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highlights

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

Workshops include a brief history of the FEDERAL REGISTER, the difference between legislation and regulations, 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.

OUT OF TOWN WORKSHOPS PREVIOUSLY ANNOUNCED

New York, N.Y., 8–15, 8–16, 8–17, 8–18, 8–19
(Details: 42 FR 36040, 7/13/77)
For reservations call: Dorothy Gemmallo
at (212) 264–3514

Boston, Mass., 9–7, 9–8, 9–9
(Details: 42 FR 37261, 7–20–77)
For reservations call: Mrs. Louise Conboy
at (617) 223–7121

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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
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DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/ADAMHA			HEW/ADAMHA
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	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

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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To extend certain oil and gas leases by a period sufficient to allow the drilling of an ultradeep well. (July 30, 1977; 91 Stat. 317). Price: $.35.

H.R. 5864..... Pub. L. 95–78
To approve with modifications certain proposed amendments to the Federal Rules of Criminal Procedure, to disapprove other such proposed amendments, and for other related purposes. (July 30, 1977; 91 Stat. 319). Price: $.35.

H.R. 5970..... Pub. L. 95–79
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To provide for a temporary extension of certain Federal Housing Administration mortgage insurance and related authorities and of the national flood insurance program, and for other purposes. (July 31, 1977; 91 Stat. 339). Price: $.35.

H.R. 7552..... Pub. L. 95–81
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H.R. 4975..... Pub. L. 95–83
To amend the Public Health Service Act to extend through the fiscal year ending September 30, 1978, the assistance programs for health services research; health statistics; comprehensive public health services; hypertension programs; migrant health; community health centers; medical libraries; cancer control programs; the National Cancer Institute; heart, blood vessel, lung, and blood disease prevention and control programs; the National Heart, Lung, and Blood Institute; National Research Service Awards; population research and voluntary family planning programs; sudden infant death syndrome; hemophilia; national health planning and development; and health resources development; to amend the Community Mental Health Centers Act to extend it through the fiscal year ending September 30, 1978; to extend the assistance programs for home health services; and for other purposes. (Aug. 1977; 91 Stat. 383.) Price $.35.

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 10—Energy
CHAPTER II—FEDERAL ENERGY ADMINISTRATION
PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Corrective Amendments

AGENCY: Federal Energy Administration.

ACTION: Corrective amendments.

SUMMARY: The Federal Energy Administration (FEA) hereby amends its refiner and reseller/retailer pricing regulations to correct inadvertent errors and omissions in those portions of its regulations. These amendments do not in any manner change or alter the substantive provisions of the Mandatory Petroleum Price Regulations.

EFFECTIVE DATE: See discussion of specific regulatory amendments in the supplementary information.

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SUPPLEMENTARY INFORMATION:

I. Defintions of "cost of crude oil," "quantity or volume of crude oil," and "throughput."
II. Benzene and toluene adjustment.
III. Increased costs allocator, the "*R*" factor.
IV. Definition of "product in inventory."
V. Passthrough of actual non-product cost increases by certain sellers of propane, butane, and natural gasoline.
VI. Typographical and publication errors and use of parallel terms.

The following amendments to the Mandatory Petroleum Price Regulations are to correct inadvertent errors and omissions in the present regulations. The sole purpose of these amendments is to correct and clarify the regulations and not to change the substantive provisions of the regulations in any manner.

I. Definitions of "Cost of Crude Oil," "Quantity or Volume of Crude Oil," and "Throughout"

First, on July 20, 1976, FEA amended the price regulations to exempt naphthas, gas oils, and certain "other products" including "unfinished oils," effective September 1, 1976 (41 FR 30096, July 22, 1976). FEA failed at that time, however, to make a corresponding revision in the definition of the "cost of crude oil in § 212.82, which included "the cost of [certain] unfinished oils * * * *which are covered products.*" (Emphasis added.) The cost of unfinished oils which are further refined (the cost of which was includable before any deregulation actions were taken) continues to be properly includable as a "cost of crude oil," even though unfinished oils are no longer a covered product. Accordingly, the definition of "cost of crude oil" is revised effective September 1, 1976, to clarify that it continues to include the cost of certain unfinished oils which were covered products before their September 1, 1976, exemption.

Second, corrective changes in the definitions of "cost of crude oil," "quantity or volume of crude oil," and "throughput" are necessary, to conform the language of the price regulations to Ruling 1976–4 (41 FR 25886, June 23, 1976). Ruling 1976–4 holds that synthetic fuels (crude oil substitutes) processed from oil shale, tar sands, coal, and other natural deposits that must be mined before the crude oil substitute can be extracted are not within the purview of the FEA price and allocation regulations. However, FEA's current regulations regarding the computation of a refiner's "increased product costs," which refer to the "cost of crude oil" as defined in § 212.82 and the "quantity or volume of crude oil" as defined in § 212.83(c)(2)(iii)(C)(II) do not expressly include substitutes for crude oil and unfinished oils. Nor does the definition of "throughput" in § 212.83(c)(2)(iii)(E) include such synthetic fuels. Thus these sections are amended to clarify that the cost of such synthetic fuels, although not subject to FEA price or allocation regulations (Ruling 1976–4) when acquired for use as crude oil substitutes, is properly includable within a refiner's "cost of crude oil" and the volume of such synthetic fuels when used as crude oil substitutes is properly includable within a refiner's "quantity or volume of crude oil" and "throughput."

II. Benzene and Toluene Ajustment

FEA exempted benzene and toluene from the price and allocation regulations effective September 1, 1976 (41 FR 30096, July 22, 1976). However, FEA did not delete the regulatory provisions that formerly provided an incentive for increased production of benzene and toluene, contained in § 212.83(a)(4) and in the adjustment in the "D_i" factor of the refiners' price formulae in § 212.83(c)(2)(iii)(B). An adjustment to the amount computed under "D_i" for general refinery products because of benzene and toluene production is not appropriate after the exemption of benzene and toluene, as those products are no longer subject to price regulations. Accordingly, the incentives are eliminated, effective as of the September 1, 1976, exemption of benzene and toluene.

III. Increased Costs Allocator, the "R" Factor

Beginning in February 1976, FEA gave refiners the option of allocating increased crude oil costs to product prices on the basis of the relative volumes of certain products or product categories refined by the refiner from crude oil, pursuant to a formula commonly known as the "*R*" factor ("R/R_i^{ν}") (41 FR 5111, February 4, 1976). On January 19, 1977, FEA amended its regulations, effective January 1, 1977, to require refiners not later than March 1, 1977 to allocate both increased crude oil and non-product costs on the basis of products refined by the refiner from crude oil, or the "*R*" factor. ("R/R_i^{ν}") (42 FR 5030, January 27, 1977) The purpose of the amendments first permitting and later requiring that cost increases be allocated on the basis of product refined by the refiner from crude oil was to exclude product sales volumes attributable to purchased product and blending agents from the cost allocator. FEA did not intend, however, when adopting the "*R*" factor to exclude volumes of product attributable to refinding of unfinished oils and addition of additives from the cost allocator computation. Therefore, effective February 1, 1976, with respect to crude oil cost increases (§ 212.83(c)(2)(iii)(C)) and to January 1, 1977, with respect to non-product cost increases (§ 212.83(c)(2)(iii)(E)) the definitions of "*R*" and "R_i^{ν}" are amended to clarify that product volume attributable to the refining of unfinished oils and the addition of additives is included in the computation of the "*R*" factor cost allocator.

IV. Definition of "Product in Inventory"

Section 212.92 was amended on May 5, 1976 (41 FR 19110, May 10, 1976) to allow resellers and retailers increased pricing flexibility by permitting them to calculate cost of product in inventory based on separate inventories to the extent such inventories were maintained pursuant to generally accepted accounting principles historically and consist-

ently applied by the seller concerned. In the preamble to the amendment FEA stated:

> • • • First, "product in inventory" is defined as either (1) the entire undivided stock of the seller's product, no matter where located, or (2) that portion of the seller's total stock of the product concerned which constitutes a separate inventory under generally accepted accounting principles historically and consistently applied by the seller concerned. Sellers may elect to use the second definition if they qualify under the terms of that definition but they must have consistently utilized separate inventory accounting methods for cost management or other normal business purposes since May 15, 1973 • • •.

However, in the actual amendment to the regulation in two instances the word "covered" was inserted before the word "product."

> "Product in inventory" means, at the option of the seller concerned, either: (1) the entire, undivided stock of a *covered* product, no matter where located, purchased and held for resale by the seller concerned; or (2) that portion of the total stock of a *covered* product purchased and held for resale by the seller concerned which constitutes a separate inventory under generally accepted accounting principles consistently and historically applied by the seller concerned • • •. (§ 212.92, emphasis added.)

The addition of the word "covered" before the word "product" in the definition of "product in inventory" was inadvertent. The amendment as issued could arguably be construed to require resellers and retailers to compute cost of "product in inventory" on the basis of the "covered products" categories as defined in § 212.31 even if the seller had historically and consistently maintained inventories of specific covered products or product groups that were less comprehensive than the defined categories of "covered products."

It is FEA's intention that sellers may calculate "increased product costs" and prices pursuant to § 212.92 and 212.93 on the basis of products or product categories that are less comprehensive than the defined terms set forth in Subpart B of the price regulations. The refiner price rules include an express provision in § 212.83(c)(1)(ii)(c), which permits refiners (subject to disapproval by FEA) to treat as "a particular general refinery product", separate products or product categories if they represent discrete, technical product differences that have been consistently and historically applied by that refiner. By implication, a comparable measure of flexibility must be read into the reseller and retailer price rules in order to avoid anomalous results.

For example, although the term "gasoline" is defined in § 212.31 to include "all of the various grades", it would clearly be inappropriate for a reseller or retailer of "regular" and "premium" grades of "gasoline" to make a single increased product cost calculation attributable to prices for both grades. This is because the calculation of "increased product costs pursuant to § 212.92 on the basis of a single weighted average cost of "gasoline" in inventory would not yield a meaningful measure of increased costs if the relative volumes of "regular" and "premium" gasoline in inventory were different than on May 15, 1973. An increased percentage of "premium" gasoline in inventory would, in itself, yield an amount of calculated "increased product costs," although no increase would, in fact, have taken place. Moreover, the weight-averaging of costs for "products" that have historically been separately priced would tend to distort the prices allowed to be charged for "products" by resellers and retailers, so that such prices would not be representative of the costs to the seller of those "products." For example, refiners are permitted to price gasoline separately by type and grade, and many refiners have increased prices for unleaded gasoline more than for leaded types. A requirement that resellers and retailers make a single calculation of "increased produce costs" for all types and grades of gasoline could result in a maximum allowable price for unleaded gasoline that would be less than the seller's cost for such gasoline, if unleaded gasoline were only a small portion of the seller's gasoline inventory.

Therefore, FEA is deleting the word "covered" from § 212.92 to eliminate any confusion as to what products or product groups may be used for purposes of determining cost of "product in inventory" and to clarify that the regulation change was not intended to require resellers and retailers to alter their historical method of designating the particular products to be used for the purpose of determining cost of "product in inventory." This amendment is effective May 1, 1976, the effective date of the amendment containing the error.

V. Pass Through of Actual Non-Product Cost Increases by Certain Sellers of Propane, Butane, and Natural Gasoline

Section 212.93 was recently amended in paragraphs (b)(4) and (e)(2) to require or permit resellers and retailers of propane, butane, and natural gasoline which elect to pass through increased non-product costs in price increases to compute such price increases using actual increased non-product costs as defined by FEA rather than using a standardized cents-per-gallon mark up previously allowed to reflect increased non-product costs. Also, all sellers may carry forward for recovery at a later date ("bank") unrecouped increased non-product costs. The effective date of the amendment is May 1, 1977. However, § 212.93 (b)(4) and (e)(2) incorrectly refer to the month of March as being the first month the amendments were in effect. Accordingly, the word "March" is deleted from, and the word "May" is added to, § 212.93 (b)(4) and (e)(2), to clarify the effective date of the amendments. Also, § 212.93(b)(4)(IV) mistakenly refers to "refiners" instead of "resellers and retailers." These corrected amendments are effective May 1, 1977, the effective date of the amendments containing the errors.

VI. Typographical and Publication Errors and Use of Parallel Terms

First, several lines in § 212.93(i)(2)(iv) were transposed and phrases were added when the section was published in the Federal Register (41 FR 18304, May 3, 1976). These errors are corrected effective April 28, 1976, the effective date of the amendment containing the errors.

Second, § 212.93(i)(2)(ii)(A) and (B), "General refinery products" is a duplication of § 212.93(i)(2)(i)(A) and (B), "General refinery products." The correct paragraph (i)(2)(ii)(A) and (B), "No. 2 oils", was inadvertently deleted from the section in connection with the September 1, 1976 exemption of naphthas, gas oils, and "other products" (41 FR 30096, July 22, 1976). Accordingly, § 212.93(i)(2)(ii)(A) and (B), "No. 2 oils", is reinserted in the regulations and the current § 212.93(i)(2)(ii)(A) and (B), "General refinery products", is deleted. This amendment is effective retroactive to September 1, 1976, the effective date of the inadvertent deletion of § 212.93(i)(2)(ii), "No. 2 oils", and of the duplication of § 212.93(i)(2)(i), "General refinery products".

Third, the term "maximum allowable prices" is defined in and applicable only to Subpart E, Refiners, and does not apply to Subpart F, Resellers and Retailers. The term in Subpart F corresponding to "maximum allowable prices" is simply "prices." Accordingly, the words "maximum allowable" are deleted from the following sections of Subpart F, effective as of the dates the regulations that first contained those words became effective.

1. Section 212.93(i)(2)(i)(C), effective October 1, 1976 (41 FR 44151, October 7, 1976).
2. Section 212.93(i)(2)(ii)(B) effective July 1, 1976 (41 FR 24518, June 16, 1976).
3. Section 212.93(i)(3)(i) and (ii) effective April 28, 1976 (41 FR 18304, May 3, 1976).

Fourth, § 212.93(i) deals with the reallocation of only increased product costs. Accordingly, to make this obvious and to use parallel sentence construction throughout the section, § 212.93(i)(2)(i)(C), (ii)(B), and (iii)(B) are amended to insert the word "product" between the words "increased" and "costs." These additions are made to the following sections as of the date they became effective.

1. Section 212.93(i)(2)(i)(C) effective September 1, 1976 (41 FR 44151, October 7, 1976).
2. Section 212.93(i)(2)(i)(B) effective July 1, 1976 (41 FR 24518, June 16, 1976).
3. Section 212.93(i)(2)(iii)(B) effective October 1, 1976 (41 FR 40452, September 20, 1976).

Because these amendments are only to correct inadvertent errors in previously adopted amendments to, or resulting from interpretative rulings regarding, the regulations, the Federal Energy Administration finds that good cause exists to issue these amendments immediately, without notice, or opportunity for comment.

As these amendments will not affect the quality of the environment, it is not

necessary to submit them to the Administrator of the Environmental Protection Agency for comments.

FEA will review any written comments received within 30 days after the issuance of these amendments.

(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, Part 212 of Chapter II, Title 10 of the Code of Federal Regulations is amended as set forth below, effective as of the dates set forth above.

Issued in Washington, D.C., July 28, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

1. Section 212.82 is amended by revising the definition of "cost of crude oil" as follows:

§ 212.82 Definitions.

* * * * *

"Cost of crude oil" means (1) for purposes of domestic crude oil, the first sale price or the purchase price if the transaction occurs after the first sale, provided that the first sale price or purchase price conforms with the requirements of Part 212, plus the cost of transportation. The cost of domestic crude oil also includes the cost of unfinished oils which were covered products as of May 31, 1976, and of synthetic fuels (crude oil substitutes) processed from oil shale, tar sands, coal, and other natural deposits that must be mined before the crude oil substitute can be extracted, provided that such oils or fuels are used in refining and are further refined; (2) for purposes of imported crude oil, the landed cost.

* * * * *

§ 212.83 is amended as follows:

2. § 212.83(a)(4) is deleted.

3. § 212.83(c)(2)(iii)(B) is amended by revising the definition of "D_i" to read as follows:

4. Section 212.83(c)(2)(iii)(C) is amended by revising the definitions of "Q^1", "Q^0", "R^1" and "R_i^1" to read as follows:

5. Section 212.83(c)(2)(iii)(E) is amended by revising the definitions of "R_i^1", "R^1", and "R^0" and in subparagraph (I) the definition of "throughput" and the recordkeeping requirement as follows:

§ 212.83 Price rule.

(a) * * *

(4) [Deleted]

* * * * *

(c) *Allocation of increased costs.* * * *

(2) *Formulae.* * * *

(iii) *Definitions.* * * *

(B) *The "D" factors.* * * *

D_i^u=The total dollar amount a refiner may apportion in the period "u" to general refinery products (i=4) in whatever amounts it deems appropriate to each particular general refinery product to compute the maximum allowable price. The formula for "D_i^u" must be computed only once for i=4 (all general refinery products).

* * * * *

(C) *The "A" factor.* * * *

Q^1=The total quantity or volume of crude oil purchased or landed in the period "t" for refining or for resale under § 211.65, provided however that this amount shall be reduced by the quantity of crude oil sold under § 211.65 in the period "t" "The quantity or volume of crude oil" includes quantities or volumes of unfinished oils which were covered products as of May 31, 1976 and of synthetic fuels (crude oil substitutes) processed from oil shale, tar sands, coal, and other natural deposits that must be mined before the crude oil substitute can be extracted, provided that such oils or fuels are used in refining and are further refined.

Q^0=The total quantity or volume of crude oil purchased or landed in the period "o" for refining or for resale under § 211.65, provided however that this amount shall be reduced by the quantity of crude oil sold under § 211.65 in the period "o". "The quantity or volume of crude oil" includes quantities or volumes of unfinished oils which were covered products as of May 31, 1976 and of synthetic fuels (crude oil substitutes) processed from oil shale, tar sands, coal, and other natural deposits that must be mined before the crude oil substitute can be extracted, provided that such oils or fuels are used in refining and are further refined.

* * * * *

R^1=The total volume of all products refined by the refiner from crude oil (including product attributable to unfinished oils and additives) in the period "t".

R_i^1=The total volume of a specific covered product of the type "i" refined by the refiner from crude oil (including product attributable to unfinished oils and to additives) in the period "t".

"The quantity or volume of crude oil" cludes quantities or volumes of unfinished oils which were covered products as of May 31, 1976 and of synthetic fuels (crude oil substitutes) processed from oil shale, tar sands, coal, and other natural deposits that must be mined before the crude oil substitute can be extracted, provided that such oils or fuels are used in refining and are further refined.

* * * * *

(E) *The "N" factor.* * * *

R_i^1=The total volume of a specific product of the type "i" refined by the refiner from crude oil (including unfinished oils which were covered products as of May 31, 1976 and synthetic fuels), and including volumes attributable to additives in the period "t".

R^1=The total volume of all products refined by the refiner from crude oil (including unfinished oils which were covered products as of May 31, 1976 and synthetic fuels), and including volumes attributable to additives, in the period "t".

* * * * *

R^1=The total volume of all products refined by the refiner from crude oil (including unfinished oils which were covered products as of May 31, 1976 and synthetic fuels), and including volumes attributable to additives, in the period "t".

* * * * *

R^0=The total volume of all products refined by the refiner from crude oil (including unfinished oils which were covered products as of May 31, 1976 and synthetic fuels), and including volumes attributable to additives, in the period "o".

* * * * *

(I) *Refinery fuel cost increase.* * * *

"Throughput" means the volume of crude oil, unfinished oils, syntheic fuels and natural gas liquids refined during the time period specified.

Refiners shall maintain records of the volume and cost of products purchased or landed that are consumed as refinery fuel.

6. § 212.92 is amended in the definition of product in inventory" to read as follows:

§ 212.92 Definitions.

* * * * *

"Product in inventory" means, at the option of the seller concerned, either: (1) the entire, undivided stock of a product, no matter where located, purchased and held for resale by the seller concerned; or (2) that portion of the total stock of a product purchased and held for resale by the seller concerned which constitutes a separate inventory under generally accepted accounting principles consistently and historically applied by the seller concerned. However, the cost of transportation may be included as a cost of product in inventory only up to the point at which the product concerned first comes to rest in facilities which constitute a part of the seller's storage and distribution system.

* * * * *

7. § 212.93 is amended in paragraphs (b)(4)(VI), (e)(2) and (i)(2)(i), (ii), and (iv) and (i)(3)(i) and (ii) to read as follows:

§ 212.93 Price rule.

* * * * *

(b) Notwithstanding the provisions of paragraph (a) of this section: * * *

(4) With request to sales of propane, butane, and natural gasoline beginning with May 1977: * * *

(VI) *Depreciation cost increase.* Depreciation cost increase is computed by applying the formula for "E_n" above. For purposes of this computation "C" is the cost attributable to the depreciation of equipment, machinery, and the facility, which are associated with propane, butane, and natural gasoline sales operations; provided that such costs are computed according to generally accepted accounting practices historically and consistently applied by the firm and

to the extent that such costs are not otherwise covered by this section. If Form 10-k is filed with the Securities and Exchange Commission of an analogous report is filed with a state regulatory agency, the amount computed for depreciation cost increase must be consistent with the figures used in preparing Form 10-k or such analogous report. Accounting procedures used to compute depreciation cost increase by resellers and retailers which do not file such form or report, or on whose behalf such form or report is not filed, must be calculated according to generally accepted accounting practices historically and consistently applied by the firm concerned for certified annual financial reports prepared by an independent accounting firm. No capital investments may be included in non-product costs as expenses; all such investments may be capitalized and depreciated and included in the computation of "E_a" for depreciation cost increase.

* * * * *

(e) Notwithstanding the provisions of paragraph (a) of this section: * * *

(2) With respect to sellers of propane, butane, and natural gasoline beginning May 1, 1977, the amount of increased non-product cost calculated pursuant to paragraph (b) (4) of this section for propane, butane, or natural gasoline and not recouped by a price adjustment in the subsequent month pursuant to paragraph (b) (4) of this section may also be added to the May 15, 1973 selling price of propane, butane or natural gasoline at the time the selling prices are computed pursuant to paragraphs (a) and (b) (4) of this section.

* * * * *

(i) *Reallocation of increased product costs among products.* * * *

(2) Increased product costs may be reallocated only as follows: (i) *General refinery products.* * * *

(C) Beginning on July 1, 1976, no increased product costs for general refinery products other than propane, butane, natural gasoline, natural gas liquids, and aviation gasoline may be reallocated to prices for any other covered product.

(ii) *No. 2 oils.* (A) To the extent that a seller does not allocate its increased product costs for No. 2 oil to the prices for that product, it may reallocate the unallocated part of its increased product costs for that product to the prices for gasoline, in whatever amounts the seller deems appropriate. No increased product costs for No. 2 oils may be reallocated to the prices for any general refinery product or products, including propane, or for aviation jet fuel.

(B) Beginning on April 21, 1976, no increased product costs for No. 2 oils may be reallocated to prices for any covered product.

* * * * *

(iv) *Propane.* To the extent that a seller does not allocate its increased product costs for propane to the prices for that product, it may reallocate the unallocated part of its increased product costs for that product to the prices for gasoline or for any other general refinery product (or products), or for both or all of them, in whatever amounts the seller deems appropriate. No increased product costs for propane may be reallocated to the prices for No. 2 oils or for aviation jet fuel.

* * * * *

(3) With respect to each reallocation of increased product costs pursuant to this paragraph, a seller shall:

(i) Determine the increased product cost pursuant to the definition of § 212.92 of the product from which increased product costs are to be reallocated, but without regard to such reallocation, and then adjust downward the amount so determined, for purposes of determining prices of that product, by a per unit amount which is equal to the total dollar amount which is reallocated from such product, divided by the same number of units fh inventory as was first used to determine the unadjusted amount of increased product cost of such product, and

(ii) Determine the increased product cost pursuant to the definition of § 212.92 of the product to which increased product costs are to be reallocated, but without regard to such reallocation, which amount may then be adjusted upward, for purposes of determining prices of that product, by a per unit amount which is not more than the total dollar amount which is reallocated to such product, divided by the same number of units in inventory as was first used to determine the adjusted product cost of such product.

* * * * *

[FR Doc.77-22235 Filed 8-2-77;8:45 am]

Title 12—Banks and Banking

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. 77-473]

PART 563—OPERATIONS

Mortgage-Backed Bonds

JULY 27, 1977.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: This rule revises the Board's mortgage-backed-bond regulation to delegate authority to the Director of the Board's Office of Examinations and supervision to waive eligibility requirements and restrictions pertaining to such bonds. The Federal Home Loan Bank Board, acting in its capacity of operating head of the Federal Savings and Loan Insurance Corporation, believes this change is needed to shorten Board processing time with regard to waiver requests.

EFFECTIVE DATE: August 3, 1977.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, 202-376-3556.

SUPPLEMENTARY INFORMATION: The Board finds that (1) notice and public procedure are unnecessary under 5 U.S.C. 553(b) and 12 CFR 508.11, because the amendment is related to Board management and rules of Board organization, procedures and practice, and (2) publication of said amendment for the 30-day period specified in 5 U.S.C. 553(d) and 12 CFR 508.14 prior to effective date is unnecessary for the same reason.

Accordingly, 12 CFR Part 563 is amended by adding a new paragraph (g) to § 563.8-2, to read as follows:

§ 563.8-2 Issuance of mortgage-backed bonds.

* * * * *

(g) *Delegation of waiver authority to Director, Office of Examinations and Supervision.* Requests for waiver of eligibility requirements and restrictions prescribed under paragraphs (a) and (b) of this section, and all supporting information, shall be filed with the Supervisory Agent, who shall prepare a report and recommendation on the request to be submitted to the Director, Office of Examinations and Supervision, within 10 business days after receipt of such filing. The Director is authorized, on behalf of the Board, to grant such waiver or waivers if in his opinion the policies, condition, or operation of the requesting institution, relative to the terms of the proposed bond issue, do not afford a basis for supervisory objection thereto. In the event that the Director has not acted favorably on the request within 10 business days after receipt of such materials from the Supervisory Agent, the request shall be submitted for decision by the Corporation and the requesting institution shall be so informed.

(Sec. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730). Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

J. J. FINN,
Secretary.

[FR Doc.77-22307 Filed 8-2-77;8:45 am]

Title 16—Commercial Practices

CHAPTER 1—FEDERAL TRADE COMMISSION

[Docket No. 8847-o]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

American General Insurance Co., Et Al.

AGENCY: Federal Trade Commission.

ACTION: Final order of divestiture.

SUMMARY: This order, among other things, requires a Houston, Texas insur-

ance company to divest itself completely of the Fidelity & Deposit Co. of Maryland, subject to FTC approval, and prohibits the firm, for a ten-year period, from acquiring any U.S. company engaged in fidelity or surety underwriting, without prior Commission consent.

DATES: Complaint issued June 17, 1971. Final Order issued June 28, 1977.[1]

FOR FURTHER INFORMATION CONTACT:

David I. Wilson, Federal Trade Commission, Bureau of Competition, 6th and Pennsylvania Ave. NW., Washington, D.C. 20580, 202-724-1276.

SUPPLEMENTARY INFORMATION: In the Matter of American General Insurance Company, a corporation, respondent, and Fidelity & Deposit Co. of Maryland, a corporation, intervenor. The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows:

Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 18.)

The Final Order of divestiture, including further requiring report of compliance therewith, is as follows:

FINAL ORDER

This matter having been heard by the Commission upon the appeal of respondent from the initial decision, and upon briefs and oral argument in support thereof and opposition thereto, and the Commission for the reasons stated in the accompanying Opinion having determined to sustain the initial decision with certain modifications:

It is ordered, That the initial decision of the administrative law judge, pages 1-48, be adopted as the Findings of Fact and Conclusions of Law of the Commission, except to the extent indicated in the accompanying Opinion.

Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

It is further ordered, That the following Order to Cease and Desist be, and it hereby is, entered:

ORDER

It is ordered, That:

I.

Respondent, American General Insurance Company (hereinafter "American General"), a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns, within one year from the date this Order becomes final and subject to prior approval of the Federal Trade Commission, divest absolutely and in good faith, all stock, assets, title properties, interests, rights and privileges, of whatever nature, tangible and intangible, acquired by American General as a result of its acquisition of Fidelity and Deposit Company, together with all contract rights, premiums payable, buildings, improvements, equipment, additions and other property of whatever description which has been added since that acquisition or hereafter shall be added to the property or assets of Fidelity and Deposit Company of Maryland ("Fidelity and Deposit"), so as to restore Fidelity and Deposit as a going concern and effective competitor in the fidelity and surety bond businesses.

II.

By such divestiture none of the assets, properties, title, interest, rights or privileges described in Paragraph I of this Order shall be sold or transferred, directly or indirectly, to any person who is at the time of divestiture an officer, director, employee or agent of or under the control or direction of American General or any of its subsidiary or affiliate corporations, or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common and/or preferred stock of American General.

III.

No method, plan or agreement of divestiture to comply with this Order shall be adopted or implemented by American General save upon such terms and conditions as first shall be approved by the Federal Trade Commission.

IV.

Pending divestiture, the assets and business acquired from Fidelity and Deposit shall be maintained and operated as a separate corporation with separate books of account, separate management, separate assets, and separate personnel.

V.

Pending divestiture, no substantial property or other assets of the separate corporation referred to in Paragraph IV herein shall be sold, leased, otherwise disposed of or encumbered, other than in the normal course of business, without the consent of the Federal Trade Commission, and American General shall not commingle any assets owned or controlled by such separate corporation with any assets owned or controlled by American General.

VI.

For the period of three years from the date on which this Order becomes final, no individual employed by Fidelity and Deposit or the separate corporation referred to in Paragraph IV herein shall be employed by American General.

VII.

Pending divestiture, the underwriting departments and selling and management personnel of the separate corporation referred to in Paragraph IV herein and American General shall be conducted independently of each other.

VIII.

Pending divestiture, American General shall maintain the separate corporation referred to in Paragraph IV herein as an independent entity and take no steps to impair such corporation's economic and financial position.

IX.

American General shall forthwith cease any and all representation on the board of directors of Fidelity and Deposit and cease and desist from taking any steps to nominate, seat, or admit any representative of Fidelity and Deposit to the board of directors of American General.

X.

Fidelity and Deposit shall forthwith cease any and all representation on the board of directors of American General and cease and desist from taking any steps to nominate, seat, or admit any representative of American General to the board of directors of Fidelity and Deposit.

XI.

American General shall forthwith cease and desist from acquiring, directly or indirectly, for a period of ten (10) years from the date on which this Order becomes final, without the prior approval of the Federal Trade Commission, the share capital, assets or interest of any corporation engaged in fidelity and/or surety underwriting in the United States.

The provisions of this paragraph shall include any arrangement pursuant to which American General acquires the market share, in whole or in part, of any concern, corporate or noncorporate, which is engaged in fidelity and/or surety underwriting in the United States, (a) through such concern's discontinuing the underwriting of such product lines or (b) by reason of such concern's discontinuing the underwriting of such product lines and thereafter transferring to American General customer and account lists or in any other way making available to American General access to customers or customer accounts.

XII.

Within thirty (30) days from the effective date of this Order and every sixty (60) days thereafter until it has fully complied with Paragraph I of this Order, American General shall submit a verified report in writing to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying or has complied therewith. All such reports shall include, in addition to such other information and documentation as may hereafter be requested, (a) a specification of the steps taken by American General to make public its desire to divest Fidelity and Deposit, (b) a list of all persons or organizations to whom notice of divestiture has been given, (c) a summary of all discussions and negotiations together with the identity and address of all interested persons or organizations, and (d) copies of

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

all reports, internal memoranda, offers, counter-offers, communications and correspondence concerning said divestiture.

XIII.

American General shall notify the Commission of any proposed change at least 30 days prior to the proposed change in the corporate respondent, American General, such as dissolution, assignment or sale resulting in the emergence of a succesor corporation(s), the creation of dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

CAROL M. THOMAS,
Secretary.

[FR Doc.77-22303 Filed 8-2-77;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 77-188]

PART 153—ANTIDUMPING

Cast Iron Soil Pipe From Poland; Revocation

Correction

In FR Doc. 77-21538, published at page 38176, in the issue for Wednesday, July 27, 1977, the heading should read as set forth above.

Title 20—Employees' Benefits

CHAPTER VIII—JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

PART 901—REGULATIONS GOVERNING THE PERFORMANCE OF ACTUARIAL SERVICES UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 902—RULES REGARDING AVAILABILITY OF INFORMATION

Adoption of Provisions Governing Enrollment of Actuaries and Public Availability of Information

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Final rule.

SUMMARY: This final rule is being adopted for the second time in order to comply with a July 22, 1977, order of the United States Court of Appeals for the District of Columbia in *Sol Tabor* v. *Joint Board for the Enrollment of Actuaries* (No. 76-1947). The Court's order remanded the case to the Board so that it could adopt new rules governing the enrollment of individuals who apply for enrollment before January 1, 1976, accompanied by a contemporaneous statement of basis and purpose as required by section 4(b) of the Administrative Procedure Act, 5 U.S.C. 553(c). This action is intended to comply with the Court's order, to enable interested persons to petition for changes in the rule, and to otherwise insure the present availability of individuals enrolled to perform actuarial services with respect to plans to which the Employee Retirement Income Security Act of 1974 applies.

EFFECTIVE DATE: January 14, 1976.

FOR FURTHER INFORMATION CONTACT:

Forest D. Montgomery, Counselor to the General Counsel, U.S. Department of the Treasury, Washington, D.C. 20220, 202-566-5311.

SUPPLEMENTARY INFORMATION: On July 22, 1977, the United States Court of Appeals for the District of Columbia Circuit held that the Joint Board for the Enrollment of Actuaries failed to comply with § 4(b) of the Administrative Procedure Act (APA) in promulgating its regulations governing enrollment of pre-1976 applicants. *Sol Tabor* v. *Joint Board for the Enrollment of Actuaries* (No. 76-1947). Those regulations, which appear in the FEDERAL REGISTER of January 14, 1976 (41 FR 2080) were vacated and the case "remanded to the Board to enable it to adopt new rules accompanied by a contemporaneous statement of basis and purpose." (As the Court's statement clearly indicates, the Board was directed to adopt new rules, not to initiate a new rulemaking proceeding. See also footnote 14 of the Court's opinion.) The Court held that the Board failed to explain the reasons why it did not adopt a "two-tier" method of enrollment, and also did not explain the basis and purpose of the enrollment requirements it imposed in addition to experience. The purpose of this statement is to remedy the Board's procedural defect in failing to meet the section 4(b) requirement of the APA, 5 U.S.C. 553(c), that an adopting agency "incorporate in the rules adopted a concise general statement of their basis and purpose."

HISTORY OF THE RULES

The Board was established by the Secretary of the Treasury and the Secretary of Labor in February 1975. On March 14, 1975, notice of a public meeting of the Board was published and public comment solicited on implementing section 3042 of the Employee Retirement Income Security Act of 1974 (ERISA). 40 FR 11918. That public meeting was held on March 19, 20, 1975. Proposed rules were issued on May 9, 1975, and comments solicited. 40 FR 20326. A public hearing was held on June 2, 1975. On August 27, 1975, the Board withdrew a substantial portion of the initial proposed rules in deference to widespread criticism. On the same date, a second set of proposed rules was issued to operate as temporary rules so that the Board could begin the enrollment process. 40 FR 38147. Comments were again invited and a hearing scheduled for November 24, 1975; that public hearing was held as scheduled. The proposed rules published in August were adopted as final on January 14, 1976, without substantive changes. 41 FR 2080. (It is the preamble to the final regulations published on January 14, 1976, which the Court found inadequate under section 4(b) of the APA.)

SUBSTANCE OF THE NEW RULES

The new rules which follow supersede those vacated by the Court on July 22, 1977. Following the Court's decision, the Board convened to consider whether substantive changes in those rules were warranted. After reconsidering the regulations vacated, the Board determined to issue new rules which are the same as the regulations vacated. The Board believes that its experience administering the enrollment of pre-1976 applicants has vindicated its rules and that any weakening of the requirements imposed for pre-1976 applicants could affect the actuarial soundness of pension plans serviced by individuals enrolled under weaker rules, possibly to the detriment of the plan participants. Moreover, any such weakening of the rules would be fundamentally unfair to those applicants previously enrolled. In making this decision, the Board was mindful of the Court's admonition that section 3042 of ERISA "reflects Congress' determination that only competent actuaries should be permitted to service private pension plans." (slip opinion, p. 2)

"TWO-TIER" ENROLLMENT SYSTEM

Some commenters suggested that the Board adopt a so-called "two-tier" system of enrollment, i.e., one enrollment standard for actuaries working on smaller and simpler plans who do not possess a high level of actuarial skills, and a second enrollment standard (or second tier) for persons with a high level of actuarial skills examining the larger pension plans. The rules herein adopted do not provide for such a system which, as the legislative history indicates, was to be adopted only if feasible. See Report of the Ways and Means Committee on H.R. 12855, H. Rept. 93-807, 93d Cong., p. 93 (1974). See also House Senate Conference Committee Report, H. Rept. 93-1280, 93d Cong., p. 362 (1974). It is noteworthy that H. Rept. 93-807 also states that actuaries enrolled under ERIS "should meet a reasonable standard of competence * * *."

The Board determined that a "two-tier" enrollment system was not feasible, and the regulations reflect this basic policy decision. There were many reasons for this decision of the Board, but the chief one was the extreme difficulty of formulating standards defining what is a "smaller and simpler plan." The immediate difficulty perceived by the Board was that smaller plans were not necessarily simpler plans. Indeed, on occasion they present difficult actuarial problems unencountered by larger plans. Some of the complicating factors in determining what are "simpler" plans are:

(1) Integration of the plan with social security benefits,

(2) Cost of living adjustments,

(3) Maximum and/or minimum benefit provisions,

(4) Disability benefits,

(5) Liberalized early retirement factors,

(6) Equity variable annuities,

(7) Dependents' income benefits, and

(8) Survivor annuities.

Such complex factors raised serious doubts about the feasibility of adequately defining a "simple" plan.

After regulations were developed, it would have been necessary to decide who would determine whether particular plans qualified as simple plans under the regulations. However, the Joint Board had no staff and no budget, and the staffs and budgets of the Department of Labor and of the Internal Revenue Service were expected to be barely adequate to meet their other responsibilities under ERISA. Even if funds were available, training new people would have put an additional strain on the key knowledgeable people already on hand. In addition, forms would have had to be developed or revised to determine what were smaller and simpler plans.

Prescribing standard tables (which the cited Conference Report recognized as a concomitant of the two-tier system) presented additional problems for which there were no satisfactory solutions, and hence indicated further that a two-tier system was not feasible. Who would have prescribed the standard tables, and on what basis? Would there have been tables using only one set of assumptions prescribed by the Board or would there have been a variety of such tables to choose from? If a variety, would the lower tier actuary have been free to select any of them, and would he have been qualified to make the choice? If only one table was used, would such enrolled actuary have been able to certify that it was his "best estimate" as required by ERISA? Since turnover varies greatly from group to group, how would this have been dealt with in standard tables? What about the variety of salary scales? Would lack of a salary scale or turnover, or use of standard tables, have been considered "reasonable actuarial assumptions" by IRS?

Other considerations also indicated that a two-tier system was not feasible. Regulations defining simple plans might have had socially undesirable effects upon pension plan design. For instance, plans might be structured to exclude benefits upon total disability or other benefits which could result in such plans not being treated as simple plans under the Board's regulations.

While the Board has not adopted a "two-tier" enrollment system in its rules, it has nevertheless effectuated the congressional purpose in suggesting a two-tier system, if it was feasible. The underlying reason for the two-tier proposal was to insure the enrollment of actuaries working on "smaller and simpler" plans who were thought generally not to possess the high level of skills of those actuaries evaluating the larger pension plans. The Board insured enrollment of actuaries not possessing such high skills by imposing an examination requirement, and designing its examinations to test only for the *minimum level of competence* needed to perform the actuarial services now required by ERISA, regardless of the size of the pension plan. Thus, even if the Board had issued regulations embodying an enrollment system setting forth two standards of enrollment, the second-tier enrollment requirements for the actuaries working on "smaller and simpler" plans *would have been the same as the enrollment requirements actually adopted.* In this fashion, the Board avoided the complexities inherent in a two-tier system, which the Board believes make such a system infeasible, and at the same time effectively carried out the intent Congress had in mind in suggesting the "two-tier" system—that actuaries with less than the highest skills who work on smaller and simpler plans should be enrolled.

The actuarial organizations commenting also favored a "one-tier" enrollment system.

Enrollment Requirements

Several comments expressed the view that there should be no standards and qualifications for those who apply for enrollment before January 1, 1976 other than experience. The Board has rejected the suggestion that such standards and qualifications be so restricted.

From the beginning the Board has been sensitive to its primary statutory responsibility, to enroll only those individuals competent to provide the actuarial services now required by ERISA. The major policy decision facing the Board was how to formulate reasonable standards and qualifications to insure enrollment only of those applicants meeting "a reasonable standard of competence." See H. Rept. 93-807, 93d Cong., 93 (1974).

The Board considered the problems inherent in basing its enrollment standards solely on the statutorily mandated experience requirement. (Section 3042 of ERISA provides that the Board's standards and qualifications for pre-1976 applicants shall include a requirement for "an appropriate period of responsible actuarial experience relating to pension plans.") The problems an experience-only standard would have engendered were manifest. A procedure confined to an analysis of experience alone would have necessarily had to rely to a great extent on the application (and any accompanying materials) of the individual applying for enrollment, particularly if the applicant was self-employed. The Board believed that applicants, in their own self-interest, could understandably be expected to paint as favorable a picture as possible of their actuarial experience. In some cases, that self-interest could be expected to exceed the bounds of candor. This would place applicants who described their experience in more mundane or humble terms at a disadvantage.

Nor would employer verifications or the statements of contemporaries of the applicant be immune from human frailty. An employer, asked to verify an applicant's experience and to express an opinion as to the worth of that experience, might be biased for or against the applicant. In any event, the employer's opinion would be inherently subjective and lead to varying evaluations of candidates with equal qualifications.

The problem reduced to the fact that if the Board were to rely on experience alone as the single criterion for enrollment, its decision would necessarily rest to a great extent on the application on its face and any employer's verification of the applicant's experience. The Board believed that basing its judgments on such inherently subjective information would prevent it from fulfilling its responsibility to enroll only those actuaries who had demonstrated a minimum level of competence.

Accordingly, the Board made the basic policy decision that the reasonable standards and qualifications for enrollment would include requirements designed to provide the Board with more objective evidence of each applicant's actuarial competence.

These standards are designed to afford an applicant the opportunity to objectively demonstrate his/her competence. They are set out in § 901.12 of the regulations published at the end of this statement. Without repeating the details of those rules, they may be said to require college-level education in the actuarial science field, or the passing of a proctored examination of certain actuarial organizations, or the passing of a Board examination.

The Board considered that an applicant who could meet any one of these alternative requirements would have objectively demonstrated a minimum level of competence. Although the level of competence thus demonstrated would vary to some extent with the academic courses taken, the school attended, or the proctored examinations of actuarial organizations taken and passed, the purpose of the Board in imposing these additional requirements was only to provide the Board with an objective demonstration of at least a minimum level of competence, and it was therefore immaterial if the applicant's level of competence exceeded the minimum required. That these requirements are reasonable is indicated by the opinion of the court in *Rasulis* v. *Weinberger*, 502 F. 2d 1006 (7th Cir. 1974), in which requirements similar to those imposed by the Board for pre-1976 applicants were upheld.

The examination and education requirements imposed by the Board for pre-1976 applicants are not substantially the same as the requirements it has imposed for those who apply on or after January 1, 1976. This can best be explained by a comparison of the two sets of requirements, which follows:

Pre-January 1, 1976	*On and after January 1, 1976*
Bachelor's or higher degree in which the major area of concentration was (1) actuarial science or (2) mathematics, statistics, or computer science and at least 6 semester hours or 9 quarter hours of life contingencies.	Bachelor's or higher degree (1) in which the major area of concentration was actuarial mathematics, or (2) which included at least as many semester hours or quarter hours each in mathematics, statistics, actuarial mathematics and other subjects as the Board determines represent equivalence to a major area of concentration in actuarial mathematics; and either the Board pension examination or a proctored pension examination of an actuarial organization, as described below.
[or]	[or]
One Board examination in actuarial matheatics and methodology related to pension plans, including the funding requirements of ERISA.	Two Board examinations: a basic examination in basic actuarial mathematics and methodology including compound interest, principles of life contingencies, commutation functions, multiple-decrement functions, and joint life annuities; and a pension examination in actuarial mathematics and methodology relating to pension plans, including the provisions of ERISA relating to the minimum funding requirements and allocation of assets on plan termination.
[or]	[or]
Protored examination of actuarial organizations to attain designated classes of membership therein.	Proctored basic examination(s) of actuarial organizations adequate in terms of passing score, subject areas covered, and level of difficulty to the basic examination of the Board; and proctored pension examination(s) adequate in terms of passing score, subject areas covered, and level of difficulty to the pension examination of the Board.

As previously mentioned, the Board designed its examination for pre-1976 applicants to test only for the minimum level of competence. Board examinations for 1977 and future years will be considerably more difficult. This comparison demonstrates that the Board has not applied substantially the same standards to pre-1976 applicants and post-1975 applicants.

The Board has of this date enrolled 2,535 actuaries who applied for enrollment before January 1, 1976. Of these 700 were enrolled, in part, on the basis of passing one of the three examinations administered by the Board. While these statistics may not relate directly to the basis and purpose of the rules adopted by the Board, they afford some evidence that the Board's enrollment process has proven workable; that the Board has enrolled an ample number of actuaries to perform services under ERISA; that in practice the enrollment requirements imposed have proven to be a reasonable method for assessing the experience and competence of actuaries; and that these requirements have served as a sound basis for the decisionmaking which is necessarily a part of the enrollment process.

The Board has made every effort in this statement to comply with the letter and spirit of section 4(b) of the APA so that any interested person can file an intelligent petition under 5 U.S.C. 553(e) for repeal of any provisions of the new rules. However, any interested person who is unable, after reading this statement, to file an intelligent petition for reconsideration of any provision in the Board's new rules, should write the Board explaining the deficiencies so that an amended statement can be issued forthwith if the criticisms made have merit. Since there may be further litigation on the issues raised in the *Sol Tabor* case, the Board has endeavored to prepare a statement which will explain regulatory requirements that have been imposed by the Board in addition to the statutory experience requirement.

In view of the above, Title 20 CFR Parts 901 and 902 are adopted as follow:

Dated: July 29, 1977.

FOREST D. MONTGOMERY,
Acting Chairman, Joint Board for the Enrollment of Actuaries.

Sec.

901.0 Scope.

Subpart A—Definitions and Eligibility To Perform Actuarial Services

901.1 Definitions.
901.2 Eligibility to perform actuarial services.

Subpart B—Enrollment of Actuaries

901.10 Application for enrollment.
901.11 Enrollment procedures.
901.12 Eligibility for enrollment of individuals applying for enrollment before January 1, 1976.
901.13 Eligibility for enrollment of individuals applying for enrollment on or after January 1, 1976.

Subpart C—Standards of Performance for Enrolled Actuaries

901.20 Standards of performance of actuarial services.

Subpart D—Suspension and Termination of Enrollment [Reserved]

Subpart E—General Provisions

901.40 Special orders.

AUTHORITY: Sec. 3042, Subtitle C, title 3, Employee Retirement Income Security Act of 1974. (88 Stat. 1002, 29 U.S.C. 1241, 1242).

§ 901.0 Scope.

This part contains rules governing the performance of actuarial services under the Employee Retirement Income Security Act of 1974, hereinafter also referred to as ERISA. Subpart A of this Part sets forth definitions and eligibility to perform actuarial services; Subpart B of this Part sets forth rules governing the enrollment of actuaries; Subpart C of this Part sets forth standards of performance to which enrolled actuaries must adhere; Subpart D of this Part is reserved and will set forth rules applicable to suspension and termination of enrollment; and Subpart E of this Part sets forth general provisions.

Subpart A—Definitions and Eligibility To Perform Actuarial Services

§ 901.1 Definitions.

As used in this Part, the term:

(a) "Actuarial experience" means the performance of, or the direct supervision of, services involving the application of principles of probability and compound interest to determine the present value of payments to be made upon the fulfillment of certain specified conditions or the occurrence of certain specified events.

(b) "Responsible actuarial experience" means actuarial experience:

(1) Involving participation in making determinations that the methods and assumptions adopted in the procedures followed in actuarial services are appropriate in the light of all pertinent circumstances, and

(2) Demonstrating a thorough understanding the principles and alternatives involved in such actuarial services.

(c) "Month of responsible actuarial experience" means a month during which the actuary spent a substantial amount of time in responsible actuarial experience.

(d) "Responsible pension actuarial experience" means responsible actuarial experience involving valuations of the liabilities of pension plans, wherein the performance of such valuations requires the application of principles of life contingencies and compound interest in the determination, under one or more standard actuarial cost methods, of such of the following as may be appropriate in the particular case:

(1) Normal cost.

(2) Accrued liability.

(3) Payment required to amortize a liability or other amount over a period of time.

(4) Actuarial gain or loss.

(e) "Month of responsible pension actuarial experience" means a month during which the actuary spent a substantial amount of time in responsible pension actuarial experience.

(f) "Applicant" means an individual who has filed an application to become an enrolled actuary.

(g) "Enrolled actuary" means an individual who has satisfied the standards and qualifications as set forth in this part and who has been approved by the Joint Board (or its designee) to perform actuarial services required under ERISA or regulations thereunder.

(h) "Actuarial services" means performance of actuarial valuations and preparation of any actuarial reports.

§ 901.2 Eligibility to perform actuarial services.

(a) *Enrolled actuary.* Subject to the standards of performance set forth in Subpart C of this part, any individual who is an enrolled actuary as defined in § 901.1(g) may perform actuarial services required under ERISA or regulations thereunder. Where a corporation, partnership, or other entity is engaged to provide actuarial services, such services may be provided on its behalf only by an enrolled actuary who is an employee, partner or consultant.

(b) *Government officers and employees.* No officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, may perform actuarial services required under ERISA or regulations thereunder if such services would be in violation of 18 U.S.C. 205. No Member of Congress or Resident Commissioner (elect or serving) may perform such actuarial services if such services would be in violation of 18 U.S.C. 203 or 205.

(c) *Former government officers and employees*—(1) *Personal and substantial participation in the performance of actuarial services.* No former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, shall perform actuarial services required under ERISA or regulations thereunder or aid or assist in the performance of such actuarial services, in regard to particular matters, involving a specific party or parties, in which the individual participated personally and substantially as such officer or employee.

(2) *Official responsibility.* No former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, shall, within 1 year after his employment has ceased, perform actuarial services required under ERISA or regulations thereunder in regard to any particular matter involving a specific party or parties which was under the individual's official responsibility as an officer or employee of the Government at any time within a period of 1 year prior to the termination of such responsibility.

Subpart B—Enrollment of Actuaries

§ 901.10 Application for enrollment.

(a) *Form.* As a requirement for enrollment, an applicant shall file with the Executive Director of the Joint Board a properly executed application on a form or forms specified by the Joint Board, and shall agree to comply with the regulations of the Joint Board.

(b) *Additional information.* The Joint Board or Executive Director, as a condition to consideration of an application for enrollment, may require the applicant to file additional information and to submit to written or oral examination under oath or otherwise.

(c) *Denial of application.* If the Joint Board proposes to deny an application for enrollment, the Executive Director shall notify the applicant in writing of the proposed denial and the reasons therefor, of his rights to request reconsideration, of the address to which such request should be made and the date by which such request must be made. The applicant may, within 30 days from the date of the written proposed denial, file a written request for reconsideration therefrom, together with his reasons in support thereof, to the Joint Board. The Joint Board may afford an applicant the opportunity to make a personal appearance before the Joint Board. A decision on the request for reconsideration shall be rendered by the Joint Board as soon as practicable. In the absence of a request for reconsideration within the aforesaid 30 days, the proposed denial shall, without further proceeding, constitute a final decision of denial by the Joint Board.

§ 901.11 Enrollment procedures.

(a) *Enrollment.* The Joint Board shall enroll each applicant it determines has met the requirements of these regulations and shall so notify the applicant. Each enrollment shall be valid for a period of five years from its date or the date of any renewal thereof. Subject to the provisions of Subpart D of this Part, an enrollment shall, upon application made not more than six months before the date of the expiration of its original period or any renewal thereof, be automatically renewed for a period of five years from such date.

(b) *Enrollment certificate.* The Joint Board (or its designee) shall issue a certificate of enrollment to each actuary who is duly enrolled under this part.

(c) *Rosters.* The Executive Director shall maintain rosters of all actuaries who are duly enrolled under this part and of all individuals whose enrollment has been suspended or terminated.

§ 901.12 Eligibility for enrollment of individuals applying for enrollment before January 1, 1976.

(a) *In general.* An individual applying before January 1, 1976, to be an enrolled actuary must fulfill the experience requirements of paragraph (b) of this section and either the examination requirements of paragraph (c) of this section or the educational requirements of paragraph (d) of this section.

(b) *Qualifying experience.* Within a 15 year period immediately preceding the date of application, the applicant shall have completed either:

(1) A minimum of 36 months of responsible pension actuarial experience, or

(2) A minimum of 60 months of responsible actuarial experience, including at least 18 months of responsible pension actuarial experience.

