, a purchaser had some assurance that the price was as low as could be obtained by reason of the seller's published price together with the

seller's certification that no lower price had been quoted within six months after that price was established. Second, a purchaser could employ an independent auditor to review the seller's records to assure the purchaser that no lower price had in fact been quoted to others within that six month period.

The Department agrees that the Proposed Modification eliminates the first mechanism because the defendants would no longer be allowed to publish their prices. We believe that the prohibition against published prices is essential if the pattern of identical pricing, which we believe was established illegally, is to be broken.

As for the availability of the second mechanism, you state the purchaser will have to retain, as provided in the contract, an independent auditor to certify that the price established constituted the lowest price quoted by the manufacturer during the period of 36 months to 30 months prior to shipment.

Your concern is that while the Proposed Modification would allow an auditor to determine prices quoted in transactions involving a sale of a turbine-generator during that six month period, it could not have access to prices quoted that did not result in a sale. This would, in your view, diminish the protection afforded a purchaser in existing contracts where shipment is scheduled more than three years from the order date.

We do not read the Proposed Modification as limiting the types of quotations an auditor could review in these circumstances. Section 2(i)(b) of the Proposed Modification was designed to deal with the situation about which you are concerned.

Generally, section 2(i) enjoins communication of lists of outstanding bids and quotations for five years from the date they are made (part (a)) and the communication of prices "quoted on transactions involving the sale of large turbine-generators for a period of thirty months from the date of such quotations" (part b)). The first part of section 2(i) was intended to prohibit an important feature of what we considered to be an agreement between the defendants to coordinate pricing. As stated in our memorandum

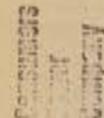
filed with the Court (at p. 8), these lists of customers to whom bids were outstanding served to eliminate a possible source of disruption at times of price changes and as assurance that neither firm was "cheating". Section 2(i)(a) is intended to prohibit the dissemination of such lists so no such monitoring can take place.

The second part of Section 2 (i) was intended to prohibit the dissemination of information about prices quoted on past transactions. As stated in our memorandum (at p. 19), this was intended to prevent the communication of information from which one defendant's price book or price system could be discerned by the other. This injunction was not intended to be limited to information about quotes resulting in actual sales. Information on quotes that did not result in sales could be used for the same purpose as those that did. Thus, it was the Department's intention to include within 2(i)(b) information regarding price quotations regardless of whether a sale resulted.

Further, we believe the language of 2(i)(b) by its terms includes all such quotations. The phrase "involving the sale of large turbine-generators" was not intended to limit the class of price quotation covered but to serve a broad definitional purpose saved by similar phrases throughout the decree. Also, the date from which the 30 month period runs is not the date of a sale, but the date of such quotations.

The only quotations that could not be viewed by your company or its auditor are those that remain outstanding for more than 30 months. From our investigation of this market, it is highly unlikely that any quotations remain outstanding for that long a period. Hence, any diminution of protection resulting from the inability to view such a quote seems to us de minimis and clearly offset by the benefits of the price competition the modification should produce.

While it may seem that the ban in 2(i)(a) on the publication of lists of customers to whom bids are outstanding is disproportionately long relative to the ban on actual price quotations, the Department believes it does not affect the operation of the decree's provisions and does serve to call attention to the importance we attach to the role played by the customer lists in the alleged conspiracy.



O. K. Pomeroy
Managing Attorney

General Office: 212 West Michigan Avenue, Jackson, Michigan 49201

February 23, 1977

Department of Justice
Washington, DC 20530

Attention: John W. Clark, Esq.
Antitrust Division

Re: United States of America v
General Electric Company and
Westinghouse Electric Corporation

United States District Court
Eastern District of Pennsylvania
Civil No. 28228

(Proposed MODIFICATION BY CONSENT OF
FINAL JUDGMENT ENTERED OCTOBER 1, 1962)

Dear Sirs:

In response to the Department's invitation, dated December 22, 1976, as extended, to submit comments on the above matter Consumers Power Company has joined with a number of other utilities in comments submitted through the firm of Berlack, Israels and Liberman. Consumers Power Company, which serves more than 1,000,000 electric customers in the lower peninsula of the State of Michigan, believes that an issue not discussed in that submission warrants your careful attention. These supplementary comments are submitted to discuss that issue.

It is our suggestion that Part 4 of the proposed "Modification" be revised as follows:

"4. The defendant is ordered to retain in its files records of calculations and determinations involved in the computation of a price for any large turbine-generator, or in the preparation of any price book or price list for such machines, for a period of five FIFTEEN years after such computation or preparation."

There are two principal reasons for this suggestion:

Since Section 2(l)(b) should allow the communication of all price quotations thirty months from the date they are made, an auditor may be able to determine whether any customer has been offered a lower price during the period between 36 and 30 months prior to shipment.

It appears that the Proposed Modification will require some adjustment by those with contracts outstanding with the defendants. The Department feels strongly that whatever inconvenience results will be more than offset by the benefits to purchasers, and to the public generally, of the price competition the Proposed Modification should induce.

Under the circumstances, we do not think it is necessary to amend the Proposed Modification to include the subparagraph suggested in your letter.

Thank you for your views.

Sincerely yours,

JOHN W. CLARK
Acting Chief, Special Trial Section
Antitrust Division

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UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530



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JWC
60-230-77

March 11, 1977

O. K. Petersen, Esquire
Managing Attorney
Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

Re: United States v. General Electric Company &
Westinghouse Corporation, Civil Action 28228

Dear Mr. Petersen:

This is in response to your letter of February 23, 1977, in which you comment on the Proposed Modification to the Final Judgments in the above action.

You noted that the firm of Berlack, Israels & Liberman has submitted comments in behalf of several electric utilities, including your firm, Consumers Power Company. You also suggested that paragraph 4 of the Proposed Modification be amended to require the defendants to retain their records relating to computations of prices for turbine generators for a period of fifteen years. The Proposed Modification now requires the defendants to retain these records for five years. You cited two reasons for this recommendation. First, you expressed concern that many transactions concerning these complex machines require more than five years to complete, and that records could be destroyed while they are still applicable to unfinished transactions. Second, you note that events giving rise to antitrust claims are often not examined until many years later. If the defendants were compelled to retain these records for fifteen instead of five years, you suggest that any such inquiry would be facilitated. While we understand and appreciate these concerns, we do not think they warrant reopening the decree and the consequent delay in its implementation.

With respect to your first concern, paragraph 4 is not intended to and does not affect commercial relationships between the defendants and their customers. Defendants

First, it is now common for nine, ten or more years to elapse between the date upon which contracts are made for the purchase of turbine-generator units and the date upon which the units begin operation. In order to have a uniform period for the retention of documents for both successful and unsuccessful bidders, which can be expected to extend for a reasonable period after "start up," a period of at least fifteen years for the retention of records appears necessary. The provision, as proposed, would allow destruction of these important records before transactions upon which they bear are completed.

Second, lengthy periods pass between the events which give rise to antitrust issues and the time when such events are fully examined. The activities which gave rise to the indictment of June 29, 1960 and its companion civil action originated many years prior to the indictment, and the activities which have culminated in the proposed modification of the Final Judgment entered October 1, 1962 originated much more than five years ago. Because critical examination of the documents described in Part 4 of the proposed "Modification" may be essential to the resolution of antitrust issues arising out of future conduct, five years is an unreasonably short period for the retention of those essential records. Fifteen years, while short in terms of past experience, is a much more reasonable minimum period for the retention of such records.