(c) *Examination requirement.* The applicant shall satisfactorily complete the Joint Board examination requirement of paragraph (c)(1) of this section or the organization examination requirement of paragraph (c)(2) of this section.

(1) *Joint Board examination.* To satisfy the Joint Board examination requirement, the applicant shall have completed, to the satisfaction of the Joint Board, an examination prescribed by the Joint Board in actuarial mathematics and methodology related to pension plans, including the funding requirements of ERISA.

(2) *Organization examination.* (i) To satisfy the organization examination requirement, the applicant shall, before March 1, 1975, have attained by proctored examination one of the following classes of qualification in one of the following organizations:

(A) Member of the American Academy of Actuaries,

(B) Fellow or Member of the American Society of Pension Actuaries,

(C) Fellow or Associate of the Casualty Actuarial Society,

(D) Fellow or Member of the Conference of Actuaries in Public Practice,

(E) Fellow or Associate of the Society of Actuaries, or

(F) A class attained by proctored examination in any other actuarial organization in the United States or elsewhere if the Joint Board determines that the subject matter included in such examination, complexity of questions, and the minimum acceptable qualifying score are at least comparable to proctored examinations administered by any of the above organizations before March 1, 1975; or

(ii) On or after March 1, 1975, the applicant shall have attained one of the classes of qualification specified in paragraph (c)(2)(i) of this section, the attainment of such qualification having been by proctored examination under requirements determined by the Joint Board to be of not lower standards than the requirements for qualification during the 12 months immediately preceding March 1, 1975.

(d) *Qualifying formal education.* Prior to filing an application, the applicant shall have satisfied one of the following educational requirements:

(1) Received a bachelor's or higher degree from an accredited college or university, such degree having been granted after the satisfactory completion of a course of study in which the major area of concentration was actuarial science, or

(2) Received a bachelor's or higher degree from an accredited college or uni-

versity, such degree having been granted after the satisfactory completion of a course of study in which the major area of concentration was mathematics, statistics, or computer science, and shall have successfully completed at least 6 semester hours or 9 quarter hours of courses in life contingencies at an accredited college or university.

(e) *Disreputable conduct.* The applicant may be denied enrollment if it is found that he/she, after his/her eighteenth birthday, has:

(1) Engaged in any conduct evidencing fraud, dishonesty or breach of trust; or

(2) Been convicted of any of the offenses referred to in section 411 of ERISA; or

(3) Submitted false or misleading information on an application for enrollment to perform actuarial services or in any oral or written information submitted in connection therewith or in any report presenting actuarial information to any person, knowing the same to be false or misleading.

§ 901.13 Eligibility for enrollment of individuals applying for enrollment on or after January 1, 1976.

Subpart C—Standards of Performance for Enrolled Actuaries

§ 901.20 Standards of performance of actuarial services.

In the discharge of duties required by ERISA of enrolled actuaries with respect to any plan to which the Act applies:

(a) *In general.* An enrolled actuary shall undertake an actuarial assignment only when qualified to do so.

(b) *Professional duty.* An enrolled actuary shall not perform actuarial services for any person or organization which he/she believes or has reasonable grounds for believing may utilize his/her services in a fraudulent manner or in a manner inconsistent with law.

(c) *Advice or explanations.* An enrolled actuary shall provide to the plan administrator upon appropriate request, supplemental advice or explanation relative to any report signed or certified by such enrolled actuary.

(d) *Conflicts of interest.* In any situation in which the enrolled actuary has a conflict of interest with respect to the performance of actuarial services, of which the enrolled actuary has knowledge, he/she shall not perform such actuarial services except after full disclosure has been made to the plan trustees, any named fiduciary of the plan, the plan administrator, and, if the plan is subject to a collective bargaining agreement, the collective bargaining representative.

(e) *Assumptions, calculations and recommendations.* The enrolled actuary shall exercise due care, skill, prudence and diligence to ensure that:

(1) The actuarial assumptions are reasonable in the aggregate, and the actuarial cost method and the actuarial method of valuation of assets are appropriate,

(2) The calculations are accurately carried out, and

(3) The report, any recommendations to the plan administrator and any supplemental advice or explanation relative to the report reflect the results of the calculations.

(f) *Report or certificate.* An enrolled actuary shall include in any report or certificate stating actuarial costs or liabilities, a statement or reference describing or clearly identifying the data, any material inadequacies therein and the implications thereof, and the actuarial methods and assumptions employed.

(g) *Utilization of enrolled actuary designation.* An enrolled actuary shall not advertise his/her status as an enrolled actuary in any solicitation related to the performance of actuarial services, and shall not employ, accept employment in partnership, corporate, or any other form, or share fees with, any individual or entity who so solicits. However, the use of the term "enrolled actuary" to identify an individual who is named on the stationery, letterhead or business card of an enrolled actuary, or of a partnership, association, or corporation shall not be considered in violation of this section. In addition, the term "enrolled actuary" may appear after the general listing of an enrolled actuary's name in a telephone directory provided such listing is not of a distinctive nature.

Subpart D—Suspension and Termination of Enrollment [Reserved]

Subpart E—General Provisions

§ 901.40 Special orders.

The Joint Board reserves the power to issue such special orders as it may deem proper in any cases within the scope of this Part.

PART 902—RULES REGARDING AVAILABILITY OF INFORMATION

Sec.

902.1 Scope.
902.2 Definitions.
902.3 Published information.
902.4 Access to records.
902.5 Appeal.

AUTHORITY: Sec. 3042, Subtitle C, Title 3, Employee Retirement Income Security Act of 1974. (88 Stat. 1002, 29 U.S.C. 1241, 1242).

This Part is issued by the Joint Board for the Enrollment of Actuaries (the "Joint Board") pursuant to the requirements of section 552 of Title 5 of the United States Code, including the requirements that every Federal agency shall publish in the FEDERAL REGISTER, for the guidance of the public, descriptions of the established places at which, the officers from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

§ 902.2 Definitions.

(a) *"Records of the Joint Board."* For purposes of this Part, the term "records of the Joint Board" means rules, statements, opinions, orders, memoranda, letters, reports, accounts and other papers containing information in the possession of the Joint Board that constitute part of the Joint Board's official files.

(b) *"Unusual Circumstances."* For purposes of this Part, "unusual circumstances" means, but only to the extent reasonably necessary for the proper processing of the particular request:

(1) The need to search for and collect the requested records from other establishments that are separate from the Joint Board's office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

§ 902.3 Published information.

(a) FEDERAL REGISTER. Pursuant to sections 552 and 553 of Title 5 of the United States Code, and subject to the provisions of § 902.5, the Joint Board publishes in the FEDERAL REGISTER for the guidance of the public, in addition to this Part, descriptions of its organization and procedures, substantive rules of general applicability, and, as may from time to time be appropriate, statements of general policy, and interpretations of general applicability.

(b) *Other published information.* From time to time, the Joint Board issues statements to the press relating to its operations.

(c) *Obtaining printed information.* If not available through the Government Printing Office, printed information released by the Joint Board may be obtained without cost from the Executive Director of the Joint Board ("Executive Director").

§ 902.4 Access to records.

(a) *General rule.* All records of the Joint Board, including information set forth in section 552(a)(2) of Title 5 of the United States Code, are made available to any person, upon request, for inspection and copying in accordance with the provisions of this section and subject to the limitations stated in section 552(b) of Title 5 of the United States Code. Records falling within such limitations may nevertheless be made available in accordance with this section to the extent consistent, in the judgment of the Chairman of the Joint Board ("Chairman"), with the effective performance of the Joint Board's statutory responsibilities and with the avoidance of injury to a public or private interest intended to be protected by such limitations.

(b) *Obtaining access to records.* Records of the Joint Board subject to this section are available by appointment for public inspection or copying during regular business hours on regular business days at the office of the Executive Director. Every request for access to such records, other than published records described in § 902.3, shall be signed and

submitted in writing to the Executive Director, Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, D.C. 20220, shall state the name and address of the person requesting such access, and shall describe such records in a manner reasonably sufficient to permit their identification without undue difficulty.

(c) *Fees.* A fee at the rate of $5.00 per hour or fraction thereof or the time required to locate such records, plus ten cents per standard page for any copying thereof, shall be paid by any person requesting records other than published records described in § 902.3. In addition, the cost of postage and any packaging and special handling shall be paid by the requester. Documents shall be provided without charge or at a reduced charge where the Chairman determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(d) *Actions on requests.* The Executive Director shall, within ten days (excepting Saturdays, Sundays and legal public holidays) from receipt of request, determine whether to comply with such request for records and shall immediately notify in writing the person making such request of such determination and the reason therefor, and of the right of such person to appeal any adverse determination, as provided in § 902.5. In unusual circumstances, the time limit for the determination may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which the determination is expected to be dispatched. No such notice shall specify a date that will result in an extension of more than ten working days.

§ 902.5 Appeal.

(a) Any person denied access to records requested under § 902.4, may within thirty days after notification of such denial, file a signed written appeal to the Joint Board. The appeal shall provide the name and address of the appellant, the identification of the records denied, and the dates of the original request and its denial.

(b) The Joint Board shall act upon any such appeal within twenty days (excepting Saturdays, Sundays and legal public holidays) of its receipt, unless for unusual circumstances the time for such action is deferred, subject to § 902.4(b), for not more than ten days. If action upon any such appeal is so deferred, the Joint Board shall notify the requester of the reasons for such deferral and the date on which the final reply is expected to be dispatched. If it is determined that the appeal from the initial denial shall be denied (in whole or in part), the requester shall be notified in writing of the denial, of the reasons therefor, of the fact the Joint Board is responsible for the denial, and of the provisions of section 552(a)(4) of Title 5 of the United States Code for judicial review of the determination.

(c) Any extension or extensions of time under §§ 902.4(d) and 902.5(b) shall not cumulatively total more than ten days (excepting Saturdays, Sundays and legal public holidays). If an extension is invoked in connection with an initial determination under § 902.4(d), any unused days of such extension may be invoked in connection with the determination on appeal under § 902.5(a), by written notice from the Joint Board.

[FR Doc.77-22325 Filed 7-29-77;4:42 pm]

Title 24—Housing and Urban Development

CHAPTER VIII—LOW INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-77-334]

Tax Exemption of Obligations of Public Housing Agencies and Related Amendments

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This regulation sets forth the conditions and procedures for HUD approval for the issuance of tax exempt obligations to finance Section 8 New Construction or Substantial Rehabilitation projects. The purpose is to clarify the existing regulation and to provide the requisite controls to carry out the purposes of the Federal tax exemption in relation to the provision of housing for lower-income families and persons under section 8 of the United States Housing Act.

ADDRESS: Rules Docket Clerk, Office of the Secretary, Department of Housing and Urban Development, 451 Seventh St. SW., Washington, D.C. 20410, 202-755-6703.

COMMENT DUE DATE: September 1, 1977. Comments should be filed with the Rules Docket Clerk.

EFFECTIVE DATE: August 3, 1977. Where all required HUD approval for tax exemptions under the Part 811 Subpart A regulations effective May 27, 1975, were issued prior to the effective date of these revised regulations, no further processing under these revised regulations is required even if the obligations have not been issued prior to the effective date of these revised regulations. If any HUD approvals pursuant to these revised regulations are required, such approval may be requested provided that the applicant complies with all provisions of these revised regulations.

FOR FURTHER INFORMATION CONTACT:

Joseph Burstein, Counsel to the Secretary, Department of Housing and Urban Development, Washington, D.C. 20410, 202-755-6480.

SUPPLEMENTARY INFORMATION: The Department gave notice on March 18, 1977, at 42 FR 15232 proposing to amend Title 24 of the Code of Federal Regulations by revising § 811.209(b). The comment period closed April 5, 1977.

By the deadline, the Department had received 22 comments from outside sources and three from its own offices in response to the March 18, 1977 publication. All comments including those received after the deadline were carefully considered, and changes have been made to the proposed regulations to reflect these comments as well as other changes in the proposed regulation, certain of which are technical clarification, others of which are substantive in nature and in the Secretary's judgment should be the subject of further public participation. The specific provisions on which the Secretary invites further comment are:

(1) Section 811.106(a)(4) includes a provision requiring that the loan on a project involving a profit-motivated owner may not exceed 90 percent of the reasonable development cost.

(2) Payment of Debt Service is permitted in the case of a physically completed project before all requirements for accepting the project (including EO requirements relating to construction) may have been met. However, full payments to the owner under the HAP Contract will not be made until all conditions applicable to full acceptance of the project are satisfied. Also, rent-up and occupancy are subject to such conditions, including those relating to EO and managerial responsibilities, as HUD may require. See § 811.108(b)(4).

(3) In order to further assure that the purpose of tax exemption, whether granted under the U.S. Housing Act of 1937 or by virtue of Section 103 of the Treasury Department's Regulations, 31 CFR Part 103, is carried out, the Regulation expands the conditions imposed with respect to tax exemption under Section 103 to include requirements relating to: (1) The amount of permanent obligations and the term of the HAP Contract; (2) Interim financing; and (3) Use of Project revenues. See §§ 880.115 and 881.115.

Changes described in items (1), (2), and (3) above are being made effective as part of Part 811; however, interested persons are invited to file comments, views and suggestions with respect to these changes. All comments should be filed with the office of Rules Docket Clerk.

Copies of all comments received will be available for inspection and copying in the Office of the Rule Docket Clerk.

All comments received will be considered before the Secretary adopts the changes described in items (1), (2), and (3) above on a final basis.

The Secretary finds that good cause exists for making the rule effective upon publication because of the many projects whose financing is being delayed pending this publication.

The prime direction of these regulatory changes is to provide a practical vehicle for financing section 8 housing with a type of security that will achieve the lowest possible interest cost, prevent the abuses of the financing of the section 23 (predecessor to Section 8) program and promote the integrity of the Section 8 program. Although this Regulation basically applies to tax exemption under Section 11(b) of the United States Housing Act of 1937, certain of its provisions are made applicable even where the exemption is established pursuant to Section 103(b) of the Treasury Regulations.

This application is being made in order to assure that the provisions of the Regulation are not evaded by obtaining the exemption under Treasury Regulation as opposed to Part 811. The authority to make this requirement is pursuant to HUD's obligation and authority under Section 8 Regulations to approve the terms and conditions of financing of Section 8 projects.

These amendments do not establish any new authority to provide tax-exempt financing of Section 8 projects. All of the activities permitted by this Regulation have in the past been carried out under the previous Administration. This amendment will simply tighten up those existing methods of Section 8 tax exempt financing which have been in effect since October 30, 1975.

The policy implications concerning tax-exempt vs. taxable bond financing are not meant to be resolved by these amendments. In the coming months the Department, along with the Treasury Department, will be reviewing the current uses of tax-exempt financing in connection with housing. The type of section 8 tax-exempt financing covered by this Regulation, as well as by regulations and rulings of the Internal Revenue Service, will be included in that review.

Briefly, obligations, in order to be tax exempt under this Regulation, must be issued by a PHA (including an agency or instrumentality PHA) in connection with a Section 8 project approved by HUD, in an amount and on terms and conditions approved by HUD. Section 811.104 sets forth the provisions pertaining to an application to HUD for approval as a PHA, and § 811.105 sets forth the provisions pertaining to an application to HUD for approval as an agency or instrumentality. An agency or instrumentality may be created by the parent PHA, or it may be otherwise created, so long as the creation of the agency or instrumentality and its utilization by the parent are not prohibited by state law. Its activities must be limited to carrying out or assisting in carrying out one or more low-income housing projects, and the assistance may consist only of borrowing and lending funds for the project. Section 811.105 also sets forth provisions concerning the relationship between the parent and the agency or instrumentality.

Under § 811.106, the amount of permanent tax-exempt obligations outstanding for a project may not exceed the estimated reasonable development cost of the project as determined by HUD, less any equity investment plus the reasonable expenses of issuing the obligations, capitalized interest on the permanent obligations during construction, and a reserve for debt service. HUD will prescribe terms and conditions to assure continued operation of the project in the manner contemplated by the HAP Contract.

Under § 811.107, the proceeds of the permanent obligations must be placed in escrow, to be disbursed only upon completion of the project and execution of a HAP Contract covering the project except for prior disbursements for capitalized interest. In the event of failure to complete the project, the escrowed funds are used to redeem the obligations.

Section 811.108 contains the provisions pertaining to tax exemption for interim obligations. This section also makes it explicit that the risk of completion of the project is on the interim lender and/or owner, rather than holders of the permanent obligations. Provisions are also included, however, for PHA inspections during construction; for making the HAP Contract effective as of the date when HUD is required to inspect the project for completion, assuming that the inspection when made finds it to have been acceptable; and for execution of a HAP Contract after acceptable physical completion, even though other conditions to execution of the Contract have not been met, with the limitation that the HAP payments be limited to the debt service requirements.

Section 811.108 imposes certain requirements with regard to the use of project revenues.

Section 811.110 provides that after HUD finds that all the necessary approvals pursuant to this regulation and other applicable regulations have been made, and that an Agreement to Enter Into a HAP Contract or HAP Contract has been executed, HUD shall issue a notification of approval of tax exemption and that this notification shall not be subject to revocation by HUD.

A discussion of the changes and the more recurrent and significant comments is set forth below. The section numbers refer to the numbers as contained in the final regulations except for several references to the section numbers in the proposed rule where necessary to understand a particular explanation.

CHANGES IN PART 811 SUBPART A

1. Section 811.101 has been retitled Purpose and Scope, and the scope of Part 811, Subpart A, has been explicitly restricted to Section 8 projects pursuant to 24 CFR Parts 880, 881 and 883. Language has also been added to indicate that tax exemption pursuant to section 11(b) in connection with other low-income housing projects are not subject to this subpart. These are clarifications, since the intent of the regulation was to cover only Section 8 projects. The title of Subpart A was changed for the same reason.

2. Section 811.102 has been expanded to include definitions of a number of additional key terms. The newly defined terms are: (a) Agency or Instrumentality, (b) Development Cost, (c) Expenses of Issuing the Obligations, (d) HAP Contract, (e) Parent Entity, and (f) Trustee. The definition of Development Cost includes inspections by PHAs during construction. The definition of Obligations has been clarified to indicate that bonds and notes can be issued for either permanent or interim financing. The definition of Secretary has been deleted because the term HUD is used throughout. A sentence was added to the definition of Obligations to note the exclusion of the obligations of a public housing agency as mortgagor (this exclusion is required by section 319(b) of the Housing and Community Development Act of 1974).

3. Section 811.103(a) has been revised to include the statement contained in section 11(b) that the income derived by the PHA from the project is exempt from taxation.

4. Language has been added to § 811.103(b)(1) directing specific attention to the provisions of the section 8 regulations concerning contract rent reduction to reflect savings as a result of tax-exempt financing.

5. Section 811.103(b)(4) has been added to require HUD approval of the terms and conditions of the financing under these regulations and other applicable HUD regulations, such as § 880.125 of the Section 8 New Construction regulation.

6. Section 811.104 has been rearranged for clarification. In addition, the section now provides that, in the absence of evidence to the contrary, certain evidence shall be considered satisfactory to HUD.

There was a comment suggesting that the regulation make it clear that a Participating Agency under 24 CFR 883.103 qualifies as a PHA. Accordingly, a provision has been added to § 811.104 that where the applicant is such a Participating Agency, it should include with its application a statement that it has been previously approved as a Participating Agency under Part 883.

7. Section 811.104(b), requiring that subsequent amendments must also be approved by HUD, makes explicit a requirement that was intended under the proposed rule.

8. A new § 811.105, Approval of Agencies or Instrumentalities, has been provided. The material in § 811.104(b) of the proposed rule has been moved to the new section, thus consolidating all material on eligibility of an agency or instrumentality into one section.

Since both the parent and the agency or instrumentality must qualify as PHAs, § 811.105(a)(2) provides that each must meet all the requirements specified in § 811.104.

There was a misunderstanding that an agency or instrumentality may only undertake a single project. Although an agency or instrumentality must be limited in its activities to low-income housing projects, it may perform such activities in connection with more than one such project. Another question was whether the agency or instrumentality had to be the owner of the project, or whether its activities could be limited to providing the financing. Accordingly, the words "carrying out a low-income housing project" have been changed to "carrying out or assisting in carrying out a low-income housing project(s) (including assistance by borrowing and lending funds)" (§ 811.105(a)(2)(iv)).

With respect to both §§ 811.104 and 811.105 there were questions as to what is "sufficient evidence" to establish that an entity is a PHA or an agency or instrumentality, and it was suggested that

a certification of counsel should be sufficient. To clarify HUD's position on this point, the term "sufficient evidence" has been changed to "evidence satisfactory to HUD". The opinion of counsel must be an "opinion of counsel acceptable to HUD."

9. Section 811.105(b) includes, with some changes, the provisions contained in § 811.104(b)(3) of the proposed rule, except for the provisions concerning the escrow and use of the proceeds of the obligations. The latter provisions should not have been placed under a heading referring only to agencies and instrumentalities because these provisions were intended to apply to all tax exempt permanent obligations of a PHA, whether or not the PHA is an agency or instrumentality. Accordingly, the provisions concerning the escrow and use of the proceeds of the permanent obligations are now set forth in a separate § 811.107, entitled Use of Proceeds of Permanent Obligations.

10. The first four of the provisions concerning the relationship between the agency or instrumentality and the parent entity are now characterized as "provisions requiring * * *", in order to make it clear that the requirement for HUD approval of tax exemption is the inclusion of provisions in the charter and/or other relevant documents. The continuing effect of the tax exemption is not dependent upon subsequent compliance with these provisions. Other changes in these provisions are the following:

(a) The charter or other organic document must provide that any amendments are subject to approval by HUD, as well as by the parent entity (§ 811.105(b)(1)).

(b) The documents must contain provisions requiring approval by the parent entity of each project, as well as of the projected program and expenditures of the agency or instrumentality (§ 811.105(b)(2)).

(c) The provision requiring approval by the parent entity of each issue of obligations not more than 60 days prior to the date of issue was misinterpreted as meaning that if there are any amendments the issue must be postponed for 60 days. To avoid such misunderstanding, a provision was added indicating that amendments may be approved at any time prior to the issuance of the obligations (§ 811.105(b)(3)).

(d) The provision requiring annual review by the parent entity of the activities and financial statements of the agency or instrumentality has been strengthened by requiring a financial audit, a review by the parent entity of the audit and of the activities of the agency or instrumentality, and the submission of a copy of the audit and review to HUD (§ 811.105(b)(4)).

11. A number of comments misinterpreted clause (vi) of § 811.104(b)(3) of the proposed rule (now § 811.105(b)(9) and (10)) as requiring that arrangements for transfer of title to the parent entity must be made in all cases. This was not the intent. The parent must agree in advance to accept title only in the following circumstances:

(a) In the event of dissolution of the agency or instrumentality.

(b) Where the parties have agreed that provision should be made in conjunction with the issuance of the obligations for title to be conveyed to the parent entity under specified circumstances. The inclusion or noninclusion of such provisions, however, in conjunction with the issuance of the obligations is not required by the regulations.

(c) In a third situation (discussed under comment 13(b) below), for the purpose of assuring continued operation of the project in the manner contemplated by the HAP Contract.

The foregoing intent has been clarified by incorporating specific references to the three situations, rearranging the provisions and changing the opening words of the former clause (vii) to indicate more explicitly that it is not a mandatory requirement.

12. A number of comments expressed the view that the provisions of the former clause (vii) (now § 811.105(b)(6)) were unduly rigid and restrictive particularly for cases involving syndicated ownership. Specifically, it was recommended that conveyance to the parent or another PHA be permitted, that the time or circumstances for the conveyance be for determination by the parties at the time the arrangements for financing are made, that conveyance of less than fee simple title might be appropriate in some situations (as where the agency or instrumentality holds only a lender's interest or a leasehold); and that arrangements other than escrow of title documents should be permissible. It was also pointed out that the provision requiring that the title be free of all encumbrances should make an exception for tenant leases. All of these recommendations have been incorporated by suitable language changes. In permitting alternatives to the escrow arrangement, the new language states that the alternative must provide comparable assurance of performance and must be approved by HUD.

13. Section 811.106 contains several important changes as follows:

(a) Paragraph (a)(1) states that the amount of outstanding permanent obligations tax-exempt under the regulation shall not exceed the estimated reasonable development cost of the low-income housing project as determined by HUD, less any equity investment, plus certain other amounts. (The words "less any equity investment" would be applicable in the case of a project where the Owner is making an equity investment toward the approved development cost). A new § 811.106(a)(2) make provisions for the issuance of additional obligations to finance additional development cost. Under these provisions, if the original issuance is in the full amount of the approved development cost, no additional tax-exempt obligations could be issued for the same project unless it is established to the satisfaction of HUD that the additional amount is needed for additional development cost and that this increase in the development cost is reasonable.

(b) Paragraph (a)(3) is a new provision which states that the owner shall be subject to such terms and conditions as HUD shall prescribe and that these terms and conditions shall include provisions designed to assure continued operation of the project as contemplated by the HAP Contract including provision for operation or ownership of the project by a PHA (other than an agency or instrumentality).

(c) If the project involves a profit-motivated owner, paragraph (a)(4) provides that the loan to the owner may not exceed 90 percent (determined in accordance with HUD rules) of the HUD-approved development cost.

(d) Paragraph (b) provides that the term of the HAP Contract may not exceed 30 years or the term of the obligations whichever is shorter. Section 101(c) of the Supplemental Housing Authorization Act of 1977 authorized, with certain exceptions, 30-year HAP Contracts for privately-owned, privately financed projects. It is assumed that a 30-year term should also be sufficient for publicly-owned or financed projects. However, because of the difficulty in meeting the low-income housing needs for non-elderly families, the term for such projects may with HUD approval be for up to 40 years.

(e) Paragraph (c) states that the anticipated interest cost and the ancillary costs of servicing the obligations must be shown to and approved by HUD as being reasonable in relation to prevailing costs in the tax exempt market for comparable obligations, taking into account any differences between the types of obligations.

(f) Paragraph (d) prohibits the issuance of tax exempt obligations under this regulation to refund permanent obligations. Refunding led to a wide variety of problems in the Section 23 program and this prohibition is deemed necessary to avoid such abuses. Comment 13(a) discusses necessary additional funding.

14. As noted in Comment 9, the provisions concerning the escrow of the proceeds of the permanent obligations and the use thereof are now included in a separate section (§ 811.107). It is now clear that the escrow requirement is applicable to all permanent tax-exempt obligations under the regulation except as provided in § 811.107(c) (see comment 14(d)). The new section incorporates the following significant changes:

(a) Several comments noted that the provisions permitting prior disbursement for expenses of issuance of the obligations was inconsistent with the provision requiring redemption of the obligations at par in the event of failure to complete the project. Accordingly, although the escrowed funds may include the amount of these expenses, disbursement may be made only upon completion and execution of a HAP Contract. Prior payment of the expenses of issuance may be made from the interim financing or by an ad-

vance from the developer/owner or contractor (§ 811.108(a)). Upon execution of the HAP Contract, the escrowed funds are to be disbursed for the debt service reserve fund, the expenses of issuing the obligations and the interim financing.

(b) Under paragraph (b), in the event the HAP Contract is not executed within the prescribed time, the permanent obligations must be redeemed from the funds in the escrow plus income from investment of the funds and less any debt service disbursements. This will provide for full redemption except in the event the payments for debt service exceed the the income from investments.

(c) Several comments expressed the view that the provision in the proposed rule concerning extensions of time were unduly restrictive, and that the interim lender or contractor, for example, might be willing to absorb or provide funds for additional costs. Accordingly, paragraph (b) now provides that the date for redemption may be extended to a later specified date in the event (1) the parties to the Agreement have agreed in writing to such extended date, and (2) additional funds, in the form of cash or an unconditional letter of credit, are added to the escrow to guarantee that there will be sufficient funds in the escrow on the extended date to pay all amounts that are then required to be paid from the escrow on at least as favorable a basis as if there had been no extension.

(d) In response to comments, paragraph (c) exempts from the escrow requirement three situations: (1) Where the obligations are unconditionally guaranteed by a State or by a county, city, or other unit of general local government, (2) where the construction advances are insured pursuant to the National Housing Act and (3) if the permanent obligations are not issued until after completion of construction. It was suggested that there might be other forms of guaranty or assurance providing comparable protection to the holders of the permanent obligations and HUD. Since no specific examples meeting this standard were cited, no additional exceptions were included in the regulation. It is anticipated that should there be other cases meeting this standard, they will be submitted to HUD with a request for waiver pursuant to 24 CFR Part 899.

(e) The regulation also provides that any amounts in the fund in excess of the original amount shall be available for any project purposes.

15. A number of comments directed attention to the fact that the failure of the proposed rule to deal specifically with the subject of interim financing created uncertainties in several respects, including the question of whether the interim financing could be tax exempt under the regulation and, if so, under what conditions. Accordingly, a new § 811.108, Interim Financing, has been added.

(a) Paragraph (a) states that the applicant may request a determination by HUD that the obligations for interim financing be tax exempt under this regulation. The amount may not exceed the estimated approved development cost of the project, plus the amount of the expenses of issuing the permanent obligations if these are to be paid prior to execution of the HAP Contract. The interim obligations must mature on a date not unreasonably beyond the stated date for completion of the project.

(b) Paragraph (b) contains a number of provisions which are applicable to interim financing whether or not such financing is tax exempt.

(c) Paragraph (b)(1) states that the terms and conditions must be consistent with those of the permanent obligations.

(d) Paragraph (b)(2) makes it explicit that the escrowed proceeds of the permanent obligations shall be available for repayment of the interim obligations, but only upon execution of the HAP Contract and otherwise in accordance with the terms of the escrow, and that the risk of completion is upon the developer/owner and the interim lender.

(e) A number of comments argued that under this system it would be impossible or difficult to obtain interim financing, and that at best it would add to the cost of the interim financing. Our experience in the Section 23 program, however, has shown that where the proceeds of the permanent obligations are used to finance development and construction, thus placing the risk of completion on the holders of those obligations, subsequent delays, cost overruns, or failures to complete construction, result in unacceptable difficulties including ultimate total costs far in excess of any possible additional interest cost of interim financing under the system provided by this regulation. It was also urged that performance and payment bonds and careful inspection during construction could provide sufficient protection without escrowing the proceeds of the permanent obligations. In our judgment, these are precautions and safeguards which can and should be taken by the interim lender, but they cannot provide the security of the interests of the permanent obligation holders and the Government provided by these regulations.

Our inquiries have indicated that interim lenders are ready and willing to accept the risk of completion, after satisfying themselves of the competence and reliability of the developer and/or construction contractor and imposing suitable requirements including bonding and construction inspection procedures of their own. In order to enhance the obtaining of interim financing at lower interest cost, consistent with the system under this regulation, the following new provisions have been added to § 811.108:

(1) Paragraph (b)(3) provides that the lender shall provide for such inspection during construction as the lender deems necessary; that copies of inspection reports shall be furnished to the PHA and to HUD; that the PHA shall to the extent of funds provided in the development cost also make inspections; that copies of these inspection reports as well as copies of any comments by the PHA on any inspection reports shall be furnished to the lender and HUD and that HUD shall promptly notify the parties that deficiencies must be corrected prior to completion of the project. However, failure of the PHA and/or HUD to make such inspections, comments or notifications shall not relieve the owner and lender of their obligation for completion of the project.

(2) In view of comments indicating concern about administrative delay on the part of HUD in making inspection upon completion or in execution of the HAP Contract, paragraph (b)(4) provides that if the HUD inspection when made finds the project to have been acceptable as of the date when the HUD inspection should have been made (10 working days after notification of project completion), the HAP Contract, when executed, shall be effective as of that earlier date.

(3) In view of comments that the interim lender is willing to be responsible for physical completion, but not for other requirements such as compliance with the approved marketing plan, paragraph (b)(5) provides that if HUD finds that the physical completion of the project is acceptable, but that there are other conditions to the execution of the HAP Contract that have not been met, HUD shall, upon request by the owner, execute or approve the execution of the HAP Contract on the basis that, until such evidence of completion is submitted to and found acceptable by HUD, (i) the Contract Rent for the purpose of computing Housing Assistance Payments shall be the monthly amount of the debt service on the permanent obligations attributable to the unit, and (ii) rent-up and occupancy shall be subject to such conditions as HUD may require.

16. A new § 811.109 has been added to provide that the trust indenture shall provide for the maintenance of reserves and/or accounts to assure that there are funds as necessary to meet all project requirements.

17. Several comments stated that there was a need for an official HUD determination in writing to the effect that the obligations have been found to qualify for tax exemption under the regulation, and that this determination would not be subject to revocation by HUD. Since this was intended to be the effect of the approval of the tax-exempt status of the obligations, a new section has been added to carry it out (§ 811.110, Approval of Obligations as Tax Exempt). Paragraph (a) provides for the issuance of such a HUD determination when all the necessary approvals have been made, with specific references to interim obligations where tax exemption for these as well as the permanent obligations was applied for and has been approved. Paragraph (b) states that the HUD notification of approval shall not be subject to revocation by HUD.

18. Section 811.105(b) of the proposed rule, which prohibited arbitrage obligations with an exception for temporary obligations to finance construction, has

been deleted in the final regulations. Many questions were raised as to the meaning and effect of this language in the proposed rule. It was determined that the purpose of these regulations would be better accomplished by deleting the language using the term arbitrage, and incorporating other controls, particularly the limitation on the amount of tax exempt obligations which may be outstanding (§ 811.106(a)), the prohibition of refunding obligations (§ 811.106(d)) and the new § 811.108 on Interim Financing.

19. There was a suggestion that language permitting exceptions by HUD be inserted in various places in the regulation. This suggestion has not been adopted because it would tend to encourage wholesale requests for exceptions and ultimately undermine the effectiveness of the regulation. Where unusual circumstances indicate a need for exeception, a waiver pursuant to 24 CFR Part 899 can be requested.

CHANGES IN RELATED PROVISIONS OF OTHER REGULATIONS

20. With respect to the proposed amendment to §§ 880.106(a) and 881.106(a), comments indicated there was a need to clarify the distinction between the fee payable by HUD for administration of the HAP Contract and the HFDA's charge for costs related to its financing activities. Accordingly, the language of this paragraph has been changed to clarify this distinction and to indicate expressly that the HFDA's cost of borrowing includes "the ancillary costs of servicing the obligations, such as trustee fees, maintenance of books and accounts and audit expenses."

21. With respect to the proposed amendment adding new §§ 880.115(c) and 881.115(c), comments indicated there was a need to clarify the meaning of the exception for a "Participating Agency under Part 883". Accordingly, the language of the exception has been changed to "other than an agency notified by HUD pursuant to 24 CFR 883.103 that it is a qualified Participating Agency."

22. In the proposed amendment of § 883.203(a), relating to the same subject matter as the amendment to §§ 880.106(a) and 881.106(a), language changes have been made corresponding to those discussed in comment 16.

23. A related amendment is being made to the title and opening paragraph of §§ 880.125 and 881.125 to clarify that the section applies where the permanent financing for a project is to be provided by a public agency or other entity including a PHA.

Because of the importance of this regulation in making financing available for Section 8 projects, it has been determined in the public interest to make these amendments effective on publication. However because of the many changes that were made as a result of considering the comments, the Department invites further comments on this Final Rule. Comments received will be carefully reviewed, along with experience under this Final Rule for consideration of any further amendments.

A finding of Inapplicability regarding the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the office of the Rules Docket Clerk, Office of the Secretary, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C.

Accordingly, Title 24 of the Code of Federal Regulations is amended as follows:

PART 811—TAX EXEMPTION OF OBLIGATIONS OF PUBLIC HOUSING AGENCIES AND RELATED AMENDMENTS

Title 24, Chapter VIII is amended to delete the present Part 811 and to substitute a new Part 811 reading as follows:

Subpart A—Tax Exemption Under Section 11(b) of the Act of Obligations of Public Housing Agencies Issued To Finance Section 8 Projects

Sec.

811.101 Purpose and scope.
811.102 Definitions.
811.103 Tax exemption of obligations.
811.104 Approval of public housing agencies.
811.105 Approval of agencies or instrumentalities.
811.106 Amount of permanent obligations and term of HAP contract.
811.107 Use of proceeds of permanent obligations.
811.108 Interim financing.
811.109 Use of project revenues.
811.110 Approval of obligations as tax exempt.
811.111 Limited applicability to tax exemption other than under section 11(b).

AUTHORITY: Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)); secs. 3(6), 5(b)8, 11(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, and 1437).

Subpart A—Tax Exemption Under Section 11(b) of the Act of Obligations of Public Housing Agencies Issued to Finance Section 8 Projects

§ 811.101 Purpose and scope.

The purpose of this Subpart A is to provide a basis for determining tax exemption of obligations issued by Public Housing Agencies pursuant to section 11 (b) of the United States Housing Act of 1937 and this subpart for Section 8 New Construction or Substantial Rehabilitation projects (24 CFR Parts 880, 881, and 883). The tax exemption pursuant to section 11(b) in connection with other low-income housing projects under the Act is not subject to this subpart.

§ 811.102 Definitions.

Act.—The United States Housing Act of 1937 (42 U.S.C. 1437, et seq.).

Agency or Instrumentality.—A not-for-profit entity (which as to form may be a corporation, trust, commission, bureau, tribe, district, authority, unincorporated association, partnership, or other form of organization) which is a PHA created or utilized by another PHA (the parent entity) in accordance with this subpart.

Development Cost.—Estimated cost approved by HUD for planning, land acquisition, demolition, construction, rehabilitation, or equipment, cost of PHA inspections during construction, cost of other items necessary for the development or acquisition of a low-income housing project, and the necessary costs of the interim financing. In the case of HUD-insured mortgage financing, the development cost is the amount approved by HUD for purposes of determining the amount of the mortgage.

Expenses of Issuing the Obligations.—Necessary costs in connection with the issuance of the obligations, consisting of attorney's fes, underwriter/issuer fees, rating agency's fees, trustee's initial fee, printing costs, and such other fees or expenses as are shown to and approved by HUD as being necessary and consistent with economy in the total costs of issuance. All costs must be shown to and approved by HUD as being reasonable in relation to the prevailing costs of issuing comparable obligations, taking into account any differences between the types of obligations. In making its determination of reasonableness, HUD will take into consideration that the prime purpose of tax exempt financing under this subpart is to effect maximum feasible savings in housing costs.

HUD.—The Department of Housing and Urban Development or its designee.

HAP Contract.—Housing Assistance Payments Contract pursuant to Section 8 of the Act and the applicable HUD regulations.

Low-Income Housing.—Housing for families and persons of lower income pursuant to Section 8 of the Act, including those within that income range who may otherwise be referred to as moderate-income families and persons.

Low-income housing project.—Any low-income housing, including all necessary appurtenances thereto, developed, acquired, or assisted by PHA under the Act, and the improvement of any such housing.

Obligations.—This term includes bonds and notes (whether or not secured by a mortgage) issued to provide interim or permanent financing of a low-income housing project. Pursuant to section 319 (b) of the Housing and Community Development Act of 1974, the term obligations shall not include any obligation secured by a mortgage which is insured under section 221(d)(3) of the National Housing Act and issued by a public agency as mortgagor in connection with the financing of a project assisted under section 8 of the Act (this exclusion does not apply to a public agency as mortgagee).

Parent Entity.—A PHA, other than an agency or instrumentality, which creates or utilizes an agency or instrumentality in accordance with the provisions of this Subpart.

Public Housing Agency (PHA).—Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

Trustee.—A bank or other entity which is qualified and experienced in performing fiduciary responsibilities with respect to care and investment of funds com-

parable to those involved in the financing of the project.

§ 811.103 Tax exemption of obligations.

(a) Obligations, permanent or interim, including interest thereon, issued by PHAs in connection with Section 8 projects pursuant to and approved by HUD under this Subpart shall be exempt from all taxation now or hereafter imposed by the United States whether paid by such PHA or by HUD. The income derived by such PHAs from such projects shall also be exempt from all taxation now or hereafter imposed by the United States (section 11(b) of the Act).

(b) In order for obligations to be tax exempt under this subpart:

(1) The obligations must be issued in connection with a low-income housing project approved by HUD under the Act and the applicable regulations including, but not limited to, the regulations relating to the reduction of Contract Rents to reflect savings as a result of tax-exempt financing;

(2) The obligations must be issued by an entity approved by HUD as a PHA pursuant to § 811.104 or § 811.105;

(3) The amount of the obligations, the term of the HAP Contract, and the use of the obligations must be approved by HUD pursuant to §§ 811.106, 811.107, and 811.108; and

(4) The terms and conditions of the financing must be approved by HUD in accordance with the other provisions of this subpart and the provisions of other applicable HUD regulations.

§ 811.104 Approval of Public Housing Agencies.

(a) (1) An application to HUD for approval as a Public Housing Agency for purposes of this subpart shall be supported by evidence satisfactory to HUD to establish that:

(i) The applicant is legally authorized to engage in or assist in the development or operation of low-income housing;

(ii) The applicant has the legal capacity to carry out the low-income housing project, or the financing thereof, as described in its application, including the legal capacity to carry out the responsibilities required of it under HUD regulations applicable to the project.

(2) Such evidence shall include any facts or documents relevant to the determination including identification of any pending application the applicant has submitted under the Act. In the absence of evidence to the contrary, the following evidence shall be considered satisfactory to HUD:

(i) Identification of any previous HUD approval of the applicant as a PHA pursuant to this § 811.104;

(ii) Identification of any prior annual contributions contact with the applicant under the Act (or under the United States Housing Act of 1937 prior to its amendment by the Housing and Community Development Act of 1974); or

(iii) A statement, where applicable, that the applicant is an approved Participating Agency under Part 883 of this chapter.

(b) Any subsequent amendments to the documents submitted to HUD pursuant to this § 811.104 must be approved by HUD.

§ 811.105 Approval of Agencies or Instrumentalities.

(a) An application to HUD for approval as an agency or instrumentality for purposes of this subpart shall:

(1) Identify the parent entity;

(2) Establish by evidence satisfactory to HUD that—

(i) The applicant was designated or created as the duly authorized agency or instrumentality of the parent entity and that such creation and utilization is not prohibited by state law.

(ii) The parent entity meets the requirements of § 811.104,

(iii) The applicant meets the requirements of § 811.104,

(iv) The activities to be performed by the applicant, and funds and assets connected therewith, shall be limited to carrying out or assisting in carrying out a low-income housing project(s) (including assistance by borrowing and lending funds), which project(s) has been approved by the parent entity, and

(v) The applicant understands and agrees that, prior to the date of issuance of the obligations, an Agreement to Enter into a HAP Contract or a HAP Contract pursuant to the Act will have been executed and, where applicable, approved in writing by HUD in accordance with an Annual Contributions Contract with HUD; and

(3 Furnish an opinion of counsel acceptable to HUD that the applicant meets the requirements of this § 811.105(a).

(b) The documents submitted shall include the following with respect to the relationship between the parent entity and the agency or instrumentality:

(1) Provisions requiring approval by the parent entity of the charter or other organic document and of the by-laws which organic instrument and by-laws shall specify that any amendments are subject to approval by the parent entity and by HUD.

(2) Provisions requiring approval by the parent entity of each project and of the projected program and projected expenditures of the applicant.

(3) Provisions requiring approval by the parent entity of each issue of obligations of the applicant not more than 60 days prior to the date of issue and approval of any amendments prior to the date of issue.

(4) Provisions requiring an annual financial audit of the applicant by an independent certified public accountant, review by the parent entity of the audit and of the applicant's activities, and submission of a copy of the audit and review to HUD.

(5) Provisions giving the parent entity right of access at any time to all books and records of the applicant.

(6) Where the parties have agreed that provision should be made in conjunction with the issuance of the obligations for title to or other interest in the real and personal property financed by the obligations to be conveyed at a specified time and/or under specified conditions to the parent entity or another PHA, instruments making such conveyance shall be placed in escrow with instructions that the escrow agent deliver the instruments to the parent entity or other PHA a such specified time and in accordance with such specified conditions. A method other than this escrow procedure may be used if it provides comparable assurance of performance and is approved by HUD. Any conveyance to the parent entity or other PHA shall be free of encumbrances (other than tenant leases) created subsequent to the establishment of the lien to secure the permanent obligations except as otherwise consented to by the parent entity or other PHA with the approval of HUD.

(7) Any net earnings of the applicant (beyond those necessary for retirement of the indebtedness or to carry out the low-income housing project) may not inure to the benefit of any person or entity other than the parent entity.

(8) Upon dissolution of the applicant, title to or other interest in any real or personal property owned by such applicant shall vest in the parent entity.

(9) Agreement by the parent entity to accept title to or other interest in any real or personal property pursuant to § 811.105(b)(8).

(10) Agreement by the parent entity or another PHA to accept title to any real or personal property financed by the obligations pursuant to §§ 811.105(b)(6) and 811.106(a)(3), if applicable.

(c) Any subsequent amendments to the documents submitted to HUD pursuant to this § 811.105 must be approved by HUD.

§ 811.106 Amount of permanent obligations and term of HAP Contract.

(a) (1) The amount of outstanding permanent obligations tax-exempt under this Subpart shall not exceed the estimated reasonable development cost of the low-income housing project as determined by HUD, less any equity investment, and plus the reasonable expenses of issuing the obligations, capitalized interest on the permanent obligations duirng construction and an amount sufficient to establish a reserve fund up to one year's debt service.

(2) Additional tax-exempt obligations may be issued to finance additional development costs which are shown to be reasonable and are approved by HUD pursuant to this subpart.

(3) The owner shall be subject to such terms and conditions as HUD shall prescribe. Such terms and conditions shall include provisions designed to assure continued operation of the project for the housing of low-income families as contemplated by the HAP Contract, including, if the project is not so operated, provision for operation or ownership of the project by a PHA (other than an agency or instrumentality).

(4) In the case of obligations used to finance a low-income housing project involving private profit-motivated owners, the loan to the owner shall not exceed 90 percent (determined in accordance

with HUD standards) of the HUD-approved development cost.

(b) The term of the HAP contract securing the permanent obligations under this subpart shall not exceed 30 years or the term of the obligations whichever is shorter, except that in the case of projects other than those designed for the elderly HUD may approve a term of not to exceed 40 years or the term of the obligations, whichever is shorter.

(c) The anticipated interest cost and the ancillary costs of servicing the obligations, such as trustee fees, maintenance of books and accounts and audit expenses, must be shown to and approved by HUD as being reasonable in relation to prevailing costs in the tax exempt market for comparable obligations, taking into account any differences between the types of obligations.

(d) Issuance of obligations to refund outstanding permanent obligations is prohibited.

§ 811.107 Use of proceeds of permanent obligations.

(a) The proceeds of permanent obligations issued pursuant to this Subpart shall upon receipt be placed in escrow with the trustee in accordance with the trust indenture and shall be invested to earn interest. The escrowed funds shall be disbursed only upon execution of a HAP Contract covering the project with respect to which the obligations were issued except for prior disbursements for capitalized interest. Upon execution of the HAP Contract, the escrowed funds shall be disbursed for the debt service reserve fund, the expenses of issuing the obligations and the interim financing.

(b) In the event that the HAP Contract is not executed within 60 days of the date by which completion is required under the applicable Agreement to Enter into HAP Contract, the permanent obligations shall be redeemed from the funds in escrow plus income from investment of the escrowed funds and less any debt service disbursements. However, such date for redemption may be extended to a later specified date in the event (1) The parties to the Agreement have agreed in writing to such extended date, and (2) additional funds, in the form of cash or an unconditional letter of credit, are added to the escrow to guarantee that there will be sufficient funds in the escrow on the extended date to pay all amounts that are then required to be paid from the escrow on at least as favorable a basis as if there had been no extension.

(c) The provisions of § 811.107 (a) and (b) shall not apply to permanent obligations issued pursuant to this subpart where (1) The obligations are unconditionally guaranteed as to both principal and interest by a State or by a county, city, or other unit of general local government, (2) construction advances are insured pursuant to the National Housing Act, or (3) permanent obligations are not issued until after completion of construction.

(d) After execution of the HAP Contract and disbursement of the escrow, the debt service reserve fund, if any, shall be invested to earn interest and shall be maintained by the trustee in accordance with the trust indenture. This fund and interest income, which may be accumulated therein, shall be available only for the purpose of paying principal, interest, or premiums on the permanent obligations as long as these obligations are outstanding; except that any amounts in the fund in excess of the original amount shall be available for any project purposes as provided in the trust indenture.

§ 811.108 Interim Financing.

(a) The applicant may also request a determination by HUD that the obligations for interim financing be tax exempt pursuant to this subpart. The amount of such obligations shall not exceed the estimated development cost of the low-income housing project, as determined by HUD. If the expenses of issuing the permanent obligations are to be paid prior to execution of the HAP Contract, these expenses may be included in the amount of the interim obligations or they may be advanced by the developer/owner or contractor to be repaid upon disbursement of the escrow § 811.107). The interim obligations shall mature on a specified date not unreasonably beyond the stated date by which completion is required under the applicable Agreement to Enter into HAP Contract.

(b) The following provisions are applicable whether or not interim financing is tax-exempt:

(1) The terms and conditions of any interim financing shall be consistent with the terms and conditions of the permanent obligations which are proposed or committed for issuance.

(2) The proceeds of the permanent obligations shall be available for repayment of the interim obligations, but only upon execution of the HAP Contract and otherwise in accordance with the terms of the escrow. The risk of completion of the project is upon the developer/owner and the entity providing the interim financing.

(3) The entity providing the interim financing shall provide for such inspection during construction, either directly or by agreement with the owner, as the lender deems necessary to protect its interest. Copies of inspection reports shall be furnished to the PHA (including the parent entity and the agency or instrumentality where applicable) and to HUD. The PHA shall to the extent of the funding provided in the development cost make independent inspections, and copies of any reports resulting from such independent inspections as well as copies of any comments by the PHA on any inspection reports shall be furnished to the lender and to HUD. HUD shall promptly notify the Owner, with copies to the lender, contractor, and PHA, of any deficiencies noted in such reports or comments, with a statement that evidence of the correction of such deficiencies will be required at the time of the HUD inspection for evidence of completion. However, failure by the PHA to make such independent inspections or comments or failure by HUD to give such notifications shall not relieve the owner and lender of their obligation for completion of the project in accordance with the Agreement to Enter into HAP Contract.

(4) The effective date of the HAP Contract shall be 10 working days after the notification of project completion to HUD, or the date of the HUD inspection if earlier, provided that the Owner's and Architect's Certifications and other evidence of completion is found by HUD to be acceptable as of that date. If the certifications and other evidence of completion is found not to be acceptable as of that date, the effective date of the HAP Contract shall be the earliest subsequent date as of which the evidence of completion is found by HUD to be acceptable.

(5) If HUD finds that the evidence of completion is acceptable with respect to the physical completion of the project, including the certificate and/or official approvals required for occupancy, but the evidence of completion in other respects is not acceptable, HUD shall upon request by the Owner execute or approve the execution of the HAP Contract; in such case, however, until such evidence of completion is submitted to and found acceptable by HUD, (i) The Contract Rent for the purpose of computing the Housing Assistance Payment with respect to any unit shall be the monthly amount of the debt service on the permanent obligations attributable to the unit, and (ii) rent-up and occupancy shall be subject to such conditions as HUD may require.

§ 811.109 Use of Project Revenues.

The trust indenture shall provide for the maintenance of reserves and/or accounts to assure that there are funds as necessary to meet all project requirements, including, but not limited to, a reserve or account sufficient to provide for the routine and non-routine maintenance over the life of the project.

§ 811.110 Approval of Obligations as Tax Exempt.

(a) If HUD finds that (1) Obligations proposed to be issued for the financing of a low-income housing project are in compliance with this subpart, (2) the terms and conditions of the financing have been approved pursuant to other applicable HUD regulations, and (3) the Agreement to Enter into HAP Contract or the HAP Contract has been executed and, where applicable, approved in writing by HUD, the Field Office Director shall notify the applicant of these findings.

(b) This notification shall include a statement that (1) Pursuant to this subpart and the Act, HUD has found the applicant to be a PHA, (2) the obligations when issued in accordance with the approved application shall be exempt from all taxation now or hereafter imposed by the United States whether paid by the PHA or by HUD, and (3) the income derived by the PHA from the low-income housing project shall be exempt from all taxation now or hereafter imposed by the United States.

(c) If the application included tax exempt interim financing, the notification shall include a comparable statement with regard to such interim financing.

(d) This notification of approval of tax exemption shall not be subject to revocation by HUD.

§ 811.111 Limited applicability to tax exemption other than under Section 11(b).

This subpart shall not be applicable to obligations issued pursuant to, or purporting to be tax exempt under, any other provision of law or Governmental regulation, except as provided in 24 CFR 880.115(c) and 881.115(c).

CHANGES TO RELATED REGULATIONS

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION

1. Section 880.106(a) is amended by inserting the following at the end thereof:

§ 880.106 Maximum Total ACC Commitment and Project Account (Private-Owner/PHA Projects).

(a) * * * Where the PHA is a State Housing Finance and Development Agency, the maximum total annual contribution shall not include a fee payable by HUD for the regular costs of administration of the HAP Contract, nor shall the agency be eligible for a fee payable by HUD for the preliminary costs of administration of the HAP Contract, if the amount charged for the permanent loan by the agency to the Owner ancillary is greater than the agency's cost of borrowing including costs of servicing the obligations, such as trustee fees, maintenance of books and accounts and audit expenses.

* * * * *

2. A new § 880.115(c) is added to read as follows:

§ 880.115 Financing.

* * * * *

(c) *Applicability of Certain Provisions of 24 CFR, Part 811, Where Financing is by a PHA or Entity Created or Utilized by a PHA.*—Where the permanent financing is by obligations of a PHA (other than an agency notified by HUD pursuant to 24 CFR 883.103 that it is a qualified Participating Agency) or an entity created or utilized by such a PHA, which obligations are tax exempt pursuant to Treasury Department regulations, rather than 24 CFR Part 811, "Tax Exemption under Section 11(b) of the Act of Obligations of PHAs Issued to Finance Section 8 Projects," §§ 811.106, 811.107, 811.108(b), and 811.109 shall nevertheless be applicable.

3. Section 880.125(a) is amended to read as follows:

§ 880.125 Projects Financed with Proceeds of Obligations issued by a Public Agency.

(a) *Applicability.*—The provisions of this section shall apply where permanent financing for a project is to be provided by a public agency or other entity including a PHA ("financing agency").

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SUBSTANTIAL REHABILITATION

4. Section 881.106(a) is amended by inserting the following at the end thereof:

§ 881.106 Maximum Total ACC Commitment and Project Account (Private-Owner/PHA Projects).

(a) * * * Where the PHA is a State Housing Finance and Development Agency, the maximum total annual contribution shall not include a fee payable by HUD for the regular costs of administration of the HAP Contract, nor shall the agency be eligible for a fee payable by HUD for the preliminary costs of administration of the HAP Contract, if the amount charged for the permanent loan by the agency to the Owner is greater than the agency's cost of borrowing including ancillary costs of servicing the obligations, such as trustee fees, maintenance of books and accounts and audit expenses.

* * * * *

5. A new § 881.115(c) is added to read as follows:

§ 881.115 Financing.

* * * * *

(c) *Applicability of Certain Provisions of 24 CFR Part 811, Where Financing is by a PHA or Entity Created or Utilized by a PHA.*—Where the permanent financing is by obligations of a PHA (other than agency notified by HUD pursuant to 24 CFR 883.103 that it is a qualified Participating Agency) or an entity created or utilized by such a PHA, which obligations are tax exempt pursuant to Treasury Department regulations, rather than 24 CFR, Part 811, "Tax Exemption of Obligations of PHAs under section 11(b) of the Act," §§ 811.106, 811.107, 811.108(b), 811.109 shall nevertheless be applicable.

6. Section 881.125(a) is amended to read as follows:

§ 881.125 Projects Financed with Proceeds of Obligations issued by a Public Agency.

(a) *Applicability.*—The provisions of this section shall apply where permanent financing for a project is to be provided by a public agency or other entity including a PHA ("financing agency").

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—HOUSING FINANCE AND DEVELOPMENT AGENCIES AND NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

7. Section 883.203(a) is amended to read as follows:

883.203 Maximum total ACC commitment and project account.

(a) *Maximum total ACC commitment.*—The maximum total annual contribution that may be contracted for in the ACC for a project shall be the total of the Gross Rents for all the Contract units in the project, plus a Financing Cost Contingency (if the HFA is using its set-aside for the project) for possible increases in Contract Rents resulting from higher financing costs, pursuant to § 883.205(c)(2). In addition, the maximum total annual contribution may include a fee payable by HUD for the regular cost of HFA administration of the HAP Contract if the amount charged for the permanent loan by the HFA to the Owner is no greater than the HFA's cost of borrowing, including the ancillary costs of servicing the obligations, such as trustee fees, maintenance of books and accounts and audit expenses. Where the HFA qualifies for a fee payable by HUD for the regular costs of administration of the HAP Contract, HUD-approved preliminary costs for administration of the HAP Contract (including administrative costs in connection with HFA activities related to relocation of occupants) shall also be payable out of the maximum total annual contribution.

* * * * *

(Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); secs. 3(6), 5(b) 8, 11(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f and 1437).)

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with Executive Order No. 11821.

Issued at Washington, D.C., July 28, 1977.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 77-22226 Filed 8-2-77;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 739-77]

PART 17—REGULATIONS RELATING TO THE CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION AND MATERIAL PURSUANT TO EXECUTIVE ORDER NO. 11652

Dissemination; Delegation of Authority to Assistant Attorney General for Administration

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This document delegates the authority to establish special procedural requirements for the handling of classified information to the Assistant Attorney General for Administration. This delegation will allow the Justice Department to more efficiently handle the increased number of persons requesting access to classified information.

EFFECTIVE DATE: July 26, 1977.

FOR FURTHER INFORMATION CONTACT:

J. Michael Kelly, Counselor to the Attorney General, Office of the Attorney General, Washington, D.C. 20530, 202–739–3892.

SUPPLEMENTARY INFORMATION: This amendment delegates to the Assistant Attorney General for Administration the authority to establish special requirements, in addition to those set forth in Part 17, with respect to access, distribution, protection, and dissemination outside the Executive branch of classified information and material originated or held by the Department and to assure the proper protection of such national security information. Under existing regulations, this authority is vested only in the Attorney General.

This delegation to the Assistant Attorney General for Administration relates only to the establishment of special procedural requirements and does not extend to the determination of what information will be disseminated inside or outside of the Executive branch, which determination shall continue to be made by the responsible official or employee as provided in § 17.59 of this Part.

Recently there has been a substantial increase in the number of personnel outside the Executive branch requiring access clearance to national security information in connection with court cases and, to a lesser extent, with providing very sensitive contractual services to the Department. These personnel include contractors, attorneys, law clerks, judges' secretaries, and court reporters.

The Attorney General is currently required to personally approve each special requirement for the granting of security clearances for access to national security information outside the Executive branch on a case-by-case basis. This delegation of authority will result in relieving the Attorney General of this burden and will authorize the Assistant Attorney General for Administration to promulgate orders and instructions governing the procedures to be followed in obtaining security clearances for non-executive branch personnel.

This delegation will also enable the Assistant Attorney General for Administration to create and manage a Special Security Program within the Department to establish and enforce procedures for the control of Sensitive Compartmented Information (SCI), a highly sensitive class of national security information that is flowing into the Department in a steadily increasing volume.

By virtue of the authority vested in me by 5 U.S.C. 301 and 28 U.S.C. 509, 510, Sections 17.63 and 17.64 of Subpart J, Part 17 of Chapter I of Title 28, Code of Federal Regulations, are amended as follows:

§ 17.63 [Amended]

1. Section 17.63 is amended by adding "or the Assistant Attorney General for Administration" at the end thereof.

§ 17.64 [Amended]

2. Section 17.64 is amended by inserting "or the Assistant Attorney General for Administration" immediately after "Attorney General".

Dated: July 26, 1977.

GRIFFIN B. BELL,
Attorney General.

[FR Doc.77-22331 Filed 8-2-77;8:45 am]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

ARMED SERVICES PROCUREMENT REGULATION

Adoption of the 1976 ASPR

AGENCY: Department of Defense.

ACTION: Promulgation of the 1976 ASPR.

SUMMARY: The purpose of this document is to announce that the 1976 edition of the Armed Services Procurement Regulation (ASPR) is filed with the Administrative Committee of the Federal Register for publication in the Code of Federal Regulations rather than in the FEDERAL REGISTER, in order to save on printing costs for this large volume of regulations.

EFFECTIVE DATE: October 1, 1976.

FOR FURTHER INFORMATION CONTACT:

Executive Secretary, ASPR Committee, Room 3D 776, Pentagon, Washington, D.C. 20301. Telephone: 202–697–4796.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In 1975, the Armed Services Procurement Regulation (ASPR) Committee and the Office of the Federal Register (OFR) held several discussions on creating an appropriate format for publication of the 1975 edition of the ASPR. A different method was necessary because the 1975 ASPR consisted of 3,000 pages and a normal press run of a FEDERAL REGISTER issue is over 50,000 copies. Thus the cost of promulgating the ASPR in the usual manner would have been extremely high.

To facilitate publication of the 1975 ASPR and save on printing costs, it was decided:

1. Not to print the full text of the ASPR in the daily issue of the FEDERAL REGISTER, but instead, to use the CFR as the means of promulgation.

2. To waive the CFR numbering requirements and adopt the same codification system the Defense Department uses in their loose leaf edition of the ASPR.

3. To offer free distribution of the CFR volumes to all subscribers of the FEDERAL REGISTER who made timely application.

PROMULGATION OF THE 1976 EDITION

The decisions made concerning the 1975 ASPR are equally applicable to the 1976 edition.

The OFR is repeating its offer of free distribution of the CFR volumes. (For details, see the editorial note following this document.)

Because of delays experienced in publishing this 1976 edition, it will not reflect changes made to the ASPR by Defense Procurement Circulars (DPC) 76–1 and all subsequent 76 DPS's that have been issued to date.

These DPC's will be filed with the Administrative Committee at a later date. A document will be published in the FEDERAL REGISTER noting that the DPC's have been filed and can be inspected at the Office of the Federal Register or that copies may be obtained through purchase from the Superintendent of Documents, Washington, D.C. 20402, or by writing to the ASPR committee.

Therefore, the 1976 edition of the Armed Services Procurement Regulation is hereby promulgated in Title 32 CFR, Subchapter A, Parts 1–39, Volumes I, II, and III, thereby replacing in its entirety the 1975 edition of the ASPR previously promulgated in the CFR.

Effective date: October 1, 1976.

(5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5129.1 of April 20, 1977)

T. G. CASSIDY,
Executive Secretary, Armed Services Procurement Regulation Committee.

[FR Doc.77-22410 Filed 8-2-77;8:45 am]

NOTE.—FEDERAL REGISTER subscribers will, on request, receive these CFR volumes containing the ASPR free of charge. To order the volumes, subscribers must send by August 31, 1977, the order form set forth below to:

ASPR Distribution, Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408.

A copy of the subscriber's mailing label from the FEDERAL REGISTER is also required, and should be attached to the order form. It is anticipated that distribution of these volumes will be made in the early fall of 1977.

Those persons who are not FEDERAL REGISTER subscribers but who would be interested in purchasing these volumes will be notified by a FEDERAL REGISTER announcement when the volumes are available for normal ordering from the Superintendent of Documents, Government Printing Office.

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[OSD Admin. Inst. No. 81]

PART 286b—PERSONAL PRIVACY AND RIGHTS OF INDIVIDUALS REGARDING THEIR PERSONAL RECORDS

AGENCY: Office of the Secretary of Defense (OSD), DOD.

ACTION: Final rule.

SUMMARY: This document adds two specific exemptions to the Privacy Act regulations of the Office of the Secretary of Defense. The addition of these exemptions is designed to clarify previous requirements.

EFFECTIVE DATE: This final rule becomes effective August 3, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. James S. Nash, OSD Privacy Act Officer, Office of the Deputy Assistant Secretary of Defense (Administration), Washington, D.C. 20301, 202–697–2501.

SUPPLEMENTARY INFORMATION: On June 10, 1977 (42 FR 29935) a proposed rulemaking amendment was published by the Office of the Secretary of Defense (OSD) to amend Part 286b by revising § 286b.11. The revised § 286b.11 was intended to add clarity and add two additional specific exemptions as § 286b.11(c)(4) and (5). No comments were received on the proposed amendment, therefore the Office of the Secretary of Defense adopts, without change, the amended § 286b.11.

Accordingly, 32 CFR 286b.11 is amended as follows:

§ 286b.11 Exemptions.

(a) *General information.* The Secretary of Defense designates those Office of the Secrettary of Defense (OSD) systems of records which will be exempt from certain provisions of the Privacy Act. There are two types of exemptions, general and specific. The general exemption authorizes the exemption of a system of records from all but a few requirements of the Act. The specific exemption authorizes exemption of a system of records or portion thereof, from only a few specific requirements. If an OSD Component originates a new system of records for which it proposes an exemption, or if it proposes an additional or new exemption for an existing system of records, it shall submit the recommended exemption with the records system notice as outlined in § 286b.9(c). No exemption of a system of records shall be considered automatic for all records in the system. The systems manager shall review each requested record and apply the exemptions only when this will serve a significant and legitimate Government purpose.

(b) *General exemptions.* [Reserved]

(c) *Specific exemptions.* All systems of records maintained by any OSD Component shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to subsection (k)(1) of that section to the extent that the system contains any information properly classified under Executive Order 11652, "Classification and Declassification of National Security Information and Material," dated March 8, 1972 (37 FR 10053, May 19, 1972), and required by the Executive Order to be kept classified in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions may contain isolated information which has been properly classified. The Secretary of Defense has designated the following OSD systems of records described below specifically exempted from the appropriate provisions of the Privacy Act pursuant to the designated authority contained therein:

(1) SYSID–DCOMP P26, SYSNAME. Protective Service File:

Exemption. This system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a, which would require the disclosure of investigatory material compiled for law enforcement purposes; or a record maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. If any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or otherwise be eligible, as a result of the maintenance of the material compiled for law enforcement purposes, the material shall be provided to that individual, except to the extent that its disclosure would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

Authority. 5 U.S.C. 552a(k)(2) and (3).

Reasons. These exemptions are necessary to maintain the confidentiality of the records compiled for the purpose of law enforcement, or protecting the President of the United States or others pursuant to 18 U.S.C. 3056.

(2) SYSID–DCOMP P28, SYSNAME. The Office of the Secretary of Defense Clearance File:

Exemption. This system of records is exempt from subsections (c)(3) and (d) of 5 U.S.C. 552a, which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning the specific information which would reveal the identity of the source.

Authority. 5 U.S.C. 552a(k)(5).

Reasons. This exemption is required to protect the confidentiality of the

sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(3) SYSID–DCOMP SP02, SYSNAME. Industrial Personnel Security Clearance Case Files:

Exemption. This system of records is exempt from subsections (c)(3) and (d) of Sections 552a of 5 U.S.C. which would require the disclosure of investigatory material compiled solely for the purpose of determining access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an expressed promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source.

Authority. 5 U.S.C. 552a(k)(5).

Reasons. This exemption is required in order to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

(4) SYSID–DCOMP P32, SYSNAME. Standards of Conduct Inquiry File:

Exemption. This system of records is exempted from subsections (c)(3) and (d) of 5 U.S.C. 552a, which would require the disclosure of: investigatory material compiled for law enforcement purposes; or investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, or Federal contracts, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. If any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or otherwise be eligible, as a result of the maintenance of investigatory material compiled for law enforcement purpose, the material shall be provided to that individual, except to the extent that its disclosure would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

Authority. 5 U.S.C. 552a(k)(2) and (5).

Reasons. These exemptions are necessary to protect the confidentiality of the records compiled for the purpose of: enforcement of the conflict of interest statutes by the Department of Defense Standards of Conduct Counselor, General Counsel, or their designees; and determining suitability, eligibility or qualifications for Federal civilian employment, military service, or Federal contracts of those alleged to have violated or caused others to violate the Standards of Conduct regulations of the Department of Defense.

(5) SYSID–DGC 03, SYSNAME. General Administrative File:

Exemption. This system of records is exempt from subsections (c)(3) and (d), Title 5 U.S.C. 552a, which would require the disclosure of: investigatory material compiled for law enforcement purposes; investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence; or any record maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. If any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or otherwise be eligible, as a result of the maintenance of material compiled for law enforcement purposes, the material shall be provided to that individual, except to the extent that its disclosure would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

Authority. 5 U.S.C. 552a(k) (2), (3) and (5).

Reasons. These exemptions are necessary to protect the confidentiality of the records compiled for the purpose of enforcing the law by or at the request of the General Counsel or his professional staff, determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, or protecting the President of the United States or others pursuant to 18 U.S.C. 3056.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

JULY 27, 1977.

[FR Doc.77-22308 Filed 8-2-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER I—FEDERAL PROCUREMENT REGULATIONS

[FPR Amdt. 180]

PART 1–4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Unsolicited Proposals

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This amendment of the Federal Procurement Regulations (FPR) prescribes policies and procedures concerning the receipt, evaluation, and acceptance of unsolicited proposals. It applies not only to unsolicited proposals for research or development of methods or approaches but also for the conduct of services or the delivery of items. The amendment is designed to foster and encourage the submission of unsolicited proposals that could enhance, benefit, and/or provide valuable input to some area of an agency's mission responsibilities. The circumstance which created the need for the action was recommendation B-7 of the Commission on Government Procurement.

EFFECTIVE DATE: February 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Philip G. Read, Director of Federal Procurement Regulations (703–557–8947).

The table of contents for Part 1–4 is amended to add the following new entries:

Subpart 1–4.9—Unsolicited Proposals

Sec.
1–4.900 Scope of subpart.
1–4.901 General.
1–4.902 Policy.
1–4.903 Agency program direction and operation.
1–4.904 Definitions.
1–4.905 Advance guidance.
1–4.906 Content of unsolicited proposals.
1–4.907 Time of submission.
1–4.908 Agency point of contact.
1–4.909 Receipt, review, and evaluation.
1–4.910 Method of procurement.
1–4.911 Prohibitions.
1–4.912 Interagency coordination.
1–4.913 Limited use of data.

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

Section 1–4.000 is revised as follows:

§ 1–4.000 Scope and applicability of part.

This part sets forth policies and procedures regarding special types and methods of procurement which include public utility services, livestock products, architect-engineer services, unsolicited proposals, and automatic data processing equipment and services.

New Subpart 1–4.9 is added as follows:

Subpart 1–4.9—Unsolicited Proposals

§ 1–4.900 Scope of subpart.

This subpart, sets forth policies and procedures concerning the receipt,

evaluation, and acceptance of unsolicited proposals.

§ 1–4.901 General.

The unsolicited proposal is a valuable means by which unique or innovative methods or approaches which have originated or developed outside the Government can be made available to Government agencies for use in the accomplishment of their missions. It is offered in the hope that the Government will enter into a contract with the offeror for (a) research on or development of the methods, approaches, or ideas it contains, or (b) the conduct of the activity or services or the delivery of the items it proposes. It should not be merely an advance proposal for a specific agency requirement which would normally be procured by competitive methods. An unsolicited proposal should be prepared independent of Government supervision. It often represents a substantial investment of time and effort by the offeror. It should present the proposed work in sufficient detail to allow a determination that Government support could be worthwhile and that the proposed work could enhance, benefit, and/or provide valuable input to an agency's research and development mission or to some other area of agency responsibility.

§ 1–4.902 Policy.

It is the policy of the Government to foster and encourage the submission of unsolicited proposals.

§ 1–4.903 Agency program direction and operation.

Each agency shall adopt and publish policies and procedures which will encourage the submission of unsolicited proposals relating to the agency's mission. Such policies and procedures shall be consistent with the requirements of this Subpart 1–4.9. They shall be developed with an objective to eliminate restraints which discourage the generation and acceptance of innovative ideas through unsolicited proposals.

§ 1–4.904 Definitions.

As used in this Subpart 1–4.9, the following terms have the meanings stated:

(a) "Unsolicited proposal" means a written offer to perform a proposed task or effort, initiated and submitted to the Government by a prospective contractor (offeror) without a solicitation by the Government, with the objective of obtaining a contract. Advertising material, commercial product offerings, contributions, or technical correspondence as defined in paragraphs (b) through (e) of this § 1–4.904 which are submitted to an agency shall not be considered to constitute unsolicited proposals within the intent of this Subpart 1–4.9.

(b) "Advertising material" means material designed to acquaint the Government with a prospective contractor's present off-the-shelf products or potential capabilities, or designed to determine the Government's interest in buying such products.

(c) "Commercial product offerings" mean offers of standard commercial products usually sold in substantial quantities to the general public and which the vendor wishes to see introduced in the Government's supply system as an alternate or replacement for an existing supply item.

(d) "Contributions" mean concepts, suggestions, or merely ideas presented to the Government for its use, with no indication on the part of the offeror that he will devote any further effort in relation to such concepts, suggestions, or ideas on behalf of the Government.

(e) "Technical correspondence" includes written inquiries regarding Government interest in research areas, preproposal explorations, technical inquiries, and research descriptions.

§ 1–4.905 Advance guidance.

Organizations or individuals who are interested in submitting an unsolicited proposal should be encouraged, before expending extensive effort in preparing a detailed unsolicited proposal or submitting any proprietary information to the Government, to make preliminary inquiries as to the general need for the type of effort contemplated.

(a) Prior contact with agency technical personnel is permissible and should be encouraged with the limited objectives of conveying to the prospective offeror an understanding of the agency mission and needs relative to the type of effort contemplated.

(b) Agencies shall make free written information available to potential offerors regarding policies and procedures for unsolicited proposals. As a minimum, the following information shall be made available to potential offerors.

(1) Definition of an unsolicited proposal, consistent with that set forth in § 1–4.904.

(2) Characteristics of a suitable proposal acceptable for formal evaluation. Also see §§ 1–4.906 and 1–4.910.

(3) Requirements concerning (i) responsible prospective contractors (see Subpart 1–1.12), (ii) organizational conflicts of interest, and (iii) where applicable, cost sharing.

(4) Role of technical correspondence prior to proposal preparation.

(5) Agency points of contact for information regarding advertising, contributions, bidders mailing lists, and other types of transactions frequently misconstrued as unsolicited proposals.

(6) Information regarding unsolicited proposal submission procedures.

(7) Information regarding evaluation procedures of the agency.

(8) Sources of information on agency objectives and areas of potential interest suitable for unsolicited proposal submissions.

(9) Instructions to the offeror that he identify proprietary information contained in his proposal and that any restrictive legend appearing in his proposal shall conform to the legend set forth in § 1–4.913(a).

(10) Advice to the prospective offeror that an unsolicited proposal shall conform to the procedural and submission guidelines of the agency to which it is submitted.

(c) Personal contacts shall be conducted in a manner that will preclude agency commitments regarding acceptance of unsolicited proposals.

§ 1–4.906 Content of unsolicited proposals.

Unsolicited proposals should contain the following information in order to permit consideration in an objective and timely manner.

(a) *Basic information.* This includes the name and address of the offeror; if an organization, indicate type; e.g., profit, nonprofit, educational, small business; names and telephone numbers of the offeror's technical and business personnel whom the agency may contact for evaluation or negotiation purposes; identification of any proprietary data which the offeror intends to be used by the agency only for evaluation purposes (see § 1–4.913); names of any other Federal, State, local agencies or other parties receiving the proposal and/or funding the proposed effort or activity; date of submission; and signature of a responsible official or authorized representative of the organization or a person authorized to contractually obligate the organization.

(b) *Technical information.* This includes a concise title and an abstract (approximately 200 words) of the proposed effort; a reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the agency's mission; the names and brief biographical information of the offeror's key personnel (including alternates, if desired) who would be involved, and the type of support, if any, the offeror requests of the agency; e.g., facilities, equipment, materials, or personnel resources.

(c) *Supporting information.* This includes a proposed price or total estimated cost; a cost estimate for the proposed effort sufficiently detailed by element of cost for meaningful evaluation; the type of contract preferred; period of time for which the proposal is valid (a minimum of 6 months is suggested); proposed duration of effort; statements, if applicable, regarding cost sharing, organizational conflicts of interest, security clearance status, and environmental impacts, and brief descriptions of the organization, previous work or experience in the field of the proposal, and facilities to be utilized for the work, where appropriate for understanding the proposal.

§ 1–4.907 Time of submission.

Unsolicited proposals should be submitted well in advance of the offeror's desired beginning of the proposed effort or activity in order to allow the agency sufficient time to evaluate the proposal and negotiate any resultant contract. Agencies may establish procedures gov-

erning the time for submission and number of copies of proposals for the purpose of maintaining orderly and efficient evaluation procedures.

§ 1–4.908 Agency point of contact.

Each agency shall establish procedures within the agency to coordinate the receipt and handling of unsolicited proposals. Since the early involvement of procurement personnel is essential to the proper processing, evaluation, and possible contract award, agencies should consider designating their procurement activities for this purpose.

Each agency shall establish uniform procedures that provide for the coordinated control of the receipt, evaluation, and disposition of proposals. Because of the sensitivity of the evaluation process, particular attention should be devoted to the conduct of evaluations. The procedures shall be consistent with the provisions of §§ 1–4.909 through 1–4.913. Agency procedures shall also address reproduction (duplicating) and disposition of proposal material, particularly data which the offeror has identified as subject to duplication, use, and disclosure restrictions (see § 1–4.913(a)).

(a) Unsolicited proposals shall be acknowledged as soon as possible by the office which has been assigned the coordination responsibility (see § 1–4.908), and processed in an expeditious manner.

(b) Prior to making a comprehensive evaluation of an unsolicited proposal, the coordinating office (see § 1–4.908) shall determine that the document:

(1) Contains sufficient technical and cost information to permit a meaningful evaluation; and

(2) Has been approved by a responsible official or authorized representative of the organization submitting the proposal or a person authorized to contractually obligate the organization.

(c) If the document does not meet the requirements in paragraph (b) of this § 1–4.909, the offeror shall be given the opportunity to provide the required data. A comprehensive evaluation of an unsolicited proposal need not be made if the proposal is not within the purview of the mission of the agency (also see § 1–4.912(a)). In such cases, the submitter shall be furnished a prompt reply, stating how the document is being interpreted by the agency, the reason(s) for not evaluating it, and the disposition or intended dispositon of the material submitted. The agency shall not deny reconsideration of a timely and appropriately revised or supplemented proposal which is responsive to such an initial agency determination.

(d) Comprehensive evaluations shall be coordinated by the organizational entity designated in accordance with § 1–4.908. Each unsolicited proposal that is circulated for a comprehensive evaluation within the agency shall have attached or imprinted a legend identifying it as an unsolicited proposal, and stating that it shall be used only for purposes of evaluation see § 1–4.913 (c)). In evaluating an unsolicited proposal, agency personnel shall consider, in addition to any othe criteria, the following:

(1) Unique, innovative, or meritorius methods, approaches, or ideas which have originated with or are assembled together by the offeror that are contained in the proposed effort or activity.

(2) Overall scientific, technical, or socio-economic merits of the proposed effort or activity.

(3) Potential contribution which the proposed effort is expected to make to the agency's specific mission, if pursued at this time.

(4) Capabilities, related experience, facilities, or techniques, or unique combinations thereof which the offerer possesses and offers and which are considered to be integral factors for achieving the scientific, technical, or socio-economic objective(s) of the proposal.

(5) Qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal.

(e) Upon completion of the comprehensive evaluation of an unsolicited proposal, agency evaluation personnel shall, in accordance with agency procedures, notify the coordinating office (see § 1–4.908) of their conclusions together with recommendations for further action.

§ 1–4.910 Method of procurement.

(a) A favorable comprehensive evaluation of an unsolicited proposal is not, in itself, sufficient justification for negotiating on a noncompetitive basis with the offeror. When a document qualifies as an unsolicited proposal (see §§ 1–4.904 (a) and 1–4.909(b)) but the substance (1) is available to the Government without restriction from another source, or (2) closely resembles that of a pending competitive solicitation, or (3) is otherwise not sufficiently unique to justify acceptance (see § 1–4.909(b)), the unsolicited proposal shall not be acceptable. When procurement is intended and competition is feasible, the proposal shall be returned to the offeror together with the reasons for the return (see § 1–4.909(e)).

(b) A negotiated, noncompetitive procurement is permissible when an unsolicited proposal has received a favorable technical evaluation, unless it is determined that the substance thereof is available to the Government without restriction from another source, or a competitive procurement is otherwise appropriate. The agency technical office sponsoring the procurement shall support its recommendation with a justification for noncompetitive procurement. The justification shall be based on a comprehensive evaluation of the proposal. The justification shall include the facts and circumstances that operate to preclude competition and that support the recommended noncompetitive action. Consideration shall include the evaluation factors listed in § 1–4.909(d).

(c) When it is determined that the subject matter of an unsolicited proposal is acceptable for award on a noncompetitive basis, the unsolicited proposal will serve as the basis for negotiation.

§ 1–4.911 Prohibitions.

Agencies shall not permit all or any part of an unsolicited proposal to be used as the basis, or as a portion, of a solicitation, or in negotiation with other firms unless the offeror is notified and agrees to the intended use. However, nothing herein precludes the Government from using any data, concept, or idea which it could have used had the unsolicited proposal not been submitted. With respect to data (see § 1–4.913(a)) tendered in an unsolicited proposal, disclosure of information which concerns or relates to trade secrets, processes, operations, style of work, or apparatus, and other matters may result in the imposition of a criminal penalty pursuant to the provisions of 18 U.S.C. 1905.

§ 1–4.912 Interagency coordination.

When it is determined that a meritorious unsolicited proposal is not related to the mission of the recipient agency or may be of interest to other agencies in addition to the recipient agency, the recipient agency may identify for the offeror other agencies whose missions bear a relationship to the subject matter of the unsolicited proposal.

§ 1–4.913 Limited use of data.

(a) An unsolicited proposal may include data which the offeror does not want disclosed for any purpose other than evaluation of the proposal. If the offeror wishes to impose such a restriction on his unsolicited proposal he shall mark the title page with the following legend:

USE AND DISCLOSURE OF DATA

This data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal; *Provided*, That if a contract is awarded to this offeror as a result of or in connection with the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtainable from another source without restriction. The data subject to this restriction is contained in Sheets ----------

The offeror also shall mark each sheet which he wishes to restrict with the following legend:

Use or disclosure of proposal data is subject to the restriction on the title page of this Proposal.

(b) An unsolicited proposal shall be returned to the offeror if it is marked with a different legend than that provided in paragraph (a) of this § 1–4.913. The offeror shall be informed that the proposal cannot be considered because it is impracticable for the Government to comply with the legend. However, he shall also be informed that the proposal will be considered if it is resubmitted with the legend provided in paragraph (a).

(c) Except as provided in paragraphs (d) or (e) below, the coordinating office (see § 1–4.908) shall place a cover sheet on the proposal or the proposal

shall be otherwise clearly marked as follows unless the offeror gives a clear written indication that he does not wish to impose any restrictions on the disclosure or use of the data contained in the proposal.

UNSOLICITED PROPOSAL USE OF DATA LIMITED

All Government personnel handling this proposal shall exercise extreme care to insure that the information contained herein is not disclosed outside the Government and is not duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal, without the written permission of the offeror (except that if a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use).

This notice does not limit the Government's right to use the information contained in the proposal if it is obtainable from another source without restriction.

This is a Government notice, and shall not by itself be construed to impose any liability upon the Government or Government personnel for any disclosure or use of data contained in this proposal.

The notice in this paragraph (c) is used by the Government solely as a manner of handling unsolicited proposals which will be compatible with the provisions of this section. Nevertheless, the use of the notice in this paragraph (c) shall not be used by the Government to justify the withholding of a document (record) nor to improperly deny access to a document to an individual (the public) where an obligation is imposed on the agency by the Freedom of Information Act. 5 U.S.C. 552, as amended. Matters which the prospective offeror considers to be trade secrets and commercial or financial information and privileged or confidential should be identified by the offeror upon submission to the Government in accordance with paragraph (a) of this § 1-4.913.

(d) If an unsolicited proposal is received without any restrictive legend from an educational or nonprofit organization or institution and it is necessary or appropriate to obtain an evaluation of the proposal outside the Government by leading scientists or other preeminent experts, to ascertain the merits of the proposal, a cover sheet shall be placed on the proposal or the proposal shall be clearly marked with the legend set forth in paragraph (c), above, modified by changing the first two words to read "All Government and non-Government and by deleting the words "is not disclosed outside the Government and". A written agreement shall be obtained from any non-Government evaluator that the evaluator will not disclose information in the proposal outside the Government. If the proposal is received with the restrictive legend specified in paragraph (a) of this § 1-4.913, the modified cover sheet shall also be used and permission shall be obtained from the offeror, prior to release, for the release of the proposal for outside evaluation.

(e) If an unsolicited proposal is received from other than an education or nonprofit organization or institution irrespective of whether it contains a restrictive legend, and it is necessary or appropriate to obtain an evaluation of the proposal by Government personnel outside the agency and/or by leading scientists or preeminent experts outside the Government, written permission shall be obtained from the offeror prior to release of the proposal for such evaluation. A cover sheet shall be placed on the proposal or the proposal shall be clearly marked with the notice set forth in paragraph (c), above, or as modified in accordance with paragraph (d), above, if appropriate. A written agreement shall be obtained from any non-Government evaluator that the evaluator will not disclose information in the proposal outside the Government.

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

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: July 25, 1977.

JOEL W. SOLOMON,
Administrator of General Services.

[FR Doc.77-22304 Filed 8-2-77;8:45 am]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 196—DOMESTIC MINING AND MINERAL FUEL CONSERVATION FELLOWSHIPS

Award of Fellowships

AGENCY: U.S. Office of Education, HEW.

ACTION: Final regulation.

SUMMARY: The Education Amendments of 1976 included several amendments to the statute governing this program. This final regulation implements these amendments, including setting the amount of the fellowship and establishing weighting factors for criteria used in the evaluation of the applications.

EFFECTIVE DATE: Pursuant to section 431(d) of the General Education Provision Act, as amended (20 U.S.C. 1232(d)), this regulation has been transmitted to the Congress concurrently with the publication in the FEDERAL REGISTER. That section provides that regulations subject thereto shall become effective on the forty-fifth day following the date of such transmission, subject to the provisions therein concerning Congressional action and adjournment.

FOR FURTHER INFORMATION CONTACT:

Dr. Clarence B. Lindquist, Bureau of Higher and Continuing Education, 7th and D Streets SW., Regional Office Building 3, Room 3060, Washington, D.C. 20202, telephone 202-245-2347.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking published in the FEDERAL REGISTER on March 28, 1977 (42 FR 16448) incorporated proposed amendments to the existing regulation which had been published in final form on July 15, 1976 (41 FR 29123). The objective of the proposed regulation was:

(1) To implement the statutory provision permitting the Commissioner, in certain cases, to award an additional 12 months of fellowship tenure to a fellow who has already received 36 months of fellowship support;

(2) To implement the statutory provision allowing a fellow to interrupt his or her studies in certain circumstances for a period up to 12 months;

(3) To set the stipend, the dependency allowance, and the institutional allowance at levels consistent with prevailing practices in comparable federally supported programs, as is now required by statute;

(4) To delete the provision concerning the payment of travel allowances (formerly § 196.9), which are no longer authorized by the statute; and

(5) To establish weighting factors for the criteria (§ 196.10) used in evaluating the applications.

SUMMARY OF COMMENTS AND RESPONSES

Comment. One written comment to the proposed regulation was received. The commenter recommended that the stipend and dependency allowance paid to fellows be set at levels no less than those in comparable federally supported programs and that the dollar amount of the stipend not be specified in the regulation.

Response. The statute requires the Commissioner to pay such stipends (including such allowances for subsistence and other expenses for fellows and their dependents) as he may determine to be consistent with prevailing practices under comparable federally supported programs. The Commissioner believes that it is appropriate to publish these amounts in the regulation. The proposed regulation set the annual stipend at $3,600; the annual dependency allowance for each qualified dependent at $300; and the annual institutional allowance for each fellow at $3,600. To achieve consistency with other comparable federally supported programs and to conform with departmental policy, dependency allowances are being eliminated and the stipend and institutional allowance are both being set at $3,900 in the final regulation.

The Office of Education 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.

(Catalog of Federal Domestic Assistance Program No. 13.567; Domestic Mining and Mineral and Mineral Fuel Conservation Fellowships.)

Dated: June 22, 1977.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: July 28, 1977.

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

Title 45 of the Code of Federal Regulations is amended by revising Part 196, to read as follows:

Sec.
196.1 Definitions.
196.2 Purpose.
196.3 Award procedures.
196.4 Types of fellowships.
196.5 Eligibility for fellowships.
196.6 Fellowship conditions.
196.7 Stipend.
196.8 [Reserved]
196.9 Institutional allowance.
196.10 Criteria for allocating fellowships to institutions of higher education.
196.11 Reaward of vacated fellowships.
196.12 Payment procedures.
196.13 Criteria for determining financial need.
196.14 Records and reports.

AUTHORITY: Title IX, Part D, sections 961–965 of Pub. L. 89–329, as amended (20 U.S.C. 1134n–1134r), unless otherwise noted.

§ 196.1 Definitions.

As used in this part:

(a) "Act" means the Higher Education Act of 1965, as amended.

(b) "Domestic Mining" is defined as the means by which mineral and mineral fuel resources of the United States are extracted from the earth.

(c) "Fellow" means a person to whom the Commissioner awards a fellowship under this part.

(d) "Fellowship" means an award by the Commissioner under this part.

(e) "Institution of higher education" is defined in Section 1201(a) of the Higher Education Act of 1965, as amended 20 U.S.C. 1141(a).)

(f) "Mineral and Mineral Fuel Conservation" is defined as the means by which an adequate supply of the Nation's non-renewable resources is maintained, either through exploration for new sources, more efficient extraction of existing reserves, or better utilization of already processed minerals and mineral fuels.

(20 U.S.C. 1134n.)

§ 196.2 Purpose.

It is the purpose of this program to provide fellowships to assist graduate students of exceptional ability who demonstrate a financial need for advanced study in domestic mining and mineral and mineral fuel conservation including oil, gas, coal, oil shale and uranium.

(20 U.S.C. 1134n(a).)

§ 196.3 Award procedures.

Fellowships will be allocated to institutions of higher education which apply for a fellowship allocation and which offer a graduate program leading to an advanced or professional degree in the field of domestic mining or mineral and mineral fuel conservation on the basis of the criteria set forth in § 196.10. Institutions receiving such an allocation shall recommend eligible students to the Commissioner for fellowship award.

(20 U.S.C. 1134n(b)(1); 1134(c).)

§ 196.4 Types of fellowships.

The types of fellowships that will be awarded under this part are as follows:

(a) Fellowships for individuals for graduate study leading to an advanced or professional degree in a field of domestic mining or mineral and mineral fuel conservation.

(1) These fellowships will be awarded to individuals who have been accepted for graduate study at an institution of higher education that has received a fellowship allocation under this part.

(2) The fellowships will be allocated each year to institutions of higher education and will consist of two categories: new fellowships and continuation fellowships. Continuation fellowships will only be awarded to individuals who previously received an award under this part and who are continuing their study leading to an advanced or professional degree.

(3) An individual may receive assistance under this part for up to 36 months, except that the Commissioner may award a fellowship for an additional 12 month period to allow a student who has completed all course work and comprehensive examinations (if any) to complete the doctoral dissertation.

(b) Doctoral dissertation fellowships. These fellowships are one-year fellowships for persons who have completed all course work required for granting a doctoral degree or an equivalent degree (except such course work credited on the dissertation) and comprehensive examinations where appropriate, and whose doctoral dissertation (or other equivalent dissertation) proposal has been approved by appropriate officials of an institution of higher education that has received a fellowship allocation for this purpose.

(c)(1) A fellow may take a leave of absence for a period up to 12 months for the purpose of work, travel, or independent study away from the campus, if (i) the leave of absence is approved by the institution at which the fellow is enrolled and by the Commissioner; and (ii) the independent study is supportive of the fellow's academic program.

(2) The Commissioner shall make no payments to the fellow or the institution during this period. The fellowship is not vacated during this period and no reaward of the fellowship to another student may be made.

(20 U.S.C. 1134n(c); 1134n(d); 1134o.)

§ 196.5 Eligibility for fellowships.

Recipients of fellowships under this part must:

(a) Be of exceptional ability, as determined by the institution of higher education;

(b) Demonstrate financial need, as determined by the institution of higher education under the criteria set forth in § 196.13; and

(c) Be a national of the United States or be in the United States for other than a temporary purpose and intend to become a permanent resident thereof, or be a permanent resident of the Trust Territory of the Pacific Islands.

(20 U.S.C. 1134n(a)(1).)

§ 196.6 Fellowship conditions.

In order to continue receiving payments under the provisions of this part, a fellow must:

(a) Maintain satisfactory proficiency in the approved program in which he or she is registered;

(b) Continue to devote full-time to study or research in the field in which the fellowship was awarded; and

(c) Not engage in gainful employment during the period of the fellowship tenure, except in an internship or research activity under faculty supervision in the field in which he or she is studying.

(20 U.S.C. 1134q(a).)

§ 196.7 Stipend.

(a) The stipend to which a fellow is entitled will be $3,900 for an academic year consisting of twelve months.

(b) A fellow who is enrolled in the program of study for less than twelve months shall only be entitled to receive a pro rata share of the annual entitlement. For purposes of this section, a fellow who is enrolled in the program for the entire academic year (including summer sessions) at an institution of higher education shall be considered to be enrolled in the program for the full twelve months.

(20 U.S.C. 1134p(a).)

§ 196.8 [Reserved]

§ 196.9 Institutional allowance.

The institution of higher education at which the fellow is pursuing his or her course of study shall be paid $3,900 per twelve month period, except that any amount charged to and collected from the fellow by the institution for tuition and other expenses required by the institution as part of the fellow's instructional program shall be deducted from this amount. If the fellow is enrolled for less than 12 months, the institution will be paid a pro rata share of this amount.

(20 U.S.C. 1134p(b).)

§ 196.10 Criteria for allocating fellowships to institutions of higher education.

The allocation of fellowships among institutions of higher education which apply for participation in this program and which offer a graduate program leading to an advanced or professional degree in the field of domestic mining or mineral and mineral fuel conservation will be based on the following criteria:

(a) Highest priority will be given to allocate fellowships to institutions of higher education where the fellowships will be used to support fellows who are currently receiving assistance under this part or who are returning from an approved leave of absence (see § 196.4(c))

if there is evidence that these individuals have made satisfactory progress toward completing their course of study during the time when they are (or were) enrolled at the institution.

(b) The remaining fellowships will be allocated among institutions of higher education based on the degree (calculated according to the maximum point scores as shown) to which there is demonstrated evidence that the educational program at that institution:

(1) Is designed to address one or both of the following national needs (25 points):

(i) The need for trained individuals to improve the technologies for the efficient extraction and processing of nonrenewable mineral and mineral fuels including the development of improved systems of underground, underwater, and surface mining techniques, improved methods to protect the health and safety of people working in extraction and processing operations, and improved methods to protect and restore the environment in extraction and processing operations;

(ii) The need for training individuals to develop ways to ensure the availability of non-renewable minerals and mineral fuels through improved exploration or discovery techniques, optimum recovery of existing mineral and mineral fuel reserves, improved utilization of processed minerals and mineral fuels through recycling technology, and improved understanding of mineral economics;

(2) Is of high quality in terms of course offerings (20 points);

(3) Leads to immediate career opportunities in domestic mining and mineral and mineral fuels industries, including careers in teaching in those subject areas at institutions of higher education (5 points);

(4) Offers an opportunity for relevant supervised practicum, internship, or field experience (5 points);

(5) Has a program director and teaching staff which have the education, background, research interests, and experience to plan and implement a successful program of domestic mining and mineral and mineral fuel conservation education (20 points);

(6) Has the necessary institutional resources (facilities, equipment, library, etc.) to meet program objectives (20 points); and

(7) Has developed procedures to measure the effectiveness of the program (5 points).

(20 U.S.C. 134n(c).)

§ 196.11 Reaward of vacated fellowships.

If a fellowship is vacated prior to the end of a period for which it was awarded, the institution to which the fellowship is allocated may recommend to the Commissioner another individual to receive the fellowship. This individual must meet all the eligibility requirements set forth in § 196.5. The duration of a reawarded fellowship shall be for a period of graduate or professional work or research not in excess of the remainder of the period for which the fellowship it replaces was awarded.

(20 U.S.C. 1134n(b)(2).)

§ 196.12 Payment procedures.

(a) The Commissioner will pay to the approved institution of higher education the stipend and institutional allowance (calculated pursuant to §§ 196.7 and 196.9) for each fellowship allocated to that institution. The institution of higher education is responsible for disbursing all funds due the recipient.

(b) The timing of payments to fellows will be left to the discretion of each institution of higher education, although no fewer than two payments a year shall be made. Institutions are responsible for recovery of excess payments made to students who, for any reason, fail to complete the academic year for which they are registered.

(20 U.S.C. 1134p.)

§ 196.13 Criteria for determining financial need.

In determining whether a student has financial need for the purposes of this fellowship program, the institution must consider the student's projected costs for the year including tuition, fees, books, materials, and supplies, plus other reasonable costs that a student might have for room and board in comparison with the student's resources (including available income and contribution from available assets).

(20 U.S.C. 1134n(a).)

§ 196.14 Records and reports.

Each institution of higher education which receives an allocation of fellowships under this part, and each individual who is awarded a fellowship shall keep such records and submit such reports as are required by the Commissioner. Such reports shall include a certificate from an appropriate official at the institution of higher education, library, archive, or other research center approved by the Commissioner, stating that the fellow is making satisfactory progress in and is devoting essentially full time to the program for which the fellowship was awarded.

(20 U.S.C. 1134q(b).)

[FR Doc.77-22230 Filed 8-2-77;8:45 am]

Title 49—Transportation

Subtitle A—Office of the Secretary of Transportation

[OST Docket No. 16, Amdt. 99-12]

PART 99—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Statements of Employment and Financial Interests

AGENCY: Department of Transportation, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to revise Appendix C of the Department of Transportation's regulations governing employee conflict of interest. This document makes several additions to the list of positions the incumbents of which are required to submit statements of employment and financial interests.

EFFECTIVE DATE: August 3, 1977.

FOR FURTHER INFORMATION CONTACT:

Booker T. Wade, Jr., Attorney-Advisor, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590. (202-426-4723).

SUPPLEMENTARY INFORMATION: The persons principally responsible for drafting this document are: Program—Aubrey B. Robertson, Office of Personnel and Training; legal—Booker T. Wade, Jr., Office of the General Counsel.

Since this amendment relates to Departmental management, procedures, and practices, notice and public procedure thereon are unnecessary and it may be made effective in fewer than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, Part 99 of title 49, Code of Federal Regulations, is amended as follows:

Appendix C [Amended]

In Appendix C, Section I, under the caption "Office of the Assistant Secretary for Systems Development and Technology," the following amendments are made:

After the listing of "Director, Office of Noise Abatement," the following caption and listings are inserted:

* * * * *

TRANSPORTATION SYSTEMS CENTER

Director
Deputy Director
Executive Assistant
Equal Opportunity Officer
Chief Counsel
Patent Advisor
Chief, Office of Plans and Programs
Chief, Office of Advanced Systems
Director, Office of Systems Research and Analysis
Chief, National Transportation Research Division
Chief, Transportation Information Division
Chief, Urban and Regional Research Division
Director, Office of Energy and Environment
Chief, Energy Programs Division
Chief, Environmental and Test Programs Division
Director, Office of Air and Marine Systems
Chief, Systems Development Division
Chief, Systems Technology Division
Director, Office of Ground Systems
Deputy Director, Office of Ground Systems
Chief, Urban Systems Division
Chief, Intercity Systems Division
Chief, Vehicles and Engineering Division
Director, Office of Administration
Chief, Budget Office
Chief, Management Systems Division
Chief, Procurement and Supply Division
Chief, Procurement Analysis Branch
Chief, Contracts Branch
Chief, Purchases Branch
Contract Specialist, GS-13 and above
Contract Price Analyst, GS-13 and above
Chief, Computer Services Division

* * * * *

(Sec. 9(e), Department of Transportation Act (49 U.S.C. 1657(e); 49 CFR 99.735-31(b).)

Issued in Washington, D.C., on July 27, 1977.

EDWARD W. SCOTT, Jr.,
Assistant Secretary for Administration.

[FR Doc.77-22301 Filed 8-2-77;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Amdt. No. 4 to Service Order No. 1242]

PART 1033—CAR SERVICE

Kansas City Southern Railway Co. Authorized To Operate Over Certain Tracks of Southern Pacific Transportation Co.

Service date: July 29, 1977.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amendment No. 4 to Service Order No. 1242).

SUMMARY: Service Order No. 1242 authorizes the Kansas City Southern to operate over tracks of the Southern Pacific Transportation Co. at Lake Charles, La. The Kansas City Southern Railway's drawbridge over the Calcasieu River at Lake Charles is unserviceable because of failure of the operating machinery used to open and close the span, isolating a major industrial district served by the Kansas City Southern from the remainder of the system. Operation of Kansas City Southern trains over the parallel bridge of the Southern Pacific enables the Kansas City Southern to continue service to shippers served by the tracks disconnected from the remainder of the system by the failure of the operating mechanism of the bridge. Amendment No. 4 extends Service Order No. 1242 for six months.

DATES: Effective 11:59 p.m., July 31, 1977. Expires January 31, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Utilization and Distribution Branch, Interstate Commerce Commerce Commission, Washington, D.C. 20423, Telephone 202-275-7840.

SUPPLEMENTARY INFORMATION: The order is printed in full below.

At a session of the Interstate Commerce Commission Railroad Service Board held in Washington, D.C., on the 28th day of July 1977.

Upon further consideration of Service Order No. 1242 (41 FR 18053, 31824, 48344; and 42 FR 6584), and good cause appearing therefor:

It is ordered, That Service Order No. 1242 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

§ 1033.1242 Service Order No. 1242.

(a) The Kansas City Southern Railway Co. authorized to operate over tracks of Southern Pacific Transportation.* * *

* * * * *

(e) Expiration date: The provisions of this order shall expire at 11:59 p.m., January 31, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date: This amendment shall become effective at 11:59 p.m., July 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, Robert S. Turkington, and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-22327 Filed 8-2-77;8:45 am]

[Amdt. No. 2 to Service Order No. 1248]

PART 1033—CAR SERVICE

Norfolk & Western Railway Co. Authorized To Operate Over Tracks of Burlington Northern, Inc.

Service date: July 28,1977.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amendment No. 2 to Service Order No. 1248).

SUMMARY: Service Order No. 1248 authorizes the Norfolk and Western Railway to operate over 18.86 miles of the Burlington Northern, Inc., between Hannibal, Mo., and Quincy, Ill., in lieu of operations over a parallel line of the Burlington Northern between East Hannibal, Ill., and Quincy. The line on the east bank of the Mississippi River formerly used by the Norfolk and Western is unserviceable because of deteriorated track. An application for permanent authority to operate over the west bank line of the Burlington Northern has been filed by the Norfolk and Western. Amendment No. 2 extends Service Order No. 1248 for six months.

DATES: Effective 11:59 p.m., July 31, 1977. Expires 11:59 p.m., January 31, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone 202-275-7840, Telex 89 2742.

SUPPLEMENTARY INFORMATION: The order is printed in full below.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 27th day of July 1977.

Upon further consideration of Service Order No. 1248 (41 FR 31222 and 42 FR 6371), and good cause appearing therefor:

It is ordered, That Service Order No. 1248 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

§ 1033.1248 Service Order No. 1248.

(a) Norfolk and Western Railway Co. authorized to operate over tracks of Burlington Northern, Inc. * * *

* * * * *

(e) Expiration date: The provisions of this order shall expire at 11:59 p.m., January 31, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date: This amendment shall become effective at 11:59 p.m., July 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, Robert S. Turkington, and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-22328 Filed 8-2-77;8:45 am]

[Amdt. No. 6 to Revised Service Order No. 1210]

PART 1033—CAR SERVICE

Providence & Worcester Co. Authorized To Operate Over Tracks of Consolidated Rail Corp. and Consolidated Rail Corp. Authorized To Operate Over Tracks of Providence & Worcester Co.

Service date: July 29, 1977.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amendment No. 6 to Revised Service Order No. 1210).

SUMMARY: Because of abandonments by the former Penn Central, two short segments of the Consolidated Rail Corp.'s

lines in Rhode Island known as the Slatersville and Wrenthan branches are isolated from the remainder of its system. Revised Service Order No. 1210 authorizes the Providence and Worcester Co. which has the sole rail connections with these two Consolidated Rail Corp. branches to operate them for the account of Consolidated Rail, pending approval by the Commission of a joint operating contract covering these lines. Amendment No. 6 extends Revised Service Order for six months.

DATES: Effective 11:59 p.m., July 31, 1977. Expires 11:59 p.m., January 31, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone 202-275-7840.

SUPPLEMENTARY INFORMATION: The order is printed in full below.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 28th day of July 1977.

Upon further consideration of Revised Service Order No. 1210, (40 FR 7452, 19478, 41 FR 4929, 15414, 32430; and 42 FR 6817), and good cause appearing therefor:

It is ordered, That Revised Service Order No. 1210 be, and it is hereby, amended by substituting the following paragraph (h) for paragraph (h) thereof:

§ 1033.1210 Service Order No. 1210.

(a) Providence and Worcester Co. authorized to operate over tracks of Consolidated Rail Corp. and Consolidated Rail Corp. authorized to operate over tracks of Providence and Worcester Co. * * *

* * * * * *

(h) Expiration date: The provisions of this order shall expire at 11:59 p.m., January 31, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date: This amendment shall become effective at 11:59 p.m., July 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. ((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, Robert S. Turkington, and John R. Michael.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 77-22326 Filed 8-2-77;8:45 am]

SUBCHAPTER B—PRACTICE AND PROCEDURES

[Ex Parte No. 55 (Sub-No. 4)]

PART 1108—REVISED GUIDELINES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Correction

AGENCY: Interstate Commerce Commission.

ACTION: Correction to final rule.

SUMMARY: In the above captioned proceeding published at 41 FR 54772, December 15, 1976, one of the sub-sections contained an error. This correction is to show the proper sub-section for Item 7.

FOR FURTHER INFORMATION CONTACT:

Richard Chais, Chief, Section of Energy and Environment, Interstate Commerce Commission, Washington, D.C. 20423. Phone No.: 202-275-7692.

SUPPLEMENTARY INFORMATION: Because of a typographical error, item 7 of said notice incorrectly referred to § 1108.12(a) (b) of the Commission's Environmental Rules, 49 CFR 1108. The correct section number is § 1108.12(a) (3).