Yours very truly,

O. K. Petersen

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address this to the
Prothonotary
and Refer to Bench and Number

JWC
60-230-77

March 11, 1977

Kimba Wood Lovejoy, Esquire
LeBoeuf, Lamb, Leiby & MacRae
140 Broadway
New York, New York 10005

Re: United States v. General Electric Company
and Westinghouse Electric Corporation

Dear Ms. Lovejoy:

This is in response to your letter of February 28, 1977, in which you subscribe, in behalf of several electric utilities, to the comments submitted by Berlack, Israels & Liberman concerning the Proposed Modification to the 1962 final judgments in the above action.

Enclosed is a copy of our reply to Berlack, Israels & Liberman. Thank you for your interest in this matter.

Sincerely yours,

JOHN W. CLARK
Acting Chief, Special Trial Section
Antitrust Division

Enclosure

NEW ENGLAND POWER SERVICE COMPANY



20 Turnpike Road, Westborough, Massachusetts 01581

February 28, 1977

Department of Justice
Washington, D. C. 20530

Attention: Mr. John W. Clark
Antitrust Division

Re: Modification of GE and Westinghouse Consent Decrees

Dear Sir:

In response to your invitation, we submit the following comment on behalf of the New England Electric System companies. This comment is in addition to those contained in the February 22 Memorandum sent to you on our behalf by Berlack, Israels & Liberman.

We believe that the proviso in subsection 2(f)(v) of the proposed Modification is too narrow and suggest a revision of that subsection as follows:

"(v) a formula or system for pricing large turbine-generators, provided that nothing in this subsection 2(f)(v) shall be construed to prohibit the defendant from using price adjustment clauses to adjust prices to reflect changes in defendant's costs, in one or more economic indices, or caused by other events or conditions, or from selling large turbine-generators or components or spare parts under a contract in which price is based upon reimbursement of costs plus, if the defendant elects, other specified factors."

Such a broad proviso is necessary so as not to retard the development of new and sophisticated price adjustment clauses.

Very truly yours,

Richard B. Dunn

Richard B. Dunn
General Counsel

Stamp: 60-230-77, ASAC, 27, 1 17, P.A.D.

Pasco Casbarro Jr.
Pasco Casbarro Jr.
Counsel

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20535

Address Right in the
Division Subpart
and Refer to Title and Number

JNC
60-230-77

March 11, 1977

Richard B. Dunn, Esquire
Pasco Gasbairo Jr., Esquire
New England Power Service Company
20 Turnpike Road
Westborough, Massachusetts 01581

Re: United States v. General Electric Company
and Westinghouse Electric Corporation

Dear Sirs:

This is in response to your letter of February 28, 1977, in which you comment on the Proposed Modification to the Final Judgments in the above action.

You noted that the firm of Berlack, Israels & Liberman has submitted comments in behalf of several electric utilities, including the New England Electric System companies. You also recommended an expanded proviso to section 2(f)(v) of the proposed modification. An almost identical proviso was suggested by the Berlack firm. Enclosed is a copy of our response to that firm, which includes our views on its recommendation regarding 2(f)(v).

The only difference we perceive between your suggested language and that of the Berlack firm is the addition by you of the phrase "or caused by other events or conditions". This appears intended to allow an expanded use of a price escalation clause by allowing such a clause to reflect changes in a defendant's costs "caused by other events or conditions." Your concern is apparently that any limitation on the methods by which defendants may adjust prices for changes in costs might "retard the development of new and sophisticated price adjustment clauses."

The purpose of 2(f)(v) is to prohibit the dissemination of pricing formulas which would allow each manufacturer to know how the other prices its machines. The proviso is intended to allow the buyer and seller to agree on a formula that would

reflect changes in the seller's costs between the date of order and the date of delivery.

We do not interpret 2(f)(v) as limiting the kinds of costs the defendants may reference in price escalation clauses. Thus, we do not think it necessary to amend the present language to broaden the proviso as you suggest.

Thank you for your interest in this matter.

Sincerely yours,

John W. Clark
Acting Chief, Special Trial Section
Antitrust Division

February 26, 1977

Department of Justice
Washington, D.C. 20530

Attention: John W. Clark, Esq.
Antitrust Division

Re: JWC:ME
-- 60-230-77

Gentlemen:

This letter is in response to the invitation of the Department of Justice to submit comments on the proposed modifications of the final judgment against General Electric Company and Westinghouse Electric Corporation attached to the stipulations which we understand were filed on December 10, 1976 with the United States District Court for the Eastern District of Pennsylvania in United States v. General Electric Company, et al., Civil No. 26128.

Illinois Power Company presently has a contract with General Electric Company for the purchase of two large turbine generator units, with electrical ratings in excess of 100,000 kw each, at least one of which is to be delivered more than three years after 1977. We are unclear as to how General Electric Company will be able to comply with provisions of that contract which govern the establishment of the purchase price, if the modification of the final judgment against General Electric Company should be entered in its present form. We request clarification of the proposed modification in order to be assured that it will not impair General Electric's existing contractual obligations to Illinois Power. Absent such assurance, Illinois Power objects to the entry of the proposed modification in its present form. Moreover, Illinois Power reserves all of its rights to enforce the preexisting contractual obligations of General Electric, notwithstanding General Electric's subsequent consent to the proposed modification or the entry thereof by the court.

The contract between General Electric and Illinois Power contains the following provision entitled "Price Protection

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"Policy"

"The price listed here is the Company's market price in effect [] 1972 and is [] % below the Company's published prices in effect that date. However, since shipment is more than three years from date of order, the contract price will be the Company's market price in effect thirty-six months prior to shipment as adjusted by the provisions of the clause entitled, "Price Adjustment Policy." If within the period between thirty-six and thirty months prior to the shipment of this unit, the Company quotes a steam turbine-generator unit rated 44,000 kw or larger to any purchaser for use within the fifty United States at a price level lower than that of the billing price level, the billing price level will be reduced to the lower level. For the purposes of this paragraph, the price level is the ratio of price to the Company's applicable published price in effect thirty-six months prior to shipment.

"The Purchaser will be given a written certification thirty months before a scheduled shipment that the contract is in compliance with this policy. The Purchaser may, at his option, and expense, have Paul Warwick, Mitchell & Company conduct an independent examination of the Company's quotations compared with Handbook prices in order to determine compliance with this clause. Such an examination shall not disclose the names of other purchasers or the details of their purchases." [Emphasis supplied]

As is apparent from the quoted language, General Electric's "applicable published price in effect thirty-six months prior to shipment" is pivotal to the application of this price protection policy.

We recognize that the proposed modification permits General Electric to maintain newly created internal price books lists or compilations and to use previously issued price books.

"solely for the purpose of calculating prices for turbine generators ordered before that date" (paragraph 2(c)). The proposed modification, however, would prohibit General Electric from hereafter disclosing "to any person" a price book or price list (paragraph 2(e)), and would prohibit General Electric from expressing to any person not employed by General Electric "the price of a large turbine generator in terms of a multiplier or percentage of a book or list price or a separately stated price" or "a relation of the price of a large turbine generator to a separately stated price furnished to a different customer" (paragraph 2(h)).

We do not understand how, in the face of these provisions, General Electric could comply with the price protection policy in its contract with Illinois Power. Although that provision clearly contemplates that the "published price in effect thirty-six months prior to shipment" shall be a price of general application, the modification would forbid General Electric from having any such price, or at least from disclosing that it had any such price. Thus Illinois Power would have no way of determining whether General Electric was complying with the price protection provision.