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.77-22211 Filed 8-2-77;8:45 am]

proposed rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 780]

APPEAL REGULATIONS

Appraisals With Respect to Technical Determinations for Wheat; Feed Grain, Upland Cotton and Rice Programs

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Proposed rule.

SUMMARY: The proposed rule provides that appraisals by Federal Crop Insurance Corporation and Agricultural Stabilization and Conservation Service appraisers with respect to technical determinations for wheat, feed grain, upland cotton, and rice programs shall be binding on the reviewing authority and are not appealable to the Deputy Administrator, Programs. Experience has proven that proper judgment decisions on appeal matters such as these become increasingly difficult when handled beyond the State committee level. By the time this type of appeal reaches the National level, the familiarity of local surroundings decreases and any contributions to effective program administration resulting from appeals beyond the State committee level is minimal.

DATE: Comments must be received on or before September 2, 1977.

ADDRESS: Mail comments or objections regarding the proposed change to the Director, Program Appeals Staff, Agricultural Stabilization and Conservation Service, Room 3649, South Building, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Arthur Reynolds, Program Appeals Staff, 202–447–3901.

SUPPLEMENTARY INFORMATION:

All references to programs for which the authorizing statutory language has expired such as the Land Use Adjustment and Soil Bank Programs are hereby removed.

PART 780—APPEAL REGULATIONS

In accordance with the above, it is proposed that § 780.11(a) of the Appeal Regulations, 7 CFR Part 780, be amended to read as follows:

§ 780.11 Requests for reconsideration and appeals requiring special handling.

(a) Determinations made by a State committee with respect to (1) the establishment of farm yields for wheat, feed grain, and cotton, (2) the establishment of wheat allotments, (3) the establishment of farm feed grain allotments, (4) the establishment of upland cotton base acreage allotments, (5) matters rising under the tobacco discount variety program, (6) eligibility provisions of the livestock feed program, (7) the disaster provisions of the wheat, feed grain, and upland cotton programs that a loss on a farm was due in whole or in part to causes other than the natural disaster or conditions beyond the control of the producer, (8) the establishment of rice allotments, and (9) crop appraisals by the Agricultural Stabilization and Conservation Service (ASCS) and by Federal Crop Insurance Corporation for ASCS are not appealable to the Deputy Administrator, Programs.

(b) In matters arising under the Agricultural Conservation Program involving the misuse of a purchase order by a vendor of conservation materials and services, the vendor may appeal to the Deputy Administrator only on the issue as to whether the facts reasonaly support the determination of the State committee.

(c) Matters arising under the (1) Agricultural Conservation Program involving a finding or certification by a technician of the Soil Conservation Services or Forest Service, or (2) appraisal redeterminations under the wheat, feed grain, upland cotton, or rice programs by Federal Crop Insurance Corporation or Agricultural Stabilization and Conservation Service, shall be binding on the reviewing authority.

RAY FITZGERALD,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.77-22271 Filed 8-2-77;8:45 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 705]

REASONABLE DUTIES UNDER A FULL WARRANTY

Inquiry and Proceeding on Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of Inquiry and Proposed Rule Proceeding.

SUMMARY: The Commission is proposing a rule applicable to only "full" warranties which will define certain duties which are not reasonable within the meaning of Section 104(b)(1) of the Magnuson-Moss Warranty Act. The rule proposes that eight duties or obligations, when imposed upon a consumer as a condition of securitg a remedy after a consumer product malfunctions, may not be placed in a "full" warranty. The rule is intended to provide guidance to warrantors offering full warranties regarding unreasonable conditions which may not be imposed as a precondition to obtaining warranty performance. The proposed rule covers the following issues: (1) The cost of returning consumer products for warranty service; (2) the safety of returning consumer products for warranty service; (3) warranty registration requirements; (4) service of built-in consumer products; (5) repackaging consumer products for return for warranty service; (6) return of consumer products to authorized dealers; (7) methods which consumers may use for notification of warrantors of defects; and (8) the time in which consumers must notify warrantors of defects.

DATES: Written comments must be received on or before September 15, 1977. Hearings will commence in Chicago, Illinois on October 3, 1977, in Los Angeles, California on November 7, 1977, and in Washington, D.C. on December 6, 1977.

FOR FURTHER INFORMATION CONTACT:

Gary Laden, Attorney, 202–724–1145, Division of Special Statutes, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Section 104(b)(1) of the Magnuson-Moss Warranty Act, Pub. L. 93–637 (15 U.S.C. 2304) (the Act), authorizes the Federal Trade Commission to make rules setting forth what is an unreasonable duty when imposed by a warrantor on a consumer as a condition of securing a remedy under a full warranty of any consumer product which malfunctions, is defective, or does not conform to the written warranty.

A "full warranty" is a written warranty which meets the minimum standards of Section 104. Neither that Section nor this proposed rule apply to limited warranties.

The proposed rule is intended to define and identify certain duties which are not reasonable within the meaning of Section 104(b)(1) of the Act. That section provides that a warrantor "shall not impose any duty other than notification upon any consumer as a condition of securing a remedy * * * unless the warrantor has demonstrated in a rulemaking proceeding, or can demonstrate in an administrative or judicial enforcement proceeding (including private enforcement), or in an informal dispute settlement proceeding, that such a duty is reasonable." The burden of showing that a duty is reasonable rests with the warrantor. The proposed rule does not

include all duties which may be unreasonable under Section 104(b)(1). Rather, the proposed rule covers those duties which the Commission currently has reason to believe constitute unreasonable duties if imposed in a full warranty. Other duties, not addressed by the proposed rule, may be dealt with in the future on a case-by-case basis in an adjudicatory proceeding, or in future rulemaking proceedings as provided in Section 104(b)(1). Furthermore, duties not included here in may be found to be unreasonable by a court or dispute settlement mechanism in a case or dispute under the Act.

Section 110(b) of the Act states that failure by any person to comply with any requirement imposed on such person by the Act, or by a rule thereunder, shall be a violation of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)). Should instances of noncompliance with these requirements occur, the Commission may exercise its injunctive powers, or take other action to enforce Section 5 of the Federal Trade Commission Act or Section 110 of the Act.

The Commission also wishes to conduct an inquiry into various issues raised by the proposed rule. The Commission wishes to invite comment on a number of questions raised by this proceeding. These questions are designed not only to solicit data, views and arguments on the appropriateness of the proposed rule but also to develop alternative approaches to those suggested by the Commission's proposed rule should such alternatives be warranted and found to be in the public interest.

The documents supporting the proposed rule, and a report of the Commission's staff discussing the proposed rule and the supporting documents, will be made available for examination by interested persons in Room 130 of the Division of Legal and Public Records, Federal Trade Commission, Washington, D.C.

SECTION A. PROPOSED RULE

In consideration of the foregoing, the Commission proposes the following rule implementing Section 104(b)(1) of the Act, and to amend Title 16, Chapter 1, by adding to subchapter G—Rules, Regulations, Statements, and Interpretations under the Magnuson-Moss Warranty Act, a new Part 705 under that subchapter as follows:

PART 705—REASONABLE DUTIES UNDER A FULL WARRANTY

Sec.
705.1 Definitions.
705.2 Scope.
705.3 Unreasonable Duties.

AUTHORITY: The provisions of this Part 705 issued under 15 U.S.C. 2304 and 2309.

§ 705.1 Definitions.

(a) "The Act"—means the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15 U.S.C. 2301, et seq.

(b) "Built-in"—means any consumer product which is attached, fastened, or installed in or on to real or personal property.

(c) "Consumer"—means a buyer (other than for purposes of resale or use in the ordinary course of the buyer's business) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty applicable to the product, and any other person who is entitled by the terms of such warranty or under applicable state law to enforce against the warrantor the obligations of the warranty.

(d) "Consumer product"—means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(e) "Duty"—means any obligation imposed upon a consumer by a warrantor in a written warranty which is or appears to be a condition of securing a remedy of a consumer product which malfunctions, is defective, or does not conform to the written warranty.

(f) "Full warranty"—means a written warranty which meets or is deemed to meet the Federal minimum standards under section 2304 of the Act.

(g) "Remedy"—means whichever of the following actions the warrantor elects: (1) Repair (2) replacement, or (3) refund; except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund.

(h) "Warrantor"—means any supplier or other person who gives or offers to give a written warranty.

(i) "Written warranty"—means (A) Any written affirmation of fact or promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material and workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) Any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(j) "Warranty service point"—means the place of business of the warrantor or of any designated representative for the performance of service under a written warranty.

(k) "Warranty service"—means any repair, replacement, refund, or other remedial action which a warrantor or a warrantor's designated representative is obligated to perform pursuant to a written warranty.

§ 705.2 Scope.

The regulations in this part define certain duties that warrantors offering full warranties may not impose upon consumers as a condition of securing a remedy of any consumer product. These regulations are not intended to give a complete list of such duties.

§ 705.3 Unreasonable duties.

It is a violation of Section 104(b)(1) of the Act, and as provided in Section 110(b) of the Act, a violation of Section 5(a)(1) of the Federal Trade Commission Act, for a warrantor offering a full warranty to a consumer on a consumer product to require or appear to require of the consumer, as a condition of securing a remedy, any unreasonable duty. The following are unreasonable duties:

(a) Requiring that a consumer assume the costs of mailing or shipping, including insurance, to send a product to or from a warranty service point. (NOTE.—A warrantor may require that a consumer initially pay these costs if the warrantor reimburses the consumer for them. In this case, reimbursement must be made no later than the time the product is returned to the consumer. Only documented costs must be reimbursed. The warrantor need not assume the costs of transportation to and from a mailing or shipping point, although a warrantor may choose to do so.)

(b) Requiring that a consumer mail, ship, or carry a consumer product which:

(1) Weights more than 15.9 kg (35 lbs);

(2) Is not designed to permit safe and convenient handling on stairways and through doorways; or

(3) Has any hazardous handling characteristics, including, but not limited to: (i) Sharp edges which may come in contact with a person handling the product; (ii) Hazardous or inadequate lift points, handholds or handles; (iii) Improperly located lift points, handholds or handles, especially on products which have uneven weight distribution.

NOTE 1.—It shall also be an unreasonable duty to require that a consumer mail a consumer product which is not mailable under current regulations of the United States Postal Service, if the product must be mailed to a warranty service point. United States Postal Service regulations include 39 CFR Part 124; United States Postal Service Manual Chapter 1, Part 123 and 124; and any other applicable regulations of the United States Postal Service or any amendments and supplements thereto.

NOTE 2.—Section 705.3(b) does not apply to operable motorized vehicles which are suitable for travel on public roads or waterways such as automobiles, motorcycles, and boats, and which can be returned to a warranty service point without unreasonable risk of damage to the vehicle or danger to persons. If a motorized vehicle is inoperable or cannot be returned for any of these reasons as a result of a warranty-related defect, the warrantor shall be responsible for returning (or assuming the cost of returning) the vehicle for warranty service.

(c) Requiring that a consumer complete and return any card shortly after

purchase of a product (such as an owner's registration card, a warranty registration card, or the like), to make all or any part of the warranty effective. (NOTE: A warrantor may require a consumer to submit evidence that a product is under warranty at the time a remedy is sought (e.g., evidence of date of purchase), except where a warranty is offered without a time limit. Evidence that a product is under warranty at the time a remedy is sought may include a requirement that a card (which may, at the customer's option, be the warranty registration card) or other evidence that the product is still under warranty, be presented as a condition for warranty coverage. A warrantor may suggest the return of a warranty registration card shortly after purchase of a product, as one means of submitting evidence of date of purchase, but it may not be required or implied as the only means of evidencing date of purchase. Any such suggestion or implication that a consumer return a warranty registration card, or that the warranty registration card is in any way connected to the warranty, must be accompanied by the following notice, printed clearly and conspicuously: "You do not have to return this (the) card. Failure to return the card will not affect your warranty rights." The following are examples of implications which would trigger this notice: Labeling a card a warranty card, warranty registration card, or the like; placing the text of the warranty on the card or attaching the warranty text to the card; representing or distributing the card as part of the warranty material.)

(d) Requiring that a built-in consumer product be removed and returned by a consumer for warranty service or reinstalled by a consumer after warranty service unless the product can be removed, returned, and reinstalled by the average consumer without special tools, skills, or without the expenditure of a substantial amount of time.

(e) Requiring that a consumer return a product in its original package. (NOTE.—A warrantor may require a consumer to take precautions in repackaging a consumer product that are reasonably calculated to protect it from damage in shipping or mailing. In this case, the warranty must include simple and readily understood instructions on how to repackage the product.)

(f) Requiring that a consumer product be returned for warranty service only to the selling dealer, where a warrantor has more than one warranty service point.

(g) Requiring that a consumer's notice of a defect, malfunction, or a failure to conform with the written warranty be in writing. Notice of a defect under a full warranty may be any communication reasonably calculated to inform the warrantor of the defect, malfunction, or lack of conformity of the consumer product.

(h) Requiring that a consumer give notice of a defect within a specified period of time other than a "reasonable period of time."

SECTION B. QUESTIONS FOR COMMENT

All interested persons are urged to provide data, views or arguments on any or all aspects of the proposed rule, including recommended revisions and alternative approaches. The Commission specifically invites comments on the following questions:

1. What duties, other than those addressed in the proposed rule, might be deemed to be unreasonable in violation of Section 104(b)(1) of the Act?

2. Section 705.3(a) would prohibit warrantors from requiring a consumer to pay mailing or shipping costs to return a product for warranty service. Is there an alternative formula for determining whether a consumer should bear the mailing costs when a product is returned for warranty service? Would limiting the amount of shipping charges a consumer would have to pay to a percentage of the purchase price of the product be a viable alternative? If so, how could such an approach be practically implemented? Are there other alternatives and how could each be implemented?

3. To provide as much certainty as possible, § 705.3(b)(1) provides a specified weight limit to guide warrantors in the question of reasonableness with regard to portability. However, it has been suggested that with respect to the issue of consumer product return, alternative criteria might be preferable in determining whether or not a duty to carry back a product is unreasonable. One alternative suggested has been to define reasonableness by reference to whether or not a consumer initially carried the product home from the place of purchase. Another alternative theory suggests that the nature of the use of the product itself might be one relevant criterion. For example, a vacuum cleaner or lawn mower on wheels might be reasonable to roll back if it did not have to be carried. Should either of these alternatives serve as a basis for formulating a rule, rather than establishing a maximum reasonable weight standard? What other criteria might be used to address the issue of the reasonableness of consumer product return requirements?

4. Section 705.3(b)(2) and (3) would prohibit warrantors from requiring return of any product which was not safe and convenient to handle on stairways or through doorways or which has hazardous handling characteristics. Is it possible to define more specifically what handling characteristics are too hazardous? How may the Commission provide more specific guidance on the issue of what may make a product too unsafe for a consumer to carry back for warranty service? Have manufacturers of consumer products studied these issues and developed guidelines for product design?

5. Section 705.3(d) would prohibit any requirement that consumers, return, remove, or reinstall a built-in consumer product "unless the product can be returned, removed, and reinstalled by an average consumer without special tools, skills, or without the expenditure of a substantial amount of time." The Commission wishes to invite comment on how it may provide more specific guidance on when a consumer may not be required to return a built-in item for warranty repair. Are there better terms to define the concepts of "average consumer" and "special tools and skills"? What is the expenditure of a substantial amount of time for removal and reinstallation? Is there another formula which addresses this question more specifically?

6. As an alternative to the approach presently embodied in § 705.3(b) and (d) of the proposed rule, should warrantors be able to require consumers to arrange for return of products over 35 lbs., or to remove built-in products, providing the warrantor bears the expense of removal and return? Would warrantors use such a system if allowed, and how could it be practically implemented? Would it be feasible, for example, to impose limitations on reimbursable costs of returning a product?

7. Section 705.3(c) would prohibit any requirement that a consumer return a card shortly after purchase as a prerequisite to make a warranty effective. However, the rule does not prohibit a warrantor from requiring that a purchaser produce a card at the time warranty service is sought. See also § 700.7 of Federal Trade Commission, "Interpretations of the Magnuson-Moss Act," 42 FR 36111, at 36116. Should a warrantor's requirement that a consumer return a card at the time a remedy is sought, as evidence that the product is still under warranty, be an unreasonable duty? Where the warranty period is of a lengthy duration, is there potential for consumers being denied warranty service because of loss of a card? Under what circumstances would a service card requirement amount to an unreasonable burden on the exercise of full warranty rights?

8. Section 705.3(f) would prohibit warrantors who have more than one service center from requiring consumers to return products for service only to the selling dealer. Will this requirement create any inefficiencies in the administration of a warranty program which includes more than one service center? What are the nature of these inefficiencies? For example, do consumer products receive their final inspection, testing, preparation, or assembly from retailers? Would retailers of such products sold under the terms of a full warranty perform these duties less diligently if consumers were no longer required to have warranty repairs performed by the dealer from whom the product was originally purchased? How would any such inefficiencies compare to the burden imposed on consumers? Please provide factual data in support of any comments.

9. Proposed § 705.3(h) would prevent warrantors from imposing time limitations for notice of defect which are more restrictive than a "reasonable time." The Commission wishes to invite comments on whether any specific time limitation for notice of defect, apart from the use

of the words "reasonable time," would constitute an unreasonable duty under Section 104(b)(1) of the Act? Please provide facts to the extent possible in support of any time period suggested.

10. What will be the additional costs of compliance, if any, with this rule for warrantors who give full warranties?

11. This rule was designed to give those offering full warranties guidance on what duties are unreasonable in full warranties. Should the rule try to provide guidance for all consumer products or should some or all of the issues raised by the proposed rule be considered by product groups or categories? Should there be different standards of unreasonableness for different product categories? Should the Commission define unreasonable duties on a case-by-case approach rather than through rulemaking?

SECTION C—WRITTEN COMMENTS

All interested persons are hereby notified that they may submit written data, views, or arguments on any issue of fact, law, or policy, which may have some bearing upon the proposed rule. Such written comments should be submitted to John A. Gray, Presiding Officer, Federal Trade Commission, Washington, D.C. 20580, on or before September 15, 1977. To assure prompt consideration comments should be identified as "Full Warranty Duties Comments" and submitted when possible and not burdensome, in three copies.

SECTION D—PUBLIC HEARINGS DATES AND PLACES

1. Public hearings will begin on October 3, 1977 at 9:30 a.m. in Room 280, Everett M. Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois 60604.

2. Public hearings will begin on November 7, 1977 at 9:30 a.m. in Room 13114, 11000 Wilshire Boulevard, Los Angeles, California 90024.

3. Public hearings will begin on December 6, 1977 at 9:30 a.m. in Room 532, Federal Trade Commission Building, Pennsylvania Avenue at Sixth Street, N.W., Washington, D.C. 20580.

SECTION E—INSTRUCTIONS FOR WITNESSES

1. *Advance notice.* Persons wishing to testify at a hearing should contact the Commission representative for that hearing location immediately. This will enable us to assist you in complying with the requirements set forth below. You may testify at only one hearing. In addition, all persons desiring to deliver a prepared statement at any of the hearings should file such statement together with supporting factual material with the Commission representative for that hearing location, two weeks before the commencement of the particular hearing.

2. *Notification and filing requirements.* (a) If you want to testify at the Chicago hearing, contact Alline G. Brown, 312–353–3775, Federal Trade Commission, 55 East Monroe Street, Chicago, Illinois 60603. If you plan to deliver a prepared statement at this hearing file such statement with Ms. Brown no later than September 19, 1977.

(b) If you want to testify at the Los Angeles hearing contact Paul M. Updegrove, 213–824–7575, Federal Trade Commission, 11000 Wilshire Boulevard, Los Angeles, California 90024. If you plan to deliver a prepared statement at this hearing file such statement with Mr. Updegrove no later than October 24, 1977.

(c) If you want to testify at the Washington, D.C. hearing contact Gary M. Laden, 202–724–1145, Division of Special Statutes, Federal Trade Commission, Washington, D.C. 20580. If you plan to deliver a prepared statement at this hearing file such statement with Mr. Laden no later than November 22, 1977.

3. *Use of Exhibits.* Use of exhibits during oral testimony is encouraged, especially when they clarify technical or complex matters.

(a) If you plan to offer documents as exhibits, file them as soon as possible during the general comment period (on or before September 15, 1977) so they can be studied by interested persons.

(b) If such documents are unavailable during the period, file them as soon as you can but not later than two weeks before the hearing at which you intend to present your testimony.

(c) Mark each document with your name, and number it in sequence, *e.g.* Jones Exhibit 1.

4. *Expert Witnesses.* If you are going to testify as an expert witness submit a curriculum vitae, biographical sketch, resume, or summary of your professional background and a bibliography of your publications. In addition, it would be helpful if you would include documentation for the opinions and conclusions you express. If your testimony is based upon or chiefly concerned with one or two major scientific works, copies should be furnished.

5. *Results of surveys and other research studies.* If you present in your testimony the results of a survey or other research study, you must also submit as an exhibit or exhibits in compliance with paragraph 3 above the following:

(a) A complete report of the survey or other research study and the information and documents listed in (b) through (e) below if they are not included in that report.

(b) A description of the sampling procedures and selection process including the number of persons contacted, the number of interviews completed, and the number of persons who refused to participate in the survey.

(c) Copies of all questionnaires or interview reports used in conducting the survey or study if respondents were permitted to answer questions in words of their choice rather than to select an answer from one or more answers printed on the questionnaire or suggested by the interviewer.

(d) A description of the methodology used in conducting the survey or other research study including the selection of instructions to interviewers, introductory remarks by interviewers to respondents, and a sample questionnaire or other data collection instruments.

(e) A description of the statistical procedures used to analyze the data and all data tables which underlie the results reported.

Other interested parties may wish to examine the questionnaires, data collection forms, and any other underlying data not offered as exhibits and which serve as a basis for your testimony. This information along with punch cards or computer tapes which were used to conduct analyses should be made available (with appropriate explanatory data) upon the request of the Presiding Officer who will then be in a position to permit their use by other interested parties or their counsel.

6. *General.* Copies of all materials filed by witnesses will be made available for examination at each hearing location specified above for the submission of such material. Any person who desires to obtain copies of the above materials for his own use must make arrangements in advance with the Commission representative specified above.

7. *Reason for requirements.* The foregoing requirements are necessary to permit us to schedule the time for your appearance as well as that of other witnesses in an orderly fashion. The Commission staff and the Presiding Officer need the requested documents for study before the hearing to prepare appropriate questions. Also, such data should be of assistance to interested persons in the preparation of the filing of contradictory statements (rebuttals).

8. *Content of testimony.* In your testimony you can discuss any questions of fact, law, or policy concerning the proposed rule.

9. *Procedures and time limits.* These hearings will be informal and courtroom rules of evidence will not apply. You will not be put under oath unless the Presiding Officer so requires. The Presiding Officer may set reasonable time limits on your testimony. If you submit a prepared statement of testimony you may summarize the statement in your testimony, and the entire written statement will be introduced into the record as an exhibit.

Issued: August 3, 1977.

By the Commission.

CAROL M. THOMAS,
Secretary.

[FR Doc.77-22278 Filed 8-2-77;8:45 am]

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Part 134]

COUNTRY OF ORIGIN MARKING

Proposed Change of Position Relating to Country of Origin Marking of Radios, Stereo Systems, Television Sets, and Other Similar Consumer Electronic Products

JULY 28, 1977.

AGENCY: United States Customs Service, Treasury.

ACTION: Notice of proposed change of position.

SUMMARY: This document describes a proposed change of position relating to the country of origin marking of radios, stereo systems, television sets, and other similar consumer electronic products. This change is being considered because contemporary marketing practices make the current practice of placing the country of origin marking on the back of such products unacceptable as a means of conspicuously marking the products as to country of origin, as required by law and regulations.

DATES: Comments must be received on or before September 2, 1977.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Diane Bratter, Attorney, Regulations and Legal Publications Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8237).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Unless otherwise provided by law, section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), and the Customs Regulations promulgated thereunder (19 CFR Part 134), require every article of foreign origin (or its container) imported into the United States to be marked in a conspicuous place, as legibly, indelibly, and permanently as the nature of the article (or the container of the article) will permit, in such a manner as to indicate to the ultimate purchaser of the article in the United States the English name of the country of origin of the article.

The United States Customs Court, in *Charles A. Redden (Inc.) v. United States*, T.D. 44964 (1931), held that section 304 of the Tariff Act does not require that an article be marked with the country of origin in the most conspicuous place, but merely that it be so marked "in any conspicuous place which shall not be covered or obscured by subsequent attachments or arrangements." Under the rationale of the *Redden* case, it has been the practice of the Customs Service to permit television sets, stereo systems, radios, and similar articles to be marked as to the country of origin on the back of the article, where labels showing the model number and other technical data are normally affixed

It has come to the attention of the Customs Service that many such articles of foreign origin carry a brand name which does not suggest foreign origin and, when offered for sale, are displayed in such a manner that prospective purchaser is unable to examine the merchandise to determine the country of origin until the article has been purchased and unpacked at home. Consequently, the Customs Service has determined that the current practice of marking these articles may no longer result, in a substantial number of cases, in such articles being conspicuously marked in a manner that will indicate to the ultimate purchaser the country of origin of the article.

PROPOSED CHANGE

Accordingly, it is proposed to require that radios, stereo systems, television sets, and similar consumer electronic products be marked with the country of origin on the front, top, or sides of the article in a manner which would ensure the visibility of the marking when the article is on display.

This change is being proposed under the authority of sections 304 and 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 1304, 1624). Notice of this proposed change is being published for public comment pursuant to section 177.10(c)(2) of the Customs Regulations (19 CFR 177.10(c)(2)).

COMMENTS

Before adopting this proposed rule, consideration will be given to any written comments submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b) of the Customs Regulations (19 CFR 103.8(b)) during regular business hours at the Regulations and Legal Publications Division, Headquarters, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this proposed rule is Diane Bratter, Attorney, Regulations and Legal Publications Division of the Office of Regulations and Rulings, United States Customs Service. However, personnel from other offices of the United States Customs Service participated in its development, both on matters of substance and style.

LEONARD LEHMAN,
Assistant Commissioner, Regulations and Rulings.

[FR Doc.77-22302 Filed 8-2-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1, 301, 404]

[LR-295-76]

INCOME TAX RETURN PREPARERS

Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to persons who prepare for compensation income tax returns and claims for refund. Changes to the applicable tax law were made by the Tax Reform Act of 1976. The regulations would affect all these persons and would provide them with the guidance needed to comply with the law.

DATE: Written comments must be delivered or mailed by September 2, 1977. The regulations are proposed to apply to documents prepared after December 31, 1977.

ADDRESS: Send comments to: Commissioner of Internal Revenue, attention: CC:LR:T (LR-295-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Mark. L. Yecies, Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, attention: CC:LR:T, 202-566-3328 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1), the Procedure and Administration Regulations (26 CFR Part 301), and the Temporary Regulations on Procedure and Administration under the Tax Reform Act of 1976 (26 CFR Part 404) under sections 6060, 6107, 6109(a)(4), 6694, 6695, and 7701(a)(36), of the Internal Revenue Code of 1954, relating to income tax return preparers. These amendments are proposed to conform the regulations to section 1203 of the Tax Reform Act of 1976 (90 Stat. 1688) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

The Tax Reform Act of 1976 established duties for persons who prepare for compensation income tax returns or claims for refund, and provided penalties for the breach of these duties and procedures with resepct to the collection of these penalties. These proposed regulations would implement the provisions of the Act.

DESCRIPTION OF PROPOSED REGULATION

In general, § 1.6060-1 requires an income tax return preparer to file an information return identifying each preparer employed by the preparer.

Section 1.6107–1 requires a preparer to furnish a copy of the completed return or claim for refund to the taxpayer before filing and to keep a copy of the completed return or claim for refund, or a list identifying the return or claim for refund available for inspection by the district director.

Section 1.6109–2 requires each return or claim for refund to bear the business address of the preparer where the document was prepared and the identification number of the preparer required to sign the document.

Section 1.6695–1(b) requires a preparer who has the primary responsibility for the accuracy of a return or claim for refund to manually sign the return or claim for refund before presenting it to the taxpayer.

Section 1.6695–1 provides penalties for the failure to file a correct information return, the failure to furnish a completed copy of the return or claim for refund to the taxpayer, the failure to retain a copy or list of returns and claims for refund, the failure to furnish identifying numbers, and the failure to manually sign the return. In addition, § 1.6695–1(f) provides a penalty for the endorsement or negotiation by a preparer of a refund check issued to a taxpayer for a return or claim for refund prepared by the preparer.

Section 1.6694–1 prohibits a preparer from negligently or intentionally disregarding rules or regulations, resulting in an understatement of tax liability, and from willfully understating tax liability. This section also provides penalties for the breach of these prohibitions. Section 1.6694–2 establishes procedures with respect to the collection of these penalties and the contest by the preparer of the preparer's liability for these penalties.

Section 301.7701–15 defines the terms "income tax return preparer", "return", and "claim for refund".

Temporary regulations relating to income tax return preparers were published in the FEDERAL REGISTER on December 29, 1976 (41 FR 56631), March 31, 1977 (42 FR 17124), and April 1, 1977 (42 FR 17452). In contrast to these temporary regulations, the proposed regulations require that the return or claim for refund bear the identifying number of the preparer required to sign the return or claim for refund. In addition, under certain circumstances, the proposed regulations permit, upon notice to, but without the approval of, the Internal Revenue Service, the return or claim for refund to bear only the ZIP code of the preparer as the preparer's address. Finally, the proposed regulations provide two limited alternatives to strict compliance by the preparer with the manual signature requirement.

COMMENTS—PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held in accordance with the notice of hearing published in this issue of the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations was Mark L. Yecies of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Proposed amendments to the regulations.—The proposed amendments to 26 CFR Parts 1, 301, and 404 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The following new section is added immediately after § 1.6056–1:

§ 1.6060–1 Information returns of income tax return preparers.

(a) *In general.*—(1) Each person who employs (or engages) one or more income tax return preparers as employees or independent contractors to prepare any return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954, other than for the person, at any time during a return period shall file an information return setting forth the name, taxpayer identification number, and place of work of each income tax return preparer employed by the person at any time during such period.

(2) For the definition of the term "income tax return preparer", see section 7701(a)(36) and § 301.7701–15. For the definition of the term "return period", see section 6060(c) and paragraph (c) of this section.

(3) (i) For purposes of this section, any individual who, in acting as an income tax return preparer, is not employed by another income tax return preparer shall be treated as his own employer. Thus, a sole proprietor without any employee-preparers shall file the information return.

(ii) A partnership shall, for purposes of this section, be treated as the employer of the partners of the partnership and shall file the information return.

(4) Form 5717 is the return form prescribed for filing the information required under this section. The information return shall be filed with the Internal Revenue Service Center on or before the first July 31 following the end of the return period to which the return relates.

(b) *Alternative reporting method.*—(1) Any person required to file an information return under paragraph (a) of this section may request approval of an alternative reporting method which the person wishes to use to comply with paragraph (a) of this section. Such a requested alternative reporting method may include, for example, the filing, on a consistent basis, of the information required on magnetic tape. However, no approval will be given to an alternative reporting method that does not require some form of annual filing of all the information required by paragraph (a) of this section.

(2) Any request for approval of an alternative reporting method shall be in writing, shall be filed at least 90 days prior to the date the return is due, and shall be directed to the Office of the Assistant Commissioner (Accounts, Collection, and Taxpayer Service), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (attention: ACTS:R). The information required shall be filed when due on the prescribed form if the request is denied (or not approved) by the date when the return is due. If the request is approved, the approval shall continue in effect with respect to all return periods until modified or revoked by written notice to the person required to file the return.

(c) *Return period defined.*—For purposes of this section, the term "return period" means the 12-month period beginning on July 1 of each year, except that the first return period shall be the 6-month period beginning on January 1, 1977, and ending on June 30, 1977.

(d) *Penalty.*—For the civil penalty for failure to file an information return required under this section, or for failure to set forth an item in the return as required under this section, see section 6695(e) and § 1.6695–1(e).

Par. 2. The following new section is added immediately after § 1.6102–1:

§ 1.6107–1 Income tax return preparer must furnish copy of return to taxpayer and must retain a copy or list.

(a) *Furnishing copy to taxpayer.*—The person who is an income tax return preparer of any return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 shall furnish a completed copy of the original return or claim for refund to the taxpayer not later than the time the original return or claim for refund is presented for the taxpayer's signature.

(b) *Copy or list to be retained.*—The person who is an income tax return preparer of any return or claim for refund shall—

(1) (i) Retain a completed copy of the return or claim for refund; or

(ii) Retain, on a list, the name, taxpayer identification number, and taxable year of the taxpayer for whom the return or claim for refund was prepared and the type of return or claim for refund prepared;

(2) Retain a record for each return or claim for refund presented to the taxpayer of the name of the individual preparer required to sign the return or claim for refund pursuant to § 1.6695–1(b); and

(3) Make the copy or list and record available for inspection upon request by the district director.

The material described in this paragraph (b) shall be retained and kept available for inspection for the 3-year period following the close of the return period during which the return or claim for refund was presented to the taxpayer. However, in the case of a return which becomes due (with extensions, if any) during a return period following the return period during which the return was presented to the taxpayer, the material shall be retained and kept available for inspection for the 3-year period following the close of the later return period in which the return became due. For the definition of "return period" see section 6060(c) and § 1.6060–1(c).

(c) *Preparer.*—For the definition of "income tax return preparer", see section 7701(a)(36) and § 301.7701–15. For purposes of applying this section, in the case of—

(1) An employment arrangement between two or more income tax return preparers, the person who employs one or more other preparers to prepare for compensation any return or claim for refund other than for the person shall be considered to be the sole income tax return preparer; and

(2) A partnership arrangement for the preparation of returns and claims for refund, the partnership shall be considered to be the sole income tax return preparer.

(d) *Penalties.*—(1) For the civil penalty for failure to furnish a copy of the return or claim for refund to the taxpayer as required under paragraphs (a) and (c) of this section, see section 6695(a) and § 1.6695–1(a).

(2) For the civil penalty for failure to retain a copy of the return or claim for refund, or to retain a list, as required under paragraphs (b) and (c) of this section, see section 6695(d) and § 1.6695–1(d).

§ 1.6109 [Deleted]

Par. 3. Section 1.6109 is deleted.

Par. 4. The following new section is added immediately after § 1.6109–1:

§ 1.6109–2 Furnishing identifying number of income tax return preparer.

(a) *Furnishing identifying number.*—Each return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 prepared by one or more income tax return preparers shall bear the identifying number of the preparer required by § 1.6695–1(b) to sign the return or claim for refund. In addition, if there is a partnership or employment arrangement between two or more preparers, the identifying number of the partnership or the person who employs (or engages) one or more other persons to prepare for compensation the return or claim for refund shall also appear on the return or claim for refund. If the preparer is—

(1) An individual (not described in subparagraph (2) of this paragraph (a)) who is a citizen or resident of the United States, such preparer's social security account number shall be affixed; and

(2) A person (whether an individual, corporation, or partnership) who employs one or more persons to prepare the return or claim for refund, such preparer's employer identification number shall be affixed.

For the definition of the term "income tax return preparer" (or "preparer") see section 7701(a)(36) and § 301.7701–15.

(b) *Furnishing address.*—(1) Each return or claim for refund which is prepared by an income tax return preparer shall bear the street address, city, State, and postal ZIP code of the preparer's place of business where the return or claim for refund was prepared. However, if the place of business where the return or claim for refund was prepared is not maintained by the preparer as a place of business on a year-round basis, the return or claim for refund shall bear the street address, city, State, and postal ZIP code of the preparer's principal office or business location which is maintained on a year-round basis, or if none, the preparer's residence.

(2) For purposes of satisfying the requirement of the first sentence of paragraph (b)(1) of this section, an income tax return preparer may, on returns and claims for refund, disclose only the postal ZIP code of the described place of business as a satisfactory address, but only if the preparer first by written notice advises the Internal Revenue Service Center that he intends to follow this practice.

(c) *Penalty.*—For the civil penalty for failure to furnish an identifying number as required under paragraph (a) of this section, see section 6695(c) and § 1.6695–1(c).

Par. 5. The following new sections are added immediately after § 1.6655–5:

§ 1.6694–1 Understatement of taxpayer's liability by income tax return preparer.

(a) *Negligent or intentional disregard of rules and regulations.*—(1) If any part of an understatement of liability relating to a return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 is due to negligent or intentional disregard of one or more rules or regulations by one or more income tax return preparers of the return or claim for refund, each such preparer shall be subject to a separate penalty of $100. However, an employer of a preparer subject to this penalty is not also subject to the penalty, unless the employer (or one or more of its chief officers) also participated in the negligent or intentional disregard of one or more rules or regulations. A preparer is not considered to have negligently or intentionally disregarded a rule or regulation if the preparer exercises due diligence in an effort to apply the rules and regulations to the information given to the preparer to determine the taxpayer's correct liability for tax.

(2) For the definition of the term "understatement of liability", see section 6694(e) and paragraph (d) of this section.

(3) The term "rules or regulations" includes the provisions of the Internal Revenue Code of 1954, the Treasury regulations issued under the Code, and Internal Revenue Service revenue rulings published in the Cumulative Bulletin.

(4) If a preparer in good faith and with reasonable basis believes that a rule or regulation does not accurately reflect the Code and does not follow it, the preparer has not negligently or intentionally disregarded the rule or regulation. This test shall be applied in the same manner as it is applied under section 6653(a) and the regulations thereunder (relating to disregard of rules and regulations by taxpayers). For example, if a preparer reasonably believes in good faith that a judicial decision conflicts with a rule or regulation and that the decision reflects the Code more accurately, the preparation of a return or claim for refund by the preparer on the basis of the decision is not a negligent or intentional disregard of the rule or regulation. For purposes of this paragraph (a), the view of the taxpayer concerning a rule or regulation is not material.

(5) In any proceeding with respect to the penalty imposed by this paragraph (a), the preparer shall bear the burden of proof on the issue whether the preparer has negligently or intentionally disregarded a rule or regulation. If the preparer presents evidence that the normal practice of the preparer concerning the treatment of a particular credit, allowance, deduction, or item of income was not negligent and that this normal practice was followed, the preparer has satisfied the burden of proof that he did not negligently disregard a rule or regulation, unless the Internal Revenue Service presents contrary evidence.

(b) *Willful understatement of liability.*—(1) If any part of an understatement of liability relating to a return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 is due to a willful attempt in any manner to understate liability for tax by one or more income tax return preparers of the return or claim for refund, each such preparer shall be subject to a separate penalty of $500. However, an employer of a preparer subject to this penalty is not also subject to the penalty, unless the employer (or one or more of its chief officers) also participated in the willful attempt to understate liability.

(2) (i) A preparer is considered to have willfully attempted to understate liability if the preparer disregards information furnished by the taxpayer or other persons in an attempt wrongfully to reduce the tax liability of the taxpayer. For example, if a preparer disregards information concerning certain items of taxable income furnished by the taxpayer or other persons, the preparer would be subject to the penalty. Simi-

larly, if a taxpayer states to a preparer that the taxpayer has only two dependents, and the preparer reports six dependents on the return, the preparer would be subject to the penalty.

(ii) Generally, in preparing a return, the preparer may in good faith rely without verification upon information furnished by the taxpayer. To avoid the penalty, the preparer is not required to examine or review documents or other evidence in order to verify independently the taxpayer's information. However, the preparer may not ignore the implications of information furnished. The preparer shall make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. Additionally, many sections of the Code require the existence of specific facts and circumstances, such as maintenance of specific documentation, before a deduction may properly be claimed. The preparer shall make appropriate inquiries of the taxpayer to determine the existence of facts and circumstances required by a Code section or regulations incident to claiming a deduction.

(iii) For example, assume that a taxpayer, during the tax interview conducted by a preparer, stated that he had paid $2,500 in doctor bills and $4,000 in deductible travel and entertainment expenses during the tax year when in fact he had paid smaller amounts. On the basis of the information, the preparer properly calculated deductions for medical expenses and for travel and entertainment expenses which resulted in an understatement of liability for tax. The preparer had no reason to believe that the medical expense and travel and entertainment expense information presented was incorrect or incomplete. The preparer did not ask for underlying documentation of the medical expenses and, upon inquiry, was satisfied by the taxpayer's representations that the taxpayer had adequate records (or other sufficient corroborative evidence) for the deduction of $4,000 for travel and entertainment expenses. The preparer is not subject to the penalty.

(iv) In certain situations, a preparer shall be subject both to a penalty under paragraph (a) of this section for intentional disregard of rules and regulations and to a penalty under this paragraph (b) for willful understatement of liability. A penalty for willful understatement of liability may be based on an intentional disregard of rules and regulations. For example, a preparer who claims a personal exemption deduction for the taxpayer's mother with knowledge that the taxpayer is not entitled to the deduction will have both intentionally disregarded rules and regulations within the meaning of paragraph (a) of this section and willfully understated liability for tax within the meaning of this paragraph (b).

(3) For the definition of the term "understatement of liability", see section 6694(e) and paragraph (d) of this section.

(4) If a penalty is assessed against a preparer, and collected at least in part, under paragraph (a) of this section for a return or claim for refund, then the amount of a penalty for which the preparer may be subject under this paragraph (b) for the same return or claim for refund is $500, reduced by the amount collceted under paragraph (a) of this section for the return or claim for refund.

(5) In any proceeding with respect to the penalty imposed by this paragraph (b), the Internal Revenue Service shall bear the burden of proof on the issue whether the preparer has willfully attempted to understate the liability for tax. See section 7427.

(c) *Abatement of penalty where taxpayer's liability not understated.*—If a penalty or penalties under section 6694(a) and paragraph (a) of this section or under section 6694(b) and paragraph (b) of this section concerning a return or claim for refund have been assessed against one or more income tax return preparers, and if at any time in a final administrative determination or a final judicial decision it is established that there was no understatement of liability relating to the return or claim for refund, then—

(1) The assessment shall be abated; and

(2) If any amount of the penalty or penalties was paid, that amount shall be refunded to the person or persons who so paid, as if the payment were an overpayment of taxes, without consideration of any period of limitations.

(d) *Understatement of liability defined.*—For purposes of this section, the term "understatement of liability" means any understatement of the net amount payable of any tax under subtitle A of the Internal Revenue Code of 1954, or any overstatement of the net amount creditable or refundable of any tax under subtitle A of the Internal Revenue Code of 1954. Except as provided in paragraph (c) of this section, the determination of whether an understatement of liability exists may be made in a proceeding involving the preparer apart from any proceeding involving the taxpayer.

§ 1.6694–2 Extension of period of collection where preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general.*—(1) The Internal Revenue Service shall investigate the preparation by the income tax return preparer of the return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 and shall send a report of examination to the preparer before the assessment of either—

(i) The penalty for negligent or intentional disregard of rules and regulations under § 1.6694–1(a); or

(ii) The penalty for willful understatement of liability under § 1.6694–1(b).

Unless the period of limitation (if any) under section 6696(d) may expire without adequate opportunity for assessment, the Internal Revenue Service shall also, before the assessment of either penalty, send a 30-day letter to the preparer notifying him of the proposed penalty or penalties and offering an opportunity to the preparer to request further administrative consideration and a final administrative determination by the Internal Revenue Service concerning the assessment. If the preparer then makes a timely request, assessment may not be made until the Internal Revenue Service makes a final administrative determination adverse to the preparer.

(2) If the Internal Revenue Service assesses either of the two penalties described in paragraph (a)(1) (i) and (ii) of this section, it shall send to the preparer a statement of notice and demand, separate from any notice of a tax deficiency, for payment of the amount assessed.

(3) Within 30 days after the day on which notice and demand of either of the two penalties described in paragraph (a)(1) (i) and (ii) of this section is made against the preparer, that preparer shall either—

(i) Pay the entire amount assessed (and may file a claim for refund of the amount paid at any time not later than 3 years after the date of payment); or

(ii) Pay an amount which is not less than 15 percent of the entire amount assessed and shall file a claim for refund of the entire amount paid.

(4) If the preparer pays an amount and files a claim for refund under paragraph (a)(3)(ii) of this section, the Internal Revenue Service may not make, begin, or prosecute a levy or proceeding in court for collection of the unpaid remainder of the amount assessed until—

(i) A date which is more than 30 days after—

(A) The day on which the preparer's claim for refund is denied; or

(B) The expiration of 6 months after the day on which the preparer filed the claim for refund; and

(ii) Final resolution of any proceeding begun as provided in paragraph (b) of this section.

Final resolution of a proceeding includes any settlement between the Internal Revenue Service and the preparer, any final determination by the court (for which the period for appeal, if any, has expired), and, generally, the types of determinations provided under section 1313(a) (relating to taxpayer deficiencies). Notwithstanding section 7421(a) (relating to suits to restrain assessment or collection), the beginning of a levy or proceeding in court by the Internal Revenue Service in contravention of this subparagraph (4) may be enjoined by a proceeding in the proper court.

(b) *Preparer must bring suit in district court to determine liability for penalty.*—(1) If, within 30 days after the earlier of—

(i) The day on which the preparer's claim for refund filed under paragraph (a)(3)(ii) of this section is denied; or

(ii) The expiration of 6 months after the day on which the preparer filed the claim for refund.

the preparer fails to begin a proceeding for refund in the appropriate United States district court, then the Internal Revenue Service may proceed with collection of the amount of the penalty not paid under paragraph (a)(3)(ii) of this section.

(2) (i) If the preparer begins a proceeding for refund within the applicable 30-day period of paragraph (b)(1) of this section, then the Internal Revenue Service may not make, begin, or prosecute a levy or proceeding in court for collection of the unpaid remainder of the penalty until final resolution of the proceeding.

(ii) If the preparer begins a proceeding for refund under this paragraph (b), then the Internal Revenue Service need not bring a counterclaim in the proceeding for the unpaid remainder of the penalty, because any judicial decision on the refund will apply as well to the unpaid remainder of the penalty.

(c) *Suspension of running of period of limitations on collection.*—The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court of the unpaid amount of a penalty or penalties described in § 1.6694–1 (a) or (b) shall be suspended for the period during which the Internal Revenue Service, under paragraphs (a)(4) and (b)(2)(i) of this section, may not collect the unpaid amount of the penalty or penalties by levy or a proceeding in court.

§ 1.6695–1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

(a) *Failure to furnish copy to taxpayer.*—(1) A person who is an income tax return preparer of any return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 and who fails to satisfy the requirement imposed upon him by section 6107(a) and § 1.6107–1 (a) and (c) to furnish a copy of the return or claim for refund to the taxpayer shall be subject to a penalty of $25 for the failure, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. Thus, no penalty may be imposed under section 6695(a) and this paragraph (a)(1) upon a person who is an income tax return preparer solely by reason of—

(i) Section 301.7701–15 (a)(2) and (b) on account of having given advice on specific issues of law; or

(ii) Section 301.7701–15(b)(3) on account of having prepared the return solely because of having prepared another return which affects amounts reported on the return.

(2) No penalty may be imposed under section 6695(a) and paragraph (a)(1) of this section upon an income tax return preparer who furnishes a copy of the return or claim for refund to a taxpayer—

(i) Who holds an elected or politically appointed position with the government of the United States or a State or political subdivision thereof; and

(ii) Who, in order faithfully to carry out his official duties, has so arranged his affairs that the has less than full knowledge of the property which he holds or of the debts for which he is responsible,

if information is deleted from the copy in order to preserve or maintain this arrangement.

(b) *Failure to sign return.*—(1) An individual who is an income tax return preparer with respect to a return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 shall manually sign the return or claim for refund (which may be a photocopy) in the appropriate space provided on the return or claim for refund after it is completed and before it is presented to the taxpayer for signature. An individual preparer may not satisfy this requirement by use of a facsimile signature stamp or signed gummed label. If the preparer is unavailable for signature, another preparer shall so advise the taxpayer, shall review the entire prepared of the return or claim for refund, and then shall manually sign the return or claim for refund.

(2) If more than one income tax return preparer is involved in the preparation of the return or claim for refund, the individual prepared who has the primary responsibility as between or among the preparers for the overall accuracy of the preparation of such return or claim for refund shall be considered to be the income tax return preparer for purposes of this paragraph.

(3) The application of paragraph (b)(1) and (2) of this section is illustrated by the following examples:

Example (1).—X law firm employs Y, a lawyer, to prepare for compensation returns and claims for refund of taxes. X is employed by T, a taxpayer, to prepare his 1977 Federal tax return. X assigns Y to prepare T's return. Y obtains the information necessary for completing the return from T and makes determinations with respect to the proper application of the tax laws to such information in order to determine T's tax liability. Y then forwards such information to C, a computer tax service which perfroms the mathematical computations and prints the return form by means of computers. C then sends the completed return to Y who reviews the accuracy of the return. Y is the individual preparer who is primarily responsible for the overall accuracy of T's return. Y must sign the return as preparer.

Example (2).—X partnership is a national accounting firm which prepares for compensation returns and claims for refund of taxes. A and B, employees of X, are involved in preparing the 1977 tax return of T Corporation. After they complete the return, including the gathering of the necessary information, the proper application of the tax laws to such information, and the performance of the necessary mathematical computations, P, a partner in X, reviews the return. As part of this review, P checks for mathematical mistakes, reviews the information provided, and makes the final determination with respect to the proper application of the tax laws to the information in order to determine T's tax liability. P is in the individual preparer who is primarily responsible for the overall accuracy of T's return. P must sign the return as preparer.

Example (3).—C corporation maintains an office in Seattle, Washington, for the purpose of preparing for compensation returns and claims for refund of taxes. C makes compensatory arrangements with individuals (but provides no working facilities) in several States to collect information from taxpayers and to make determinations with respect to the proper application of the tax laws to the information in order to determine the tax liabilities of such taxpayers. E, an individual, who has such an arrangement in Los Angeles with C, collects information from T, a taxpayer, and completes a worksheet kit supplied by C which is stamped with E's name and an identification number assigned to E by C. In this process, E classifies this information in appropriate income and deduction categories for the tax determination. The completed worksheet kit signed by E, is then mailed to C. D, an employee in C's office, reviews the worksheet kit to make sure it was properly completed. D does not review the information obtained from T for its validity or accuracy. Neither does he make the final determination with respect to the proper application of tax laws to the information. The data from the worksheet is entered into a computer and the return form is completed. The return is prepared for submission to T with filing instructions. E is the individual preparer primarily responsible for the overall accuracy of T's return. E must sign the return as preparer.

Example (4).—X employs A, B, and C to prepare income tax returns for taxpayers. After A and B have collected the information from the taxpayer and applied the tax laws to the information, the return form is completed by computer service. On the day the returns prepared by A and B are ready for their signatures, A is away from the city for 1 week on another assignment and B is on detail to another office for the day. C may sign the returns prepared by A, provided that (i) C notifies each taxpayer that he as preparer (and not A) is primarily responsible for the preparation of the return, (ii) C reviews with each taxpayer the information obtained by A relative to the taxpayer, and (iii) C reviews the preparation of each return prepared by A. C may not sign the returns prepared by B because B is available.

(4) (i) The manual signature requirement of paragraph (b)(1) and (2) of this section may be satisfied by a photocopy of a copy of the return or claim for refund which copy is manually signed by the preparer after completion of its preparation. After a copy of the return or claim for refund is signed by the preparer and before it is photocopied, no person other than the preparer may alter any entries on the copy other than to correct arithmetical errors discernable on the return or claim for refund. The employer of the preparer or the partnership in which the preparer is a partner, or the preparer (if not employed by a preparer and not a partner of a partnership which is a preparer), shall retain the manually signed copy of the return or claim for refund. A record of anv arithmetical errors corrected shall be retained by the person required to retain the manually signed copy of the return or claim for refund and made available upon request.

(ii) If mechanical preparation of the return or claim for refund is accomplished by computer not under the control of the individual preparer, then the manual signature requirement of paragraph (b)(1) and (2) of this section may be satisfied by a manually signed

attestation by the individual preparer attached to the return or claim for refund that all the information contained in the return or claim for refund was obtained from the taxpayer and is true and correct to the best of his knowledge, but only if that information (including any supplemental written information provided and signed by the preparer) is not altered on the return or claim for refund by another person. For purposes of the preceding sentence, the correction of arithmetical errors discernable from the information submitted by the preparer does not constitute an alteration. The information submitted by the preparer shall be retained by the employer of the preparer or by the partnership in which the preparer is a partner, or by the preparer (if not employed by a preparer and not a partner of a partnership which is a preparer). A record of any arithmetical errors corrected shall be retained by the person required to retain the information submitted by the preparer and made available upon request.

(iii) If the district director determines that a preparer or preparers have abused the permissive signature rules of this subparagraph (4) by altering the return or claim for refund after signature (in contravention of subdivision (i) of this subparagraph), or by altering information on the return or claim for refund after attestation (in contravention of subdivision (ii) of this subparagraph), then the district director may, by written notice, prospectively deny to the preparer or preparers the right to use these permissive signature rules.

(5) An individual required by this paragraph (b) to sign a return or claim for refund shall be subject to a penalty of $25 for each failure to sign, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. For purposes of this paragraph, "reasonable cause" is a cause which arises despite ordinary care and prudence exercised by the individual preparer. Thus, no penalty may be imposed under section 6695(b) and this paragraph (b) upon a person who is an income tax return preparer solely by reason of—

(i) Section 301.7701–15 (a)(2) and (b) on account of having given advice on specific issues of law; or

(ii) Section 301.7701–15(b)(3) on account of having prepared the return solely because of having prepared another return which affects amounts reported on the return.

If the preparer asserts reasonable cause for failure to sign, the Service shall require a written statement in substantiation of the preparer's claim of reasonable cause.

(c) *Failure to furnish identifying number.*—(1) A person who is an income tax return preparer of any return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 and who fails to satisfy the requirement of section 6109(a)(4) and § 1.6109–2(a) to furnish one or more identifying numbers of preparers on a return or claim for refund shall be subject to a penalty of $25 for the failure, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. Thus, no penalty may be imposed under section 6695(c) and this paragraph (c)(1) upon a person who is an income tax return preparer solely by reason of—

(i) Section 301.7701–15 (a)(2) and (b) on account of having given advice on specific issues of law; or

(ii) Section 301.7701–15(b)(3) on account of having prepared the return solely because of having prepared another return which affects amounts reported on the return.

(2) No penalty may be imposed under section 6695(c) and paragraph (c)(1) of this section upon—

(i) A preparer who is the employee of a person who is also a preparer of the return or claim for refund, or

(ii) A preparer who is a partner in a partnership which is also a preparer of the return or claim for refund.

(3) No more than one penalty of $25 may be imposed under section 6695(c) and paragraph (c)(1) of this section with respect to a single return or claim for refund.

(d) *Failure to retain copy or list.*—(1) A person who is an income tax return preparer of any return of tax under subtitle A of the Internal Revenue Code of 1954 or claim for refund of tax under subtitle A of the Internal Revenue Code of 1954 and who fails to satisfy the requirements imposed upon him by section 6107(b) and § 1.6107–1 (b) and (c) (other than the record requirement described in § 1.6107–1(b) (2) and (3)) to retain and make available a copy of the return or claim for refund, or to include the return or claim for refund on a list and make the list available for inspection, shall be subject to a penalty of $50 for the failure, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. Thus, no penalty may be imposed under section 6695(d) and this paragraph (d)(1) upon a person who is an income tax return preparer solely by reason of—

(i) Section 301.7701–15 (a)(2) and (b) on account of having given advice on specific issues of law; or

(ii) Section 301.7701–15(b)(3) on account of having prepared the return solely because of having prepared another return which affects amounts reported on the return.

(2) A person may not, for returns or claims for refund presented to the taxpayers during any single return period, be subject to more than $25,000 in penalties under section 6695(d) and paragraph (d)(1) of this section.

(e) *Failure to file correct information return.*—A person who is subject to the reporting requirements of section 6060 an § 1.6060–1 and who fails to satisfy these requirements shall be subject to penalties as set forth in this paragraph, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(1) $100, for failure to file an information return as required (or to comply with an approved alternative reporting method), plus

(2) $5, for each failure to report as required an item on the information return (or under the approved alternative reporting method).

A person may not, for failure to satisfy the reporting requirements for any single return period, be subject to more than $20,000 in penalties under section 6695 (e) and this section.

(f) *Negotiation of check.*—(1) No person who is an income tax return preparer may endorse or otherwise negotiate, directly or through an agent, a check for the refund of tax under subtitle A of the Internal Revenue Code of 1954 which is issued to a taxpayer other than the preparer if the person was a preparer of the return or claim for refund which gave rise to the refund check.

(2) Section 6695(f) and paragraph (f)(1) and (3) of this section do not apply to a preparer-bank which cashes a refund check and remits all of the cash to the taxpayer or accepts a refund check for deposit to a taxpayer's account, so long as the bank does not initially endorse or negotiate the check. A preparer-bank may also subsequently endorse or negotiate a refund check as a part of the check-clearing process through the financial system after initial endorsement or negotiation.

(3) The preparer shall be subject to a penalty of $500 for each endorsement or negotiation of a check prohibited under section 6695(f) and paragraph (f)(1) of this section.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 6. Section 301.7701–15 is changed to § 301.7701–16 and is amended to read as follows:

§ 301.7701–16 Other terms.

Any terms which are defined in section 7701 and which are not defined in §§ 301.7701–1 to 301.7701–15, inclusive, shall, when used in this chapter, have the meanings assigned to them in section 7701.

Par. 7. The following new section is added immediately after § 301.7701–14:

§ 301.7701–15 Income tax return preparer.

(a) *In general.*—An income tax return preparer is any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax under subtitle A of the Internal Revenue Code of 1954 or any claim for refund of tax under subtitle A of the Internal Revenue Code of 1954.

(1) A person who furnishes to a taxpayer or other preparer sufficient information and advice so that completion of the return or claim for refund is largely a mechanical or clerical matter is considered an income tax return preparer, even though that person does not actually place or review placement of information on the return or claim for re-

fund. See also paragraph (b) of this section.

(2) A person who only gives advice on specific issues of law shall not be considered an income tax return preparer, unless—

(i) The advice is given with respect to events which have occurred at the time the advice is rendered and is not given with respect to the consequences of contemplated actions; and

(ii) The advice is directly relevant to the determination of the existence, characterization, or amount of an entry on a return or claim for refund. For example, if a lawyer gives an opinion on a transaction which a corporation has consummated, solely to satisfy an accountant (not a preparer of the corporation's return) who is attempting to determine whether the reserve for taxes set forth in the corporation's financial statement is reasonable, the lawyer shall not be considered a tax return preparer solely by reason of rendering such opinion.

(3) A person may be an income tax return preparer without regard to educational qualifications and professional status requirements.

(4) A person must prepare a return or claim for refund for compensation to be an income tax return preparer. A person who prepares a return or claim for refund for a taxpayer with no explicit or implicit agreement for compensation is not a preparer, even though the person receives a gift or return service or favor.

(5) A person who prepared a return or claim for refund outside the United States is an income tax return preparer, regardless of his nationality, residence, or the locations of his places of business, if the person otherwise satisfied the definition of income tax return preparer. Notwithstanding the provisions of § 301.6109–1(g), the person shall secure an employer identifying number if he is an employer of another preparer or is not employed by another preparer. The person shall comply with the provisions of section 1203 of the Tax Reform Act of 1976 and the regulations thereunder.

(6) An official or employee of the Internal Revenue Service performing his official duties is not an income tax return preparer.

(b) *Substantial preparation.*—(1) Only a person (or persons acting in concert) who prepares all or a substantial portion of a return or claim for refund shall be considered to be a preparer (or preparers) of the return or claim for refund. A person who renders advice which is directly relevant to the determination of the existence, characterization, or amount of an entry on a return or claim for refund, will be regarded as having prepared that entry. Whether a schedule, entry, or other portion of a return or claim for refund is a substantial portion is determined by comparing the length and complexity of, and the tax liability or refund involved in, that portion to the length and complexity of, and tax liability or refund involved in, the return or claim for refund as a whole.

(2) For purposes of applying the rule of paragraph (b)(1) of this section, if the schedule, entry, or other portion of the return or claim for refund involves amounts of gross income, amounts of deductions, or amounts on the basis of which credits are determined which are—

(i) Less than $2,000; or

(ii) Less than $100,000, and also less than 20 percent of the gross income (or adjusted gross income if the taxpayer is an individual) as shown on the return or claim for refund,

then the schedule or other portion is not considered to be a substantial portion. If more than one schedule, entry or other portion is involved, they shall be aggregated in applying the rule of this subparagraph (2). Thus, if a person, for an individual taxpayer's return, prepares a schedule for dividend income which totals $1,500 and gives advice making him a preparer of a schedule of medical expenses which results in a deduction for medical expenses of $1,500, the person is not a preparer if the taxpayer's adjusted gross income shown on the return is more than $15,000. This subparagraph shall not apply to a person who prepares all of a return or claim for refund.

(3) A preparer of a return is not considered to be a preparer of another return merely because an entry or entries reported on the return may affect an entry reported on the other return, unless the entry or entries reported on the prepared return are directly reflected on the other return and constitute a substantial portion of the other return. For example, the sole preparer of a partnership return of income or a small business corporation income tax return is considered a preparer of a partner's or a shareholder's return if the entry or entries on the partnership or small business corporation return reportable on the partner's or shareholder's return constitute a substantial portion of the partner's or shareholder's return.

(c) *Return and claim for refund.*—(1) *Return.*—A return of tax under subtitle A is a return filed by or on behalf of a taxpayer reporting the liability of the taxpayer for tax under subtitle A. A return of tax under subtitle A also includes an information return filed by or on behalf of a person or entity that is not a taxable entity and which reports information which is or may be reported on the return of a taxpayer of tax under subtitle A.

(i) A return of tax under subtitle A includes an individual or corporation income tax return, a fiduciary income tax return (for a trust or estate), a regulated investment company undistributed capital gains tax return, a return of a charitable remainder trust, a return by a transferor of stock or securities to a foreign corporation, foreign trust, or foreign partnership, a partnership return of income, a small business corporation income tax return, and a DISC return.

(ii) A return of tax under subtitle A does not include an estate tax return, a gift tax return, any other return of excise taxes or income taxes collected at source on wages, an individual or corporation declaration of estimated tax, or an informational statement on any Form 1099 or similar form.

(2) *Claim for refund.*—A claim for refund of tax under subtitle A includes a claim for credit against any tax under subtitle A.

(d) *Persons who are not preparers.*—A person shall not be considered to be a preparer of a return or claim for refund if the person performs only one or more of the following services:

(1) Typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund.

(2) Preparation of a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed.

(3) Preparation of a return or claim for refund for a trust or estate of which the person either is a fiduciary or is an officer or employee of the fiduciary.

(4) Preparation of a claim for refund for a taxpayer in response to—

(i) A notice of deficiency issued to the taxpayer; or

(ii) A waiver of restriction after initiation of an audit of the taxpayer or another taxpayer if a determination in the audit of the other taxpayer affects, directly or indirectly, the liability of the taxpayer for tax under subtitle A.

For purposes of paragraph (d)(2) of this section, the employee of a corporation more than 50 percent of the voting power of which is owned by another corporation is considered the employee of such other corporation as well. For purposes of paragraph (d)(3) of this section, an estate, guardianship, conservatorship, committee, and any similar arrangement for a taxpayer under a legal disability (such as a minor, an incompetent, or an infirm individual) is considered a trust or estate.

PART 404—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE TAX REFORM ACT OF 1976

§§ 404.6060–1; 404.6107–1; 404.6109–1; 404.6694–1; 404.6695–1; 404.6695–2; 404.7701–10 [Deleted]

Par. 8. The following sections are deleted: Sections 404.6060–1; 404.6107–1; 404.6109–1; 404.6694–1; 404.6695–1, 404.6695–2; 404.7701–1.

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc.77-22227 Filed 7-29-77;11:28 am]

[26 CFR Parts 1, 301, 404]

[LR-295-76]

INCOME TAX RETURN PREPARERS

Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice o fa public hearing on proposed regulations relating to persons who prepare for compensation income tax returns and claims for refund.

DATES: The public hearing will be held on September 19, 1977, beginning at 10 a.m. Outlines of oral comments must be delivered or malied by September 2, 1977.

ADDRESS: The public hearing will be hel din the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Bnuilding, 1111 Constitution Avenue NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

George Bradley, Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 6060, 6107, 6109(a)(4), 6694, 6695, and 7701(a)(36) of the Internal Revenue Code of 1954. These proposed regulations appear in this issue of the FEDERAL REGISTER. The statutory provisions relate to persons who prepare for compensation income tax returns and claims for refund.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by September 2, 1977. The outlines should be submitted to the Commissioner of Internal Revenue, attention: CC:LR:T (LR-295-76), Washington, D.C. 20224. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

ROBERT A. BLEY,
Director, Legislation and Regulations Division.

[FR Doc.77-22228 Filed 7-29-77;11:28 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

[32 CFR Part 114]

DEPARTMENT OF DEFENSE RESERVE COMPONENTS

Common Personnel Data System

AGENCY: Office of the Secretary of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes Department of Defense (DoD) policies and procedures for the Reserve Components Common Personnel Data System (RCCPDS) to meet statutory requirements. The requirements provide that adequate and current personnel records be maintained to ensure proper management and mobilization readiness of Reserve Components. This proposed rule outlines the processes and assigns responsibilities to comply with those requirements.

DATES: Comments must be received on or before September 2, 1977.

ADDRESSES: Office of the Deputy Assistant Secretary of Defense (Reserve Affairs), The Pentagon, Room 3C980, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT:

Major Donald M. McCabe, USAF, Telephone: 697-4334 or 697-0624

Accordingly, it is proposed to publish 32 CFR Part 114 as follows:

PART 114—DEPARTMENT OF DEFENSE RESERVE COMPONENTS

Sec.

114.1 Applicability and scope.
114.2 Statutory requirement.
114.3 Preservation of privacy.
114.4 Responsibilities.
114.5 Furnishing Selective Service with Information.
114.6 Effective date and implementation.

AUTHORITY: Title 10, U.S.C. section 275.

§ 114.1 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff and the Defense Agencies. Additionally, the Coast Guard of the Department of Transportation has agreed to provide information in conformance with this Part.

(b) Its provisions govern all male and female officers, warrant officers, and enlisted personnel assigned to the Ready Reserve, the Standby Reserve, and the Retired Reserve. Included are reservists on active duty for training who continue their assignment with a Reserve Component.

(c) Individuals who are enlisted members of a Regular component and also have a Reserve commission should not be reported in the Reserve Components Common Personnel Data System (RCCPDS).

(d) Individuals on extended active duty who are part of the active force should not be reported.

§ 114.2 Statutory requirement.

(a) Title 10, United States Code, section 275 requires the Armed Force to maintain adequate and current personnel records of Reserve Components, which shall include each member's:

(1) Physical condition.

(2) Dependence status.

(3) Military qualifications.

(4) Civilian occupation skills.

(5) Availability for service, and such other information as the Secretary of the Military Department concerned may prescribe.

(b) *Common DoD Data Base.* A computerized common data base has been established to meet the above statutory requirement and to provide statistical tabulations of Reserve Components strengths and related data for use throughout the Department of Defense, by other Government Agencies and by the Congress, and for appropriate public release by the Assistant Secretary of Defense (Public Affairs).

(c) *Minimum data requirements.* The items of personnel data included in this reporting system partially satisfy the minimum essential data items needed to meet the statutory requirements of 10 U.S.C. Additionally, data falling within the following categories will be maintained in individual records (either in a manual or automated mode) to satisfy fully statutory requirements:

(1) Retirement Points Earnings (all point earning reservists).

(2) Retirement Authority (all retired reservists).

(3) Professional Military Education for Enlisted Members (all point earning enlisted members).

(4) Servicemen's Group Life Insurance Option Selected (all point earning reservists).

(d) *Data Maintenance Policy.* The Military Departments shall maintain only such additional items of data on an individual as necessary to (1) manage adequately their Guard and Reserve Forces, and (2) ensure mobilization readiness.

§ 114.3 Preservation of Privacy.

The requirements and procedures prescribed by the Privacy Act, 5 U.S.C. 552a, and 32 CFR Part 286a must be followed in order to safeguard the personnel data maintained in this reporting system. Individuals having access to identifiable personnel information may be held personally responsible and punishable under the law for making unauthorized disclosures.

§ 114.4 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) or his designee, the Deputy Assistant Secretary of Defense (Reserve Affairs), shall be responsible for:

(1) Collecting, summarizing and publishing, on a periodic basis, the "Official Manpower Strengths and Statistics" report for the Reserve Components of the Department of Defense and, through the Office of the Assistant Secretary of Defense (Public Affairs), for public release.

(2) Providing access to the DoD Data Base to each of the Military Departments through an on-line time sharing terminal system. The Guard and Reserve Components will have access only to their portion of the data base by means of assigned passwords controlled by the Deputy Assistant Secretary of Defense (Reserve Affairs).

(b) The Secretaries of the Military Departments shall be responsible for:

(1) Implementing Directives.

(2) Providing their respective Guard and Reserve Components the necessary support to establish personnel data systems that support readiness requirements in addition to this reporting requirement.

(3) Preparing, at the end of each month, a Master Officer and Master Enlisted File reflecting the status of each member of the Guard and Reserve as of the last day of each month.

(4) Preparing, at the end of each month, an Officer Transaction File and an Enlisted Transaction File reflecting the gains, losses, reenlishment or extensions of Selected Reserve personnel that occurred during the reporting month.

(5) Editing monthly submissions in support of the editing concept.

(6) Performing a quality control validation of the data prior to submission to the Office of the Secretary of Defense.

(7) Assuring accuracy of data considered "critical data items" since they are required by either statutes, directives, or regulations, and should be 100 percent accurate to insure acceptability in the system.

(8) It is our policy that the data reliability objectives apply equally to the Ready, Standby and Retired Reserve Categories, if the data item must be reported. Similarly, the data reliability rates are goals of data accuracy which should eventually be achieved by each Reserve Component.

§ 114.5 Furnishing selective service with information.

Any information available in RCCPDS which is required by the Director of Selective Service will be provided by magnetic tape extracts of data submitted in compliance with this part.

NOTE.—This paragraph is effective after the requirements of the Privacy Act are fulfilled.

§ 114.6 Effective data and implementation.

(a) This part is effective 1 year from the date of issuance. Each Reserve Component shall be formally advised of the specific implementation date by separate correspondence.

(b) When implementation occurs, each record in the initial submission will be expanded to provide fields for all new data items. All new data which is available either directly or through data extrapolation will be provided at that time.

(c) The Retired Reserve data was incorporated into this reporting system during January 1977. Retired Reserve records will expand with all other Reserve Categories for the initial submission. Records in this category shall be considered as part of the parallel validation which will be conducted during the first 2 months following implementation.

(d) Beginning with the initial submission under this part, a complete record containing all new data items will be provided on accessions. The collection of new data on existing records will be handled incrementally after that time. Our goal is to have all new data collected and in the system within a three-to-four year period.

(e) At the time of conversion to this part, unknown and unavailable data items will be left blank.

MAURICE W. ROCHE,
Director, Correspondence & Directives, Office of Assistant Secretary of Defense (Comptroller).

JULY 28, 1977.

[FR Doc.77-22299 Filed 8-2-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 771-4]

[40 CFR Part 52]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS, DISTRICT OF COLUMBIA

Pilot Bikelane

AGENCY: Environmental Protection Agency.

ACTION: Approval and Promulgation of Implementation Plans.

SUMMARY: This notice announces that the District of Columbia has formally requested the Regional Administrator to take no further action on a proposed revision to its Implementation Plan. The proposed revision, if approved by the EPA, would have resulted in substitution of EPA's requirement for a pilot bikelane along Pennsylvania Avenue with another bikelane network consisting of 14.87 miles in the District of Columbia.

EFFECTIVE DATE: This Notice of Withdrawal is effective immediately on August 3, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Raymond Cyphers, State Implementation Planning Section, Air Programs Branch, Air and Hazardous Materials Division, U.S. Environmental Protection Agency, Curtis Building, Tenth Floor, 6th and Walnut Streets, Philadelphia, Pa. 19106.

SUPPLEMENTARY INFORMATION: On May 9, 1975, the District of Columbia submitted to the Regional Administrator an amendment to its Transportation Control Plan. The District requested that the amendments be reviewed and processed as a revision to its State Implementation Plan (SIP).

The amendment called for a network consisting of 14.87 lane-miles of bicycle lanes. The District requested that this program be considered as a substitute for EPA's requirement for the establishment of a pilot bicycle lane along Pennsylvania Avenue (40 CFR 52.491(g), 38 FR 33702).

The District provided adequate proof that a public hearing was held in the District on December 10, 1974, in accordance with the requirements set forth in 40 CFR Section 51.4.

On September 4, 1975 (40 CFR 40855), the Administrator acknowledged receipt of the District's bicycle lane program, proposed the submittal as a revision to the District SIP and provided for a 30-day public comment period, ending October 6, 1975. Upon request of interested citizens' groups, EPA extended the public comment period until November 7, 1975. During this time EPA received comments from the Washington Area Bicyclists Association (WABA) and a private citizen. The comments essentially contended that while certain links of the bicycle lane network were adequate for bicycle use, the overall network was disjointed rather than coordinated. Similarly, the lanes described in this pilot bicycle lane program were characterized as being too narrow and failed to provide adequate separation between bicycle traffic and vehicular traffic.

There followed a series of discussions between the District and EPA concerning the approvability of the bicycle network. The EPA was concerned that expected emission reductions would not be realized if network design inadequacies cited by critics resulted in lowered use of the network than originally intended.

In early January, 1977, the District advised EPA that in light of a new comprehensive bicycle plant, they no longer wanted EPA to take further action on this proposed State Implementation Plan revision. This was confirmed in a letter dated March 4, 1977, from the Mayor of the District of Columbia to the Regional Administrator.

In response to this request, the Regional Administrator hereby formally withdraws his proposal of this amendment from any further consideration as a revision to the District of Columbia Implementation Plan.

(42 U.S.C. 1857c-5.)

Dated: July 13, 1977.

A. R. MORRIS,
Acting Regional Administrator.

[FR Doc.77-22224 Filed 8-2-77;8:45 am]

[40 CFR Part 52]

[FRL 771-3]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS, MASSACHUSETTS

Change in Sulfur Content of Fuel Burned in Berkshire Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The proposed revision to the State Implementation Plan (SIP) changes Regulation 5.1, "Sulfur Content of Fuels and Control Thereof," to allow fuel burning sources in the Berkshire Air Pollution Control District to burn 2.2 percent sulfur content residual fuel

oil, which is the sulfur content specified by Chapter 353 of the Acts of 1974 for fuel oil burned in this District. Regulation 5.1 of the present SIP allows the use of fuel oil having a sulfur content not greater than 1.0 percent.

DATE: Comments must be received on or before September 2, 1977.

ADDRESSES: Copies of the Massachusetts submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 2113, JFK Federal Building, Boston, Mass. 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460; and the Massachusetts Department of Environmental Quality Engineering, Division of Air and Hazardous Materials, Room 320, 600 Washington Street, Boston, Mass. 02111.

Comments should be submitted to the Regional Administrator, Region I, Environmental Protection Agency, Room 2203, JFK Federal Building, Boston, Mass. 02203.

FOR FURTHER INFORMATION CONTACT:

Wallace Woo, Air Branch, EPA, Region I, Room 2113, JFK Federal Building, Boston, Mass. 02203, 617-223-5609.

SUPPLEMENTARY INFORMATION: On May 31, 1972 (37 FR 10872), pursuant to Section 110 of the Clean Air Act and 40 CFR Part 51, the Administrator approved, with exceptions, the Massachusetts Implementation Plan for the attainment of National Ambient Air Quality Standards (NAAQS).

On April 14, 1977, the Commissioner of the Massachusetts Department of Environmental Quality Engineering (the Massachusetts Department) submitted a revision to the State Implementation Plan (SIP) which would increase the allowable sulfur content of fossil fuel burned in the Berkshire Air Pollution Control District (BAPCD). The BAPCD is the same geographic area as the Berkshire Intrastate Air Quality Control Region (AQCR). Regulation 5.1 of the present SIP, "Sulfur Content of Fuels and Control Thereof," permits fossil fuel utilization facilities in the BAPCD to burn fossil fuel with a sulfur content not in excess of 0.55 pounds per million Btu heat release potential (approximately equivalent to 1.0 percent sulfur content residual fuel oil by weight). The proposed SIP revision would change Regulation 5.1 to allow burning of fossil fuel with a sulfur content not in excess of 1.21 pounds per million Btu heat release potential (approximately equivalent to 2.2 percent sulfur content residual fuel oil by weight). Approval of the revision to Regulation 5.1 would eliminate the conflict between the SIP and Chapter 353 of the Acts of 1974, "An Act Permitting the Burning of Fuel with Sulfur Content of Two and Two Tenths Per Cent for Residual Fuel Oil Utilization Facilities in the Berkshire Air Pollution Control District."

Air quality dispersion modeling was used to predict annual and 24-hour SO_2 concentrations that could occur when sources in the BAPCD burn 2.2 percent sulfur content residual fuel oil. The model utilizes point and area source emission data and meteorological data as input, and accounts for the varying topography which characterizes the BAPCD. Violations of the annual NAAQS for SO_2 predicted by the modeling in the Lenox-Lee area are largely attributable to Kimberly-Clark's Columbia Mill. Violations of the 24-hour NAAQS for SO_2 were predicted in North Adams, Dalton, and Lee, and are attributable, respectively, to the Sprague Electric Company, the Crane Paper Company, and the Kimberly-Clark Columbia Mill. Although ambient monitoring data recorded at monitoring stations in the BAPCD since 1973 do not show violations of the NAAQS for SO_2, none of the monitoring stations is located in an area where the maximum concentrations are predicted. Consequently, EPA is proposing that these three sources be disapproved. The modeling indicates that other sources in the BAPCD could burn the higher sulfur content fuel in accordance with Regulation 5.1 as revised, without causing violations of the NAAQS for SO_2.

Unless comments received during the comment period show the analysis to be incorrect, or appropriate technical information demonstrates that NAAQS will not be violated, the aforementioned three sources will be required to burn fuel oil having a sulfur content not greater than 1.0 percent.

EPA's evaluation of the impact of burning higher sulfur fuel indicates that an increase in particulate emissions may occur with an increase in the sulfur content of fuel. Since a violation of the secondary 24-hour NAAQS for total suspended particulates (TSP) occurred in the AQCR in 1976, EPA has called upon the Massachusetts Department to evaluate whether or not a more stringent SIP should be devised to control ambient particulate levels. The results of that evaluation, together with any necessary changes in the SIP, will be submitted to EPA by November 1, 1978. At present, it is not possible to make a reliable quantitative estimate as to what effect, if any, this SIP revision will have on TSP levels to be recorded at monitors in the AQCR; accordingly, EPA has determined that requiring the Massachusetts Department to develop an attainment plan is an adequate measure to assure that any violations of the NAAQS for TSP, whether or not attributable to the use of higher sulfur fuel, will be corrected in a timely manner.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of Sections 110(a)(2)(A)-(H) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to Sections 110(a) and 301 of the Clean Air Act, as amended (42 U.S.C. 1857c-(5)(a) and 1857(g)).

Dated: July 25, 1977.

WILLIAM R. ADAMS, Jr.,
Regional Administrator, Region I.

[FR Doc.77-22212 Filed 8-2-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 63]

[Docket No. 18875; FCC 77-536]

TRANSATLANTIC COMMUNICATIONS

Policy To Be Followed In Future Licensing of Facilities

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission issues a number of alternative plans it is considering to set the policy the Commission will follow in licensing transatlantic communications facilities through 1985. The Commission also states its tentative preference for one of these plans. This action is intended to result in a comprehensive plan for construction and use of facilities to meet the transatlantic communications needs of this time period.

DATE: Comments must be received on or before August 31, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Raymond B. Crowell, International Programs Staff, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, 202-632-3214.

SUPPLEMENTAL INFORMATION:

MEMORANDUM OPINION, ORDER AND NOTICE OF PROPOSED RULEMAKING

Adopted: July 20, 1977.

Released: August 1, 1977.

In the matter of policy to be followed in future licensing of facilities for overseas communications.

1. On November 29, 1976, we issued a Further Statement of Policy and Guidelines in the above-captioned proceeding, "Overseas Communications," 62 F.C.C. 2d 451, in which we announced that we would develop an overall, comprehensive facilities construction and use plan to meet United States-CEPT[1] tra-

[1] CEPT, The Conference Europeenne des Administrations des Postes et des Telecommunications, is an association of the communications entities of thirty European countries. In 1975, CEPT formed a subsidiary CEPT Liaison Committee for Transatlantic Telecommunications (CLTA) for the purpose of establishing an ongoing dialogue with the FCC and the Canadian overseas communications entity (Teleglobe) concerning issues of common interest in developing communications facilities for the North Atlantic region.

fic requirements through year-end 1985 and announced procedures we proposed to follow in developing that plan. In that connection, we reaffirmed our 1971 Policy Statement in this proceeding, "Overseas Communications," 30 F.C.C. 2d 571, 572, which had adopted the following policy guidelines:

(a) The public interest requires that we promote the continued development of both cable and satellite technologies and their most effective and timely applications to meet future requirements for international communications services;

(b) The public interest also requires that we authorize the most modern and effective facilities available via both cable and satellite technology with due regard for efficiency, economy, diversity and redundancy;

(c) The public interest and due regard for the concerns of the Administrations which operate the foreign end of the cables require that care should be taken to minimize the need for imposing artificial formulae to govern the distribution of traffic among available media;

(d) The public interest requires that the economies available from each advance in technology be reflected in charges for service. (Citations omitted).

Further, we clarified and amplified our 1971 policies by adopting, 62 F.C.C. 2d at 458–9, the following additional policy guidelines:

(a) The continuing availability of adequate, reliable, low cost communications facilities and services between Europe and North America is a matter of common interest and concern to communications users, operating entities, and governments in Europe and North America.

(b) This Commission does not, as a matter of policy, favor the use of one technology over another nor any predetermined distribution of traffic or transmission capacity among alternative technologies or suppliers. Pursuant to our statutory mandate, our primary policy objective has been and remains the achievement and efficient utilization of the lowest cost combination of facilities which can satisfy valid traffic needs and service objectives, irrespective of technology or supplier, within this basic policy framework, both cable and satellite technologies—as well as any other—can and should be afforded the opportunity to evolve.

(c) The existing operational structure and attendant economic and other incentives of the international communications industry are not such as to lead automatically to the realization of the basic public interest policy objectives enunciated above. Accordingly, this Commission must and will continue to scrutinize thoroughly both facility installation and utilization proposals of U.S. carriers prior to the authorizing these carriers' participation in such facilities programs, in order to ensure that U.S. communications users are not unnecessarily burdened with excessive facility investments or inefficient utilization of authorized facilities.

(d) The need to consider such interrelated factors as diversity, redundancy, restoration and other means to provide continuity of service within the context of the operational structure and varying economic and other incentives and preferences previously cited severely limits our ability to make the necessary public interest evaluations in the context of isolated applications for individual facility authorization. Accordingly, we will not in the future consider the authorization of major facility investments and utilization proposals as isolated instances, but will instead evaluate them in the context of a comprehensive long-range plan for the establishment and use of facilities to serve a particular geographic area during a specified future planning period. To ensure that all interested and affected parties have a full opportunity to participate in the evolution of a mutually acceptable long range plan for future facility establishment and use, we shall approach the adoption of such a plan through an iterative process as set forth in the Annex to this decision.

(a) In our public interest evaluation of both long range plans and specific facility applications, the primary criteria shall be those set forth in (b) above. For the purpose of cost analysis and comparisons, we shall consider as relevant only historical and/or projected investment and operating expenses—as opposed to lease charges or tariff rates. Moreover, before we can adopt any such long range plan as a basis for specific facility planning and authorization, we would necessarily require comparable commitments regarding the use of cable and satellite facilities.

(f) The evolution of mutually acceptable long range facility plans and the subsequent authorization of specific facilities will necessarily be a difficult and time-consuming process, given the necessity of accommodating this process to the differing legal requirements and operating arrangements of the sovereign nations involved. We shall make every effort to ensure the success of this effort, within our basic statutory mandate, public interest obligations and legal system. As a part of our effort to achieve an acceptable plan, we also desire to explore, where beneficial, changes in the present ownership arrangements and provision of circuits within future transatlantic facilities. Specifically, we propose to explore the feasibility and desirability of substituting end-to-end provision of whole circuits within facilities, for the present arrangement whereby each terminal country provides fifty percent of each transatlantic circuit.

In addition to setting forth the policy guidelines we would use to develop our overall facilities plan, we also announced the procedures we proposed to follow in that task.

2. First, we requested the United States International Service Carriers [3] (USISC) and the Communications Satellite Corporation (Comsat) to submit proposed facilities plans and supporting data so as to provide us with information necessary to arrive at an overall, comprehensive facilities construction and use plan. Second, we proposed that after consideration of these proposals we would issue for public comment a tentative facilities plan. Finally, after adoption of a final plan, we stated we would receive appropriate applications for authority to implement the plan. To the extent that those applications were consistent with our final plan, we envisioned a relatively automatic grant of authority. We noted, however, that should an application deviate significantly from the plan, we would consider it de novo, subject to the full process of comment, review and authorization. See 62 F.C.C. 2d at 461 (Annex 1).[4] Concurrently, we noted that we would continue as an integral part of our process the consultation with CEPT and Canadian representatives we have been pursuing since 1974.

3. Pursuant to our request, Comsat, on April 26, and the USISC, on April 29, 1977, filed their respective proposed facilities construction and use plans and supporting data. Comsat and the USISC each submitted a number of alternative plans. However, each of the respondents employed a different methodology in developing its plans and based them on different traffic forecasts, cost elements, methods of estimating costs, assumptions as to the availability of facilities and methods of circuit distribution. For example, the USISC included in their plans the costs of handling traffic between the U.S. and points other than CEPT countries, while Comsat limited its plans to CEPT points. Further, the USISC provided information on international record carrier services in only one of their five alternatives while Comsat included such costs in all of its alternatives. As a result of such differences, direct comparison of the plans as submitted was not feasible. Accordingly, the staff first reduced the USISC and Comsat plans to a common format, and subsequently reviewed both these and several staff-generated alternatives. In its review, the staff subjected the proposals to analysis in accordance with the following basic criteria:

(a) Ability to satisfy forecasted circuit requirements;

(b) Degree of service reliability provided; and

[3] Those carriers are American Telephone and Telegraph Company (AT&T), The French Telegraph Cable Company, ITT World Communications Inc. (ITT Worldcom), RCA Global Communications, Inc. (RCA Globcom), TRT Telecommunications Corporation and Western Union International, Inc. (WUI).

[4] These specific procedures set forth in the Further Statement were amended somewhat by Memorandum Opinion and Order, Overseas Communications, FCC 77-386, ____ F.C.C. 2d ____, released June 7, 1977, and Memorandum Opinion and Order, Overseas Communications, FCC 77-460, ____ F.C.C. 2d ____, released July 8, 1977. However, the amended procedures retain the basic provision in the Further Statement for issuance of a Commission final facilities plan and subsequent processing of authorization applications; the later orders merely spell out in detail the steps leading to issuance of the final plan.

(c) The total cost associated with construction and maintenance of the facilities called for.

4. Under the procedures in our Further Statement, we had proposed to develop a single tentative facilities plan which we would issue for public comment. This tentative plan was to be submitted for discussion at the consultative meeting with CEPT and Canadian representatives in Rome, Italy. See 62 F.C.C. 2d at 461. However, for the reasons stated in our Memorandum Opinion and Order, released June 7, 1977, FCC 77-386,_____ F.C.C. _____ (June 7 Order), the staff found it necessary to develop a number of alternative plans. We concluded that all these plans should be made available for public comment and therefore we modified the procedures of our November 29 Order. We also concluded that these alternative plans should be presented for discussion at the Rome meeting.

5. On June 13-15, 1977, Commission representatives met in Rome, Italy, with representatives of 20 CEPT countries and Canada to discuss the plans prepared by the staff and the CEPT Master Plan which was prepared by the CEPT nations. Following the Rome Meeting, we issued on July 8, 1977, a Memorandum Opinion and Order herein, Overseas Communications, FCC 77-460, _____ F.C.C. 2d _____ (July 8 Order), in which we further clarified the procedures we shall follow in developing our final, comprehensive facilities construction and use plan and adopted a timetable for the various steps in that procedure:

(1) No later than July 31, 1977, we shall issue for public comment the five alternative plans including any proposed alternatives or modifications and will designate which of those is the Commission's tentative preferred plan.

(2) Comments on the alternative plans will be due no later than August 31, 1977.

(3) Following receipt of the comments, the Commission will analyze the plans in light of the comments received and begin to prepare its final plan.

(4) With the agreement of CEPT and Canadian officials, the Commission will also schedule a one-day meeting in Washington, D.C. for the purpose of further discussions with representatives from those nations having decisional responsibilities within their respective countries concerning international communications facilities. We anticipate that such a meeting will occur on September 19, 1977.

(5) Following such a meeting, we would allow 15 days for the filling of a final round of comments from interested persons—due October 5, 1977.

(6) The Commission would then consider the material before it and issue its final plan on November 1, 1977.

6. In the course of examining the carriers filings; alternative methods of using basic transmission facilities once established; and the effect of alternative traffic forecasts, circuit distribution procedure, etc., our staff has formulated a number of "plans" for purposes of analysis. Several of these which have been subjected to detailed analysis and comparison as regards traffic handling capabilities, service reliability, and cost are set forth in this Order and its Attachment I for further comment. Essentially, however, there are only three basic facility planning and implementation options under review and consideration. The first option, advanced primarily by the USISC and CEPT and embodied in Plans 1 and 1-M, would introduce a new TAT-7 cable in 1981. The second option, reflected in both Comsat's filing and various staff analyses and embodied in Plans 2, 4, 4-M and 5, would not include a new transatlantic cable at any time within the planning period (i.e. through 1985). The third option, designed by the staff to test the merits of an intermediate position regarding additional cable facilities, and embodied in Plan 3, would introduce a new TAT-7 cable in 1983. A brief description of each of the several "plans" falling under these three basic facility options follows:

PLAN 1. This plan represents, to the extent possible, the proposed USISC plan. It uses the USISC traffic forecasts; introduces TAT-7 in 1981; uses TASI-C beginning in 1982 to increase the capacity of TAT-5, TAT-6, TAT-7 and CANTAT-2 for telephony; and assumes a greater USISC use of CANTAT-2 than is presently authorized. Circuits used for telephony are distributed on a balanced-route basis with exceptions to some countries. No overall rationale for distribution of circuits used for record traffic could be discerned.

PLAN 1-M. This plan represents a modified PLAN 1 as a result of changes to the circuit forecast and distribution of circuits used in PLAN 1. While the circuit forecasts used in PLAN 1 and PLAN 1-M are essentially the same, the circuit distribution plans differ in several respects. PLAN 1-M reflects the circuit forecast and utilization of facilities developed by the CEPT countries and used in the CEPT Master Plan presented at the June 13-15, 1977, meeting in Rome, Italy. PLAN 1-M does not represent the CEPT Plan. It only represents the changes necessary in the distribution of circuits used in PLAN 1 to conform to the distribution of circuits used in the CEPT Plan.

PLAN 2. This plan represents, to the extent possible, the fourth alternative plan submited by Comsat. This plan uses the U.S. interim forecast (high estimate) submitted at the October, 1976, meeting in Rome. Under this plan, the introduction of TAT-7 is deferred beyond the planning period under consideration. No TASI-C is used in this plan. It is assumed that all of the CANTAT-2 circuits the USISC are authorized to use until year-end 1980 (373 telephony circuits and 60 record circuits) will continue to be available throughout the planning period. This plan assumes that both telephone and record circuits will be distributed in the ratio of satellite to cable capacity calculated by Comsat to be available between the U.S. and the CEPT countries.

PLAN 3. This is a staff-generated plan using the USISC forecast. Under this plan: TAT-7 is introduced in 1983; TASI-C is used on the TAT-5, TAT-6, TAT-7 and CANTAT-2 cables to the maximum extent possible, if needed to balance routes for telehony circuits; USISC use of CANTAT-2 basic circuits is limited to that presently authorized, and circuit growth for both telephony and record is distributed using the balanced-route approach.

PLAN 4. This is a staff-generated plan using the USISC forecast. This plan assumes: no TAT-7 during the planning period; use of TASI-C on the TAT-5, TAT-6 and CANTAT-2 cables to the maximum extent possible if needed to balance routes for telephony circuits; increased USISC use of CANTAT-2 circruits. Circuit growth for both telephony and record services is distributed using the balanced route approach.

PLAN 4-M. This plan represents a modified PLAN 4, resulting from a reduction in the use of TASI-C. The distributions of circuits contained in PLAN 4 and PLAN 4-M are different due to this change. The other basic assumptions used in PLAN 4 are also used in PLAN 4-M.

PLAN 5. This plan assumes no TAT-7 and no TASI-C during the planning period, and beginning in 1980, telephony and record circuits are distributed to achieve balance among available routes to the extent possible. There is an additional condition that total activated cable and total activated satellite circuits are not less than those in use as of April 30, 1977. A staff-generated estimate of circuits is used.

7. Attachment I sets forth in greater detail these several plans and analyses, as well as the information and methods employed by the staff to analyze traffic requirements, service reliability and costs. Information in addition to that submitted to the Rome meeting is included and errors found in the document submitted at Rome have been corrected. We believe it would be beneficial to make observations regarding the analysis performed to date and our basis for selecting one of these plans as our preferred plan. In so doing, we wish to make clear that factors in addition to those considered herein need to be addressed and fully considered before we make our final decision. In this regard, we are also seeking comments concerning the additional factors we believe should be addressed by all the concerned U.S. parties to this proceeding. As indicated earlier, we expect to meet with European and Canadian officials on September 19, 1977, in Washington, D.C., to discuss issues of mutual concern and responsibility before the Commission makes its final decision on this matter.

EVALUATION

8. *Traffic Requirements.* The several circuit forecasts and the staff's estimate of circuit requirements during the period under consideration are presented in the Attachment. Information con-

cerning circuit and traffic requirements is presented and discussed. The circuit estimates made by the staff are considerably lower than the circuit forecasts provided by the USISC and others, which raises significant questions regarding the need to re-evaluate the methods employed to forecast traffic and circuit requirements. Nevertheless, the staff has used the higher forecasts, and not the lower staff estimate, in all plans under consideration, with the exception of Plan 5 which is included to demonstrate the effect on the cost of Plan 4 or Plan 4-M if the higher traffic forecast by USISC and CEPT does not materialize.[4] It appears to us that any of the plans under consideration will provide more than sufficient capacity to accommodate any of the circuit projections we have considered. Therefore, in selecting a preferred plan we did not need to discount any of the plans because it provides insufficient capacity.

9. *Service Reliability.* In order to assess the factors of service reliability, we required in our November 1976 Further Statement of Policy and Guidelines that the carriers and Comsat specify: (a) Their service and reliability objectives; (b) the analytical methods used to determine the trade-offs between diversity and restoration in maintaining the stated grade of service; and (c) the methods used to assess any differences in meeting the grade of service among various alternative mixes of facilities and levels of use of those facilities. The submissions of the USISC and Comsat failed to provide such information. The USISC filing evaluated its various plans by general statements whether a plan provided for "adequate" or "inadequate" diversity—without either defining the terms or showing the effect of diversity on service reliability. Comsat concluded, without presenting supporting information, that the same high level of service reliability provided in the past could be maintained under any of the alternative plans it considered. Lacking any meaningful assessment of service reliability by the carriers or Comsat the staff used blocking probability calculations[5] as a common indicator of relative service reliability to assess various mixes of facilities and levels of use of those facilities. The method is described in Attachment I.

10. The analysis performed by the staff allows the resulting blocking probabilities associated with each of the plans to be compared. Using CCITT Recommendation E.542[6] as a guide, it appears that prompt restoration will be required for circuits lost due to major facility failure under any of the plans. There are differences when comparing the blocking probabilities associated with each plan on a facility-by-facility, point-by-point, year-by-year basis. However, on the information before us, we are unable to determine any significant differences among the plans which would lead us to conclude that one plan provides superior service reliability vis a vis another. We recognize that other factors also bear upon overall service reliability. They include the speed and level of restoration required under emergency conditions and reliance on network management techniques to prevent rapid congestion of switching machines. It seems to us that these factors require detailed consideration by the operating entities concerned, irrespective of the plan finally adopted. The provision of leased-channel services to a customer on a full-availability basis would also require, in our opinion, special consideration under any of the tentative plans. All of these factors, including blocking probabilities, are concerned with emergency conditions where special measures need to be taken. During normal conditions, there should be no difference in the quality or level of service provided under any of the plans presented herein. We regret that the carriers and Comsat have not provided the kind of information or analysis we deem necessary to fully assess the various factors which affect service reliability. We do expect that they will review the analysis performed by the staff and address the specific questions contained herein so that we may have as complete and thorough a record as possible for our final decision.

11. *Costs.* The data, methodology and analysis employed by the staff to assess the costs associated with each of the plans considered are presented in Attachment I. The objective of the cost analysis is to estimate the relevant U.S. costs which will be incurred from mid-1977 through 1985 to provide, maintain and operate facilities for U.S.-CEPT traffic included in each alternative plan. The relevant costs include capital expenditures for new facilities and operating and maintenance expenses for all facilities. Since the facilities will also be used to provide communications service to non-CEPT countries, some cost allocation is necessary to isolate the U.S.-CEPT costs. Throughout the analysis, the general basis for allocating costs is relative use. The costs are estimated for each year of the 1977–1985 period and discounted to mid-1977 so as to equalize costs incurred at different times. An interest rate of 12 per cent is used. An allowance is made for capital equipment placed in service during the study period and useful beyond 1985. No allowance is made for inflation because relative costs are the relevant considerations under analysis. It is assumed that inflation will not affect relative costs. Based on this analysis the relevant costs to compare (net present value mid-1977–1985) are as follows:

Plan 1	$208,565,000
Plan 1-M	209,884,000
Plan 2	170,459,000
Plan 3	191,586,000
Plan 4	174,314,000
Plan 4-M	171,382,000
Plan 5	118,359,000

SELECTION OF PREFERRED PLAN

12. At this stage of our proceeding we have the benefit of the information now before us and the staff's analysis contained in the Attachment I. We stated in our November 29 Further Statement that "[w]here no significant differences arise in the resulting levels of service reliability between alternative means of meeting stated service objectives, considerations of service reliability is not a determining factor in the selection of the least cost combination of facilities." 62 F.C.C. 2d at 456, f.n. 2. Based upon the information considered thus far, we believe that any of the seven plans can be expected to provide adequate capacity and essentially the same level of service reliability. Therefore, we have no reason at this time to prefer one plan over another because of capacity or service reliability considerations. It is obvious from the staff's analysis of the plans presented herein that those plans which do not include a TAT-7 cable within the planning period (i.e. Plans 2, 4, 4-M and 5) represent the least cost alternatives. Depending on whether the staff's estimate or the USISC/CEPT estimates of future traffic growth are assumed these plans are less costly than Plan 1 to the American ratepayer, by amounts of $34 million to $90 million, according to this analysis.

13. The levels of traffic that will be realized in the future cannot be known with certainty. Indeed there is a substantial difference between the USISC forecast and the staff's estimate of circuit requirements. While this disparty needs to be considered in greater detail we do not believe it must be resolved now. More than sufficient capacity appears to be available under the plans considered to accommodate the range of traffic levels in question.

14. We believe the future of TASI-C technology is promising and economically attractive. Its application should be planned in the time period being considered. We have noted the uncertainty inherent in forecasting levels of demand. Recognizing this, we believe service handling capability should be planned to accommodate this uncertainty so long as the costs are not excessive. Therefore, we believe Plan 4-M is the most reasonable plan and select it as our preferred plan.

15. As indicated in our July 8 Order, adopting a final comprehensive facilities construction and use plan by November 1 is a difficult but attainable goal if we receive the cooperation of all concerned. Accordingly, to develop a full record on

[4] The important point is that either Plan 4 or 4-M, if adopted, could be readily adjusted to accommodate lower traffic requirements at lower cost. This adjustment could be periodic and based upon up-dated forecasts resulting from actual traffic levels being experienced and, possibly, a refined method of forecasting.

[5] The blocking probability number is a measure of the congestion (blocking) that may be expected in the International Direct Distance Dialling (IDDD) environment during the busy hour as a result of the loss of the number of circuits on each facility to each point should the facility fail. It indicates on the average, the number of telephone calls out of every 100 calls that may fail to seize an overseas circuit.

[6] CCITT Recommendation E.542—Acceptable reduction in the number of circuits of a final route in the extent of a breakdown. See Volume II-A—Rec. E.542, Volume VI—Rec. Q.96.

which to base our final decision, we desire to have the views of the carriers and the public on all seven of the alternative plans set forth in Attachment I. To aid us in this process, we shall make each of the USISC and Comsat a party to this proceeding and direct the parties to exchange copies of their comments with each other. The clarity, completeness and prompt filing of the parties' comments is of paramount importance in realizing our objective. We therefore urge each party to exercise particular care to assure that its comments provide all the information, support and descriptions of methodologies it uses so that the other parties and the Commission can promptly analyze the proposals, positions and recommendations. We would point out that the time schedule to which we must adhere does not permit the second round of pleadings which would be required if additional information must be requested after the filing of these comments. In order to aid the parties in the preparation of their comments and, to elicit information we believe pertinent, we shall require the parties to respond to a number of questions and specifically address a number of issues.

16. As set forth in Attachment I, the USISC and Comsat's April, 1977, filings failed to contain substantial amounts of information which would have aided the staff in formulating the tentative plans being issued for comment. We believe that much of this information also will be of value in analyzing the comments filed in this phase of the proceeding. Therefore, we are setting forth, in Section I of Attachment 2 to this decision, questions and information requests to solicit that information.

17. The tentative plans we are issuing for comment have been analyzed thus far from the standpoint of Traffic requirements, service reliability, and costs. There are other relevant factors to consider in adopting a final comprehensive plan (e.g. International Comity, foreign relations, etc.). One important factor is the effect selection of a particular plan will have on telecommunications plans of the CEPT nations and the procedures the Commission should follow to resolve issues if the final plans adopted on either side of the Atlantic are in conflict regarding the construction and use of transatlantic facilities. Another factor is the impact on the research, design and manufacturing of submarine cables in the U.S. To this end, we request all parties to address these issues. We are also requiring that the carriers and Comsat respond to the specific questions pertaining to these issues. We have also set forth in Section 3 of Attachment 2 questions pertaining to service reliability, to which we will require the carriers and Comsat to respond.

18. While the parties may submit information and raise issues in addition to those set forth herein, we request that they respond to the questions and information requests in Attachment 2 separately from other portions of their comments.

19. Finally, we will address the comments, petitions for reconsideration, partial reconsideration and clarification filed in regard to our November 29 Further Statement.[1] In the main, these pleadings do not appear to request the Commission to take specific actions. They suggest that we consider various effects that could result from following the course adopted in our Further Statement. However, some requests were made for specific action. These include requests that the Commission clarify certain aspects of the decision and consider the various alternatives proposed in the pleadings.

20. We believe that this Order, together with its attachments, provides much of the clarification requested. In addition, the procedural modification to facilitate development of a comprehensive facilities plan, may alter the basis for or obviate some of the requests made in these pleadings. Finally, we believe many of the comments and suggestions can better be considered by all parties in light of our preferred plan and tentative plans presented in the rulemaking phase of this proceeding.

21. With regard to the procedure being followed, the various comments and petitions include a request by ITT Worldcom that we reconsider the depth of our involvement in the planning of facilities for overseas communications; and a request by WUI that the Commission reconsider its guidelines and adopt one or more of the alternatives it proposed. To the extent the petitioner seeks reconsideration of the procedures set forth in our Further Statement, we shall deny them. The procedures we have adopted do not involve the Commission in the regulation of any aspect of overseas facilities construction in which it has not been involved heretofore. Prior Commission authorization of the construction of overseas transmission facilities has been mandatory since enactment of the Communications Act of 1934. Consideration of the capacity available in existing facilities in determining whether additional facilities should be authorized has also been required since that time. The question of appropriate use of existing and planned satellite and cable facilities has been pleaded before, and determined by, the Commission since 1966. The departure from overseas facilities planning by ad hoc action on individual facility applications to the development of a long range policy began with the issuance of our first Notice of Inquiry in this Docket in 1970. Discussions between Commission representatives and representatives of the CEPT nations to discuss matters of mutual interest began in 1971 and were regularized in 1974 with the establishment of the present consultative mechanism. The procedures implemented in November, 1976, make no significant additions to these Commission activities. The only major new element introduced by these procedures is the timing of determinations the Commission is required to make in the facilities authorization process.

22. As is clear from the foregoing, adoption of a comprehensive plan following consideration of alternative plans and comments filed thereon will not be the first Commission action where public comments filed thereon will not be the first Commission action where public interest determinations are made regarding the construction and use of proposed overseas facilities. It will be the first time the Commission has been able to make both of these determinations at the same time. Such course of action is, we believe, responsive to the objections made by overseas telecommunications entities as well as the carriers and other interested parties to this proceeding concerning the timing of past Commission actions. Two other benefits are gained from our proposed procedures. First, the U.S. Carriers and Comsat are afforded an increased opportunity to present, support, and comment on various plans for cable and satellite construction and use in a more meaningful manner than is possible when considering applications on a case-by-case, facility-by-facility basis. Second, we are afforded the benefits of considering a range of possible plans and therefore take actions based on a more complete record. We continue to believe that the procedures we have adopted will better serve the public interest and see no reason to change them.

23. We referred earlier to the WUI petition which contains four alternative proposals. WUI requests that we "reconsider our Guidelines" and "clarify them by adopting one or more of the WUI alternative proposals in the interests of harmonius international relations and for the benefit of the telecommunications users throughout the world." We interpret WUI's pleading as a request that we substitute one of its proposals for the policies and guidelines established in our November 29 Order. Three of WUI's alternative proposals would permit the carriers to earn a rate of return on satellite circuits leased from Comsat. The first of these proposals would permit the carriers to capitalize satellite lease payments thus making the includable in the carriers' rate bases. The second proposal would require Comsat to issue Capital Participations Shares to the carriers in 50 percent of their satellite circuits. Such shares would then be included in the carriers' rate bases. The third alternative proposed by WUI is the Commission's adoption of an Operating Ratio Criterion for rate-making. Under this approach, the carriers would be permitted an "appropriate spread" between revenues and expenses allocated to leased satellite facilities. WUI's fourth alternative would permit the carriers to elect to compensate Comsat for a reasonable allocated share of its justified overhead

[1] AT&T and Comsat filed comments. ITT Worldcom, RCA Globcom and WUI filed petitions requesting reconsideration and clarification of various aspects of our policy guidelines or procedures. Additionally, AT&T filed an opposition to Comsat's comments to which Comsat responded.

costs but not of costs related to INTELSAT because such costs could be reduced to the extent of non-use of satellite circuits. WUI says that such compensation would be more logical economically and less burdensome upon the rate payers than any Guidelines compelling the carriers to lease satellite circuits for which they have no need while their owned cable circuits are idle. It further asserts that this proposal "might also defer a costly generation of INTELSAT spacecraft, or at least relieve congestion of the Atlantic primary satellite and permit the deferment of the proposed costly three satellite configuration."