The contractual provision permitting Illinois Power-- at its own expense-- to have Peat, Marwick, Mitchell & Company conduct an independent examination of General Electric's quotations does not cure the problem. In the first place, Illinois Power should not be compelled, as a result of a subsequently entered decree modification in a case to which it is not even a party, to incur additional expense to police General Electric's contract performance. Secondly, the bench mark for any such independent examination would be the same as referred to in the foregoing paragraph-- General Electric's "applicable published price"-- and Peat, Marwick would be confronted with the same inability to determine that price. Finally, although the price protection provision is tied to prices which General Electric "quotes" to any purchaser within the thirty to thirty-six month period prior to shipment to Illinois Power, paragraph 2(i) of the proposed modification forbids communication to any non-employee of General Electric of any compilation of outstanding bids or quotations for a period of five years from the date such bids or quotations are made.

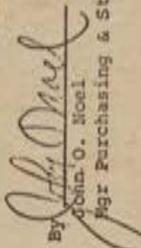
It appears that paragraphs 3(e) (i) and (ii) of the

Proposed modification were included in an attempt to eliminate the type of problem described in this letter, by permitting General Electric, where necessary to comply with preexisting contractual commitments, to express prices in terms of a price book or list, or multiplier or percentage, or formula, established prior to the effective date of the modification. We respectfully submit that these provisions do not cure the problem raised by Illinois Power either, since they are all based on factors established before the modification, whereas Illinois Power's rights depend on General Electric's "applicable published price" in effect.

We understand that the price protection provision in the contract between General Electric and Illinois Power is a standard provision General Electric uses with other purchasers, and we suppose that the comments in this letter apply equally to other similarly situated purchasers. In any event, the question raised herein is of utmost importance to Illinois Power. We therefore request clarification as to how General Electric would be permitted to perform its contractual obligations to Illinois Power if the proposed modification were entered. Absent a satisfactory clarification, we request alternatively that the proposed modification be revised so as to assure General Electric's ability to perform its obligations. Otherwise, Illinois Power Company objects to the entry of the proposed modification by the court.

Very truly yours,

Illinois Power Company

By 
John O. Noel
Mgr. Purchasing & Stores

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20538

March 14, 1977

JWC
60-230-77

Mr. John O. Noel
 Manager Purchasing and Stores
 Illinois Power Company
 500 South 27th Street
 Decatur, Illinois 62545

Re: United States v. General Electric
 Company and Westinghouse Electric
 Corporation

Dear Mr. Noel:

This is in response to your letter of February 26, 1977 in which you comment on certain provisions of the Proposed Modification by Consent of the Final Judgments entered October 1, 1962 against General Electric Company and Westinghouse Electric Corporation.

Your concern is that the Proposed Modification will impair your contractual rights under the clause entitled "Price Protection Policy" in your current contracts with GE. Under that clause, the ultimate contract price will be General Electric's market price in effect thirty-six months prior to shipment. The clause also provides that if within the period between thirty-six and thirty months prior to shipment GE quotes a price for a large turbine generator unit at a lower level than the billing of contract price described above, that billing price will be reduced to the lower level. In your view, a problem arises because according to the Price Protection Clause, the determination of the various price levels discussed above depends upon the existence of a "published price". Since the Proposed Modification prohibits the publication of prices by GE for a period of time, you believe that several provisions of the Proposed Modification interfere with the method of determining the contract price set forth in your agreement with GE. Consequently, you object to these provisions.

The Department agrees that the specific method of determining the contract price as set forth in the Price Protection Clause of your contract with GE may be affected by provisions of the Proposed Modification. However, we do not believe that the Department is foreclosed from utilizing these provisions solely because they will have the effect you fear. Elimination of published prices is essential, in our view, to the restoration of price competition in the industry. Without this relief, the existing pattern of identical pricing, which we believe was established illegally, would be able to continue indefinitely. To allow the manufacturers to communicate current prices or price relationships in order to comply with outstanding contracts would defeat the broad purpose of the decree.

It is clear that the Court has the power to uproot all parts of an alleged scheme - the valid as well as the invalid - in order to rid the trade or commerce of all taint of the conspiracy. *United States v. Shush & Loeb Co.*, 321 U.S. 707, 724 (1962); *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 148 (1948); *United States v. Loew's, Inc.*, 371 U.S. 38, 51, 53 (1944). Thus the Court has the power to prohibit the method of determining contract prices set forth in the price protection clause by prohibiting GE from having published prices.

The Department believes that while GE cannot comply literally with the price protection clause because of the Proposed Modification, it may be able to substantially comply with the intent of the clause. After the Proposed Modification becomes effective, GE will, as before, be able to determine its market price in effect thirty-six months prior to shipment. GE may also be able to determine if it has quoted a price lower than this "price in effect" within the period between thirty-six and thirty months prior to shipment. If GE makes that determination, it could, in accordance with the price protection clause, reduce its price to you. Admittedly, Illinois Power cannot verify GE's action by examining an internal GE price book or price list (Section 2(e)). However, Illinois Power can examine GE's actual quotations thirty months from the date they are made. This may serve as some basis of

CP&L
 Carolina Power & Light Company
 P. O. Box 150 • Raleigh, N. C. 27602

CHARLES E. ROSSON, JR.
 Manager and Associate General Counsel
 Legal Department

March 2, 1977

U. S. Department of Justice
 Antitrust Division
 Washington, D. C.

Attention: John W. Clark, Esquire
 Mark P. Leddy, Esquire

Re: United States vs. General Electric Company and
 United States vs. Westinghouse Electric Corporation
 Eastern District of Pennsylvania, Civil No. 28228
 Proposed Modification by Consent of Final Judgment
 Entered October 1, 1962

Gentlemen:

Carolina Power & Light Company ("CP&L"), a regulated electric utility and a purchaser of large turbine-generators from the General Electric Company ("GE") and Westinghouse Electric Corporation ("Westinghouse"), is taking this opportunity to request clarification of certain provisions of the Proposed Modification by Consent of Final Judgment ("Proposed Modification") in the above-identified matters and, at the same time, to provide the Department of Justice, and the Court, with its comments on the Proposed Modification.

These requests for clarification and comment fall into three categories, the first two specific, and the third more general:

(1) CP&L is concerned about the effect, if any, the Proposed Modification would have on outstanding quotations by either Westinghouse or GE for the sale and purchase of turbine-generators which quotations are based on existing price lists and which may be in the process of being evaluated by CP&L or other utility customers. For the purpose of this request for clarification, it is assumed that the quotation is a formal written offer from either GE or Westinghouse and that the period in which it is subject to formal acceptance by the utility customers has not run. It is noted that Subsection 2(c) contains the proviso that it does not apply to the calculation of prices for turbine-generators "ordered" before the effective date of this provision and that clause (e) of Section 3 refers to "contractual commitments to any customer undertaken prior to the effective date of this modification". Is it a correct interpretation

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comparison for purposes of the price protection clause.

We offer the foregoing as a suggestion only, and not as in any way determinative of the rights of the parties under the contract in question. 1/

It appears that the Proposed Modification will require some adjustment by those who have contracts outstanding with the defendants. However, the Department feels strongly that whatever inconvenience results will be more than offset by the benefits to purchasers, and to the public generally, of the price competition the Proposed Modification should induce.

Thank you for the benefit of your views.

Sincerely yours,

John W. Clark, Acting Chief
 Special Trial Section

1/ It is the Government's view that a purchaser with a price protection clause in an outstanding contract will not be deprived of any significant benefit it had when it entered into the contract. As we stated in our Memorandum in Support of the Proposed Modification, the purpose of the price protection clause during the years of the alleged violation was to provide assurance for GE and Westinghouse that neither would discount from identical published prices. Since there was virtually no discounting, purchasers did not receive any of the retroactive price reductions contemplated by "price protection." Price protection merely guaranteed that no purchaser received a higher price than the artificially high prices we believe all purchasers paid during this period.

U. S. Department of Justice
Page 3
March 2, 1977

has described in this matter, it can be argued that it does provide some assurance to the purchaser that he does not risk being taken advantage of because of his unequal ability to obtain accurate pricing information on which to evaluate bids that he may receive.

Further, it should be noted that turbine-generators, and even more particularly the electric generating plants in which they are installed, are long lead time items and that the period between initial planning and the solicitation of bids may be as long as five years or more. During this long lead time it is necessary for the prospective purchaser to make many projections and estimates in which he must predict with some accuracy the level of prices for turbine-generators at a later period. CP&L wishes to express its concern that the lack of available price information from the manufacturers will tend to make projections of this kind, very necessary to the electric utility industry, substantially less accurate and reliable.

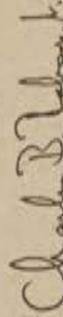
The final point is that we do not have satisfactory answers to these concerns which are, in CP&L's judgment, real and significant concerns to this industry. We can find no evidence that these concerns were explored in any depth by the Department of Justice in arriving at its position with respect to the Proposed Modification. Nor, in the relatively short period in which the Proposed Modification has been publicly available, have we been able to assess with any accuracy the economic effect of the Proposed Modification on the turbine-generator industry against the effect of alternatives which may be available. It is clear that the electric utility industry generally was not consulted in this, and it is our strong position that it should have been. We also understand, and this is a matter of some additional concern, that the Department of Justice is refusing to make available any of the documents which may have had an influence on its position in this matter.

Given the serious implications of the matters, CP&L strongly urges that adoption of the Proposed Modification by the Court be delayed until further consideration can be given and that representatives of the electric utility industry be invited to participate actively in further consideration of these implications.

CP&L is providing the United States District Court for the Eastern District of Pennsylvania with a copy of this request for clarification and these comments. Copies are also being provided to Westinghouse and GE counsel.

Very truly yours,

CAROLINA POKER & LIGHT COMPANY

By: 
Charles B. Robson, Jr.

—CP&L/dv

U. S. Department of Justice
Page 2
March 2, 1977

of the proposed consent order that a formally outstanding offer, subject to acceptance, is a "contractual commitment" under the terms of the Proposed Modification but not an "order" as that term may be used in the Proposed Modification? The use of these different terms is by no means clear.

(2) CP&L is concerned as to the effect the Proposed Modification may be with respect to options contained in existing contracts with either GE or Westinghouse in which the option price has as its base a price list or price book to be in effect at the time of exercise of the option or at some other date in the future. For example, there exist cases in which contracts state that the purchase of certain items under the contract will be at "the actual prices in effect at the time of shipment charged to other United States Electric Utility Purchasers". Also, some contracts provide that in the case of delay of shipment at the buyer's instance or due to a cause beyond the reasonable control of the seller, the contract price of a particular turbine-generator "will be the Seller's price in effect X months prior to shipment but will not exceed the Seller's price in effect Y months prior to shipment as adjusted by Seller's Selling Policy in effect Y months prior to shipment".

CP&L has been unable to identify with precision every instance in which this situation may exist, but it is apparent that there will be a number of instances affecting both CP&L and other utility customers. The proviso of Subsection 2(c) would not appear to offer any guidance in this situation in that the "price" or "prices in effect" and "Selling Policy" referred to in the situations described apparently would not, under the terms of the Proposed Modification, come into existence. This brings us to our third and most severe concern.

(3) It is CP&L's concern that the "cure" of the Proposed Modification could well turn out to be worse than the disease.

It is apparent from the Proposed Modification that, should it become effective, purchasers of turbine-generators will have no readily available method for evaluating bids received by it in relation to bids which may have been made to other customers or other accurate means for evaluating the prices which are quoted it by these two manufacturers. The Proposed Modification provides no method by which a buyer can assure himself that he is being treated fairly, or even equally with other buyers in similar positions. The Proposed Modification requires that prices quoted by the defendants be "based on the defendant's own individually determined criteria and cost," but a significant flaw is that there is no mechanism provided whereby the Department of Justice, the Court, the customers or the public will be able to monitor or enforce this.

This is a particular concern when it is recognized that there are only two viable domestic suppliers in this industry. While the present practice of publicly announced pricing policies as exercised by these two suppliers does lead itself to the abuses which the Department of Justice

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

March 14, 1977

Address Reply to the
Division Indicated
and Refer to Transmittal Number
JMC
60-230-77

Charles B. Robson, Jr., Esquire
Carolina Power & Light Company
P. O. Box 1551
Raleigh, North Carolina 27602

Re: United States v. General Electric Company
and Westinghouse Electric Corporation

Dear Mr. Robson:

This is in response to your letter of March 2, 1977 in which you have submitted your comments on the Proposed Modification by Consent of the Final Judgments entered October 1, 1962 against General Electric Company and Westinghouse Electric Corporation.

In your comments, you express uncertainty regarding the effect of the Proposed Modification on outstanding quotations by GE or Westinghouse that are in the process of being evaluated by utility customers. Specifically, you request clarification as to whether a formally outstanding offer is either a "contractual commitment" or an "order" as those terms are used in the Proposed Modification.

The Department's interpretation of the Proposed Modification is that an outstanding offer is not an "order" or "contractual commitment." Thus, the provisions of the modification that relate to orders placed or contractual commitments entered into prior to the effective date of the Proposed Modification do not apply to outstanding offers unless such offers are accepted prior to the effective date of the Proposed Modification.

The Department believes that the effective date of the modification is the most acceptable cutoff date for purposes of determining which transactions will be covered by the previously used pricing system. The purpose of the Proposed Modification is to create a break with the past and establish new, more competitive methods for pricing large turbine generators. In order to minimize the disruption to purchasers and manufacturers caused by the implementation of a new pricing system,

some exceptions to the injunctive provisions were made to provide for past transactions. We see no reason to expand the group of transactions covered by the old pricing system. This is especially so since there was a minimum period of 60 days from December 10, 1976 before the Proposed Modification could go into effect (which period has since been extended) in which purchasers could accept offers made prior to that date.

Your second concern relates to the effect of the Proposed Modification upon options contained in existing contracts with either GE or Westinghouse in which the option price has as its base a price list or price book to be in effect at the time of the exercise of the options or at some other date in the future. In explaining your potential problem, you refer to a specific clause that appears in contracts which states that the purchase of certain items will be "at the actual prices in effect at the time of shipment charged to other United States Electric Utility Purchasers." It appears to us that such a clause, if it does not refer specifically to published prices, may be complied with after the Proposed Modification becomes effective. The Proposed Modification does not prohibit GE or Westinghouse from setting the option price at the actual prices being charged to other utility customers at the time of shipment. We believe that there are methods consistent with the Proposed Modification by which the prices so determined by the seller may be verified by the purchaser.