24. WUI submits that any of these alternatives, or reasonable combinations or variations thereof, would provide the solution to the cable vs. satellite controversy without impairing this country's fragile international relations in the telecommunications sector. Adoption of any of the first three alternatives according to WUI could result in the carriers' being economically motivated to use more satellite circuits. WUI states

> The U.S. carriers could then endeavor to negotiate agreements with their foreign correspondents to maintain or acquire matching satellite circuits. The sovereign foreign administrations would, thus, be relieved of the irksome coercion, direct or indirect, from this Commission. The traditional relationship between international telecommunications operators—foreign administrations and U.S. carriers—would be restored. Additionally, the U.S. carriers could elect to compensate Comsat for non-use of satellite circuits (WUI alternative 4); and the carriers and their foreign correspondents would be free once again to configure their networks in an optimum manner for service reliability as only network operators can mutually decide. Comsat's ownership share in INTELSAT might be adjusted downward as a result with no adverse impact upon the ultimate U.S. ratepayers or upon the viability of Comsat.

It is not clear from the foregoing whether WUI proposes its fourth alternative as a substitute for or as an adjunct to any of the first three proposals.

25. We believe that the first three WUI proposals and its fourth proposal would have opposite effects on facilities use. If, as WUI suggests, the increased economic incentives produced by the first three proposals resulted in carriers' increased use of satellite circuits, it would seem a permissible conclusion that the need for additional cable facilities during the planning period under consideration would be delayed or, possibly, eliminated. However, WUI does not provide any indication as to the level of increased satellite use it would expect to result. It also fails to indicate the effect such increased use of satellite circuits would have on service reliability. No information is provided as to whether cost savings from deferring additional cable facilities would exceed the additional burden on the ratepayers caused by including satellite circuits in both Comsat's and the carriers' rate bases. Finally, no indication is given as to the effect that the increased economic incentive for the U.S. carriers to use satellite circuits would have on the determinations of overseas telecommunication's entities concerning service reliability and costs.

26. WUI indicates its fourth proposal would result in a decrease in the number of satellite circuits actually used. It would seem permissible to conclude that should such a decrease occur, the need for additional cable facilities during the planning period under study may be increased. However, WUI again provides no indication as to the magnitude of decrease it would expect to occur. While WUI seems to imply that decreased satellite circuit usage would increase service reliability, it provides no information with which one could test the reasonableness of that hypothesis. WUI also does not provide any information concerning the effect of its proposal on the cost of service to the ratepayer. It appears also to assert that the anticipated reduction in use of satellite circuits will be sufficient to warrant delaying the introduction of the INTELSAT-V series of satellites and deferring implementation of a three-satellite path configuration in the Atlantic basin. However, WUI gives no indication of the magnitude of cost savings such eventualities would produce. WUI also suggests that the reduced level of satellite use will result in diminishing Comsat's share of INTELSAT ownership and costs. However, it does not indicate the degree to which Comsat's costs would be reduced.

27. While all of WUI's proposals have the potential to affect the planning of future facilities, they are not substitutes for planning; nor, in our opinion, for the procedures we have adopted. The adoption of one or more of WUI's proposals would not terminate the legal requirement that prior approval be obtained for the construction and operation of overseas facilities; reduce our statutory duty to certify that the public interest requires construction of those facilities; or change the procedures to be followed in acting upon applications for overseas facilities. The objective of our procedures in this docket is to shape the required authorization process to a more meaningful and responsive process given the complexities of international facilities planning. The manner in which WUI's proposals would accomplish similar objectives is not obvious. They may be relevant considerations within the planning process. However, the cursory description provided sheds little light on the effect these proposals will have on the need, timing, and use of future facilities. Nevertheless we invite comments on these proposals by interested parties at the time they file the comments required herein.

28. In addition to the pleadings previously mentioned, we received a letter, dated January 27, 1977, from the Office of Telecommunications Policy (OTP) commenting on a number of aspects of our procedures. Some of OTP's comments have already been discussed. Its concern about the depth of the Commission involvement in facilities planning and the question of increasing the carriers' incentives to use satellite circuits were also raised in other pleadings discussed above. Regarding OTP's concern that factors other than cost and facilities used by considered in reaching a decision in this matter, we are inviting comments and supporting information regarding all issues to be considered, including those other than costs, service reliability, and traffic requirements. OTP has also raised other issues which we believe are more appropriately addressed in this phase of the proceedings and we invite interested parties to include comments on the OTP letter in their filings.

29. We will, however, address at this time OTP's request that we abandon the comprehensive facilities plan approach we adopted in our November, 1976, Further Statement. OTP views the procedure adopted, and in particular the detailed analysis of costs and facilities use with our concomitant information requests, as unduly coercive with respect to the European Telecommunications entities. OTP urges the Commission to reconsider the necessity for the comprehensive plan approach. In its view, the regulatory judgments as to the prudence of new cable or satellite facilities should be determined at the time applications for those facilities are filed. OTP recognizes that one important consideration in analyzing such applications is the prudent use of all existing facilities and that commitments to continue to reduce spare capacity can be demanded of the carriers if necessary, before new facilities are authorized. OTP states that the U.S. carriers, in turn, will be obliged to reach agreements with their operating partners consistent with such commitments. Such a procedure would, according to OTP, serve U.S. interests better than the procedures set forth in our Further Statement.

30. As indicated in our earlier discussion of the pleadings filed, our goal in adopting these procedures is to expedite Commission determination of the need of future facilities and to indicate our findings at the earliest possible time in order to minimize distruption of agreements already reached among the carriers and the overseas operating entities. As we also earlier indicated, these procedures allow the Commission to consider a number of alternative plans and provide for more input of views and information from all interested parties.

31. Past experience with *ad hoc* applications has shown that the same detailed consideration of cost, traffic requirements and service reliability is required. However, as we fully described in our November 29 Further Statement, this approach has proved to be unsatisfactory to adequately address these issues and reach timely decisions. While we do not presume to state that the procedures we have instituted cannot be improved, given the complexity of international

telecommunications facilities planning, we continue to believe that they offer a significant improvement to the application processes which in the past have yielded unsatisfactory results.

32. *Accordingly, it is ordered*, Pursuant to, sections 4(i), 4(j), 214, and 403 of the Communications Act of 1934, as amended 47 U.S.C. 154(i), 154(j), 214 and 403 (1971), and section 201(c) of the Communications Satellite Act of 1962, 47 U.S.C. 721(c) (1971), that the parties named herein shall, and all other interested persons may, file comments on the seven alternative proposed facilities construction and use plans set forth in Attachment 1 hereto.

33. *It is further ordered*, That the proposed PLAN 4–M is designated to Commission's tentatively-preferred facilities construction and use plan.

34. *It is further ordered*, For purposes of the comments called for here, American Telephone and Telegraph Company, Communications Satellite Corporation, the French Telegraph Cable Company, ITT World Communications Inc., RCA Global Communications, Inc., TRT Telecommunications Corporation, Western Union International, Inc. are named parties respondent to this proceeding.

35. *It is further ordered*, Pursuant to § 1.419 of the Commission's rules and regulations, 47 CFR 1.419 (1976), that all parties herein shall, and other interested persons may, on or before August 31, 1977, file an original and eleven copies of comments on the Commission's tentatively-preferred facilities construction and use plan and all alternative proposed plans set forth in Attachment I hereto. Each person named a party to this proceeding shall also provide the information called for in Attachment 2 to the extent that a particular question is aplicable to it. In addition to the material filed in response to this order, the Commission may consider any other relevant material before it. Copies of responses in this proceeding shall be available for public inspection at its headquarters at 1919 M Street, NW., Washington, D.C.

36. *It is further ordered*, That to the extent the pleadings and comments filed in regard to the Commission's Further Statement of Policy and Guidelines in this proceeding request abolition of the comprehensive facilities plan approach set forth herein, they are hereby denied.

FEDERAL COMMUNICATIONS COMMISSION,*
VINCENT J. MULLINS,
Secretary.

NOTE.—Attachments 1 and 2 are filed as part of the original document and may be inspected at the office of the FEDERAL REGISTER. A limited number of copies of these attachments are available from the Federal Communications Commission.

* See attached statements of Commissioners Fogarty and White. Commissioners Hooks and Quello concurring in the result.

CONCURRING STATEMENT OF COMMISSIONERS JOSEPH R. FOGARTY AND MARGITA E. WHITE

IN RE: POLICY TO BE FOLLOWED IN FUTURE LICENSING OF FACILITIES FOR OVERSEAS COMMUNICATIONS (DOCKET 18875)

Although we concur in the Commission's decision to designate Plan 4–M as a tentative preferred plan, we believe it is essential to emphasize that this preference is strictly a preliminary assessment of the alternative plans before the Commission and the complex technical and policy questions involved. While we accept the conclusion of the staff's preliminary analysis of the plans, our concurrence is based solely upon the limited record now before us.

In this regard, we are hampered by the lack of probative data and analysis in the submissions of the USISC and Comsat, particularly with respect to the critical comparative issues of quality of service, reliability of service, and costs presented by the various plans. Clearly, before this Commission can move with any confidence from a tentative preferred to a final plan, more is needed by way of comment, analysis, and evaluation.

In particular, we are not convinced that sufficient attention has been given to the question of quality of service in either the parties' comments or the Commissions analysis. Further, we question the impact that the adoption of the preferred plan will have both upon the distribution of circuits between cable and satellite in meeting overall traffic demand, and upon the route diversity available for traffic to and from individual countries.

In this regard, we are attaching to this statement a comparison of plans 4–M and 1 which graphically illustrates the differences in the country-by-country and overall distribution of cable and satellite circuits under these respective plans. The historically recognized need for both redundancy and diversity in transatlantic telecommunications may be compromised under plan 4–M to the possible detriment of all the region's consumers.

We further recognize—as we believe do our colleagues—that principles of international comity must also be considered in the Commission's ultimate decision. Indeed, international comity is a fundamental an element of our statutory public interest mandate as are the factors thus far considered. In expressing a tentative preference which results in cable/satellite allocations so dramatically different from those favored by the European nations, the Commission may find it more difficult to reach agreement on a final United States-CEPT plan after November 1, 1977. In our judgment, the element of comity must be given due consideration in the Commission's further deliberations leading to the adoption of the final comprehensive plan.

In view of the substantial issues which remain at this time unresolved, we urge the participants in this proceeding to provide the additional data and analysis necessary for the Commission to make a responsible and fully informed decision which will reflect and accommodate the best interests of all transatlantic telecommunications consumers.

Comparison of Satellite vs Cable Circuits for each Country Plans 4M and 1*

Country	PLAN 4M		PLAN 1	
	No. of Cable Circuits	No. of Satellite Circuits	No. of Cable Circuits	No. of Satellite Circuits
Austria	62	94	66	90
Belgium	316	656	521	451
Cyprus	7	13	12	8
Denmark	53	130	117	66
Finland	17	63	48	32
France	776	1385	1127	1034
Germany	946	2154	1369	1731
Greece	167	310	169	308
Ireland	83	203	175	111
Italy	708	790	757	741
Luxembourg	35	49	60	24
Netherlands	312	624	492	444
Norway	32	212	137	107
Portugal	86	52	93	45
Spain	362	397	457	302
Sweden	39	289	184	144
Switzerland	354	599	534	419
Turkey	13	63	41	35
United Kingdom	1410	5012	3229	3193
Yugoslavia	1	86	38	49
Totals	5779	13181	9626	9334

* The figures presented represent the circuit distribution under the two plans for the year 1985, the final year of the planning period.

[FR Doc.77-22330 Filed 8-2-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1106]

[Ex Parte No. 332]

INDEPENDENT VOTING TRUSTS

Guidelines for the Establishment, Approval and Maintenance

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to institute a proceeding for adopting appropriate regulations for the establishment, Commission approval and administration of proper independent voting trusts. To insure the independent administration of voting trusts. To define clearly the circumstances and to set forth guidelines to be followed to insure the independent administration of voting trusts.

DATES: Notice of intent to participate must be received on or before August 18, 1977.

ADDRESSES: Notices of intent to participate should refer to docket Ex Parte No. 332. An original and four copies should be submitted to the Office of Proceedings Room 5349, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Philip Israel, Deputy Director, Section of Finance, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, 202-275-7245.

SUPPLEMENTARY INFORMATION: This proceeding is being instituted on our own motion to consider adopting certain guidelines pertaining to the establishment, Commission approval, and administration of proper independent voting trusts. These regulations shall pertain to all carriers under our jurisdiction.

Section 5(5) of the Interstate Commerce Act makes it unlawful except with the approval and authorization of the Commission as provided in section 5(2) of the Act for any person to enter into any transaction whereby that person would obtain "control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever." (emphasis added). This section of the Act does not preclude the use of voting trusts in proceedings wherein the acquisition of control or management was obtained without prior Commission approval, because it has been determined in several cases decided by Federal courts, "that creation of an independent voting trust for stock, the prior control of which without Commission approval constituted a section 5(4)[1] violation was effective to avoid the violation and the Commission was authorized to give it that effect" (emphasis added). *B. F. Goodrich Co.* v. *Northwest Industries, Inc.*, 303 F. Supp. 53, 61 (D. Del. 1969), aff'd 424 F. 2d 1349) (3rd Cir. 1970), cert. denied, 400 U.S. 822 (1971). This and other decisions make it clear that the wording of Section 5(5) of the Act does not prohibit voting trusts so long as the trustee is truly independent of the acquiring carrier settlor. See, *Illinois Central R.R. Co.* v. *United States*, 293 F. Supp., 421-429 (N.D. Ill. 1966), affirmed per curiam, 385 U.S. 457 (1967).

Several recent proceedings involving section 5(2) control acquisitions have been complicated by the improper use of voting trusts by the settlor. In almost every instance, the voting trusts were established after the acquiring carrier had purchased a sufficient amount of the target carrier's publicly held voting securities to be considered in control of such publicly held target carrier.[2] Additionally, the voting trusts were frequently found not to have been administered independently from the control of the settlor, but were conduits through which the settlor continued in control of the publicly held carrier. These condi-

[1] Section 5(4) of the Interstate Commerce Act became section 5(5) by virtue of the amendments to section 5 in Pub. L. 94-210, the Railroad Revitalization and Regulatory Reform Act of 1976, enacted February 5, 1976.

[2] Unlike certain public utility regulatory statutes, the Interstate Commerce Act (49 U.S.C. § 1(3)(b) does not define control in terms of a fixed percentage of stock ownership with result that the point at which "control" or "power to control" exists, is defined by the circumstances of each individual case, *Gilbertville Trucking Co.* v. *United States*, 371 U.S. 115, 123-125 (1962).

tions led to a number of instances where the Commission determined that the settlor had violated section 5(5) of the Act, that is, acquired control of a carrier without Commission approval. Commission policy does not require the section 5(2) application to be denied merely because section 5(5) has been found to have been violated, though it is a factor to be considered. In three cases, notwithstanding section 5(5) violations involving improper usage of voting trusts, the Commission has granted approval of the section 5(2) applications where, in each instance, the evidence of record demonstrated that overriding public benefits would be derived from the resulting control to warrant a finding that the public should not be deprived of those benefits because of the section 5 (5) violation. See "East Texas Motor Frt.—Control—Consolidated," 109 M.C.C. 213 (1969), "Alleghany Corporation—Control and Purchase, 109 M.C.C. 333 (1970), and "Eastern Freight Ways, Inc.—Invest. of Control," 122 M.C.C. 143 (1975).

This situation need not arise. It is the purpose of these proposed regulations to define clearly the circumstances and to set forth guidelines which, if followed prior to the "acquisition of control" or "power to control", should insure that voting trusts will be administered independently from the settlor.

The proposed regulations will provide for the mandatory submission of the final draft of the trust agreement for Commission approval prior to execution of the trust agreement and the receipt by the trustee of any voting securities under the trust. The purpose for requiring Commission approval of the trust agreement is to insure that the trust agreement places the trustee under a legal obligation to observe the guidelines for independent administration of the trust contained in the proposed regulations.

The guidelines set forth the practices which should be adhered to by both the trustee and the settlor. In addition, the lack of any dealings or relationship between the trustee and the settlor (other than the trust itself) will be required to insure absolute insulation of the trustee and target carrier from any influence by the settlor. The attached proposed regulations contain the standards which we believe will enable voting trusts to be administered properly and independently from the control of the settlor.

The proposed action is not expected to affect significantly the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

Any interested person may participate in this proceeding by submitting an initial and/or reply statement of views, arguments, or other comments regarding the proposed regulations. The parties are also asked to comment on the need for the proposed regulations. The parties furthermore are requested to comment on the need for the voting trust in these proceedings. In addition the parties are asked to comment on whether or not interested parties should be permitted to comment on agreements submitted to the Commission, as provided by the proposed regulations. Any person intending to participate in this proceeding shall, on or before 15 days from first publication in the FEDERAL REGISTER, notify the Commission of his or her intention to participate by filing an original and 4 copies of a written notice of intent to participate with the Office of Proceedings, Room 5349, Interstate Commerce Commission, Washington, D.C. 20423. Since the Commission desires (a) to conserve time, (b) to avoid unnecessary expense, and (c) to limit the service of statements in this proceeding to persons who intend actively to participate, each notice of intent to participate shall include a detailed statement of (1) whether the person's interest extends merely to receiving Commission releases in this proceeding; (2) whether the person wishes to participate by filing and receiving initial and/or reply statements; (3) whether, if the person intends to participate as described in "(2)", the person's interests can be consolidated with those of other persons through joint statements; and (4) any other pertinent information to aid in limiting the service list to be issued in this proceeding.

The Commission will prepare and make available to all persons submitting notices of intent to participate a service list which will contain the names and addresses of all persons participating in this proceeding. An original and 19 copies of each statement shall be filed with the Commission and a copy of each statement shall be served upon each person on the service list. Initial and reply statements shall be filed with the Commission and served on each person on the service list in accordance with the schedule for submissions of comments and reply statements to be set by an order to be served concurrently with issuance of the service list of participants in the proceeding.

All written submissions will be available for public inspection during regular business hours at the Offices of the Interstate Commerce Commission, 12th Street and Constitution Avenue, Washington, D.C. 20423.

This notice of proposed rulemaking is issued under section 552, 553, and 559 of the Administrative Procedure Act (5 U.S.C. 552, 553, and 559) and section 5 of the Interstate Commerce Act (49 U.S.C. 5), as amended.

By the Commission, Commissioner Christian not participating.

H. G. HOMME, Jr.,
Acting Secretary.

PART 1106—STANDARDS FOR JUSTIFICATION OF THE INDEPENDENCE OF VOTING TRUSTS

Sec.

1106.1 Scope and applicability of the standards.
1106.2 Definitions.
1106.3 Submission of voting trusts for Commission approval.
1106.4 Mandatory provisions to be included in voting trust agreement.
1106.5 Standards of independence in the business relationship between the trustee and the settlor.
1106.6 Reporting requirements.
1106.7 Filing and acceptance of Section 5(2) applications.
1106.8 Denial because of nonindependence of trustee.

§ 1106.1 Scope and applicability of the standards.

The regulations set forth in this part govern the establishment, Commission approval, and administration of independent voting trusts. An independent voting trust may be established by a deed of trust or other written instrument and utilized by a carrier, or those controlling or affiliated with a carrier (hereinafter jointly referred to as carrier), which seeks to acquire control, through the purchase of, or through any other means to obtain ownership of, voting securities of a carrier, the control of which requires approval under section 5(2) of the Interstate Commerce Act (hereinafter Act), to avoid a violation of section 5(5) of the Act. In order to avoid a section 5(5) violation, the independent voting trust should be established before a controlling block of voting securities is purchased.

§ 1106.2 Definitions.

As used in this part: (a) The term "Act" means the Interstate Commerce Act, as amended.

(b) The term "voting trust" means any device resulting in the accumulation of voting shares or corporate securities of a carrier the control of which requires approval under the Act in trust for the purpose, among other things, of insulating the settlor from control of the business of the carrier whose shares are so held.

(c) The term "settlor" means any person, as defined in section 1(3)(a) of the Act, who has provided the consideration for the purchase of the corporate voting shares which are placed in the voting trust.

(d) The term "cestui que trust" means any person, as defined in section 1(3)(a) of the Act, who possesses a beneficial or equitable interest in the voting securities comprising or to comprise the corpus of the voting trust.

(e) The term "trustee" means any person, as defined in section 1(3)(a) of the Act, who holds legal title to the corpus of the voting trust and administers the trust for the benefit of the cestui que trust.

(f) The term "trust arrangement" means the arrangement encompassing the trust agreement, and the relationship between the trustee and the settlor at the time the trust is established.

§ 1106.3 Submission of voting trusts for Commission approval.

(a) Any person who proposes to establish an independent trust for the purpose of avoiding a violation of section 5(5) of the Act shall submit to the Commission five copies of a petition request-

ing Commission approval of the proposed voting trust arrangement. Attached to said petition shall be the unexecuted trust agreement in its final draft form, as assented to by both the settlor and trustee. Execution of the trust agreement and receipt by the trustee of any voting securities shall not occur prior to the effective date of the order of the Commission approving the unexecuted trust agreement. The petition requesting approval of proposed voting trust arrangements shall also attach thereto an affidavit of the trustee attesting to compliance with the standards of independence of the business relationship between the trustee and settlor as set forth below in § 1106.5.

(b) Approval of the proposed voting trust arrangement by the Commission will not foreclose reconsideration, or a subsequent determination that the voting trust arrangement was not independent, on the basis of facts not known to the de-isional Commission body at the time of its approval.

(c) Approval of the proposed voting trust arrangement by the Commission shall cease to be of any further force and effect should the terms of the executed voting trust agreement differ in any material respect from the terms of the unexecuted trust agreement, or should the relationship between the trustee and settlor change, in any material respect, from the relationship, as it existed at the time of execution by the trustee of the affidavit attesting to compliance with the standards of independence, unless Commission approval has first been obtained for the subsequent modifications in the terms of the voting trust agreement, or change in the relationship between the trustee and settlor.

(d) A request for expeditious handling may be filed concurrently with the petition requesting approval of the proposed voting trust agreement. The petition should set forth the exigent circumstan-es necessitating extraordinary processing of the agreement.

§ 1106.4 Mandatory provisions to be included in trust agreements.

No proposed voting trust arrangement will receive Commission approval unless there are contained in the voting trust agreement provisions encompassing the following concepts:

(a) The trust and the nomination of the trustee during the term of the trust shall be irrevocable, and the trust is to remain in effect until the occurrence of specific events specified therein, but none other. The specified events referred to above may be, inter alia, (1) a sale of all the deposited securities, provided the sale is made to persons not affiliated with the settlor; (2) the delivery to the trustee of an order of this Commission authorizing settlor to acquire control of the carrier whose corporate securities constitute the corpus of the trust or to purchase any of its properties, or authorizing the release of the securities of any reason, or otherwise affecting the trust. At no time shall such event be one which it is within the power of the settlor to control other than the filing of an application for appropriate authorization from this Commission.

(b) The trustee must not exercise the voting power of the trust in any way so as to cause any dependence or intercorporate relationship between the settlor and the carrier whose corporate securities constitute the corpus of the trust.

(c) The trustee shall not use the voting powers of the trust in any matters relating to the acquisition of control of the carrier whose corporate securities constitute the corpus of the trust except as may be authorized in advance by this Commission or required by a court of proper jurisdiction.

(d) The trustee shall not use the voting powers of the trust to elect common officers or directors of the settlor and the carrier whose corporate securities constitute the corpus of the trust, without the prior consent of the Commission.

(e) The trustee shall be empowered to vote stock held in the trust with regard to all other proposals which will, in his determination, affect the well being of the carrier whose corporate securities constitute the corpus of the trust in the manner deemed by him to be consistent with the best interests of such carrier.

(f) Notwithstanding the fact that the trust was created by the settlor for the ultimate benefit of the settlor, as cestui que trust, the interests of the settlor, as cestui que trust, may conflict with the other interests of the settlor which are extraneous to the trust. As a result, during the term of the trust, the trustee shall never take into account the extraneous interests of, or act for the benefit of, the settlor in utilizing the voting power of the trust, if doing so would in any way conflict with the obligation imposed by paragraph (e) of this section. The trustee may not be held liable to the cestui que trust for any detriment occuring to the corpus of the trust as a consequence of any act of the trustee, which was done in good faith and belief that such act was for the benefit of the carrier whose securities constitute the corpus of the trust: *Provided, however,* That this should not preclude the trustee from being held to the standard of conduct of a reasonably prudent businessman acting in good faith on behalf of the carrier whose securities comprise the corpus of the trust.

(g) The trustee shall be entitled to receive cash dividends declared and paid upon the trustee voting corporate securities and turn the same over to the cestui que trust. Dividends other than cash are to be received and held by the trustee upon the same terms and conditions as the voting corporate securities which constitute the corpus of the trust.

§ 1106.5 Standards of independence in the business relationship between the trustee and the settlor.

To ensure independent administration of the voting trust by the trustee and to prevent the settlor from controlling the trustee in any manner, the following standards should be followed:

(a) The trustee or any parent, subsidiary, or affiliated corporation of the trustee may not have any officers, or members on their respective boards of directors in common with either the settlor or any parent, subsidiary, or affiliated corporation of the settlor.

(b) The trustee or any parent, subsidiary, or affiliated corporation of the trustee may not have any direct or indirect business arrangements or dealings, financial or otherwise, with the settlor, or any parent, subsidiary, or affiliated corporation of the settlor, other than those dealings pertaining to establishment of the voting trust pursuant to these regulations. Mere investment in the corporation stock or securities of the settlor by the trustee short of obtaining a controlling interest will not be considered as an arrangement by which the trustee might be subject to the control of the settlor, but in no event should the investment by the trustee in the voting securities of the settlor exceed 5 percent of its outstanding shares, and in no event should the trustee hold a proportion of the settlor's securities so substantial as to permit the trustee in any way to control, or direct the affairs of the settlor.

(c) Upon execution of the trust agreement, the settlor shall neither communicate nor attempt to communicate with the trustee, whether directly or indirectly, except to advise him of the occurrence of an event terminating the trust as specified in § 1106.4(a) above. The prohibition against communications between settlor and trustee shall not be deemed to preclude the trustee from apprising the settlor of the status of stock shares received by the trustee pursuant to a tender offer of the settlor, nor from responding to questions regarding the transmittal of cash dividends.

§ 1106.6 Reporting requirements.

(a) The trustee of any voting trust in which the voting arrangement has been approved by the Commission under this part shall report to the Commission when voting securities held by the cestui que of the outstanding voting securities of the carrier which is the subject of the proposed acquisition of control, or at such earlier time as the Commission may by order direct. The trustee shall thereafter file quarterly reports with the Commission reflecting the percentage of the subject carrier's outstanding voting securities that are held by the cestui que trust and trustee: *And providing,* The following additional information:

(i) A summary of all communications made between the trustee and settlor during the quarter.

(ii) A description of all proposals to shareholders of the subject carrier for which the trustee exercised its voting power during the quarter.

(b) The quarterly report shall be titled "Voting Trustee's Quarterly Report" and shall be filed with the Deputy

Director of the Section of Finance (or the Chairman of Division 3) of the Interstate Commerce Commission, within 15 days from the close of the quarter.

(c) The trustee shall filed with the Commission a copy of any report or document filed with the Securities and Exchange Commission in connection with the proposed transaction.

§ 1106.7 Filing and acceptance of section 5(2) application.

(a) The Commission may be order specify a date by which an application under section 5(2) of the Act for approval of a proposed acquisition shall be filed. An application shall be filed no later than the date so specified.

(b) No application under section 5(2) of the Act for approval of a proposed acquisition of control through ownership of voting securities, which proposal involved the use of a voting trust, will be accepted for filing unless the application reflects that:

(1) An independent voting trust arrangement was created and approved by the Commission in accordance with the regulations in this part.

(2) The trustee has complied with all reporting requirements under this part.

(3) The application is filed no later than the date specified for such filing by the Commission pursuant to paragraph (a) of this section.

§ 1106.8 Denial because of nonindependence of trustee.

If the Commission finds that the trustee has not complied with the mandatory provisions to be included in the trust agereement as set forth in § 1106.4 and thus was not independent of the settlor, it will deny the section 5(2) application, unless the applicant shows and the Commission finds that the breach of independence was unintentional and that denial of the application will substantially disserve the public interest and the national transportation policy, taking into account the need for effective deterrence.

[FR Doc.77-22275 Filed 8-2-77;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

Office of the Secretary

PACIFIC CREST NATIONAL SCENIC TRAIL ADVISORY COUNCIL

Intent to Reestablish

Correction

In FR Doc. 77-21829 appearing on page 38623 in the issue for Friday, July 29, 1977, at the end of the fifth paragraph the comment date now reading "August 29, 1977" should read "August 12, 1977".

CIVIL AERONAUTICS BOARD

[Order 77-7-148; Docket Nos. 30969, 28269]

EASTERN AIR LINES, INC.

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 29th day of July 1977.

By applications filed June 5, 1977, Eastern Air Lines requests an amendment to its certificate of public convenience and necessity for Route 10 so as to delete segment 7 (Chicago-New Orleans) of that certificate along with the conditions pertaining to service on that segment. Eastern also asks for a continuation of its temporary suspension on segment 7 until 90 days after final action by the Board on Eastern's application for deletion in Docket 30969.

In support of its applications, Eastern alleges that the primary reason for the award of segment 7, to provide nonstop service between New Orleans and Chicago, no longer exists because of the Board's decision in the Chicago-New Orleans Nonstop Route Proceeding, Order 77-2-58, served February 11, 1977, and Order 77-5-35, served May 9, 1977, to delete Eastern's nonstop authority between Chicago and New Orleans; that all of the authority on segment 7 is available on other Eastern routes with the exception of New Orleans-Huntsville, and that the latter market is adequately served today by Southern Airways; that Eastern's service over segment 7 was suspended by Order 75-10-83, October 21, 1975, and that this suspension continues in effect until 90 days after final decision in Docket 27990; and that Eastern is only asking for the maintenance of the status quo of its current suspension of service over segment 7.

An answer in support of Eastern's application for renewal of its temporary suspension of service was filed by the City of New Orleans and the Chamber of Commerce of the New Orleans Area (New Orleans). New Orleans contends that Eastern should not be burdened by one-stop service between New Orleans and Chicago; that service between New Orleans and Birmingham is authorized on Eastern's segment 1, Route 5; and that service between New Orleans and Huntsville is adequately provided by Southern Airways.

Upon consideration of the pleadings and all the relevant facts, we have decided that the public interest requires the grant to Eastern of authority to suspend service temporarily on segment 7 of Route 10 (Chicago-Huntsville-Birmingham-New Orleans).[1] We have also decided to issue an order to show cause why the deletion should not be granted.[2] Accordingly, we tentatively find and conclude that the public convenience and necessity require the amendment of Eastern's certificate for Route 10 so as to delete segment 7.[3] The facts which we have tentatively found to support our ultimate conclusion are discussed below.

With the deletion of Eastern's nonstop authority in the Chicago-New Orleans market, the primary reason for the award of segment 7, the provision of nonstop service between the two points, no longer exists. Moreover, Eastern's service over segment 7 has been suspended for a considerable amount of time. By Order 75-10-83, October 21, 1975, the Board authorized Eastern, effective December 9, 1975, to suspend service temporarily until 90 days after the final decision in Docket 27990.[4] Before that (and before Eastern reinstituted service in May, 1975) by Orders 74-1-33, 74-6-1, 74-11-59, Eastern had authority to suspend service for six-month periods or until the end of the fuel shortage. Thus, except for a seven-month period, service over Eastern's segment 7 has been suspended since 1974 with no adverse effect on the markets involved. All of the authority on segment 7, with the exception of New Orleans-Huntsville, is available on other Eastern routes. Eastern also can combine certain authority so as to operate, for example, Chicago-Birmingham-New Orleans without using the segment 7 rights. The New Orleans-Huntsville market is now served by Southern Airways, which provides two daily round trips for approximately 20 passengers per day each way.[5] Thus, the traffic can be accommodated by Southern, which has been fulfilling the needs of the market during Eastern's suspension of service. Finally, the absence of any civic opposition to Eastern's application and New Orlean's support of the suspension renewal application support our tentative conclusion that the public convenience and necessity require the deletion of segment 7 from Eastern's certificate for Route 10.[6]

Interested persons will be given twenty days following service of this order to show cause why the tentative findings and conclusions set forth in this order should not be made final. We expect such persons to support their objections, if any, with detailed answers, specifically setting forth the tentative findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. If an evidentiary hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant and material facts he would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.

Accordingly, it is ordered, That: 1. All interested persons be directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated here and amending the certificate of public convenience and necessity of Eastern Air Lines for route 10 so as to delete segment 7;

2. Any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions or certificate amendments set forth here shall, within 20 days after service of a copy of this order, file with the Board and serve upon all persons listed in paragraph 7 a statement of objections together with a summary of testimony, statistical data and other evidence expected to be relied upon to support the stated objections. Answers to such objections shall be filed within 10 days thereof;

[1] Eastern's request that it be relieved of the requirement to submit data required by Part 205 of the Board's Economic Regulations will be granted.

[2] The suspension authority granted in this order will remain in effect until 90 days after the finalization of the show cause order.

[3] We also tentatively find that Eastern is fit, willing and able properly to perform the air transportation authorized by the certificate proposed to be issued herein and to conform to the provisions of the Act and the Board's rules, regulations, and requirements thereunder.

[4] The Board's order on reconsideration in Docket 27-990, Order 77-5-35, was served on May 9, 1977.

[5] Official Airline Guide, April 1, 1977, and CAB O&D Surveys.

[6] Since the deletion of segment 7 will result in no change from Eastern's current operations in the markets serviced by that segment, we also tentatively find and conclude that the Board action sought by Eastern will not result in a major federal action significantly affecting the environment within the meaning of the National Environmental Protection Act of 1969.

3. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board;

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth in this order;

5. Eastern Air Lines be authorized to suspend service temporarily over segment 7 of route 10 until 90 days after final decision on its deletion application in Docket 30969;

6. Eastern's request that it be relieved of the requirement to submit data required by Part 205 of the Board's Economic Regulations be granted;

7. A copy of this order shall be served on Eastern Air Lines; Mayor, City of Chicago, Illinois; Governor, State of Illinois; Mayor, City of New Orleans, Louisiana; Chamber of Commerce of the New Orleans Area; Governor, State of Louisiana; Mayor, City of Huntsville, Alabama; Mayor, City of Birmingham, Alabama; Governor, State of Alabama; Airport Manager, O'Hare Airport; Airport Manager, Moisant International Airport; Airport Manager, Madison County Airport; Airport Manager, Birmingham Municipal Airport; Southern Airways; and the U.S. Postal Service; and

8. The authority granted in paragraph 5 above may be amended or revoked at any time at the discretion of the Board without hearing.

This order will be published in the FEDERAL REGISTER.

By Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-22317 Filed 8-2-77;8:45 am]

[Order 77-7-146; Docket 30687]

S.A. DE TRANSPORT AERIEN (SATA)

Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 29th day of July, 1977.

By application filed April 1, 1977, S.A. de Transport Aerien (SATA) requests renewal of its foreign air carrier permit issued pursuant to Order 75-4-101, served April 22, 1975. That permit authorizes SATA to engage in charter air transportation between the Swiss Confederation, the U.S. and various other countries. Applicant asks for renewed authority identical to its current authority, except for the duration. SATA now seeks a five-year, instead of a two-year, permit.

On June 1, 1977, SATA filed a motion for an order to show cause why the Board should not renew its permit for an additional five-year period, subject to approval of the President. Attached to the motion were 41 supporting exhibits.

No answers were filed in response to the motion.

Upon consideration of the pleadings and all the relevant facts, the Board has decided to grant SATA's motion, and, for the reasons stated below, has tentatively concluded that SATA's foreign air carrier permit should be renewed for a period of five years.

OWNERSHIP AND CONTROL

SATA is an independent, publicly held corporation formed in 1966 pursuant to the laws of the Swiss Confederation. The capital is fixed at 32,000,000 Swiss francs, divided into two classes of stock: 213,400 nominative shares issued and outstanding, and 10,660 bearer shares issued and outstanding. Each share has one vote. The applicant has also issued 15,000,000 francs worth of bonds, worth 1000 frances each, which can be exchanged for 8 registered shares worth 100 francs each, or a 25 percent premium.

Swiss law requires that the corporation be controlled by Swiss nationals, and 95 pecent of its stock is owned by Swiss nationals.

All of SATA's directors and officers are Swiss citizens except Louis Henry and Philippe Doubre, who are French citizens.

None of SATA's officers, directors, or key personnel are employees of or affiliated with, any other air carrier, foreign air carrier, common carrier, person engaged in any phase of aeronautics or person whose principal business is the holding of stock in any such enterprise.

In light of these facts, the Board tentatively finds that SATA is effectively owned and controlled by Swiss citizens.

FITNESS

SATA holds a permit from the Swiss government authorizing it to operate passenger and cargo charter service world-wide. No authority held by the carrier has ever been suspended, revoked, or otherwise terminated.

SATA owns and operates the following aircraft: two DC-8-63's, four Super Caravelles, two Cessnas, and one Pilatus Porter. In addition it operates, but does not own a DC-8-53 and a Cessna 340. Its transatlantic charter service is conducted with the three DC-8 aircraft.

Applicant submitted two certificates of insurance evidencing the following coverage on its DC-8's and Super Caravelles: 72,500 Swiss francs per person and 400,000,000 Swiss francs per incident. In addition, for flight operations to the U.S., coverage is provided in accordance with the Montreal Agreement.

SATA has been operating charter service pursuant to its present permit for about two years, and the Board has no evidence that its services and operations have been unsatisfactory.

Applicant's operations have experienced steady growth. According to its exhibit 40, between 1970 and 1976 revenues increased at an annual compound rate of 40.5 percent, while the annual compound rate of increase was 21.2 percent for passengers carried and 19.8 percent for flying time. The company's assets in 1976 totaled 126,661,000 Swiss francs, and its after tax profit for that year was 1,422,000 Swiss francs.[1]

[1] Exchange rate: 2.5 Swiss francs=1 U.S. dollar.

Based on this information the Board tentatively finds that SATA is fit, willing and able properly to perform the foreign air transportation proposed in its application, and to conform to the Federal Aviation Act of 1958, as amended, and to the rules, regulations and requirements of the Board thereunder.

PUBLIC INTEREST

There is at present no bilateral agreement between the U.S. and Switzerland pertaining to the subject application. Therefore, the determination of the public interest turns primarily on considerations of comity and reciprocity.

When SATA's permit was originally issued by Order 75-4-101, the Board adopted the administrative law judge's finding that the Swiss government treats U.S. flag carriers such that the principles of comity and reciprocity would justify the granting of the permit. The Board is unaware of any change in the Swiss government's treatment of U.S. air carriers. Therefore, we tentatively find that it would be in the public interest to grant SATA the authority it requests.

On the basis of the foregoing and all the facts of record, it is tentatively found that:

1. It is in the public interst to issue a foreign air carrier permit to S.A. de Transport Aerien authorizing it to engage in charter foreign air transportation as described in the text of this order;

2. S.A. de Transport Aerien is substantially owned and effectively controlled by citizens of Switzerland;

3. The exercise of the privileges granted by the foreign air carrier permit described above should be subject to the terms, conditions, and limitations contained in the specimen form of permit attached hereto, and to such other reasonable terms, conditions, and limitations as the Board may prescribe in the public interest;

4. S.A. de Transport Aerien is fit, willing, and able properly to perform the above-described foreign air transportation and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder;

5. Except to the extent granted herein, the application of S.A. de Transport Aerien in Docket 30687 should be denied; and

6. An evidentiary hearing is not required in the public interest.[2]

On the basis of the foregoing, and all the facts of record, the Board tentatively finds that an evidentiary hearing is not required in he public interest, and that SATA should be issued a foreign air car-

[2] A Notice of Environmental Rejection, issued today, states that the Chief of the Legal Division, Bureau of Operating Rights, has reviewed the environmental evaluation submitted with SATA's motion, and has found, pursuant to § 312.13 of the Board's Procedural Regulations, that the action contemplated herein would not constitute a major Federal action significantly affecting the quality of the environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

rier permit for a period of five years, subject to the terms, conditions, and limitations set forth in the attached specimen permit.

Accordingly, it is ordered That:

1. All interested persons be directed to show cause why the Board should not make final the tentative findings stated herein, and why a foreign air carrier permit, in the form of the specimen permit attached, should not, subject to the approval of the President pursuant to section 801 of the Act, be issued to SATA;

2. Any interested person objecting to the issuance of an order making final the tentative findings, or to the issuance of the proposed foreign air carrier permit, shall file a statement of objections, fully supported by evidence, within 21 days after the Board adopts this order; answers to objections shall be filed within 10 days thereafter;

3. If timely and properly supported objections are filed, the Board will accord full consideration to all matters and issues raised by the objections before it takes further action; [1]

4. If no objections are filed, all further procedural steps will be considered waived, and the Board may enter an order adopting as final the tentative findings set forth herein; and

5. This order shall be served on SATA, Pan American World Airways, Capitol International Airways, Overseas National Airways, Trans International Airways, World Airways, and the Ambassador of Switzerland in Washington, D.C., and the United States Department of State.

This order will be published in the FEDERAL REGISTER and transmitted to the President.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

PERMIT TO FOREIGN AIR CARRIER

Societe Anonyme De Transport Aerien (SATA) is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in charter foreign air transportation as follows:

1. Charter flights with respect to persons and their accompanying baggage between any point or points in the Swiss Confederation and any point or points in the United States.

2. Plane load charter flights with respect to property between any point or points in the Swiss Confederation and any point or points in the United States, limited to ten one-way flights within any calendar year.

3. Inclusive tour charter flights with respect to persons and their accompanying baggage between any point or points in the Swiss Confederation and any point or points in the United States.

4. Circle tour charter flights (including inclusive tour charters) with respect to persons and their accompanying baggage which originate and terminate at a point or points in the Swiss Confederation and serve a point or points in the United States and a point or points in any country other than the Swiss Confederation and the United States.

5. Charter flights (including inclusive tour charters) with respect to persons and their accompanying baggage between a point or points in Austria, Belgium, Cyprus, Denmark, Finland, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, and Yugoslavia, and any point or points in the United States, limited to charter flights which originate in a named European country.

6. Circle tour charter flights (including inclusive tour charters) with respect to persons and their accompanying baggage which originate and terminate at a point or points in Austria, Belgium, Cyprus, Denmark, Finland, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, and Yugoslavia, and serve a point or points in the United States and a point or points in any country other than a named European country and the United States.

This permit shall be subject to the following terms, conditions, and limitations:

(1) With respect to the authorizations contained in paragraphs 1, 2, 3, and 4 above, the holder shall not engage in foreign air transportation between the United States and any point or points, other than a point or points in the Swiss Confederation, or transport any persons whose journey, by any means of transportation, begins or ends at a point not in the United States or the Swiss Confederation: *Provided*, That this condition shall not prevent the holder, under the authorization contained in paragraph 4 above, from serving a point or points in any foreign country between the point of origin and the point of termination of the charter flight in the Swiss Confederation, or prevent the holder from carrying between a point or points in the Swiss Confederation and a point or points in the United States charters originating in one of the European countries named in paragraph 5 or 6 above.

(2) During any calendar year in which the holder: (a) operates less than 18 charter trips originating outside the United States, the number of United States-originated charter trips shall not exceed those originating outside the United States by more than six; (b) operates between 18 and 45 charter trips originating outside the United States, the number of United States-originated charter trips shall not exceed those originating outside the United States by more than one-third; (c) operates more than 45 charter trips originating outside the United States, the number of United States-originated charter trips shall not exceed those originating outside the United States by more than 15. Any charter originating in one country and flown to another, whether one-way or round-trip, will be considered one charter trip for these purposes.

(3) The authority of the holder to perform inclusive tour charters originating in the Swiss Confederation shall be subject to the terms, conditions, and limitations contained in licenses to be issued by the Swiss Federal Air Office (or other appropriate aviation authority) authorizing the performance of such charters: *Provided, however*, That, except as may be otherwise authorized by the Board, such inclusive tours shall also conform to the provisions of § 378.2(b)(4) of the Board's Special Regulations, or any other provision of the Board's Regulations governing the minimum charge to passengers for an inclusive tour (including land or other accommodations). The authority of the holder to perform inclusive tour charters originating in the United States shall be subject to the provisions of Part 378 of the Board's Special Regulations, and all amendments and revisions thereof as the Board, by order or regulation and without hearing, may adopt. The authority of the holder to perform inclusive tour charters originating in a European country named in paragraphs 5 or 6 above shall be subject to the following conditions:

(a) Each tour shall provide overnight hotel accommodations at a minimum of three places other than the point of origin, such places to be no less than 50 air miles from each other.

(b) If more than one group is carried, each of the groups shall consist of 40 or more tour participants.

(c) The Board, by order or regulation and without hearing, may waive conditions (a) and (b) in whole or in part.

(4) The exercise of the privileges granted by this permit, except with respect to inclusive tour charters, shall be subject to the provisions of Part 214 of the Board's Economic Regulations, and all amendments and revisions thereof as the Board, by order or regulation and without hearing, may adopt.

(5) The Board, by order or regulation and without hearing, may require advance approval of individual charter trips conducted by the holder pursuant to the authority granted by this permit, if it finds such action to be required in the public interest.

(6) The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of the Swiss Confederation for Swiss international air service.

(7) The holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, dated May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

(8) The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

(9) By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

(10) The holder shall not commence any service authorized herein, except pursuant to an initial tariff setting forth rates, fares

[1] Since the Board has provided for the filing of objections to this order, it will not entertain petitions for reconsideration.

and charges no lower than rates, fares or charges that are then in effect for any U.S. supplemental air carrier in the same foreign air transportation.

(11) The holder shall not operate charters for or on behalf of air freight forwarders.

(12) This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the Swiss Confederation shall be parties.

The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This permit shall be effective on _____ and shall terminate five years thereafter: *Provided, however,* That if during said period the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and the Swiss Confederation are or shall become parties, then and in that event this permit is continued in effect during the period provided in such treaty, convention, or agreement.

In witness whereof, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the _____.

(SEAL) _____,
Secretary.

Issuance of this permit to the holder approved by the President of the United States on _____ in _____.

[FR Doc.77-22318 Filed 8-2-77;8:45 am]

[Docket 30687]

S.A. DE TRANSPORT AERIEN (SATA)

Environmental Rejection

By application filed April 1, 1977, SATA requests renewal of its foreign air carrier permit authorizing it to engage in charter air transportation between the Swiss Confederation, the U.S., and various other countries. On April 8, 1977, applicant filed an environmental evaluation pursuant to Part 312 of the Board's Economic Regulations.

Applicant based its calculations on the assumption that its proposed operations would increase the base period daily operations by 4 at New York (2 daytime and 2 nighttime flights), 2 at Los Angeles (both daytime flights) and 4 at Bangor, Maine (2 daytime and 2 nighttime flights). These flights would be operated with DC-8-63 and DC-8-55 equipment.

Pursuant to §§ 312.8 and 312.13 of the Board's Procedural Regulations, the undersigned—having reviewed the environmental evaluations and other available information with respect to the applications described above, and having been duly designated by the Director, Bureau of Operating Rights, pursuant to § 312.-8—finds that any subsequent Board action approving, denying, or otherwise acting upon SATA's application would not constitute a "major Federal action significantly affecting the quality of the environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Dated at Washington, D.C., July 29, 1977.

BARBARA A. CLARK,
Chief, Legal Division,
Bureau of Operating Rights.

[FR Doc.77-22316 Filed 8-2-77;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

UNIVERSITY OF NORTH CAROLINA, 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 (Public Law 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 August 23, 1977.

Amended regulations issued under cited Act, (15 CFR 301) prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket number: 77-00269. Applicant: University of North Carolina at Chapel Hill, Biological Sciences Research Center, 411 Preclinical Educational Building 228H, Chapel Hill, N.C. 27514. Article: Ultramicrotom, Model LKB 8800A and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of tissues of the central and peripheral nervous systems, isolated cerebral capillaries, subcellular fractions, avian red cells, liver and kidney of animals. Human brain and brain tumors will also be studied. Fine structural changes produced by environmental pollutants and toxins will be investigated. Of particular interest are changes in the synaptic organization of the central nervous system and the myelin and axonal relationships in the peripheral nervous system. These fine structural systems will be further analyzed by applying seriologic techniques for obtaining morphometric analyses. Cytochemical studies for localizing putative transmitters will be undertaken. Also, immunocytochemical studies will be done in order to define the subcellular localization of enzymes and polypeptides important to brain function. Application received by Commissioner of Customs: June 28, 1977.

Docket number: 77-00271. Applicant: University of North Carolina, Department of Anatomy, 111 Swing Building 217H, Chapel Hill, N.C. 27514. Article: Scanning Electron Microscope, Model JSM-35U and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for studies of the binding site distribution on normal vs. malignant cells. Hormones, IgG, oncogenic drugs, and pollutants will be conjudgated to either ferritin or hemocyanin and used as specific visual probes for the distribution of hormone, specific IgG, oncogenic drug pollutant binding sites. Changes in the distribution of such sites will be studied after challenging cells with low temperature, acid pH, divalent cations, and other physiological and non-physiological variables. In addition, the article will be used to train a limited number of graduate students and post doctoral fellows on an individual basis in the general areas of experimental cell and membrane biology. Application received by Commissioner of Customs: June 22, 1977.

Docket number: 77-00272. Applicant: University of North Carolina, Department of Anatomy, 111 Swing Building 217H, Chapel Hill, N.C. 27514. Article: Electron Microscope, Model JEM-100C (Standard Top Entry Type) and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used in high resolution studies of conformational and redistributional changes of proteins on or within organelle and cell membranes which occur during change in the state of organelle and cell function. The identification of specific proteins on or in cellular membranes will be investigated using antibody and other protein tagging techniques in a research program devoted to studies in the molecular anatomy of membranes. Protein identification and orientation in biomembranes as well as conformation of solubilized proteins, will be studied by high resolution freeze-cleaving electron microscopy, dark field electron microscopy and negative staining. In addition, the article will be used to train a limited number of graduate students and post doctoral fellows on an individual basis on the general areas of experimental cell and membrane biology. Application received by Commissioner of Customs: June 22, 1977.

Docket number: 77-00273. Applicant: University of North Carolina, Department of Anatomy, 111 Swing Building 217H, Chapel Hill, N.C. 27514. Article: Electron Microscope, Model JEM-100C (SEG) and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used in high resolution TEM and SEM studies of the distribution and lateral translation diffusion of integral proteins in biomembrane and reconstituted membrane systems. Antibody ferritin conjugates will be utilized in SEM studies to follow protein diffusion laterally on the surface of biomembranes. Diffusion will be induced by thermotropic lipid phase transitions. Diffusion of transmembrane

proteins in the lateral plane of the hydrophobic interior of the lipid bilayer will be determined by high resolution freeze-fracture TEM. Energy dispersive X-ray analysis will be carried out on various organelle and membrane systems after binding of various divalent cations such as calcium and magnesium. The effect of divalent cations on the lateral translation diffusion of integral proteins and on theracotropic lipid phase transitions will be determined. Application received by Commissioner of Customs: June 22, 1977.

Docket number: 77-00274. Article: National Radio Astronomy Observatory, P.O. Box O, Socorro, New Mexico 87801. Article: 110 (each) Rigid Helix 20 mm waveguide, 52 (each) Flexible sheathed helix 20 mm waveguide 2.0m long, and 38 (each) Waveguide Tapers 20/60 and 50 (each) Coupling Sleeves. Manufacturer: Fujikura Cable Works, Ltd., Japan. Intended use of article: The article is intended to be used as part of the Very Large Array radio telescope to transmit radio wavelength radiation received from extraterrestrial objects to recording apparatus. The study of this radiation enables astronomers to study sources of energy, origin, and evolution of the universe. The waveguide coupling components when used in conjunction with TE 01 mode circular waveguide is the only feasible method of transmission for the bandwidth required. Application received by Commissioner of Customs: June 22, 1977.

Docket number: 77-00276. Applicant: National Radio Astronomy Observatory Associated Universities, Inc., 2010 N. Forbes Blvd., Suite 100, Tucson, Arizona 85705. Article: Repair of Varian Klystron Type VRB2113A30 SN70414J6. Manufacturer: Varian Associates of Canada. Intended use of article: The article is intended to be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver. This receiver is used in conjunction with a microwave antenna to measure the intensity, polarization frequency and direction of cosmic radiation. Application received by Commissioner of Customs: June 23, 1977.

Docket number: 77-00277. Applicant: University of Notre Dame, Radiation Laboratory—ERDA Contract EY-76-C-02-0033, Notre Dame, Indiana 46556. Article: Housing for Hanovia 1kW-UV-Lamp including elliptical mirror, plane mirror and igniter. Manufacturer: Physical-Chemistry Dept., University of Zurich, Switzerland. Intended use of article: The article is intended to be used as a source for high intensity UV irradiation which is needed to initiate transient radicals in liquids to study their structure and chemical reactivity by means of electron spin resonance. Application received by Commissioner of Customs: June 23, 1977.