First, the Proposed Modification does not prevent CP&L from seeking information on market prices from sources other than the seller, e.g., from a customer receiving a quotation at the time of shipment.

Second, pursuant to Section 2(i)(b) of the Proposed Modification, the seller may publish prices quoted on transactions involving the sale of large turbine-generators beginning thirty months from the date of such quotations. Thus, beginning thirty months from the date of shipment to CP&L, the seller may disclose to CP&L the prices it quoted to other customers at the time of shipment to CP&L. CP&L may thus have sufficient information to verify that its prices were consistent with the actual prices in effect at the time of shipment charged to other United States Electric Utility Purchasers.

You provide another example of a clause which could be affected by the Proposed Modification. Under that clause, the contract price of a particular turbine-generator "will be the Seller's price in effect X months prior to shipment

Pictures, Inc., 334 U.S. 131, 148 (1948); United States v. Bausch & Lomb Co., 321 U.S. 707, 724 (1944). Elimination of book prices is essential, in our view, to the restoration of price competition in the industry. Without this relief, the existing pattern of parallel pricing, which we believe was established illegally, could continue indefinitely.

It appears that the Proposed Modification will require some adjustment by those with contracts outstanding with the defendants. The Department feels strongly that whatever convenience results will be more than offset by the benefits to purchasers, and to the public generally, of the price competition the Proposed Modification should induce.

Your third concern is that because the Proposed Modification will limit the flow of pricing information to customers, problems will arise with respect to equality of treatment between utilities by the manufacturers. The Department agrees that in the future it may be more difficult for a utility to discover whether the price it is receiving is higher than that charged to other purchasers. However, information regarding the prices paid by other customers will not be totally unavailable. Certain public agencies make the bids that they receive public and such bids may provide sufficient information to other utilities to enable them to determine whether they are being treated fairly. Second, customers are not prohibited by the Proposed Modification from attempting to obtain information from other customers regarding the bid prices such other customers have received.

In any case, the Department believes that the Proposed Modification, while it may lead to unequal prices between customers, should result in lower absolute prices because the manufacturers will no longer have perfect knowledge of what each other will bid. Such a result is likely as each manufacturer attempts to obtain orders without the assurance that the other will adhere to published book prices. The Department believes that the benefit to the public in terms of lower prices which result from increased price competition clearly outweighs the detriment to the public, if any, which results from any difference in prices that may be paid by utility purchasers. The Department believes that utility purchasers and the public generally benefit more from an environment of vigorous price competition than from the environment of equal prices and equal treatment which has existed since 1963.

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but will not exceed the seller's price in effect Y months prior to shipment as adjusted by Seller's Selling Policy in effect Y months prior to shipment. Again, we believe that this clause may be complied with by the seller. Neither GE nor Westinghouse is prohibited by the Proposed Modification from setting its price at the market price or price in effect X months prior to shipment, or at its price in effect Y months prior to shipment as adjusted by its selling policy.

The prices determined by the seller as described above may be verified by the purchaser in a manner consistent with the Proposed Modification. Under subsection 2(i)(b) of the Proposed Modification the seller may disclose to the purchaser the prices quoted on past transactions beginning 30 months after such quotation. If the reference date for price determination is more than 30 months prior to shipment, the seller may disclose to CPSL, at the time of shipment, prices charged to other customers at the reference date. These past quotations may provide CPSL with sufficient information to verify that the price charged to it is consistent with the seller's market price at the reference date.

If the reference date is less than 30 months prior to shipment, CPSL may seek to obtain information on market prices from customers receiving quotations at the reference date. Also, under section 2(i)(b), CPSL, thirty months after the reference date, may be able to obtain sufficient information from the seller to verify that the price charged to it is consistent with the seller's "price in effect" at the reference date.

To the extent that contractual provisions refer specifically to book prices or published prices as the basis for contract price determination, the existence of the Proposed Modification may make literal compliance with such contracts impossible. However, as described above we believe that the sellers will be able to determine contract prices by reference to actual or market prices during the relevant time period and that the purchasers may have an adequate substitute method of verifying the seller's compliance with the intent of the contractual provisions in question.

In any case, we do not believe that the Department is foreclosed from obtaining the relief it seeks solely because such relief may have the effect you fear. It is clear that the Court has the power to uproot all parts of an alleged scheme - the valid as well as the invalid - in order to rid the trade or commerce of all taint of the conspiracy. United States v. Loew's Inc., 321 U.S. 38, 51, 53 (1962); United States v. Paramount

3

John W. Clark, Esq.

February 23, 1977

of the proposed decretal provisions is aimed at a specific anti-competitive practice which has been detrimental to utilities and the public and which is part and parcel of the overall conspiracy which the Department of Justice describes in its memorandum.

Our reasons for reaching these conclusions and the evidence on which they are based have been communicated to the Department of Justice in numerous conferences which we have had since the inception of AEP's private action against GE and Westinghouse in December 1971. Since our views are well-known to the Department, we see no need at this time to reiterate them in detail.

As explained in our amicus application, we are also prepared to respond to questions or comments filed by others in order to provide the benefit of our knowledge and experience in helping to secure the entry of the decrees.

We request that these comments be submitted to the Court together with comments received from other interested parties so that the Court will be aware of the full support which AEP, as a purchaser of substantial quantities of turbine generators, lends to the proposed modifications.

Respectfully submitted,

Milton Handler

Milton Handler
Attorney for Appalachian Power Company,
Indiana & Michigan Power Company,
Kentucky Power Company and
Ohio Power Company ("AEP")

/ad

CERTIFIED MAIL
RETURN RECEIPT REQUESTED



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Book in the
Division Building
and Refer to JWS/AVP Number
60-230-77

March 11, 1977

Milton Handler, Esquire
Kaye, Scholer, Fierman, Hays
& Handler
425 Park Avenue
New York, New York 10022

Re: United States v. General Electric
Company and Westinghouse Electric
Corporation

Dear Mr. Handlet:

This is in response to your letter of February 23, 1977, commenting on the Proposed Modification to the Final Judgment in the above action in behalf of Appalachian Power Company, Indiana & Michigan Power Company, Kentucky Power Company and Ohio Power Company, all operating subsidiaries of American Electric Power Company, Inc.

We are pleased that these utilities support the Proposed Modification and believe that its entry will be in the public interest.

As you request, your comment will be submitted to the Court together with the comments received from other interested parties. Thank you for the benefit of your views.

Sincerely yours,

John W. Clark
Acting Chief, Special Trial Section
Antitrust Division

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C., 20530

March 11, 1977



Address Reply to Care of
Postmark Indicated
and Refer to Envelope and Number
JWC
60-230-77

Lewis R. Bennett, Esquire
Assistant General Manager
General Counsel
Power Authority of the
State of New York
10 Columbus Circle
New York, New York 10019

Re: United States v. General Electric &
Westinghouse Electric Corporation,
Civil Action 28228

Dear Mr. Bennett:

This responds to your letter of March 2, 1977 regarding the Proposed Modification of the Final Judgments entered in the above action. Your letter requests that your client be associated with the comments made on behalf of 27 electric utilities in a letter dated February 22, 1977 from the law firm, Berlack, Israels & Liberman.

Enclosed is a copy of our reply to Berlack, Israels and Liberman. Thank you for your interest.