Docket number: 77-00278. Applicant: The University of Michigan, Department of Physical Education, 401 Washtenaw Avenue, Ann Arbor, Michigan 48109. Article: Electron Microscope, Model EM 9S-2 and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for studying the structural characteristics of muscle and the associated intracellular changes with aging and exercise and the relationship of the capillary network to muscle function. The objectives of the experiments to be conducted are to characterize the structural changes associated with exercise, training, and aging found in the tissues of rats and humans. It is hoped that through these experiments it will be possible to ascertain methods to optimally achieve the training effect and/or to retard the aging process. In addition, the article will be used for educational purposes in the courses: Physiological and Kinesiological Bases of Human Movement, Physiological Bases of Physical Activity, Special Problems in Physical Education, and Exercise Physiology. The objectives of these courses are to associate the students with the physiological bases of movement and how muscle and heart are structured to allow for optimal movement. Application received by Commissioner of Customs: June 24, 1977.

Docket number: 77-00279. Applicant: College of Medicine and Dentistry of New Jersey, 100 Bergen Street, Newark, New Jersey 07103. Article: Electron Microscope, Model EM 301. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for studies of nerve tissue, cardiac tissue, and renal tissue. Both experimental animals and specimens of diseased human tissue will be investigated. The animal experiments will be designed as models to elucidate pathological conditions that exist in humans; the human specimens will be studied to characterize changes within cells. The article will also aid post graduate and graduate students to become proficient in their given field of study. Application received by Commissioner of Customs: June 24, 1977.

Docket number: 77-00280. Applicant: Oral Roberts University, 7777 S. Lewis, Tulsa, Oklahoma 74171. Article: Electron Microscope, Model EM 400 HTG and Accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for studying fixed biological material and prepared special materials used in dentistry. In addition, the article will be used as an aid in teaching and training graduate, medical and dental students in the following proposed courses: Normal Microscopic Anatomy (Histology, Cell Biology, Virology); pathology; dental materials; introduction to ultrastracture; introduction to electron microscopy; advanced methodology in microscopy; ultrastructural cytochemistry; problems course in electron microscopy. Application received by Commissioner of Customs: June 24, 1977.

Docket number: 77-00281. Applicant: National Institutes of Health, National Institute of Dental Research, 9000 Rockville Pike, Bethesda, Maryland 20014. Article: Electron Microscope, Model EM 10A and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used to examine biological material including: bone, tooth, salivary and lacrimal glands, tissue culture material, and negatively stained or heavy metal shadowed tissue component. Some inorganic material will also be studied. Areas under investigation will include the process of biological mineralization, examination of the crystalline structure, inorganic calcium phosphate and related compounds by transmission electron microscopy and electron diffraction, studies correlating the structure and function of exocrine gland acinar cells in both normal and pathological conditions. In addition, the article will be used to train people in basic electron microscopy, cytochemistry and energy dispersive X-ray analysis. Application received by Commissioner of Customs: June 27, 1977.

Docket number: 77-00284. Applicant: Arizona State University, Dept. of Botany & Microbiology, Tempe, Arizona 85281. Article: Electron Microscope, Model EM 201 and accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for the investigation of the location of NADP dependent isocitrate dehydrogenase in the bacterium *Escherichia coli* employing electron immunocytochemical technics. The article will also be used to train graduate students and post-doctoral researchers in a formal course, Biological Electron Microscopy, BIO 512. Application received by Commissioner of Customs: June 27, 1977.

Docket number: 77-00285. Applicant: Blodgett Memorial Medical Center, 1840 Wealthy Street S.E., Grand Rapids, Michigan 49506. Article: Electron Microscope, Model EM 9S-2, TI-Coolwell Recirculating Cooling System, Model COOL-5W and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in the pathology laboratory on human and animal tissues as an adjunct to light microscopy for diagnosis of pathologic conditions. Specific areas of research will be in brain and muscle disease comparing the electron microscopic findings with light microscopy, clinical history, physician exam, laboratory and x-ray studies. The information acquired will be used in many educational medical meetings at the Center. Application received by Commissioner of Customs: June 27, 1977.

Docket number: 77-00286. Applicant: Yale University, 10½ Hillhouse Avenue, New Haven, Connecticut 06520. Article: Laser, Model TEA-103-2, Multimode Front Optic, Model 505FCO, and Reflector, Model 503. Manufacturer: Lumonics Research Limited, Canada. Intended use of article: The article is intended to be used to create energetic plasma, and to initiate capacitor discharge in plasmas physics research. The materials to be investigated will include solid laser targets: carbon, lithium, etc. The article will also be used to teach op-

eration and use of lasers in plasma research. Application received by Commissioner of Customs: June 27, 1977.

Docket Number: 77-00287. Applicant: State University of New York—College at Purchase, Division of Natural Sciences, Purchase, N.Y. 10577. Article: Electron Microscope, Model EM 9S-2. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in a general instructional program in cellular biology. The main courses of study are: (1) Cell Biology—An introduction to the structure and function of the cells of plants, animals and micro-organisms with emphasis on their description in contemporary chemical, physical and ultrastructural terms, (2) Ultrastructure Techniques—An intensive training period during which students will learn and practice basic techniques of cell and tissue fixation, imbedment, thin sectioning, mounting and staining sections, and (3) Senior Research Project—Coherent and significant scientific investigation. Application received by Commissioner of Customs: June 27, 1977.

Docket Number: 77-00288. Applicant: Washington State University, Division of Purchasing, Pullman, WA 99164. Article: Particle Electrophoresis Apparatus, Mark II and accessories. Manufacturer: Rank Brothers, United Kingdom. Intended use of article: The article is intended to be used for the investigation of surface charge of the outer cell surface of red blood cells, bacterial cells and lymphocytes. This study will be correlated with other experiments in the laboratory. The article will also be used by graduate students conducting Ph.D. thesis research in biochemistry. Application received by Commissioner of Customs: June 30, 1977.

Docket Number: 77-00289. Applicant: Arizona State University, Tempe, Arizona 85281. Article: Scanning Transmission Electron Microscope, Model HB5 and Accessories. Manufacturer: VG Microscopes Ltd., United Kingdom. Intended use of article: The article is intended to be used to explore the applications of high resolution scanning transmission electron microscopy for the study of structures and defects of thin crystals and the configurations of small groups of atoms or single atoms on surfaces. It will then be modified and developed for a range of new operational modes which have shown theoretically to offer important new capabilities of a type not accessible to conventional transmission electron microscopy. A program of research on the study of biological specimens will include methods for the resolution of heavy atom labels on macromolecules, the study of chromosome structures and the development of methods for three-dimensional reconstruction of the structures of thicker specimens. Application received by Commissioner of Customs: June 30, 1977.

Docket Number: 77-00290. Applicant: Vanderbilt University—School of Medicine, 21st Avenue South, Nashville, Tenn. 37232. Article: Ultramicrotome, Model LKB 8800A and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for preparing specimens of human and animal tissue to be studied in the field of muscular dystrophy. Investigations will include the ultrastructural studies on normal and abnormal skeletal muscle and other animal tissues in the study and treatment of muscular dystrophy. Application received by Commissioner of Customs: July 1, 1977.

Docket number: 77-00291. Applicant: Sandia Laboratories, Kirtland AFB East Albuquerque, New Mexico 87115. Article: Imacon 675/51 Ultra Fast Camera System and Accessories. Manufacturer: John Hadland Photonics Ltd., United Kingdom. Intended use of article: The article is intended to be used in carrying out several long-term experiments which require the acquisition of optical data in very short time frames. Specific experiments include continuing laser oscillator development studies, the iodine laser development program and laser produced plasma-target interaction studies and a planned rather extensive laser-materials damage program. Application received by commissioner of customs: July 5, 1977.

Docket number: 77-00293. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, Mass. 02139. Article: Two (2) Recording Current Meters, Model 5 (RCM5) and one (1) Sea Link Type 325 Release/Transponder and accessories. Manufacturer: Aanderaa Instruments Co., Norway. Intended use of article: The article is intended to be used for studies of flow 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. Application received by Commissioner of Customs: July 6, 1977.

Docket number: 77-00294. Applicant: Stanford University, 851 Welch Road, Palo Alto, CA 94304. Article: Electron Microscope, Model EM 400 HTG, and Accessories. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for studies of tissue preparations taken from a number of commonly used experimental animals, e.g. rat, mouse, leech, and frog and from established cell culture lines. These studies will be directed toward understanding the sequence of steps in the formation of synapses and the mechanisms underlying synaptic development. Specific projects include: regenerating mammalian and amphibian neuromuscular junction, regenerating axons in the central nervous system of the leech, determining the factors that influence the growth of neurons during development. The article will also be used in the courses Neurobiology 212 and Neurobiology 209 to teach the structure of the nervous system at the cellular level and developmental neurobiology. Application received by Commissioner of Customs: July 6, 1977.

Docket number: 77-00295. Applicant: Sandia laboratories, Kirtland AFB East, Albuquerque, NM 87115. Article: TEA-100 CO_2 Lasers and Accessories. Manufacturer: Lumonics Roch Ltd., Canada. Intended use of article: The article is intended to be used to study chemical processes crucial to the development of an economical atomic iodine laser. The atomic iodine laser utilizes expensive starting chemicals which are destroyed during operation of the laser. Experiments will be conducted which are aimed at finding techniques for regenerating starting chemicals from iodine laser by products. Application received by Commissioner of Customs: July 6, 1977.

Docket number: 77-00296. Applicant: The Curators of the University of Missouri, 807 Stadium Road, Columbia, Missouri 65201. Article. AECL Radiation Therapy Treatment Couch Model 26. Manufacturer: Atomic Energy of Canada, Ltd., Canada. Intended use of article: The article is intended to be used in studies of the response of malignant neoplasms to radiation therapy. The experiments to be conducted are a continuation of on-going clinical research into the optimal radiotherapeutic time-dose-fractionation treatment protocols for cancer patients. The article will also be used in Radiologic Technology courses to train qualified radiation therapy technologists and in Nuclear Engineering courses to train qualified radiation therapy physicists. Application received by Commissioner of Customs: July 7, 1977.

Docket number: 77-00297. Applicant: Stanford University, 851 Welch Road, Palo Alto, CA 94304. Article: Electron Microscope, Model EM 201, Plate Camera, Watt Water Chiller and accessories. Manufacturer: Philips Electronics Instruments, NVD, The Netherlands. Intended use of Article: The article is intended to be used for studies of tissue preparations taken from a number of commonly used experimental animals, e.g., leech rat, mouse, and frog. Studies will be directed toward understanding the structure, function and maintenance of synaptic connections between nerve cells and between nerve and muscle cells. The objectives of the experiments conducted are to learn how synapses function, how they can be modified, and how interaction between pre- and post-synaptic cells influence their maintenance. In addition, the article will be used in the courses Neurobiology 212 and Neurobiology 209 to teach the structure of the nervous system at the cellular level. Application received by Commissioner of Customs: July 7, 1977.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-22289 Filed 8-2-77;8:45 am]

Maritime Administration

[Docket No. S–567]

LYKES BROS. STEAMSHIP CO., INC.

Application

Notice is hereby given that Lykes Bros. Steamship Co., Inc. has applied for permission to deviate the SS *Louise Lykes*, or substitute, operating outbound on its Line D (Trade Route No. 22), to Longview, Washington, to discharge approximately 1,200 measurement tons (950 long tons) of nuclear reactor components on or about September 18, 1977, which are scheduled for loading at New Orleans, Louisiana, on approximately September 1, 1977. In order to carry cargo in the domestic trade, Lykes must first obtain written permission from the Maritime Administration under section 805 (a) of the Merchant Marine Act, 1936, as amended.

Interested parties may inspect the foregoing application in the Office of the Secretary, Maritime Administration, Room No. 3099B, Department of Commerce Building, Fourteenth and E Streets, NW., Washington, D.C. 20230.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on August 10, 1977 file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By Order of the Assistant Secretary for Maritime Affairs.

Date: July 28, 1977.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.77-22205 Filed 8-2-77;8:45 am]

National Oceanic and Atmospheric Administration

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Public Meeting

Notice is hereby given of a meeting of the South Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265).

The South Atlantic Fishery Management Council has authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the east coast of Florida, Georgia, North Carolina, and South Carolina. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, prepare comments on foreign fishing applications, and conduct public hearings.

The Council will meet Tuesday through Thursday, August 23, 24, and 25, 1977, at the Downtowner Motor Inn, 201 West Oglethorpe Avenue, Savannah, Ga. The meeting will convene at 1:30 p.m. on August 23 and adjourn at about noon on August 25. The daily sessions will start at 9 a.m. and adjourn at 5 p.m., except as otherwise noted. The meeting may be extended or shortened depending on progress on the agenda.

Proposed Agenda

1. Discussions pertinent to progress on management plan development for billfish, snapper grouper, and king and Spanish mackerel.
2. Election of Chairman and Vice-Chairman.
3. Consideration of administrative and technical matters as deemed necessary.
4. Other management business.

At the same location as the Council meeting, on the evening of August 22, 1977, a public meeting will be held relative to development of the billfish fishery management plan which has been published separately in the FEDERAL REGISTER.

This meeting is open to the public and there will be seating for a limited number of public members available on a first-come, first-served basis. Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meetings. To receive information on changes, if any, made to the agenda, interested members of the public should contact, on or about August 16, 1977:

Mr. Ernest D. Premetz, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, #1 Southpark Circle, Charleston, S.C. 29407 (803–571–4366).

At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of official business. Interested members of the public who wish to submit written comments should do so by addressing the Executive Director at the aforementioned address. To receive due consideration and to facilitate inclusion of these comments in the record of the meetings, typewritten statements should be received within 10 days after the close of the meetings.

Dated: August 1, 1977.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc.77-22396 Filed 8-2-77;8:45 am]

COMMUNITY SERVICES ADMINISTRATION

[CSA Instruction 6800–9]

UNIFORM FEDERAL STANDARDS

Monitoring and Reporting Program Performance; Interim Instructions

On April 28, 1977, the Community Services Administration published in the FEDERAL REGISTER (42 FR 21623) a proposed rule on Montoring and Reporting Performance Requirements (CSA Instruction 6800–9/§ 1050.80) which was accompanied by a request for comments from interested parties. Twenty four comments were received from the public and the proposed rule and its accompanying form have been modified to reflect the comments where warranted.

Final publication of the policy is awaiting review and approval of the form by the Office of Management and Budget as required by OMB Circular A-40. Therefore, the provisions of OEO Instruction 7031–1, Grantee Program Progress Review, remain in effect and grantees should continue to submit the form promulgated by that Instruction (CSA Form 440) at the time and for the periods indicated in the Instruction until such time as § 1050.80 (CSA Instruction 6800–9) is published as a final rule.

GRACIELA (GRACE) OLIVAREZ,
Director.

[FR Doc.77-22129 Filed 8-2-77;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

[Petition CP 75–4]

AIRLESS PAINT SPRAY GUNS

Denial of Petition

AGENCY: Consumer Product Safety Commission.

ACTION: Denial of Petition.

SUMMARY: In this document, the Commission denies a petition to issue a consumer product safety rule for airless paint spray guns because, in light of enforcement action the Commission has taken, and the current precautionary labeling practices of industry, the Commission has decided no regulatory action is necessary.

FOR FURTHER INFORMATION CONTACT:

Bert Simson, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, 301–492–6554.

SUPPLEMENTARY INFORMATION: Section 10 of the Consumer Product Safety Act (15 U.S.C. 2059) provides that any interested person may petition the Commission to begin a proceeding to issue a consumer product safety rule. Section 10 also provides that if the Commission denies such a petition, it shall publish its reasons for denial in the FEDERAL REGISTER.

In a letter dated September 13, 1974 to Dr. Albert Esch, the Commission's Medical Director, Dr. Richard F. Edlich requested that the Commission issue a consumer product safety rule for high pressure airless paint spray guns. He stated that if the high pressure jet of paint from such a gun strikes an extremeity "even though the nozzle is some distance away, the paint will be blasted through the skin and will spread rapidly through the fascial planes and tendon sheaths. The end result of the majority of these accidental injuries is amputation despite immediate treatment." To alleviate this hazard, Dr. Edlich suggested development of safety devices to protect the consumer who uses spray paint guns, proper instructions for users, and also the design of safety gloves to be used with the product.

After the staff developed further information regarding this product, the Commission considered the petition on May 8, 1975. At that time, the Commission decided to address the hazards of airless paint spray guns through action under section 15 of the Consumer Product Safety Act (15 U.S.C. 2064), which allows the Commission to take action against manufacturers, distributors, and retailers of consumer products that create substantial product hazards. The Commission directed the staff to identify the manufacturers, private labelers and distributors of airless paint spray guns being primarily marketed for use by consumers that could, in the staff's judgment, present a substantial hazard to consumers. Proceedings would then be instituted under section 15 of the CPSA.

After a full investigation, the staff initiated one enforcement action under section 15 against a manufacturer of airless paint spray guns (In the Matter of "Spray Tech Corporation, Wagner/Spray Tech Corporation," and "Peter E. Bader," CPSC Docket No. 75–7). The Commission accepted a consent agreement involving a retrofit of affected paint guns, and dismissed that action by order dated October 14, 1975.

The Commission recently considered again the need for regulatory action as to airless spray guns. The staff found that airless paint spray guns for consumer use are either labeled or supplied with cautionary tags and instructions which caution the user not to point the spray gun at any part of the body. In light of the above enforcement action and the precautionary labeling practices of airless paint spray gun manufacturers, the Commission has decided that no regulatory action is necessary. Accordingly, the Commission has denied Dr. Edlich's petition.

Copies of the petition and the staff's briefing packages to the Commission on the petition and documents related to the enforcement proceeding may be seen in or obtained from the Office of the Secretary, Consumer Product Safety Commission, 3rd Floor, 1111 18th Street NW., Washington, D.C. 20207, during working hours Monday through Friday.

Dated: July 29, 1977.

SADYE E. DUNN,
Deputy Secretary, Consumer Product Safety Commission.

[FR Doc.77-22290 Filed 8-2-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

JULY 25, 1977.

The meeting of the USAF Scientific Advisory Board ad hoc Committee on Avionics Acquisition scheduled for July 28 and 29, 1977 in the Pentagon, as published FR Doc. 77-19029 (42 FR 34364 July 5, 1977) has been cancelled. This meeting will not be rescheduled.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–4811.

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

[FR Doc.77-22217 Filed 8-2-77;8:45 am]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

JULY 21, 1977.

The USAF Scientific Advisory Board ad hoc Committee on Cruise Missile Technology will hold a meeting on September 23, 1977 from 9:00 a.m. to 5:00 p.m. at Langley AFB, Virginia.

The Committee will receive classified briefings on the Tactical Air Command concept of operations vis-a-vis cruise missiles.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly the meeting will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

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

[FR Doc.77-22291 Filed 8-12-77;8:45 am]

Department of the Navy

REGIONAL DISCHARGE REVIEW SYSTEM

Hearing Locations

In FEDERAL REGISTER Document 75–27207, published on October 9, 1975, 40 FR 47524, the Department of the Navy published notice that, beginning in November, 1975, the Naval Discharge Review Board would convene and conduct hearings for a number of days each quarter in certain announced locations. In FEDERAL REGISTER Document 76–20384, published on July 15, 1976; 41 FR 29190, the Department of the Navy published notice that approval had been granted for the Naval Discharge Review Board to conduct hearings, within assigned resources, on a noncontinuing basis, in cities other than the announced locations when the concentration of petitioners in a geographical area so warrants. This expanded availability has facilitated the opportunity for personal appearances before the Board and the initially announced hearing schedule has been modified accordingly.

The following itinerary for August, 1977, through January, 1978, has been approved, but remains subject to modification if necessary:

August—Dallas, TX; Kansas City, MO; Columbus, OH.
September—San Diego, CA; San Francisco, CA; Salt Lake City, UT.
October—Chicago, IL; Minneapolis/St. Paul, MN.
November—Atlanta, GA; New Orleans, LA; (Tampa, FL if required).
January—Denver, CO; Seattle, WA; San Francisco, CA; San Diego, CA.

Any former member of the Navy or Marine Corps who desires to obtain a review of his or her discharge, either in Washington, D.C. or in one of the other cities in which the Board will conduct hearings, should file an application with the Board using DD Form 293. If a personal appearance is requested, the petitioner should indicate which scheduled location is preferred. Application forms (DD 293) may be obtained from, and the completed application should be mailed to the following address:

Naval Discharge Review Board,
Suite 905,
801 North Randolph Street,
Arlington, VA 22203.

Notice is hereby given that, since the foregoing itinerary is subject to modification and since, following receipt of a new application, the Naval Discharge Review Board must obtain the petitioner's military records before a hearing may be scheduled, the receipt of an application by the Naval Discharge Review Board is not tantamount to scheduling such hearing. Petitioners and/or their counsel will be notified by mail of the date and place of their scheduled hearing when personal appearance is requested.

For further information contact:

Captain John G. Shaw, U.S. Navy, Executive Secretary, Naval Discharge Review Board, Suite 905, 801 North Randolph Street, Arlington, VA 22203, 202-692-4628.

Dated: July 29, 1977.

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

[FR Doc.77-2220 Filed 8-2-77;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

GENERAL ADVISORY COMMITTEE

Meeting

AUGUST 1, 1977.

Pursuant to provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) in accordance with the purpose of Section 26 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2036) and Section 104(d) of the Energy Reorganization Act of 1974 (42 U.S.C. 2814), notice is hereby given that the General Advisory Committee will hold a meeting on August 23 in Washington, D.C. The meeting, which is open to the public, will be held in Room 4222C at ERDA Headquarters Building, 20 Massachusetts Avenue NW., Washington, D.C. The agenda is as follows:

9:00—Discussion of Solar Related Programs with the Division of Basic Energy Sciences.
9:30—Discussion of Solar Related Programs with the Assistant Administrator for Conservation.
10:30-12 Noon—Solar Study (discussion with Stanford Research Institute).
2:00-5:00—Solar Study (discussion with Stanford Research Institute).

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in agenda items, scheduled above, the following requirements shall apply:

(a) Persons wishing to submit written statements on agenda items may do so by mailing 13 copies thereof, postmarked no later than August 15, 1977, to the Secretary, General Advisory Committee, U.S. Energy Research and Development Administration, Washington, D.C. 20545. Comments shall be based on the above agenda items. Minutes of the meeting will be kept open for 30 days for the receipt of written statements for the record.

(b) Information as to whether the meeting has been rescheduled or relocated can be obtained by a prepaid telephone call to the Office of the Secretary of the Committee on 202-376-4678 between 8:30 a.m. and 5 p.m., eastern time. Members of the public who are interested in attending are urged to call since the location or schedule may change.

(c) Questions at the meeting may be propounded only by members of the General Advisory Committee.

(d) Seating to the public will be made available on a first-come, first-served basis.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting, will be permitted both before and after the meeting and during any recess. The use of equipment will not, however, be allowed while the meeting is in session.

(f) Copies of the minutes will be made available for copying, following their certification by the Chairman, in accordance with the Federal Advisory Committee Act, at the Energy Research and Development Administration's Public Document Room, 20 Massachusetts Avenue NW., Washington, D.C. 20545, upon payment of all charges required by law.

HARRY PEEBLES,
Deputy Advisory Committee, Management Officer.

[FR Doc.77-22403 Filed 8-2-77;8:45 am]

[Report No. 868]

FEDERAL COMMUNICATIONS COMMISSION

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

JULY 25, 1977.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (see § 309(c) of the Communications Act), applications filed under Part 68, applications filed under Part 63 relative to small projects, or as othewise noted. Unless specified to the contrary, comments or petitions may be filed concerning radio and Section 214 applications within 30 days of the date of this notice and within 20 days for Part 68 applications.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which is subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. [See § 1.227(b)(3) and 21.30(b) of the Commission's Rules.]

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE:

21424-CD-P-77 Airsignal International, Inc. (KIF650), C.P. for additional Standby facilities to operate on 72.96 MHz, Control at Loc. No. 1: Atop Red Mountain, Birmingham, Alabama.

21490-CD-P-77 Airsignal International, Inc. (KOA796), C.P. for additional Standby facilities to operate on 72.28 MHz, Control at Loc. No. 1: 4636 S.W. Council Crest Drive, Portland, Oregon.

21492-CD-MP-(2)-77 Airsignal of Colorado, Inc. (KWU523), Mod. of C.P. for additional Standby Control facilities to operate on 75.46 MHz at Loc. No. 1: 22 Miles South of Golden, Colorado.

21753-CD-P-77 Tel-Illinois, Inc. (KUC903), C.P. for additional Control facilities to operate on 454.300 MHz at a new Loc. No. 3: Adjacent to south edge of Indian Hills Country Club, Mt. Vernon, Illinois.

21754-CD-P-77 QMC Paging (new), C.P. for a new 1-way signaling station to operate on 43.58 MHz to be located at Knox Butte, 2.1 miles East of Albany, Oregon.

21755-CD-P-77 Mobile Communication Service, Inc. (new), C.P. for a new 1-way signaling station to operate on 158.70 MHz to be located at 551 State Street, Meadville, Pennsylvania.

21756-CD-P-77 Southwestern Bell Telephone Company (KKD290), C.P. to change antenna system and replace transmitter operating on 152.63 MHz located 3.8 mi. NE Lingleville, Texas.

21757-CD-P-77 Indiana Bell Telephone Company, Inc. (KSD323), C.P. to relocate facilities, change antenna system and replacement transmitter operating on 152.57 MHz to be located at 2727 Central Avenue, Columbus, Indiana.

21758-CD-P-77 Empire Paging Corporation (KRS674), C.P. for additional facilities to operate on 454.150 MHz at a new Loc. No. 18: 7th & Linden St., Northgate Apartments, Camden, New Jersey.

21759-CD-P-77 Airsignal International of Philadelphia, Pennsylvania, Inc. (KGC223), C.P. for additional Standby Control facilities to operate on 72.96 MHz at Loc. No. 7: Lewis Tower Bldg., 225 S. 15th Street, Philadelphia, Pennsylvania.

21760-CD-AL-77 Arthur Sciotto and Kathleen Sciotto, d.b.a. Neveda Mobile Telephone Company, Consent to Assignment of License from Arthur Sciotto and Kathleen Sciotto, d.b.a. Neveda Mobile Telephone Company, Assignor to Nevtelco., Inc., Assignee. Station: KSV953, Elko, Nevada.

21761-CD-AL-77 North Carolina Telephone Company Consent to Assignment of License from North Carolina Telephone Company, Assignor to Mid-Carolina Telephone Company, Assignee. Station: KIY787, Mathews, North Carolina.

21762-CD-P-77 Intrastate Radio Telephone, Inc. of San Francisco (KMA833), C.P. for additional facilities to operate on 152.12 MHz at Loc. No. 1: Wells Fargo Building, 44 Montgomery Street, San Francisco, California.

21763-CD-P-77 L. D. Garvey and J. D. Garvey, dba. Radiofone (KWU274), C.P. for additional facilities to operate on 35.58 MHz at a new Loc. No. 2: 2 miles WNW. of Tickfaw, Louisiana.

21764-CD-P-77 Comex, Incorporated (KCC-797), C.P. for additional facilities to operate on 454.300 MHz at Loc. No. 1: Uncanoonuc, New Hampshire.

21765-CD-P-77 Tel-Rad Message Center (KEC520), C.P. for additional facilities to operate on 152.15 MHz at a new Loc. No. 2: . 88 Derrick Drive, Fishkill, New York.

21766-CD-P-(5)-77 Two-Way Radio of Carolina, Inc. (KIY441), C.P. to relocate facilities and change antenna system operating on 152.03, 152.06, 152.09, 152.15 and 152.21 MHz at Loc. No. 1: 400 S. Tryon Street, Charlotte, North Carolina.

21767-CD-AL-(2)-77 T. D. Miller, III Consent to Assignment of License from T. D. Miller, III, ASSIGNOR to T. D. Miller, III Mobile Communications, Inc. Stations: KRH660 and KUA283, Burlington, North Carolina.

21768-CD-77 Telephone Communications, Inc. (new), C.P. for a new 1-way signaling station to operate on 43.22 MHz to be located at 5301 Central Avenue, N.E., Albuquerque, New Mexico.

MAJOR AMENDMENT:

20613-CD-P-(02)-77 Airsignal International, Inc., Sarasota, Florida (KIJ358). Amend to change the Control frequency to 2174.0 MHz and to change the Repeater frequency to 2124.0 MHz. All other particulars are to remain as reported on PN No. 842, dated January 24, 1977.

RURAL RADIO:

60349-CR-ML-77 Business Communications, Inc., d./b./a. New Orleans Mobilfone (KKB33). Mod. of License for additional facilities to operate on 158.55, 158.61 and 158.67 MHz to be located in any temporary fixed location within the territory of the grantee.

21503-CD-ML-77 The Mountain States Telephone and Telegraph Company (KAR 68). Mod. of License for additional facilities to operate on 152.84 MHz located in any temporary fixed location within the territory of the grantee.

POINT TO POINT MICROWAVE RADIO SERVICE:

3142-CF-P-77 The Mountain States Telephone and Telegraph Company (KPH75), Glendive Jct. 11 miles E. of Glendive, Montana. Lat. 47°07'05" N., Long. 104°28' 35" W. C. P. to replace antenna on frequencies 6019.3H, 10755V MHz toward Richey, Montana.

3143-CF-P-77 Same (KPH76), 7.6 miles SE. of Richey, Montana. Lat. 47°35'17" N., Long. 104°55'12" W. C.P. to add frequencies 6241.7H MHz toward Vida; change polarization from horizontal to vertical on 6241.7 MHz toward Glendive; replace transmitter and move and replace antenna on 11685V MHz toward Glendive and on 11405V MHz toward Vide.

3144-CF-P-77 Same (KPH77), 6.9 miles NNW. of Vide, Montana. Lat. 47°55'35" N., Long. 105°30'36" W. C.P. to change frequencies 5937.8V to 6241.7H MHz toward Richey; replace transmitter and move and replace antenna on 10955V MHz toward Richey.

3148-CF-P/ML-77 Hargray Telephone Company, Inc. (WQQ44), U.S. Highway 278, Hilton Head Island, South Carolina. Lat. 32°10'27" N., Long. 80°44'06" W. C.P. to reinstate license on frequency 2112.4H MHz toward Daufuskie Island, South Carolina.

3142-CF-P-77 Same (WQQ45), Daufuskie 8 miles South of Bluffton, South Carolina. Lat. 32°06'59" N., Long. 805°52'37" W. C.P. to reinstate license on frequency 2162.4H MHz toward Hilton Head Island, South Carolina.

3163-CF-R-77 RCA Alaska Communications Inc. (WBA787). Renewal of development radio station license expired Aug., 13, 1977, term: August 13, 1977 to August 13, 1977.

3164-CF-R-77 Same (WBA788), Renewal of development radio station license expired August 13, 1977, term: August 13, 1977 to August 13, 1978.

3170-CF-P-77 American Telephone and Telegraph Company (KBI26), 5.0 miles North of Kutch, Colorado. Lat. 38°59'00" N., Long. 103°52'19" W. C.P. to change polarization from vertical to horizontal on frequency 11035 MHz toward Calhen.

3174-CF-P-77 Southwestern Bell Telephone Company (WKR87), 2.5 miles SE. of Enid, Oklahoma. Lat. 36°21'57" N., Long. 97° 51'12" W. C.P. to add a new point of communication on frequency 6004.5H MHz toward Ringwood on azimuth 285.5°.

3175-CF-P-77 Same (new), 4.9 miles North of Ringwood, Oklahoma. Lat. 36°26'58" N., Long. 98°13'48" W. C.P. for a new station on frequencies 6256.5V MHz toward Enid on azimuth 105.2° and 6256.5H MHz toward Waynoka on azimuth 285.8°.

3176-CF-P-77 Same (new), 8 miles E. of Waynoka, Oklahoma. Lat. 36°33'50" N., Long. 98°44'13" W. C.P. for a new station on frequencies 6004.5V MHz toward Ringwood on azimuth 105.5° and 6004.5H MHz toward Curtis on azimuth 247.6°.

3177-CF-P-77 Same (new), 0.6 mile SSE. of Curtis Oklahoma. Lat. 36°35'47" N., Long. 99°08'16" W. C.P. for a new station on frequencies 6256.5V MHz toward Waynoka on azimuth 67.4° and 6256.5H MHz toward Woodward on azimuth 271.3°.

3134-CF-MP-77 Tower Communications Systems Corporation (WBA 882), Canton West 18th Street and Perry Avenue, Canton, Ohio. (Lat., 40°46'46" N., Long. 81°-27'01" W.): Construction permit to replace receive antenna—10735.OH MHz toward Shanesville, Ohio, on azimuth 210.5°.

3149-CF-P-77 Eastern Microwave, Inc. (KCL 72), Greylock-2, .2 miles NW. of Adams, Massachusetts. (Lat, 42°38'14" N., Long. 73°10'07" W.): Construction permit to replace transmitter—5945.2V MHz toward Helderberg Mtn., New York and Bennington, Vermont, via power split.

3150-CF-P-77 Eastern Microwace, Inc. (KEM 58), Helderberg Mtn., Beaver Dam Road, 1.8 mile NW. of New Salem, New York. (Lat. 42°28'12" N., Long. 73°59'45" W.): Construction permit to add 6330.7V MHz toward Cherry Valley, New York, via power split.

3151-CF-P-77 Eastern Microwave, Inc., (KEA 64), 4 miles SE. of Cherry Valley, New York (Lat. 42°46'31" N., Long. 74°40'-56" W.): CP to replace transmitter and to change polarity toward Rogers Knob, New York, via power split, and to add 6019.3V MHz toward same location and to change transmitters toward Gloversville (6137.9H) and Amsterdam (6137.9V) New York, via power split.

3152-CF-P-77 Eastern Microwave, Inc. (WOP 99), atop Quaker Hill, 3 miles NE. of Stokes, New York (Lat. 43°20'36" N., Long. 75°25'36" W.): Construction permit to add 6390.0H and 6271.4H MHz toward Hatch Hill, New York, via power split, on azimuth 198.8° and to change frequency to 6271.4H MHz toward Oneida, New York, via power split.

3153-CF-P-77 Eastern Microwave, Inc. (KEM 36), Hatch Hill, Texas Hill, 2 miles SE. of Georgetown, New York. (Lat. 42°-45'10" N., Long. 75°41'56" W.): Construction permit to add 6049.OH and 6078.6V MHz toward Rogers Knob, New York, on azimuth 142.8°.

3154-CF-P-77 Eastern Microwave, Inc. (KEL 89), Rogers Knob, Palmer Hill Road, 8 miles NE. of Sidney, New York. (Lat. 42°23'27" N., Long. 75°19'42" W.): Construction permit to add 6390.OH MHz toward Ingraham Hill, New York, on azimuth 139.9° and to replace antenna toward Hatch Hill, (6182.4H MHz) New York.

3155-CF-P-77 Eastern Microwave, Inc. (KEM 35), Ingraham Hill, Lookout Tower, 3.3 miles SSW. of Binghamton, New York. (Lat. 42°03'43" N., Long. 75°57'03" W.): Construction permit to add 6019.3V MHz toward Elk Hill, Pennsylvania, on azimuth 139.9°.

3156-CF-P-77 Eastern Microwave, Inc. (KGO 27), Elk Hill, North Knob, 4 miles North of Dundaff, Pennsylvania. (Lat. 41°-42'45" N., Long. 75°33'42" W.): Construction permit to add 6390.OV MHz toward High Knob, Pennsylvania, on azimuth 141.5° and to replace antenna toward Ingraham Hill, (6212.OH MHz) New York.

3157-CF-P-77 Eastern Microwave, Inc. (KYZ 75), High Knob, 2 miles NW. of Pecks Pond, Pennsylvania. (Lat. 41°18'00" N., Long. 75°07'31"W.): Construction permit to add 6137.9V MHz toward Highland Lake, New Jersey, on azimuth 105.6° and to replace antenna toward Elk Hill (5960.-OH MHz) Pennsylvania.

3158-CF-P-77 Eastern Microwave, Inc. (KYZ 74), Highland Lake, Accomac Road, 1.6 mile WSW. of Highland Lake, New Jersey. (Lat. 41°10'01"N., Long. 74°30'12" W.): Construction permit to add 10975. OH MHz toward West Milford, New Jersey, on azimuth 148.0° and to replace antenna toward High Knob, (6212.OH) Pennsylvania.

3159-CF-P-77 Eastern Microwave, Inc. (WQQ 53), West Milford, Germantown Road, 2 miles ESE. of Newfoundland, New Jersey. (Lat 41°02'26"N., Long. 74°23'57" W.): Construction permit to add 5989.7V MHz toward New York City Gulf and Western Building, New York, on azimuth 130.-5°

3160-CF-P-77 Eastern Microwave, Inc. (KFN 21), New York City Gulf and Western Building, 15 Columbus Circle, New York, New York. (Lat. 40°46'09"N., Long. 73°58' 55"W.): Construction permit to add 6360.-3H MHz toward East Meadow, and 6360.3V MHz toward Yonkers, both in New York and to add 6360.3V MHz toward Bergenfield, New Jersey, all via power split.

3162-CF-P-77 Cleveland Microband Teleservices, Inc. (new), 4101 Richmond Road, Beachwood, Ohio. (Lat. 41°27'26"N., Long. 81°29'34"W.): Construction permit for new station—11625.0V MHz toward Terminal Tower Building, Ohio, on azimuth 285.-3°.

3184-CF-R-77 Carolina Telephone & Telegraph Company (WPG 20), Temporary fixed, within the territory of the grantee. Received radio station license Renewal for the above station.

3187-CF-P77 American Television Relay (KOS 63), Hellograph, 13.9 miles SW of Safford, Arizona. (Lat. 32°38'59"N., Long. 109°50'53"W.): Construction permit to change frequency to 6219.5V MHz toward Douglas, Arizona and to increase transmitter output power.

3188-CF-P-77 Western Tele-Communications, Inc. (KSQ 30), Glendive Knob, 5 miles South of Glendive, Montana. (Lat. 47°03'08"N., Long. 104°40'19"W.): Construction permit to add 6110.0V, 6210.0V, 6310.0V and 6410.0V MHz toward Baker, Montana, via power split, on azimuth 155.-7°.

3203-CF-P-77 Yankee Microwave (WAU 284), Cates Hill, 2.5 miles North of Berlin, New Hampshire (Lat. 44°30'20"N., Long. 71°11'13"W.): Construction permit to add 6256.5V MHz toward Mt. Washington, New Hampshire, on azimuth 199.5°.

3197-CF-P-77 The Western Union Telegraph Company (KNG60), 1.2 Miles North of Aukum, Calif. (Lat. 38°34'26" N., Long. 120°43'32" W.): C.P. to add point of communication, 2165.2V MHz towards Sacramento, Calif. on azimuth 270.8°.

3198-CF-P-77 Same (new), B.P.O. Elks Building, Sacramento, Calif. (Lat. 38° 34'48" N., Long. 121°29'26" W.) C.P. for a new station, 2115.2V MHz towards Mt. Aukum, Calif. on azimuth 90.3°.

3169-CF-AL-(3)-77 North Carolina Telephone Company. Application for Consent to assignment of radio station license from North Carolina Telephone Company, Assignor, to Mid-Carolina Telephone Company, Assignee, for stations KIW72, Marshville, North Carolina; KIW73, Wadesboro, North Carolina; KJK89, Norwood, North Carolina.

3178-CF-P-77 Southwestern Bell Telephone Company (new), 1201 11th Street, Woodward, Oklahoma. Lat. 36°26'03" N., Long. 99°23'36" W. C.P. for a new station on frequency 6004.5V MHz toward Curtis on azimuth 91.2°.

CORRECTION:

Reference: P.N. report No. 861, June 6, 1977 2592-CF-P-77 Southwestern Bell Telephone Company (WHA74), 3.5 NNW. of Monticello, Arkansas, Lat. 33°41'00" N., Long. 91°52'44" W. C.P. to add frequency 6034.2V MHz toward Star City, Arkansas an azimuth 349.3° and add a new point of communication on frequency 6034.2H MHz toward Warren, Arkansas on azimuth 251.3°.

2892-CF-P-77. The Bell Telephone Company of Pennsylvania (KGP35), 224 South of Allen State College, Pennsylvania to add frequency 11685H MHz toward Grove Mills. All other particular remain as reported on PN 864 dated June 27, 1977.

[FR Doc.77-22267 Filed 8-2-77;8:45 am]

FM BROADCAST APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Adopted: July 22, 1977.

Released: July 29, 1977.

Notice is hereby given, pursuant to Section 1.573(d) of the Commission's Rules, that the FM broadcast applications listed in the attached Appendix will be considered as ready and available for processing on September 5, 1977. Since the listed applications are timely filed and mutually exclusive with the earlier-filed and cut-off application of Indianapolis Broadcasting, Inc., File No. BPH-10164, no other applications which involve conflict with these applications may be filed. Rather, the purpose of this Notice is to establish a date by which the parties to the forthcoming comparative hearing may compute the deadlines for filing amendments as a matter of right under § 1.522(a)(2) of the Rules and pleadings to specify issues pursuant to § 1.584.

The attention of any party in interest desiring to file a petition to deny any listed application pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's Rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

BPH-9958 NEW, Indianapolis, Ind., Peoples Broadcasting Corp. Req: 107.9 MHz; Channel No. 300B, ERP: 44 kW; HAAT: 524 Ft.

BPH-9991 NEW, Indianapolis, Ind., WOOD Broadcasting of Ind., Inc. Req: 107.9 MHz; Channel No. 300B, ERP: 40.66 kW; HAAT: 276.15 Ft.

BPH-10014 NEW, Indianapolis, Ind., Radio Circle City, Inc. Req: 107.9 MHz; Channel No. 300B, ERP: 41 kW; HAAT: 910 Ft.

BPH-10019 NEW, Indianapolis, Ind., Radio One Five Hundred, Inc. Req: 107.9 MHz; Channel No. 300B, ERP: 41 kW; HAAT: 910 Ft.

BPH-10036 NEW, Indianapolis, Ind., Mediacom, Inc. Req: 107.9 MHz; Channel No. 300B, ERP: 40.6 40.66 kW; HAAT: 907. Ft.

BPH-10047 NEW, Indianapolis, Ind., Radio Corporation of Indiana Req: 107.9 MHz; Channel No. 300B, ERP: 41 kW; HAAT: 910 Ft.

BPH-10066 NEW, Indianapolis, Ind. Indianapolis Communications Corp., Req: 107.9 MHz; Channel No. 300B, ERP: 41 kW; HAAT: 907 Ft.

[FR Doc.77-22268 Filed 8-2-77;8:45 am]

1979 WORLD ADMINISTRATIVE RADIO CONFERENCE, SATELLITE BROADCASTING SERVICE GROUP

Change in Meeting Date

JULY 28, 1977.

Pursuant to Pub. L. 92-463, notice is hereby given of the following meeting for August 1977.

WARC-79 SATELLITE BROADCASTING SERVICE GROUP

The Satellite Broadcasting Service Group, previously scheduled to meet at 9:30 a.m. on Friday, August 12, 1977, will meet instead on Wednesday, August 24, 1977 at 9:30 a.m. This meeting will be held in room 8210 of the Commission's offices at 2025 "M" Street NW., Washington, D.C. 20554.

The agenda will be as follows:

1. Call to Order and Announcements by the Chairman.

2. Approval of Minutes of Previous Meeting.

3. Discussion of Comments for Fifth Notice of Inquiry in Docket 22071 and possible drafting of Reply Comments.

4. Reports from Task Groups.
5. Further Discussion.
6. Next Meeting Date and Adjournment.

The above meeting is open to broadcast industry representatives and interested members of the general public.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-22266 Filed 8-2-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS

Week of June 24 Through July 1, 1977

Notice is hereby given that during the week of June 24 through July 1, 1977, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the FEA action sought in such cases may file with the FEA written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

ERIC J. FYGI,
Acting General Counsel.

JULY 28, 1977.

APPENDIX.—*List of cases received by the Office of Exceptions and Appeals, week of June 24 through July 1, 1977*

Date	Name and location of applicant	Case No.	Type of submission
June 24, 1977	Beacon Oil Co. Hanford, Calif. (If granted: The Beacon Oil Co. would receive an exception to the provisions of sec. 212.83(e)(2)(iii)(E) to permit it to adjust its refinery output during May 1973 for purposes of computing its increased nonproduct costs beginning Jan. 1, 1977.)	FEE-4368	Price exception (sec. 212.83(e)(2)(iii)(E)).
Do	City of Seattle, Seattle, Wash. (If granted: U.S. refiners would receive an exception from the requirement that the number of barrels of bunker C fuel oil exported to the B. C. Hydro Burrard electrical generating station be excluded from the calculation of their crude oil runs to stills for purposes of the old oil entitlements program.)	FEE-4370	Exception from old oil entitlements program (sec. 211.67(d)(2)).
Do	Dorchester Gas Corp./American Petrofina, Inc., Washington, D.C. (If granted: The Dorchester Gas Corp. would receive various types of administrative relief from the mandatory petroleum allocation and price regulations in connection with its acquisition of the Mount Pleasant refinery from American Petrofina, Inc.)	FEE-4369	Exception to mandatory petroleum allocation and price regulation (pt. 211, pt. 212, and pt. 213).
Do	Ginther Gas Processing, Houston, Tex. (If granted: Ginther Gas Processing would be permitted to increase its prices for natural gas liquid products to reflect nonproduct cost increases in excess of $0.005/gal and would be permitted to retroactively adjust its May 1973 base price for propane.)	FEE-4371	Price exception (sec. 212.163(a) and sec. 212.165(ii)).
Do	Powerine Oil Co., Washington, D.C. (If granted: The FEA would increase the entitlement exception relief which was granted to the Powerine Oil Co. in a decision and order issued to the firm on Apr. 11, 1977.)	FEX-0168	Supplemental order.
Do	Sun Co., Inc., Dallas, Tex. (If granted: Sun Co., Inc., would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at the Jameson plant and the Steedman plant.)	FEE-4372	Price exception (sec. 212.165).
Do	Sun Co., Inc., Dallas, Tex. (If granted: Sun Co., Inc., would receive an extension of the exception relief granted in the FEA's Apr. 4, 1977, decision and order to permit the firm to increase its prices for natural gas natural gas liquid products produced at the Carney, Concho, and Tonkawa plants to reflect nonproduct cost increases in excess of $0.005/gal.)	FXE-4376—FXE-4378 FEE-4373	Extension of exception relief granted in *Sun Co., Inc.* case Nos. FXE-3889, FXE-3890, and FXE-3900 through FXE-39-5 (decided Apr. 4, 1977) (unreported decision).
Do	Texaco, Inc., Houston, Tex. (If granted: Texaco, Inc., would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at the Dover Hennessey plant and the Elmwood plant.)	FEE-4374 FEE-4375	Price exception (sec. 212.165).
Do	UCO Oil Co., Whittier, Calif. (If granted: The FEA's May 27, 1977, decision and order would be rescinded and the UCO Oil Co. would be assigned a new, lower priced supplier of motor gasoline to replace its base period suppliers, Tesco and Macmillan.)	FXA-1372	Appeal of decision and order in *UCO Oil Co.*, 5 FEA par. ..... (May 27, 1977).
June 27, 1977	DeMartin Truck Lines, San Francisco, Calif. (If granted: The FEA's June 10, 1977, remedial order would be rescinded and DeMartin Truck Lines would not be required to refund overcharges made on sales of propane.)	FRA-1373 FRS-1373	Appeal of FEA region IX's remedial order dated June 10, 1977. Stay requested.
Do	Good Hope Industries, Inc., Springfield, Mass. (If granted: Good Hope Industries, Inc., would be granted retroactive relief in the form of refunds for import fees paid for the import of 136,334 bbl of naphtha, imported as unfinished oils on June 15, 1977, under fee-paid license No. FF-60035.)	FPI-0123	Exception from base-fee requirements (sec. 213.35).

Date	Name and location of applicant	Case No.	Type of submission
Do.....	Independent Oil Producers' Agency, Long Beach, Calif. (If granted: The FEA's June 10, 1977, ancillary remedial order would be partially rescinded to eliminate any requirement that the Independent Oil Producers' Agency refund to Union Oil Co. of California any and all refunds received by IOPA from Berry Holding Co. as directed and provided for in the FEA's June 10, 1977, remedial order issued to Berry.)	FEA-1375	Appeal of FEA region IX's ancillary remedial order issued June 10, 1977.
Do.....	Louisiana Land & Exploration Co., New Orleans, La. (If granted: The FEA's May 27, 1977, decision and order would be modified and the Louisiana Land & Exploration Co. would be granted additional relief from the provisions of 10 CFR 211.63(b)(1).)	FXA-1376	Appeal of decision and order in *Louisiana Land & Exploration Co.*, 5 FEA par. ..... (May 27, 1977).
Do.....	Marathon Oil Co./Ingram Corp., Washington, D.C. (If granted: The FEA's May 26, 1977, decision and order would be modified and the FEA would issue an order assigning Ingram as a base period purchaser of unleaded gasoline from Marathon Oil Co.)	FXA-1377	Appeal of decision and order in *Marathon Oil Co., Ingram Corp., Publix Oil Co., Inc., Hamilton Oil Co., Mid-Continent Inc.*, 5 FEA par. ..... (May 26, 1977).
Do.....	Newhall Refining Co., Inc., Newhall, Calif. (If granted: Newhall Refining Co., Inc., would be granted an exception which would permit it to recalculate the passthrough of increased nonproduct costs on a proportional basis for the period Jan. 1, 1975, through Jan. 31, 1976.)	FEE-4379	Exception to sequential nonproduct cost passthrough.
Do.....	Peters Fuel Corp. Oakland, Md. (If granted: The FEA's Mar. 30, 1977, decision and order would be rescinded and the Peters Fuel Corp. would be permitted to increase its prices for fuel oil above the maximum level permitted under sec. 212.93.)	FXA-1374	Appeal of decision and Order in *Peters Fuel Corp.*, 5 FEA par. 80,588 (Mar. 30, 1977).
Do.....	Powerine Oil Co., Washington, D.C. (If granted: The Powerine Oil Co. would be granted an exception which would permit it to recalculate the passthrough of increased nonproduct costs on a proportional basis for the period Jan. 1, 1975, through Jan. 31, 1976.)	FEE-4381	Exception to sequential nonproduct cost passthrough.
Do.....	R. W. Tyson Producing Co., Inc., Jackson, Miss. (If granted: Crude oil produced from properties located in the Ovett field, Jones County, Miss., and in the Glazier field, Perry County, Miss., would be sold as stripper well crude oil.)	FEE-4380	Price exception (sec. 212.74).
June 28, 1977	C. O. Johnson Oil Co., Knoxville, Tenn. (If granted: The C. O. Johnson Oil Co. would not be required to file the following forms with the Federal Energy Administration: form P112-M-1 (No. 2 Heating Oil Supply/Price Monitoring Report); Form P314-M-0 (Monthly Survey of Distillate and Residual Fuel Oil Sales to Ultimate Consumers); Form P329-M-0 (Distillate Import Monitoring Report); and Form P131-S-1.)	FEE-4383	Exception to reporting requirement (sec. 211.127).
Do.....	William P. Carr, Dallas, Tex. (If granted: Crude oil produced from the Straitmann lease located in Ellsworth County, Kans., would be sold at prices in excess of the ceiling price permitted under sec. 212.73.)	FEE-4384	Price exception (sec. 212.73).
Do.....	Condor Tank Cleaning Co., Abilene, Tex. (If granted: Crude oil recovered by Condor Tank Cleaning Co. would be sold at price levels in excess of the ceiling price permitted under the mandatory petroleum price regulations.)	FEE-4382	Price exception (sec. 212.74).
Do.....	Edgington Oil Co. (New Edgington Corp.). (If granted: The FEA would review the entitlements granted to Edgington Oil Co. (New Edgington Corp.) during the period Sept. 25 through Dec. 31, 1976, to determine whether the level of exception relief approved was appropriate.)	FEX-0167	Review of entitlements exception relief (supplemental order).
Do.....	Gibson Oil & Refining Co., Rodeo, Calif. (If granted: The Gibson Oil & Refining Co. would be permitted to earn small refiner bias entitlements while rebuilding its refinery with respect to crude oil runs to stills attributable to processing agreements for the account of Gibson with other refiners.)	FEE-4387	Exception from the old oil entitlements program (sec. 211.67).
Do.....	Herne Products, Inc., Americus, Ga. (If granted: Herne Products, Inc., would be assigned a new, lower priced supplier of propane to replace its base period supplier, the Enterprise Products Co.)	FEE-4386	Exception to change base period supplier (sec. 211.9).
Do.....	Kewanee Oil Co., Tulsa, Okla. (If granted: The Kewanee Oil Co. would receive an extension of the relief granted in the FEA's Feb. 22, 1977, decision and order and crude oil produced and sold from the South Stanley Field located in Osage County, Okla., would be sold at upper tier ceiling prices as specified in 10 CFR, pt 212, subpt. D.)	FXE-4386	Extension of exception relief granted in *Kewanee Oil Co.*, 5 FEA par. 83,076 (Feb. 22, 1977).
Do.....	Orange Fuel Distributors, Orange, Va. (If granted: The FEA's June 14, 1977, remedial order would be rescinded and Orange Fuel Distributors would not be required to refund overcharges made on sales of No. 2 fuel oil and kerosene.)	FRA-1379	Appeal of FEA region III's remedial order dated June 14, 1977.
Do.....	Pacific Northern Oil Corp., Seattle, Wash. (If granted: The Pacific Northern Oil Corp. would be permitted to import 1,800,000 bbl of finished product and 180,000 bbl of motor gasoline on a license fee-free basis during the current allocation period.)	FPI-0124	Exception from base-fee requirements (sec. 213.35).
Do.....	Plateau, Inc., Washington, D.C. (If granted: Plateau, Inc., would be granted an exception to permit it to recalculate on a proportional basis for the period Jan. 1, 1975, through Jan. 31, 1976, the passthrough of increased nonproduct costs.)	FEE-4388	Exception to sequential nonproduct cost passthrough.