Sincerely yours,

JOHN W. CLARK
Acting Chief, Special Trial Section
Antitrust Division

Enclosure

POWER AUTHORITY OF THE STATE OF NEW YORK
10 COLUMBUS CIRCLE NEW YORK, N. Y. 10019

GEORGE E. BERKOWITZ
Assistant General Manager
and Chief Counsel
LEWIS R. BENNETT
Assistant General
Manager, General
Counsel
WILBUR L. GROENBERG
Assistant General
Manager, Counsel
JOHN W. FOSTON
General Counsel
THOMAS F. MURPHY, JR.
Counsel



March 2, 1977

Department of Justice
Washington, D.C. 20530

Attention: Mr. John W. Clark
Antitrust Division

Re: JWC:ML
60-230-77

Dear Sirs:

The Power Authority of the State of New York is among the electric utilities having so called "stand-still" agreements with General Electric and Westinghouse which provide for the waiver of the Statute of Limitations for claims and counterclaims of the type involved in the litigation initiated by the American Electric Power Companies against General Electric and Westinghouse.

On February 22, 1977, the law firm of Berlack, Israels and Liberman forwarded to you on behalf of 27 electric utilities comments of the proposed modifications to the 1962 final judgments against General Electric Company and Westinghouse Electric Corporation.

The Power Authority of the State of New York hereby requests that it be associated with the comments made in that memorandum.

We are contemporaneously sending a copy of this letter to counsel for American Electric Power Company, General Electric Company, Westinghouse Electric Corporation and the law firm of Berlack, Israels and Liberman.

Very truly yours,

Lewis R. Bennett
Lewis R. Bennett
Assistant General Manager -
General Counsel

60-230-77

27
DEPARTMENT OF JUSTICE
MAR 11 1977
P.A.O.

Kohn, Savett, Marion & Graf, P.C. - Continuing Case No. 2 To Department of Justice
March 1, 1977

MARSHALL E. KIRBY
STUART W. SHREVE
DAVID W. BRACH
BRUCE W. DEAN
BENJAMIN S. HANCOCK
DAVID W. HUNTER
ROBERT A. LIPP
ALEXANDER L. COHEN
WALTER J. COHEN
CAROL A. BRIDGES-CA
JOSEPH F. ROSE
DORIS E. BART

KOHN, SAVETT, MARION & GRAF, P.C.
1214 IVB BUILDING, 1700 MARKET STREET
PHILADELPHIA, PENNSYLVANIA - 19103

WASHINGTON OFFICE
1078 K STREET, N.W.
WASHINGTON, D.C. 20006
BR 89-1018
JERRY S. COHEN
HERBERT E. MILLER
MICHAEL S. HANFELT
SUEEN DONALDSON
RECEIVED
DISTRICT OF COLUMBIA

March 1, 1977

Department of Justice
Washington, D. C. 20530
Attention: Mr. John W. Clark
Antitrust Division

Re: JWC:ML
69-230-77

Gentlemen:

We represent Philadelphia Electric Company, a public utility company supplying electricity in the Philadelphia area affected by the proposed modification by consent of the Final Judgment entered October 1, 1962, in the United States District Court for the Eastern District of Pennsylvania, Civil Action No. 28228, United State of America v. Westinghouse Electric Corporation.

We understand that Berlack, Israels & Liberman, Esquires, counsel for certain other public utility companies, has written to you under date of February 22, 1977 suggesting various amendments or modifications of your proposed Consent Decree.

Without waiving other comments which Philadelphia Electric Company may wish to propose and without

endorsing the supplementary discussion, Philadelphia Electric is in accord with and recommends the following modifications suggested by Berlack, Israels & Liberman:

1. Periodic reporting by GE and Westinghouse to the Department of the proposals submitted by each of them to prospective customers and of the sales actually made.
2. The reservation of the right in the Department to seek other and further relief during the time period specified in the proposed modifications, if it appears to be appropriate in the light of future developments.
3. A prohibition on the filing by GE or Westinghouse of antitrust, dumping, or similar complaints against competitors or potential competitors.
4. A prohibition against bundling of equipment, materials and services by GE or Westinghouse where the customer wishes to buy only one or more components.
5. Elimination of restrictions upon price protection in individual contracts.

Very truly yours,

Joseph L. McGlynn
Counsel for Philadelphia Electric Company

HEK/dt

cc: Honorable Joseph L. McGlynn,
United States District Judge
Berlack, Israels & Liberman
Henry W. Sawyer, III, Esquire
Raymond W. Midgett, Jr., Esquire

69-230-77

SEARCHED	INDEXED
SERIALIZED	FILED
MAR 1 1977	
FBI - PHILADELPHIA	

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530



Address Envelope to Care
 Division Enclosed
 and Edge to Envelope and Number

JWC
 60-230-77

March 11, 1977

Harold E. Kohn, Esquire
 Kohn, Savett, Marion & Graf, P.C.
 1214 IVB Building
 1700 Market Street
 Philadelphia, Pennsylvania 15103

Re: United States v. General Electric &
 Westinghouse Electric Corporation,
 Civil Action 28228

Dear Mr. Kohn:

This responds to your letter of March 1, 1977 regarding the Proposed Modification by consent of the final judgments entered in this action. The letter was in addition to your petition to participate in this proceeding as amicus curiae, filed with the Court on February 4, 1977.

Your letter refers to comments filed with the Department on behalf of a number of public utility companies by Berlack, Israels & Liberman by letter dated February 22, 1977. You note that your client, Philadelphia Electric Company, is in accord with and recommends adoption of a number of the suggestions made by the Berlack firm.

The Department has carefully considered all of the suggestions contained in the Berlack submission. We have concluded that some of the suggestions could weaken the decree and that some others are not directly related to the conduct involved in this case. The remaining recommendations relate to bona fide concerns that were considered during the negotiation process and in our view were adequately dealt with in the Proposed Modification. The Department's views on each of these proposals are set forth in the enclosed copy of our response to the Berlack submission.

Thank you for the benefit of your views.

Sincerely yours,

JOHN W. CLARK
 Acting Chief, Special Trial Section
 Antitrust Division

Enclosure

[FR Doc. 77-9483 Filed 3-29-77; 8:45 am]

Federal Register

WEDNESDAY, MARCH 30, 1977

PART V



DEPARTMENT OF
HOUSING
AND URBAN
DEVELOPMENT

Federal Insurance
Administration



NATIONAL FLOOD
INSURANCE PROGRAM

Communities Eligible for Sale of
Insurance

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 2788]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

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, D.C. 20410.

SUPPLEMENTARY INFORMATION:

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

flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by section 202(b) or 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

(24 CFR § 1914.6)

3

<u>State</u> ***	<u>County</u> ***	<u>Location</u> ***	<u>Effective date of authorization of sale of flood insurance for area</u> ***	<u>Hazard area Identified</u> ***	<u>Community Number</u> ***
Maryland.	Allegany.	Luke, Town of.	March 22, 1977. Emerg.	7-18-75	240114

(24 CFR § 1914.6)

4

<u>State</u> ***	<u>County</u> ***	<u>Location</u> ***	<u>Effective date of authorization of sale of flood insurance for area</u> ***	<u>Hazard area Identified</u> ***	<u>Community Number</u> ***
Florida.	Marion.	Belleview, City of.	March 23, 1977. Emerg.		120383-NEW
Louisiana.	Tangipahoa Parish.	Roseland, Town of.	Do. Emerg.	10-26-73 & 4-9-76	220212-A
Nebraska.	Dawson.	Lexington, City of.	Do. Emerg.	8-13-76	310063
Ohio.	Union.	Unincorporated Areas.	March 16, 1977. Emerg.		390808-NEW
Do.	Wood.	Do.	Do. Emerg.		390809-NEW
Pennsylvania.	Indiana.	East Mahoning, Township of.	Do. Emerg.	1-17-75	422436
Do.	Fayette.	Lower Tyrone, Township of.	Do. Emerg.	12-6-74	421630
Do.	Clearfield.	New Washington, Borough of.	Do. Emerg.	12-20-74 & 6-4-76	420312-A
Texas.	Jackson.	La Ward, City of.	March 23, 1977. Emerg.	5-7-76	481074
Wyoming.	Uinta.	Evanston, City of.	Do. Emerg.	5-21-76	560054

(24 CFR § 1914.6)

<u>State</u> ***	<u>County</u> ***	<u>Location</u> ***	<u>Effective date of authorization of sale of flood insurance for area</u> ***	<u>Hazard area Identified</u> ***	<u>Community Number</u> ***
Florida.	Duval.	Atlantic Beach, City of.	November 19, 1971. March 15, 1977.	6-28-74 & 6-11-76	120075-A
Do.	Do.	Jacksonville Beach, City of.	November 19, 1971. March 15, 1977.	6-7-74 & 2-6-76	120078-B
Maryland.	Cecil.	Perryville, Town of.	April 23, 1974. March 1, 1977.	3-8-74	240024-A
Massachusetts.	Essex.	Salem, City of.	June 23, 1972. March 15, 1977.	7-26-74	250102-A
North Carolina.	Beaufort.	Washington, City of.	October 6, 1972. February 2, 1977.	2-20-73 & 6-18-76	370017-B
Pennsylvania.	Union.	East Buffalo, Township of.	April 24, 1973. February 2, 1977.	6-28-74 & 5-28-76	421011-B
Do.	Clinton.	Flemington, Borough of.	March 9, 1973. February 2, 1977.	6-15-73 & 9-10-76	420326-A
Do.	Bucks.	Lower Southampton, Township of.	September 15, 1972. March 15, 1977.	6-15-73 & 5-14-76	420192-B
Do.	LeHigh.	Lower Macungie, Township of.	September 29, 1972. February 2, 1977.	6-28-74	420589-A
Do.	Bucks.	Perkasie, Borough of.	September 8, 1972. February 9, 1973.	2-9-73	420196-A
Do.	Huntingdon.	Smithfield, Township of.	March 9, 1973. March 15, 1977.	2-8-73 & 8-13-76	420494-B
Do.	Schuylkill.	St. Clair, Borough of.	November 24, 1972. March 15, 1977.	3-15-72.	420786-A

RULES AND REGULATIONS

17085

(24 CFR § 1914.6)

6

<u>State</u> ***	<u>County</u> ***	<u>Location</u> ***	<u>Effective date of authorization of sale of flood insurance for area</u> ***	<u>Hazard area identified</u> ***	<u>Community Number</u> ***
Illinois.	Sangamon.	Leland Grove, City of.	March 24, 1977. Emerg.		170925-IE#
Kansas.	Labette.	Altamont, City of.	Do. Emerg.		200462
Michigan.	Calhoun.	Athens, Village of.	Do. Emerg.	9-19-75	260558
New York.	Livingston.	Portage, Town of.	March 17, 1977. Emerg.	8-16-74 & 6-18-76	361029-A
Ohio.	Lake.	Kirtland Hills, Village of.	Do. Emerg.		390310 New
Pennsylvania.	Clinton.	Crawford, Township of.	Do. Emerg.	12-20-74 & 5-28-76	421535-A
Do.	Beaver.	Potter, Township of.	Do. Emerg.	12-13-77	422327
Do.	Huntingdon.	Three Springs, Borough of.	Do. Emerg.	1-24-75	422576
Wisconsin.	Iowa.	Barneveld, Village of.	March 24, 1977. Emerg.	5-17-74 & 12-26-75	550174-A
Iowa.	Ida.	Arthur, City of.	March 25, 1977. Emerg.	6-25-76	190696
Minnesota.	Freeborn.	Emmons, City of.	Do. Emerg.	12-27-74	270657
New York.	Yates.	Torrey, Town of.	March 18, 1977. Emerg.	5-31-74 & 1-9-76	360966-A
Oregon.	Washington.	North Plains, City of.	March 25, 1977. Emerg.	6-16-76	410270
Pennsylvania.	Allegheny.	Baldwin, Township of.	March 18, 1977. Emerg.		422650-New
Do.	Clearfield.	Decatur, Township of..	Do. Emerg.	9-20-74 & 6-18-76	421189-A
Do.	Potter.	Sylvania, Township of.	Do. Emerg.	12-6-74	421990
Texas.	McClellan.	Hewitt, City of.	March 25, 1977. Emerg.	1-23-74 & 3-12-76	480458-A

(24 CFR § 1914.6)

<u>State</u> ***	<u>County</u> ***	<u>Location</u> ***	<u>Effective date of authorization of sale of flood insurance for area</u> ***	<u>Hazard area Identified</u> ***	<u>Community Number</u> ***
Florida.	Duval.	Atlantic Beach, City of.	March 15, 1977, Suspension Withdrawals.	6-28-74 & 6-11-76	120075A
Do.	Hendry.	Clewiston, City of.	Do.	7-19-74 & 2-13-76	120108A
Massachusetts.	Essex.	Newbury, Town of.	Do.	3-15-77	250096
Do.	Do.	Salem, City of.	Do.	7-26-74	250102
Missouri.	Clay & Ray.	Excelsior Springs, City of.	Do.	4-5-74 & 5-28-76	290090A
Do.	Newton.	Seneca, City of.	Do.	3-22-74 & 12-5-75	290269A
Do.	St. Charles.	St. Charles, City of.	Do.	3-22-74	290318

(24 CFR § 1914.6)

9

<u>State</u> ***	<u>County</u> ***	<u>Location</u> ***	<u>Effective date of authorization of sale of flood insurance for area</u> ***	<u>Hazard area Identified</u> ***	<u>Community Number</u> ***
New Jersey.	Somerset.	Green Brook, Township of.	Do.	6-21-74	340435
Do.	Atlantic.	Hamilton, Township of.	Do.	7-26-74	340009
Do.	Do.	Oradell, Borough of.	Do.	6-15-73	340060
Oregon.	Clackamas.	Gladstone, City of.	Do.	4-5-74 & 6-25-76	410017A
Do.	Clackamas.	West Linn, City of.	Do.	12-17-73 & 8-20-76	410024A
Pennsylvania.	Bradford.	Athens, Borough of.	Do.	6-28-74 & 7-16-76	420167A
Do.	Cumberland.	Camp Hill, Borough of.	Do.	2-8-74	420357
Do.	Allegheny.	Elizabeth, Township of.	Do.	3-29-74 & 6-18-76	420033A
Do.	Sucks.	Lower Southampton, Township of.	Do.	6-15-73 & 5-14-76	420192A

(24 CFR § 1914.6)

<u>State</u> ***	<u>County</u> ***	<u>Location</u> ***	<u>Effective date of authorization of sale of flood Insurance for area</u> ***	<u>Hazard area Identified</u> ***	<u>Community Number</u> ***
Do.	Hercer.	Hercer, Borough of.	Do.	6-15-73	420676
Do.	Wayne.	Palmyra, Township of.	Do.	7-19-74 & 6-18-76	420865A
Rhode Island.	Providence.	Smithfield, Town of.	Do.	8-9-74	440025

(National Flood Insurance Act of 1968 (Title XIII of the 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 39 FR 2787, January 24, 1974.)

Issued: March 18, 1977.

J. ROBERT HUNTER,

Acting Federal Insurance Administrator.

[FR Doc. 77-9190 Filed 3-29-77; 8:45 am]

WEDNESDAY, MARCH 30, 1977

PART VI



OFFICE OF
MANAGEMENT
AND BUDGET



BUDGET DEFERRALS

Report to Congress

Register
Federal

OFFICE OF MANAGEMENT AND BUDGET

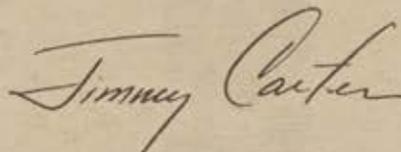
BUDGET DEFERRALS

Report

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Impoundment Control Act of 1974, I herewith report two new deferrals of funds totaling \$12.6 million. The deferred funds were provided for water resources projects in the Corps of Engineers and the Department of the Interior. Only one of the deferrals—related to the Corps of Engineers' Meramec Park Lake project—is now in effect. This deferral will be maintained, at least until the completion of a review of Federal water resources projects currently in progress.

The details of each deferral are contained in the attached reports.



THE WHITE HOUSE, March 24, 1977.

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

<u>Deferral #</u>	<u>Item</u>	<u>Budget Authority</u>
	Defense-Civil:	
	Corps of Engineers	
D77-53	Construction, general.....	7,760
	Interior:	
	Bureau of Reclamation	
D77-54	Colorado river basin project...	<u>4,790</u>
	Total, deferrals.....	12,550

* * * * *

SUMMARY OF SPECIAL MESSAGES
FOR FY 1977
(in thousands of dollars)

	<u>Rescissions</u>	<u>Deferrals</u>
Ninth special message:		
New items.....	---	12,550
Changes to amounts previously sub- mitted.....	<u>---</u>	<u>---</u>
Effect of the ninth special message...	---	12,550
Previous special messages.....	<u>1,040,378</u>	<u>7,075,880</u>
Total amount proposed in special messages.	1,040,378	7,088,430
	(in 13 rescis- sion proposals)	(in 54 deferrals)

NOTE: All amounts listed represent budget authority except for \$134,807,092 consisting of two general revenue sharing deferrals of outlays only (D77-26 and D77-27A). Reports for D77-26 and D77-27A are included in the special messages of October 1, 1976, and December 3, 1976, respectively.

Deferral No: D77-53

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of the Army	New budget authority (P.L. <u>94-355</u>)	\$ <u>1,436,745,000</u>
Bureau Corps of Engineers, Civil	Other budgetary resources	<u>141,889,603</u>
Appropriation title & symbol Construction, General COE Civil 96X3122	Total budgetary resources	<u>1,578,634,603</u>
	Amount to be deferred:	
	Part of year	\$ <u>7,760,000</u> ^{1/}
	Entire year	_____
OMB identification code: 96-3122-0-1-301	/Legal authority (in addition to sec. 1013):	
	<input type="checkbox"/> Antideficiency Act	
Grant program <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Other _____	
Type of account or fund: <input type="checkbox"/> Annual	Type of budget authority:	
<input type="checkbox"/> Multiple-year _____ (expiration date)	<input checked="" type="checkbox"/> Appropriation	
<input checked="" type="checkbox"/> No-year	<input type="checkbox"/> Contract authority	
	<input type="checkbox"/> Other _____	

Justification

The President has called for a review of all Federal water resources projects which may be environmentally damaging, economically marginal, or which pose safety hazards. This review is expected to be completed by April 15, 1977.

No 1978 funding is now being requested by the President for eleven water resources projects in the Corps of Engineers. These projects appear to meet the above criteria, and in addition, most are in relatively early stages of construction or are under design. The eleven projects are: Lukfata Lake, Oklahoma; Yatesville, Kentucky; Paintsville, Kentucky; Dickey-Lincoln, Maine; Meramec Lake, Missouri; Cache River, Arkansas; Grove Lake, Kansas; Freeport, Illinois; Dayton, Kentucky; Atchafalaya River, Bayous Chene, Boeuf and Black, Louisiana; and Richard B. Russell Dam and Lake, Georgia and South Carolina.

Three of the above projects have major contracts scheduled to begin in the two-month review period. They are: (1) Yatesville Lake, Kentucky--the main dam contract was recently awarded and the notice to proceed is imminent; (2) Meramec Park Lake, Missouri--bids have been opened on a major contract and award is imminent; (3) Atchafalaya River, Bayous Chene, Boeuf and Black, Louisiana--two major contracts are currently out for bids. (In addition, land is being acquired for the two reservoir projects--Yatesville Lake and Meramec Park Lake.)

^{1/} The amount deferred was reduced to \$2,665,000 on March 14, 1977.

Funds in the amount of \$7.76 M were deferred for Yatesville, Atchafalaya and Meramec on March 10, 1977 pending a determination on the course of action that was to be taken on these contracts and related land acquisition. On March 14, 1977, funds for Yatesville and Atchafalaya were released. Funds for Meramec Park Lake project continue to be deferred in the amount of \$2.665 M.

Estimated Effects:

The deferral temporarily delayed the issuance of the notice to proceed at Yatesville Dam and the opening of bids of Atchafalaya, Bayous Chene, Boeuf and Black, Louisiana. No outlay effects resulted from this temporary delay. The deferral of funds for Meramec Park Lake will delay the start of abutment preparation and some land acquisition.

FY 1977 appropriations and carryover funds remain available for all other work scheduled on the Meramec Park Lake project and all work on the other ten projects deleted from the FY 1978 Budget.

Outlay Effect (Estimated in millions of dollars)

Comparison with President's FY 1978 budget:

1. Budget outlay estimate for FY 1977	\$1,400.0
2. Outlay savings, if any, included in the budget outlay estimate	--

Current Outlay Estimates for 1977:

3. Without deferral	1,400.0
4. With deferral	<u>1,398.8</u>
5. Current outlay saving (line 3 minus line 4).....	1.2

Outlay savings for 1978

--

Outlay savings for 1979

-1.2

Deferral No: D77-54

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of the Interior	New budget authority (P.L. _____)	\$ 73,420,000
Bureau Bureau of Reclamation	Other budgetary resources	29,526,789
Appropriation title & symbol Colorado River Basin Project Lower Colorado River Basin Development Fund - 14X4079	Total budgetary resources	102,946,789
	Amount to be deferred:	
	Part of year	\$ 4,790,000
	Entire year	_____
OMB identification code: 14-4079-0-3-301	Legal authority (in addition to sec. 1013):	
Grant program <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act	
Type of account or fund:	<input type="checkbox"/> Other _____	
<input type="checkbox"/> Annual	Type of budget authority:	
<input type="checkbox"/> Multiple-year _____ (expiration date)	<input checked="" type="checkbox"/> Appropriation	
<input checked="" type="checkbox"/> No-year	<input type="checkbox"/> Contract authority	
	<input type="checkbox"/> Other _____	

Justification and Estimated Effects

This temporary deferral is being reported under the Impoundment Control Act (31 U.S.C. 1401). The funds have now been made available.

The funds -- related to the award of a Central Arizona Project contract -- were temporarily deferred while their disposition was being considered. They were withheld from March 10, 1977 to March 15, 1977.

[FR Doc.77-9588 Filed 3-28-77;12:02 pm]



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