Date	Name and location of applicant	Case No.	Type of submission
Do.....	Rivkin Associates, Inc., Washington, D.C. (If granted: The FEA's June 15, 1977, information request denial would be modified and Rivkin Associates, Inc., would receive access to additional data concerning the technical proposals submitted to the FEA under RFP 70068-00.)	FFA-1378	Appeal of the FEA's information request denial dated June 15, 1977.
June 29, 1977	Warrior Asphalt Co. of Alabama, Inc., Washington, D.C. (If granted: The Warrior Asphalt Co. of Alabama, Inc., would be granted an exception to permit it to recalculate on a proportional basis for the period Jan. 1, 1975, through Jan. 31, 1976, the passthrough of increased nonproduct costs.)	FEE-4398	Exception to sequential nonproduct cost passthrough.
June 30, 1977	Union Oil Co. of California, Schaumburg, Ill. (If granted: The June 6, 1977, interpretation issued to the Union Oil Co. of California would be rescinded and 6 consignees which sell allocated products under an agreement with Union would not be considered wholesale purchaser-resellers.)	FIA-1381	Appeal of interpretation dated June 6, 1977.
Do.....	USA Petroleum Corp., Los Angeles, Calif. (If granted: The May 28, 1977, interpretation issued to the State of California would be rescinded.)	FIA-1380	Appeal of interpretation dated May 28, 1977.
Do.....	Vickers Energy Corp. (Grand Chenier), Wichita, Kans. (If granted: The Vickers Energy Corp. would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at the Grand Chenier plant.)	FEE-4390	Price exception (sec. 212.165).
July 1, 1977	Connecticut Refining Co., West Haven, Conn. (If granted: The Connecticut Refining Co. would be granted additional time in which to respond to the subpena issued to it by FEA region I on June 7, 1977.)	FSG-0050	Request for special redress.

[FR Doc.77-22232 Filed 8-2-77;8:45 am]

CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS

Week of July 1 Through July 8, 1977

Notice is hereby given that during the week of July 1 through July 8, 1977, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the FEA action sought in such cases may file with the FEA written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

ERIC J. FYGI,
Acting General Counsel.

JULY 28, 1977.

APPENDIX.—*List of cases received by the Office of Exceptions and Appeals, week of July 1 through July 8, 1977*

Date	Name and location of applicant	Case No.	Type of submission
uly 1, 1977	Consumer Power Co., Jackson, Mich. (If granted: The Consumers Power Co. would be granted an exception from 10 CFR 211.67(a)(3) and would not be required to refund entitlement revenues received for its importation of residual fuel oil during November and December 1974 and January 1975.)	FEE-4392	Allocation exception (sec. 211.67).
Do.....	Husky Oil Co. of Delaware, Washington, D.C. (If granted: The FEA's June 2, 1977, decision and order would be modified and the FEA would adjust Husky's historical profit margin and historical return on invested capital for purposes of evaluating Husky's entitlement exception applications.)	FMR-0113	Modification of decision and order in *Husky Oil Co. of Delaware*, 5 FEA par..... (June 2, 1977).
Do.....	Jamar Oil Co., Broken Arrow, Okla. (If granted: The Jamar Oil Co. would receive an extension of the exception relief granted in the FEA's May 6, 1977, decision and order and would be assigned a new, lower priced supplier of motor gasoline to replace its base period supplier, Foremost.)	FXE-4391	Extension of relief granted in *Jamar Oil Co.*, 5 FEA par. 83,145 (May 6, 1977).
Do.....	National Airlines, Inc., Miami, Fla. (If granted: The June 2, 1977, interpretation issued to National Airlines, Inc., would be rescinded and Texaco, Inc., would not be permitted to rely on the interpretation and increase its rental charges for fueling trucks leased to National.)	FIA-1383	Appeal of interpretation issued to National Airlines, Inc., on June 2, 1977.
Do.....	Tesoro Petroleum Corp., San Antonio, Tex. (If granted: The May 28, 1977, interpretation issued to the Husky Oil Co. of Delaware would be rescinded.)	FIA-1382 FES-1382	Appeal of interpretation 1977-15 issued to the Husky Oil Co. of Delaware on May 28, 1977. Stay requested.
July 5, 1977	Blouin Bros., Inc., Enosburg Falls, Vt. (If granted: The FEA's June 16, 1977, remedial order would be rescinded and Blouin Bros., Inc., would not be required to refund overcharges received on its sales of petroleum products.)	FRA-1384 FRS-1384	Appeal of FEA region I's remedial order issued June 16, 1977. Stay requested.

Date	Name and location of applicant	Case No.	Type of submission
Do.....	Cologne Production Co., San Antonio, Tex. (If granted: Crude oil produced from the Cologne Production Co.'s Algoa field located in Galveston County, Tex., would be sold at upper tier ceiling prices.)	FEE-4398	Price exception (sec. 212.73).
Do.....	Hanson Oil Co., Denver, Colo. (If granted: Crude oil produced from wells which Hanson Oil Corp. proposes to drill in Washakie County, Wyo., would be sold at upper tier ceiling prices.)	FEE-4395	Do.
Do.....	Justiss-Mears Oil Co., Inc., Jena, La. (If granted: Crude oil produced from Justiss-Mears Oil Co.'s Saucier No. 1 well located in Avoyelles Parish, La., would be sold at upper tier ceiling prices.)	FEE-4396	Do.
Do.....	Maurice L. Brown Co., Kansas City, Mo. (If granted: The FEA's Nov. 5, 1976, decision and order would be modified and the Maurice L. Brown Co. would be permitted to sell the crude oil produced from well No. 2 of the Option 604 Ltd. lease located in Roosevelt County, N. Mex. at upper tier ceiling prices.)	FXA-1385	Appeal of decision and order in *Maurice L. Brown Co.*, 4 FEA par. 83,181 (Nov. 5, 1976).
Do.....	Monsanto Co., St. Louis, Mo. (If granted: The Monsanto Co. would be granted an exception which would permit the firm to include its purchases of crude oil substitutes in its crude oil runs to stills for purposes of the old oil entitlements program.)	FEE-4397	Exception to old oil entitlements program (sec. 211.67).
Do.....	Newhall Refining Co., Inc., Newhall, Calif. (If granted: Newhall Refining Co., Inc., would be granted an exception from the old oil entitlements program which would relieve the firm of any entitlements purchase obligations for the remainder of its fiscal year ending Aug. 31, 1977, and which would permit the firm to sell additional entitlements so that it would achieve a profit margin of 4.75 pct for the fiscal year.)	FEE-4394	Exception from old oil entitlements program (sec. 211.67).
Do.....	United Independent Oil Co., Salem, Oreg. (If granted: The United Independent Oil Co., would be relieved of its obligations under the old oil entitlements program to purchase entitlements.)	FEE-4393 FES-4393	Exception from old oil entitlements program (sec. 211.67). Stay requested.
July 6, 1977...	Caribou Four Corners, Inc., Afton, Wyo. (If granted: Caribou Four Corners, Inc., would be granted an exception which would permit the firm to include the product purchased from Johnson Oil in its calculations of its crude oil runs to stills for purposes of the old oil entitlements program.)	FEE-4400	Exception from old oil entitlements program (sec. 211.67).
Do.....	DeMartin Truck Lines, Inc., San Francisco, Calif. (If granted: The FEA's May 26, 1977, decision and order would be rescinded and DeMartin Truck Lines, Inc., would be permitted to increase its selling prices for liquid petroleum gas to reflect increased nonproduct costs on a retroactive basis.)	FEA-1388	Appeal of FEA region IX's May 26, 1977, decision and order.
Do.....	Keener Oil Co., Tulsa, Okla. (If granted: The FEA's June 10, 1977, remedial order would be rescinded and the Keener Oil Co., would not be required to refund overcharges received on its sales of crude oil produced from its Schenck lease in Harper County, Kans, the Ellen lease in Seminole County, Okla., and the Harjo lease in Seminole County, Okla.)	FRA-1387 FRS-1387	Appeal of FEA region VI's remedial order issued June 10, 1977. Stay requested.
Do.....	Palo Pinto Oil & Gas Co. (Markley gas plant), Wichita Falls, Tex. (If granted: The Palo Pinto Oil & Gas Co. would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at its Markley gas plant.)	FEE-4399	Price exception (sec. 212.165).
Do.....	Texas Oil & Gas Corp., Dallas, Tex. (If granted: Crude oil produced from Texas Oil & Gas Corp.'s Pete Rydolph lease located in Victoria County, Tex., would be sold at upper tier ceiling prices.)	FEE-4401	Price exception (sec. 212.73).
Do.....	Wayne S. Lockhard & Sons, Inc., Indiana, Pa. (If granted: The FEA's June 17, 1977, remedial order would be rescinded and Wayne S. Lockhard & Sons, Inc., would not be required to refund overcharges made on sales of No. 2 heating oil.)	FRA-1386	Appeal of FEA region III's remedial order issued June 17, 1977.
July 7, 1977	A&H Transportation, Inc., Baltimore, Md. (If granted: The FEA's June 24, 1977, remedial order would be rescinded.)	FRA-1385	Appeal of FEA region III's revised remedial order issued June 24, 1977.
Do.....	Maurice L. Brown Co., Kansas City, Mo. (If granted: The Maurice L. Brown Co. would receive an exception to base production control levels established for the Sheridan lease located in Lea County, N. Mex., for a period of 1 mo.)	FEE-4403	Exception to base production control levels (sec. 212.76).
July 8, 1977	Merchants Oil, Inc., Denver, Colo. (If granted: The FEA's May 16, 1977, remedial order would be rescinded.)	FRA-1389	Appeal of FEA region VIII's remedial order dated May 16, 1977.

[FR Doc.77-22233 Filed 8-2-77;8:45 am]

CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS

Week of July 8 Through July 15, 1977

Notice is hereby given that during the week of July 8 through July 15, 1977 the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the FEA action sought in such cases may file with the FEA written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

ERIC J. FYGI,
Acting General Counsel.

JULY 28, 1977.

APPENDIX.—*List of cases received by the Office of Exceptions and Appeals, week of July 8 through July 15, 1977*

Date	Name and location of applicant	Case No.	Type of submission
July 8, 1977	Kern County Refinery, Inc., Washington, D.C. (If granted: The FEA's May 25, 1977, decision and order granting Kern County Refinery, Inc., a stay of its entitlement purchase obligations would be vacated.)	FEX-0169	Supplemental order in *Kern County Refinery, Inc.*, 5 FEA par. ..... (May 25, 1977).
Do	Maguire Oil Co., Dallas Tex. (If granted: The remedial order issued by the FEA region VI on June 30, 1977, would be rescinded and Maguire Oil Co. would not be required to refund overcharges received on its sales of crude oil produced from its Chandler lease in Howard County, Tex.)	FRA-1360 FRS-1360	Appeal of the remedial order issued by FEA region VI on June 30, 1977. Stay requested.
Do	Maguire Oil Co., Dallas, Tex. (If granted: Maguire Oil Co.'s Chandler lease in Howard County, Tex., would be retroactively classified as a stripper well property.)	FEE-4401	Price exception (sec. 212.73).
Do	Maguire Oil Co., Dallas, Tex. (If granted: The Maguire Oil Co. would be granted a temporary stay of the refund requirements specified in the June 30, 1977, remedial order pending a final determination of the firm's appeal of that order.)	FST-0041	Request for temporary stay.
Do	Warrior Asphalt Co. of Alabama, Washington, D.C. (If granted: The FEA would review the entitlements exception relief granted to the Warrior Asphalt Co. of Alabama during its 1976 fiscal year in order to determine whether the level of exception relief approved was appropriate.)	FEX-0170	Entitlements review.
Do	Bunting Oil Co., Lancaster, Pa. (If granted: Bunting Oil Co. would be permitted to retroactively charge prices in excess of those permitted under the mandatory petroleum price regulations, for its sales of No. 2 heating oil.)	FEE-4400	Price exception (sec. 212.93).
July 11, 1977	Devon Corp., Oklahoma City, Okla. (If granted: Devon Corp. would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at its Dubach natural gas processing plant.)	FEE-4406	Price exception (sec. 212.165).
Do	Skelton Operating Co., Inc., Jackson, Miss. (If granted: The Skelton Operating Co. would be permitted to sell crude oil produced from the Lee Beard No. 2 well located in Wayne County, Miss., at exempt prices.)	FEE-4407	Price exception (sec. 212.73).
Do	Texas Pacific Oil Co., Inc., Dallas, Tex. (If granted: Texas Pacific Oil Co.'s Ackers-State (Caddo) unit in Stephens County, Tex., would be classified as a stripper well property.)	FEE-4405	Price exception (sec. 212.54).
Do	Williams Energy Co., Tulsa, Okla. (If granted: Williams Energy Co. would be assigned a new, lower priced supplier of propane to replace its base period suppliers, El Paso Natural Gas Co., Enterprise Products Co., and Union Oil Co. of California.)	FEE-4408	Exception to change suppliers.
July 12, 1977	J&W Refining, Inc., Dallas, Tex. (If granted: The FEA would review the entitlements exception relief granted to J&W Refining, Inc., during its 1976 fiscal year in order to determine whether the level of exception relief approved was appropriate.)	FEX-0172	Entitlements review.
Do	Kern County Refinery, Inc., Cerritos, Calif. (If granted: The FEA would review the entitlements exception relief granted to Kern County Refinery, Inc., during its 1976 fiscal year in order to determine whether the level of exception relief approved was appropriate.)	FEX-0171	Do.
Do	Kingery Drilling Co., Inc., Ardmore, Okla. (If granted: The remedial order issued by FEA region VI on June 27, 1977, would be rescinded and Kingery Drilling Co., Inc., would not be required to refund overcharges receive on its sales of crude oil to Sun Oil Co.)	FRA-1362 FRS-1362	Appeal of the remedia order issued by FEA region VI on June 27, 1977. Stay requested.
Do	Louisiana Land & Exploration Co., New Orleans, La. (If granted: Louisiana Land & Exploration Co. would receive a stay of the requirements of the FEA's May 27, 1977, decision and order pending a determination on its appeal.)	FES-1376	Stay of the decision and order in *Louisiana Land & Exploration Co.*, 5 FEA par. 83,165 (May 27, 1977).
Do	Mar-Low Corp. (If granted: Mar-Low Corp. would receive an extension of the relief granted in the FEA's Apr. 4, 1977, decision and order and would be permitted to sell crude oil produced from the Maxie Broussard No. 1-D well at upper tier selling prices.)	FXE-4410	Extension of the relief granted in *Mar-Low Corp.*, 5 FEA par. 80,594 (Apr. 4, 1977).
Do	Peninsula Exploration Co., Corpus Christi, Tex. (If granted: The remedial order issued by FEA region VI on June 13, 1977, would be rescinded and peninsula Exploration Co. would not be required to refund overcharges received on its sales of crude oil)	FRA-1361	Appeal of the remedial order issued by FEA region VI on June 13, 1977.
Do	Union Oil Co. of California, Los Angeles, Calif. (If granted: Union Oil Co. of California would receive additional entitlements for its imports of residual fuel oil.)	FEE-4411	Exception to the entitlements program.
July 13, 1977	Berry Holding Co., Fresno, Calif. (If granted: The remedial order issued by FEA region IX on June 10, 1977, would be rescinded and Berry Holding Co. would not be required to refund overcharges received on its sales of crude oil.)	FRA-1394	Appeal of the remedial order issued by FEA region IX on June 10, 1977.
Do	Ely Crude Oil Co., Ely, Nev. (If granted: The Ely Crude Oil Co. would be permitted to sell crude oil produced from Federal lease No. 012308-B and Federal lease No. 012321-A at upper tier ceiling prices.)	FEE-4412	Price exception (sec. 212.73).
Do	Farmers Gas & Oil Co., Ithaca, Mich. (If granted: The remedial order issued by FEA region V on June 28, 1977, would be rescinded and Farmers Gas & Oil Co. would not be required to refund overcharges received on its sales of motor gasoline.)	FRA-1395	Appeal of the remedial order issued by FEA region V on June 28, 1977.
Do	Louis Kahan, Tulsa, Okla. (If granted: Louis Kahan would be permitted to sell crude oil produced from the Polly B lease located in Seminole County, Okla., at upper tier ceiling prices.)	FEE-4413	Price exception (sec. 212.73).
Do	Stephens & Cass, Dallas, Tex. (If granted: The FEA's May 20, 1977, stay decision and order would be vacated.)	FEX-0174	Supplemental order in *Stephens & Cass*, 5 FEA par. 85,067 (May 20, 1977).
Do	Young Refining Corp., Douglasville, Ga. (If granted: The FEA would review the entitlements exception relief granted to Young Refining Corp. during its 1976 fiscal year in order to determine whether the level of exception relief approved was appropriate.)	FEX-0173	Entitlements review.

Date	Name and location of applicant	Case No.	Type of submission
July 14, 1977	American Petroleum Refiners Association, Inc., Washington, D.C. (If granted: Refiners which sold JP-4 and JP-5 jet fuel to the Defense Fuel Supply Center during 1973 would be permitted to use prices set forth in April 1973 contracts to retroactively establish maximum permissible selling prices for their sales of jet fuel to the DFSC.)	FEE-4414	Class exception.
Do	American Petroleum Refiners Association, Inc., Washington, D.C. (If granted: Refiners which sold JP-4 and JP-5 jet fuel to the Defense Fuel Supply Center during 1973 would be permitted to consider prices established in April 1973 contracts with the DFSC as base prices for purposes of computing maximum permissible selling prices for jet fuel under the mandatory petroleum price regulations.)	FSG-0002	Request for special redress.
Do	Lakeson Asphalt Refining Co., Evansville, Ind. (If granted: Lakeson Asphalt Refining Co. would receive an extension of the entitlement exception relief granted in the FEA's Feb. 11, 1977, decision and order.)	FXE-4415	Extension of the relief granted in *Lakeson Asphalt Refining Co.*, 5 FEA par. 83,004 (Feb. 11, 1977).
July 15, 1977	Ashland Oil, Inc., and Commonwealth Oil Refining Co., Inc., Washington, D.C. (If granted: Ashland Oil, Inc., would receive exception relief to facilitate a $50,000,000 equity investment by Ashland in Commonwealth Oil Refining Co., Inc. The requested relief would permit Ashland and Coreo to be treated as separate firms for purposes of the FEA allocation and pricing regulations and would provide an extension of the exception relief previously granted to Coreo.)	FEE-4431	Exception.

[Fr Doc.77-22231 Filed 8-2-77;8:45 am]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Recission of a Construction Order

In accordance with 10 CFR 303.137(d), the Federal Energy Administration hereby gives notice that on July 13, 1977, the FEA issued an order rescinding the construction order issued on June 30, 1977, to Memphis Mill Unit 5, Kimberly-Clark Corp., Memphis, Tenn. Pursuant to the authority of section 2 of the Energy Supply and Environmental Coordination Act of 1974 (ESECA) (15 U.S.C. 792) the construction order would have required that Unit 5 be designed and constructed so as to be capable of using coal as its primary energy source.

Based on information received from Kimberly-Clark prior to the order issuance which stated that plans to construct Unit 5 had been cancelled by Kimberly-Clark, FEA has determined that Unit 5 is not in the early planning process. Therefore, this combustor is not subject to FEA's authority to issue construction orders and the order issued on June 30, 1977 must be rescinded.

The rescission order has been served on Kimberly-Clark Corp. by registered mail. Copies of the rescission order will be on display for any interested members of the public at the FEA Freedom of Information Reading Room located in Room 2107, 12th Street and Pennsylvania Avenue NW., Washington, D.C. Copies will also be on display in the appropriate FEA regional office.

Any questions regarding this notice should be directed to Mr. G. Randolph Comstock, Office of Coal Utilization, Federal Energy Administration, 12th Street and Pennsylvania Avenue NW., Washington, D.C. 20461, (202-566-9732).

Issued in Washington, D.C., July 28, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-22262 Filed 8-2-77;8:45 am]

NATURAL GAS PIPELINE CO. OF AMERICA

Action Taken on Consent Order

Pursuant to 10 CFR 205.197(c), the Federal Energy Administration ("FEA") hereby gives notice of final action taken on a Consent Order.

On February 25, 1977, FEA published a Notice of Consent Order which, on January 11, 1977 was executed between the Natural Gas Pipeline Company of America ("Natural") and FEA 42 FR 11040 (February 25, 1977). With that Notice, and in accordance with 10 CFR 205.197(c), FEA invited interested persons to comment on the Consent Order.

During the period for comment, FEA received no comments regarding the Consent Order. Accordingly, FEA has concluded that the Consent Order as executed between FEA and Natural on January 11, 1977 is an appropriate resolution of the compliance proceedings initiated by the FEA and that the Consent Order is to be issued as proposed. Therefore, pursuant to 10 CFR 205.197 (c), FEA hereby give Notice of this action taken, making this Consent Order final without modification.

Issued in Washington, D.C., July 29, 1977.

ERIC FYGI,
Acting General Counsel.

[FR Doc.77-22329 Filed 8-2-77;8:45 am]

STATE ENERGY CONSERVATION PLANS

Negative Determination of Environmental Impact Re The West Virginia Energy Conservation Plan

Pursuant to 10 CFR 208.4, the Federal Energy Administration hereby gives notice that it has performed an analysis and review of the environmental impacts associated with the provision of Federal financial assistance for the implementation, by the State of West Virginia, of their State Energy Conservation Plan. Federal funding is authorized by Part C of Title III of the Energy Policy and Conservation Act, 42 U.S.C. 6321, et seq.

Based upon assessment of environmental impacts that are expected to result from implementation of these plans, the FEA has determined that Federal financial assistance will not be a "major Federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). Therefore, pursuant to 10 CFR 208.4(c), the Federal Energy Administration has determined that an environmental impact statement is not required for this plan.

Single copies of the environmental assessment of the State Plan for West Virginia are available upon request from the FEA National Energy Information Center, Room 1406, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Copies of the environmental assessment will also be available for public review in the Federal Energy Administration Information Access Reading Room, Room 2107, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Copies of the State Plan are available for public review in the Office of State Energy Conservation Programs, Room 6437, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Interested persons are invited to submit data, views or arguments with respect to the environmental assessment to Executive Communications, Box OJ, Room 3317, Federal Energy Administration, Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on documents submitted to FEA Executive Communications with the designation, "Environmental Assessment—West Virginia Energy Conservation Plan." Fifteen copies should be submitted. All comments should be received by FEA by 4:30 p.m. e.d.s.t., August 14, 1977, in order to receive full consideration.

Any information or data considered by the person submitting it to be confidential must be so identified and submitted in one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Issued in Washington, D.C., July 29, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-22277 Filed 8-2-77;8:45 am]

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 92]

COPELAND SHIPPING, INC.

Order of Revocation

By letter dated June 28, 1977, Mr. Nathan Cohen, Vice President, Copeland Shipping, Inc., 24806 Rockaway Boulevard, Jamaica, N.Y. 11422, was advised by the Federal Maritime Commission

that Independent Ocean Freight Forwarder License No. 92 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before July 27, 1977.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Copeland Shipping, Inc., has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01 (c), dated June 30, 1975;

It is ordered, That Independent Ocean Freight Forwarder License No. 92 issued to Copeland Shipping, Inc., be returned to the Commission for cancellation.

It is further ordered, That Independent Ocean Freight Forwarder License No. 92 be and is hereby revoked effective July 27, 1977.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served upon Copeland Shipping, Inc.

LEROY F. FULLER,
Director, Bureau of Certification and Licensing.

[FR Doc.77-22282 Filed 8-2-77;8:45 am]

[Docket No. 77-39 FMC Freight Forwarder License No. 1660]

LATINVAN, INC.

Order To Show Cause

By letters dated December 13, 1976, and May 2, 1977, the Commission directed Latinvan, Inc., P.O. Box 440281, Miami, Fla. 33144, FMC Freight Forwarder License No. 1660, to furnish certain factual information. Response was requested on or before January 15, 1977, and extended until June 6, 1977. To date Latinvan, Inc., has not responded to these letters.

Section 510.9(b) of the Commission's General Order 4 provides that a freight forwarder license may be revoked or suspended for failure to respond to any lawful inquiries of the Commision.

Therefore, *it is ordered*, That pursuant to section 44 and section 22 of the Shipping Act, 1916, Latinvan, Inc., FMC License No. 1660, is hereby made a respondent in this proceeding and is directed to show cause why its license as an independent ocean freight forwarder should not be suspended or revoked pursuant to section 510.9(b) because of failure to respond to lawful inquiries of the Commission.

It is further ordered, That this proceeding shall be limited to the submission of affidavits of fact and memorandum of law, replies and oral argument. Should any party feel that an evidentiary hearing be required, that party may accompany such a request for hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, and why such proof cannot be submitted through affidavit. Request for hearing shall be filed on or before August 29, 1977. Affidavits of facts and memorandum of law shall be filed by respondent and served upon all parties no later than the close of business August 29, 1977. Reply affidavits and memorandum shall be filed by the Commission's Bureau of Hearing Counsel and intervenors, if any, no later than the close of business September 19, 1977. Oral argument will be scheduled at a later date if requested and/or deemed necessary by the Commission.

It is further ordered, That a notice of order be published in the FEDERAL REGISTER and that a copy thereof be served upon respondent.

It is further ordered, That persons other than those already party to this proceeding who desire to become parties to this proceeding and participate therein, shall file a petition to intervene pursuant to Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72).

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in an original and 15 copies as well as being mailed directly to all parties of record.

By the Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-22284 Filed 8-2-77;8:45 am]

MED-GULF CONFERENCE

Agreements Filed

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., and San Juan P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before August 23, 1977. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

John R. Attanasio, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street NW., Washington, D.C. 20006.

Agreement No. 9522-31, among the members of the above-named conference provides for rules concerning secret ballots and for independent action on freight rates.

By order of the Federal Maritime Commission.

Dated: July 29, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-22279 Filed 8-2-77;8:45 am]

O'CONNELL DISTRIBUTING CO. INC., DOMTAR, INC., AND CITY OF MILWAUKEE

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., and Old San Juan, P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before August 23, 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 forward to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. J. L. Haskell, Deputy Port Director, City of Milwaukee, 500 N. Harbor Drive, Milwaukee, Wis. 53202.

Agreement No. T-2966-1, between O'Connell Distributing Co., Inc. (O'Connell); Domtar, Inc. (Domtar); and City of Milwaukee (City), provides for Dom-

tar's sublease with the City's approval of O'Connell's interest in the following agreements: (1) Agreement No. T-2966, which provides for the lease of a port terminal facility designated as Municipal Bulk Terminal No. 1; (2) Agreement No. T-2966-A, which provides for the lease of Jones Island Dock and property containing approximately 4.004 acres; and (3) Agreement No. T-2966-B, which provides for the lease of 1.13 acres of land located south of East Bay Street. Under the terms of the sublease, Domtar will be subject to the same rental and terms as O'Connell except Domtar is not required to pay any additional rental under terms of paragraph 3(c) of Agreement No. T-2966 nor is he required to deposit a security deposit.

By order of the Federal Maritime Commission

Dated: July 28, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-22280 Filed 8-2-77;8:45 am]

O'CONNELL DISTRIBUTING CO., INC., AND CITY OF MILWAUKEE

Agreements Filed

Notice is hereby given that the following agreements have been filed with the Commission for review and approval, if required, pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., and Old San Juan, P.R. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before August 23, 1977. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreements filed by:

Mr. J. L. Haskell, Deputy Port Director, City of Milwaukee, 500 N. Harbor Drive, Milwaukee, Wis. 53202.

Agreement No. T-2966-A, between O'Connell Distributing Co., Inc. (O'Connell), and City of Milwaukee (City), provides for the five-year lease of 4.004 acres of land on the South Harbor Tract to be used as a storage and distribution terminal. As compensation, O'Connell will pay $11,500 a year plus wharfage as follows: (1) 10 cents per ton on salt; and (2) rates on all other cargo to be negotiated prior to time of its movement.

Agreement No. T-2966-B, between O'Connell and City, provides for the month-to-month lease of approximately 1.13 acres of land for the temporary storage of salt. As compensation, O'Connell will pay $340 a month. All material on this land will be transported across the docks to the leaseshold adjacent to Municipal Mooring Basin or General Cargo Terminal One and will have been previously assessed a wharfage charge of 10 cents per ton.

Agreements Nos. T-2966-A and T-2966-B are to be subleased to Domtar, Inc., under Agreement No. T-2966-1.

By order of the Federal Maritime Commission.

Dated: July 28, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-22281 Filed 8-2-77;8:45 am]

PEOPLE-TO-PEOPLE HEALTH FOUNDATION, INC.

Order of Revocation

Certificate of financial responsibility for indemnification of passengers for nonperformance of transportation Nos. P-155 and P-166 and certificate of financial responsibility to meet liability incurred for death or injury to passengers or other persons on voyages No. C-1,158.

Whereas, the People-to-People Health Foundation, Inc., cancelled its plans to charter the passenger vessel *Danae;* and

Whereas, the People-to-People Health Foundation, Inc., has completed its charters of the passenger vessels *Stella Solaris* and *Daphne.*

It is ordered, That Certificate (Performance) No. P-155 and Certificate (Casualty) No. C-1,158 issued to the People-to-People Health Foundation, Inc., covering the *Stella Solaris* and Certificate (Performance) No. P-166 issued to the People-to-People Health Foundation, Inc., covering the *Danae* and reissued to cover the *Daphne* be and are hereby revoked effective July 26, 1977.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served on certificant.

By the Commission, July 26, 1977.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-22283 Filed 8-2-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. ER76-556]

BOSTON EDISON CO.

Electric Rates; Order Approving Settlement Agreement

JULY 20, 1977.

On April 20, 1977, Boston Edison Company (Edison) submitted for filing in this docket a proposed Settlement Agreement and a Motion To Certify Settlement Agreement and Record To The Commission. Presiding Administrative Law Judge Thomas L. Howe certified the proposed settlement to the Commission on April 25, 1977.

Notice of the filing of the Settlement Agreement was issued on April 22, 1977, with all protests due on or before May 11, 1977. No protests were received. Staff filed comments in support of the agreement on May 11, 1977.

Edison initially filed a rate schedule in this docket on March 10, 1976, to provide for the non-firm transmission service by Edison to Braintree Electric Light Department (Braintree). Braintree and Cambridge Electric Light Company (Cambridge) filed separate petitions to intervene in the proceeding. The initial filing provided for transmission to Braintree of three capacity purchases (Potter purchases) totalling approximately 28MW, from Northeast Utilities, New England Power Company, and an entitlement owned by Vermont Electric Power Company in the Merrimack 2 Unit of Public Service Company of New Hampshire. The service was to continue from April 1, 1976 until the date that Braintree's Potter 2 generating unit would enter service.[1]

In an order issued May 14, 1976, the Commission accepted the filing, suspended it, made it effective subject to refund, granted intervention of Braintree and Cambridge, and set the matter for hearing. After participating in a pre-hearing conference on July 22, 1976, the parties went to hearing on September 20, 1976. Settlement discussions took place on the date of the hearing and a tentative settlement was reached with regard to the three purchases.

Subsequent to this date, Edison agreed to transmit a fourth capacity purchase to Braintree, from the Vermont Yankee Nuclear Unit[2] and applied the same transmission rate that had been used for the Potter purchases. The transmission service of this fourth capacity purchase will terminate on October 31, 1977.

The Settlement Agreement reduces the rate from $10.84 per kW per year[3] to $9.00 per kW per year for the Potter purchases and provides for a refund, at

[1] Potter 2 entered service on April 1, 1977 and service for the 3 purchases ended on that date.

[2] This capacity constituted part of Vermont Electric Power Company's entitlement in the unit.

[3] As stated in the rate schedule filed March 10, 1976.

an annual interest rate of 9 percent, of the difference between the settlement rate and the amounts actually collected for the transmission of the Potter purchases. As for the Vermont Yankee purchase, the Settlement Agreement provides that Braintree shall continue to pay transmission charges in accordance with the rate schedule initially filed in this proceeding [4] but that the rate will be adjusted retroactively in accordance with the outcome of Boston Edison Company, Docket No. ER77-84. If the adjustments produce a lower rate, Edison shall make refunds to Braintree with interest at an annual rate of 9 percent.

Based on our review of the record in these proceedings, including the Settlement Agreement itself, the Commission finds that the proposed Settlement Agreement itself, the Commission finds that the proposed Settlement Agreement represents a reasonable resolution of all of the issues in this proceeding, and that such settlement is in the public interest. Accordingly, the Settlement Agreement between Braintree and Edison should be approved and Appendix A to that Agreement which sets forth the rate and refund provisions contained in the Settlement Agreement should be accepted for filing and made effective as of April 1, 1976. [5]

The Commission finds: The proposed Settlement Agreement should be approved and made effective as hereinafter ordered and conditioned.

The Commission orders: (A) The Settlement Agreement certified to the Commission in this proceeding on April 25, 1977, is hereby accepted, incorporated herein by reference and approved subject to the following conditions:

(B) Within 30 days from the date of this order, Edison shall refund amounts collected in excess of the settlement rate with interest computed at an annual rate of 9 percent for transmission service for the Potter purchases.

(C) Within 20 days after refunds have been made, Edison shall file with the Commission a compliance report showing monthly billing determinants and revenues under prior, present, and settlement rates. The report shall also show the monthly settlement rate increase, the monthly rate refund, and the monthly interest computation together with a summary of such information for total refund period. A copy of such report shall also be furnished to each State Commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

(D) Consistent with the provisions of the Settlement Agreement approved herein, waiver of Sections 35.3 and 35.-13 of the Regulations is hereby granted and the tendered Supplement No. 2 to Boston Edison Company Rate Schedule FPC No. 110 is hereby accepted for filing to be effective April 1, 1976.

(E) This order is without prejudice to any findings or orders which have been made or which will hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, or any party or person affected by this order, in any proceeding now pending or hereafter instituted by or against Edison or any person or party.

(F) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-22247 Filed 8-2-77;8:45 am]

[4] 10.84 per kW per year.

[5] Appendix A Rate Schedule designation: Boston Edison Company Supplement 2 to Rate Schedule FPC No. 110.

[Docket No. CP77-512]

CLAY BASIN STORAGE CO.

Application

JULY 27, 1977.

Take notice that on July 19, 1977, Clay Basin Storage Company (Applicant), 100 Broadway, New York, New York 10005, filed in Docket No. CP77-512 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Arizona Public Service Company (APS), Southern Union Company (Southern Union), Southwest Gas Corporation (Southwest) and Tucson Gas & Electric Company (TG&E), all of whom are El Paso Natural Gas Company's (El Paso) east-of-California (EOC) distributor customers jointly referred to herein as EOC Distributors, for the sale of natural gas from time to time to El Paso, and for the exchange of its gas stored in the Clay Basin Field, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell natural gas to EOC Distributors pursuant to letter agreements dated June 10, 1977, between El Paso and each of EOC Distributors which agreements were ratified and accepted by Applicant on July 6, 1977. Applicant states that the sales of natural gas which it proposes to make to the EOC Distributors and to El Paso, respectively, are integral to the effectuation of the Clay Basin Interim Storage Arrangements for the future protection of Priority 1 and 2 service to El Paso's EOC direct and distributor customers.

It is indicated that El Paso projects that it would have certain quantities of gas which would be otherwise available for sale and delivery in satisfaction of the Priority 3, 4 and 5 requirements of its interstate system customers through April 30, 1978, and that Clay Basin Interim Storage Arrangements are designed to provide for the storage and subsequent utilization of the gas supplies so stored, to the maximum extent possible, for the protection of future service to the Priority 1 and 2 requirements of El Paso's EOC customers. Applicant indicates that it, together with Northwest Pipeline Corporation (Northwest) and Mountain Fuel Resources, Inc. (Resources) have agreed to assist El Paso in the Clay Basin Interim Storage Arrangements whereby gas can be stored, on an interim basis, commencing as soon as practical and extending through December 31, 1979, in Resources' Clay Basin Storage Field (Clay Basin Field), located in Dagget County, Utah.

Applicant states that it and El Paso have entered into an Interim Storage Agreement dated July 6, 1977, as part of the arrangements necessary for implementation of the Clay Basin Interim Storage Arrangements, wherein Applicant would purchase natural gas from El Paso at certain points of delivery in the San Juan Basin area in Rio Arriba County, New Mexico, and La Plata County, Colorado. It is stated that El Paso would sell such gas to Applicant and physically deliver it to Northwest, for Applicant's account, at existing points of interconnection between the facilities of El Paso and Northwest. Such deliveries are to be made in quantities not to exceed the excess pipeline capacity available in Northwest's transmission facilities, as excess capacity may exist from time to time, on a daily basis, during the period commencing on the date of initial deliveries and extending through April 30, 1978, it is stated. Applicant indicates that it would pay El Paso a rate equivalent to the rate in effect at the time of sale under Rate Schedule G of El Paso's FPC Gas Tariff, Original Volume 1 for each Mcf of natural gas sold by El Paso to Applicant and delivered to Northwest for Applicant's account.

It is indicated that pursuant to the terms and conditions of that certain agreement dated July 6, 1977, between Applicant and El Paso, Applicant has acquired all of El Paso's right, title and interest in and to each of the agreements listed below and has assumed and agreed to pay and perform all of El Paso's obligations under each of said agreements. Such agreements are as follows:

(i) That certain agreement entitled "Gas Transportation and Exchange Agreement" dated March 24, 1977, by and between El Paso and Northwest, pursuant to which Northwest has agreed (a) to receive quantities of gas from El Paso from time to time during the period commencing with initial deliveries through April 30, 1978, at various points in the San Juan Basin area of northwest New Mexico and southwest Colorado and to transport and deliver such gas to Resources for storage for El Paso's account in Resources' Clay Basin Field in Daggett County, Utah, and (b) from time to time during the period November 1, 1977, through December 31, 1979, to deliver to El Paso in the San Juan Basin, quantities of gas equivalent to those quantities so stored by Resources for El Paso's account in the Clay Basin Field; and

(ii) That certain agreement entitled "Intermin Storage Service Rate Schedule S-2" dated March 21, 1977, by and between El Paso, Resources and Northwest, pursuant to which Resources has agreed to accept and store for El Paso's account in the Clay Basin Field commencing with initial deliveries through December 31, 1979, those quantities of gas delivered to Resources by Northwest for El Paso's account under a Gas Transpor-

tation and Exchange Agreement dated March 24, 1977.

It is indicated that under these agreements, the gas purchased by Applicant from El Paso would be delivered to Northwest and transported and delivered by Northwest to Resources which would inject and store such delivered quantities in the Clay Basin Field, all for Applicant's account. It is stated that all charges applicable to the services rendered by Northwest and Resources for Applicant and, in addition, all other chargest incurred by Applicant as a result of its participation in the Clay Basin Interim Storage Arrangments, save and except for the cost of gas purchased by Applicant from El Paso, would be billed to El Paso.

Applicant states that under the Clay Basin Interim Storage Arrangements Northwest, by displacement, would from time to time during the period November 1, 1977, through December 31, 1979, deliver to El Paso at an existing delivery point, near Ignacio, Colorado, for Applicant's account, quantities of gas equivalent, on a Btu basis, to the quantities which were previously purchased by Applicant from El Paso and delivered by El Paso to Northwest for Applicant's account. El Paso would thereafter transport through its interstate pipeline system and deliver, for Applicant's account, the quantities of gas so received from Northwest as needed to serve the Priority 1 and 2 requirements of El Paso's EOC system customers during the 1977–78, 1978–79 and through December 31, of the 1979–80 heating seasons, it is indicated.

It is stated that El Paso and the EOC Distributors have by agreements, provided for the purchase of such supplies under certain terms and conditions which permit the timely disposition of such stored quantities. These agreements contemplate that El Paso would deliver such quantities of gas to the EOC Distributors, for Applicant's account, at existing points of delivery to such customers located on El Paso's interstate transmission system, it is stated. It is stated that such sales by Applicant would be made at a rate equivalent to the rate in effect at the time of delivery for El Paso's own sales of gas to the respective distributor customers at the respective sales point locations.

Applicant states that pursuant to the gas sales agreement dated July 6, 1977, between Applicant and El Paso, El Paso would retain and purchase from Applicant a quantity of gas containing 5 percent of the number of Btu's contained in such quantities of gas, if any, as are redelivered by Northwest to El Paso for Applicant's account, such 5 percent quantity being required for use by El Paso to replace volumes of gas which would be consumed as compressor fuel or which are lost or unaccounted for in El Paso's system in physically transporting Applicant's gas. Applicant further states that El Paso would retain and purchase such 5 percent quantity only in the event that it is required to physically transport Applicant's gas and not otherwise, and shall pay Applicant for such 5 percent quantity at a rate equivalent to Applicant's weighted average cost of gas purchased from El Paso under the Interim Storage Agreement. Additionally, Applicant requests authorization as it may require incident to the effectuation of the exchange of its gas stored in the Clay Basin Field for equivalent quantities to be delivered by Northwest to El Paso for Applicant's account.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 23, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22242 Filed 8-2-77;8:45 am]

[Docket No. ES76-1]

COMMONWEALTH EDISON CO.

Supplemental Application

JULY 27, 1977.

Take notice that by orders issued August 5, 1975 and August 3, 1976, in the above-captioned docket, the Federal Power Commission, pusuant to Section 204 of the Federal Power Act, authorized Commonwealth Edison Company (Applicant), to issue unsecured promissory notes in the aggregate outstanding principal amount of up to a maximum of $400,000,000, to be issued on or before December 31, 1977, with final maturity dates of not later than December 31, 1978.

By supplemental application filed July 20, 1977, the Applicant seeks authorization to extend the latest permissable issue date to December 31, 1978 and to extend the final maturity date to December 31, 1979, on $400 million in unsecured promissory notes previously authorized. All other terms and conditions of the Commission's order are to remain in full force and effect.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 19, 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22244 Filed 8-2-77;8:45 am]

[Docket No. E-8121]

GULF STATES UTILITIES CO.

Electric Rates; Order To Show Cause and To Prescribe Procedures

JULY 26, 1977.

On July 11, 1975, the United States Court of Appeals for the District of Columbia Circuit remanded the proceedings in the docket herein to the Commission with instructions to conduct proceedings consistent with its opinion.[1] The Commission finds that a hearing to show cause instituted against Gulf States Utilities Co. concerning the issues raised by the Court would be in the public interest as hereinafter ordered.

In 1950, Mid-South Electric Cooperative Association (Mid-South) entered into a contract with Gulf States for the delivery of electric power. The limitation on Gulf States' maximum commitment to Mid-South was 200 kilowatts, with Mid-South having the right to request a monthly increase of up to 300 kilowatts subject to Gulf States' designation of the delivery points for the additional power. As Mid-South's power needs grew, Gulf States delivered Mid-South's requirements beyond the contracted commitment. According to Mid-South,[2] by 1960, the earliest year for which figures are available, Gulf States was selling to

[1] *Sam Rayburn Dam Electric Cooperative* v. *FPC*, 515 F. 2d 998 (D.C. Cir. 1975), cert. denied sub nom *Gulf States Utilities Co.* v. *FPC*, 96 S.Ct. 2229 (1976).

[2] Application for Rehearing filed by Mid-South and Robertson Electric Cooperative, Inc., on August 20, 1973, in this docket.

Mid-South a total of 1,374 kilowatts in the peak month. By 1973, the peak month supply grew to 11,940 kilowatts. Such sales were made according to all the terms and conditions of the contract and at the contract rates.[3]

The proceedings in this docket were initiated on April 10, 1973, when Gulf States tendered for filing revised rate schedules to its wholesale customers, including Mid-South. By order issued on June 14, 1973, the Commission found, inter alia, that certain Gulf States contracts were fixed-rate Sierra-Mobile type [4] contracts with a demand ceiling, and the Commission accepted Gulf States' proposed rates to be effective as initial rates to apply to those deliveries sold above the demand ceiling. According to Mid-South [5] it did not file for Commission review of the June 14 order because it believed that its contract had been amended by the conduct of the parties to remove the demand ceiling, thus making the entire contract a fixed rate contract protected by the *Mobile-Sierra* doctrine, and that the contract would be investigated by the Commission in a section 206 proceeding.

On August 7, 1973, the Commission issued an order denying the applications for rehearing of the June 14, 1973, order filed by certain other customers of Gulf States. From the August 7, 1973, order, it appeared to Mid-South that the Commission may have intended the June 14, 1973, order to affect the rates for power supplied to Mid-South by Gulf States. Therefore, it was not until August 20, 1973, that Mid-South filed with the Commission for review of the June 14, 1973 order.[6] On September 17, 1973, the Commission denied Mid-South's request for rehearing at untimely.[7]

Upon its review, the District of Columbia Circuit held that Mid-South's application for rehearing was timely filed and it assumed jurisdiction over Mid-South's petition for review.[8] The Court adopted Mid-South's position that parties to a contract filed with the Commission may vary its terms by a subsequent course of conduct.[9] The Court also adopted Mid-South's argument that fixed-rate contracts must be recognized whether or not the contracts have been reduced to writing and filed with the Commission.[10] Therefore, the Court concluded that if, in this case, the parties by their conduct did subsequently modify the 1950 contract, Gulf States is bound by the modified terms whether or not Gulf States met its responsibility of reducing the modifications to writing and filing them with the Commission. The Court remanded the case to this Commission to decide "* * * whether or not the proposed (April 10, 1973 rate) increase conflicted with any existing contractual arrangement between Gulf States and Mid-South".[11]

In accordance with the Court's mandate, we must determine what the "existing contractual arrangement" was between Gulf States and Mid-South. If the contract was a fixed rate contract with a demand ceiling, then Gulf States' proposed rates would be consistent with the contract and could be accepted to apply to those deliveries sold above the demand ceiling.[12] But if the parties' subsequent course of dealing removed the demand ceiling so that the 1950 fixed rates were applicable to all of Gulf States' deliveries to Mid-South, then Gulf States' 1973 proposed rates would be inconsistent with the parties' contractual arrangement and would have to be rejected by the Commission.

We will institute a show cause proceeding to require Gulf States to come forward and present its evidence on the issue of the contract modification as set forth in the Court's remand and whether the Commission may properly accept for filing the rates proposed by Gulf States on April 10, 1973. The parties hereto granted intervention will not be required to file any new petitions to intervene to participate in this show cause proceeding. Interested persons who are not presently parties may seek intervention pursuant to our rules.

The Commission finds: It is necessary and proper and in the public interest and to aid in the enforcement of the Federal Power Act that a hearing be held on the issues described herein.

The Commission orders: (A) Gulf States shall show cause, if any, at the proceedings instituted in paragraph (B) below, why its actions under its contract with Mid-South, as discussed in the Court's remand described herein required the Commission to accept its rate proposals of April 10, 1973.

(B) Pursuant to the authority of the Federal Power Act, particularly sections 307, 308, and 309 thereof, and the Commission's Rules and Regulations issued pursuant thereto, a Presiding Administrative Law Judge (see delegation of authority, 18 CFR 3.5(d)) shall convene a prehearing conference on August 24, 1977, at 10 a.m. in a public hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, concerning the issues discussed herein. At said prehearing conference, the Presiding Administrative Law Judge is hereby authorized to establish all procedural dates and to rule upon all motions (except petitions to intervene, motions to consolidate and sever and motions to dismiss), as provided for in the Rules of Practice and Procedure. If the Presiding Administrative Law Judge determines that factual and legal submissions in addition to those already on the record are unnecessary, he may recommend summary disposition to the Commission.

(C) Notices of intervention and petitions to intervene may be filed with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before August 8, 1977, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.37(f)).

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

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22251 Filed 8-2-77;8:45 am]

[3] Id.

[4] *FPC* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *United Gas Co.* v. *Mobile Gas Corp.*, 350 U.S. 332 (1956).

[5] Application for Rehearing filed by Mid-South and Robertson Electric Cooperative, Inc., supra.

[6] Id.

[7] Section 313(a) or the Federal Power Act (16 U.S.C. 825 1(a)) and § 1.34(a) of the Commission's Rules of Practice and Procedure (18 CFR 1.34(a)) promulgated pursuant thereto, require that a person aggrieved by a Commission order file an application for rehearing within 30 days after issuance of the order.

[8] *Sam Rayburn Dam Electric Cooperative* v. *FPC*, supra, at 1007-1008.

[9] Id. at 1009.

[10] Id. at 1008-1009.

[11] Id at 1009.

[12] After the Court's opinion was issued, the Presiding Administrative Law Judge in this docket issued an Initial Decision on March 25, 1976, finding inter alia, that Gulf States' fixed rates, subject to Section 206 proceedings, were not so low as to adversely affect the public interest and therefore were to be retained at the original level as distinguished from the proposed increased level. The decision further held that Gulf States' proposed rates subject to review under Section 205 of the Federal Power Act were just and reasonable and should be permitted to take effect. This Decision was affirmed by Commission order issued on September 22, 1976.

[Docket No. CP74-187]

MONTANA POWER CO.

Petition To Amend

JULY 26 1977.

Take notice that on July 15, 1977, Montana Power Co. (Petitioner), 40 East Broadway, Butte, Mont. 59701, filed in Docket No. CP74-187 a petition to amend the Commission's order of March 21, 1975 (53 FPC _____), as amended, issued in the instant docket pursuant to section 3 of the Natural Gas Act so as to authorize the continued importation of natural gas from Canada at an increase import rate of $2.16 (United States) per million Btu's effective September 21, 1977, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Applicant indicates that pursuant to the Commission's order of March 21, 1975, it was granted authorization in the instant docket to import from Canada, natural gas purchased from Canadian-Montana Pipe Line Co., at a price of $1 per Mcf, and that on December 17, 1976, the Commission amended its order of March 21, 1975, so as to authorize Petitioner to import gas from Canada natural gas at the price of $1.94 (Canadian) per million Btu's, effective January 1, 1977. Applicant indicates that on July 7, 1977, the Canadian Government set

the price for gas exported from Canada at $2.16 per million Btu's.

Petitioner asserts that it imports from Canada more than 70 percent of the natural gas supply necessary to serve its market and that the ability of Petitioner to meet its customers' requirements and avoid curtailment of service directly depends on continued importation of natural gas under the authorization granted in the subject docket.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 15, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22250 Filed 8-2-77;8:45 am]

[Docket No. CP76-389]

NORTHWEST PIPELINE CORP.

Amendment to Application

JULY 27, 1977.

Take notice that on July 18, 1977, Northwest Pipeline Corp. (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP76-389 an amendment to its application filed in said docket pursuant to section 7 of the Natural Gas Act so as to provide for the withdrawal on a firm basis of up to 9,400,000 Mcf of gas seasonally and up to 75,000 Mcf per day and the withdrawal on a best efforts basis of up to an additional 5,000,000 Mcf of gas seasonally and up to an additional 75,000 Mcf per day, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

Applicant indicates that in its application filed on June 10, 1976, in the instant docket it proposed to utilize the Dakota Formation of the Clay Basin Field (Dakota Formation) for the storage of natural gas during off-peak periods for subsequent withdrawals during the winter heating season (November through March). Applicant states that the utilization of the Dakota Formation for natural gas storage is contemplated as a result of an agreement dated June 8, 1976, as amended November 5, 1972, and April 6, 1977 between Applicant and Mountain Fuel Resources, Inc. (Resources), whereby Resources has agreed to develop the Dakota Formation as a natural gas storage reservoir for the storage of natural gas for the account of Applicant. Applicant indicates that on February 10, 1977, it received temporary authorization in the instant docket to deliver to Resources for storage up to 27,000,000 Mcf of gas (including those volumes of natural gas remaining in storage for Applicant's account as of April 1, 1977) of which 9,400,000 Mcf would be working gas and 17,600,000 Mcf would be cushion gas, and to withdraw up to 75,000 Mcf per day and up to 9,400,000 Mcf seasonally.

It is stated that El Paso Natural Gas Co. (El Paso) has requested that Applicant and Resources cooperate with El Paso to the end that El Paso may temporarily store up to approximately 26,000,000 Mcf of natural gas during the period from June 1, 1977, through April 30, 1978. Applicant indicates that it is contemplated that, during the summer of 1978, the volumes of gas to be stored by El Paso would be transferred to a storage field to be developed by El Paso and would be utilized for the protection of El Paso's high-priority East of California customers.

El Paso has informed Resources and Applicant that, commencing June 1, 1977, and continuing through October 31, 1977, it can make available to Resources, for storage by Resources, certain volumes of natural gas on a relatively firm basis and further anticipates that it may have additional volumes available on a day basis during the period November 1977 through April 1978, it is said.

It is indicated that El Paso and Applicant have entered into a gas transportation and exchange agreement dated March 24, 1977, and El Paso, Resources and Applicant have entered into a three party agreement dated March 21, 1977, in order to effectuate the storage for El Paso. It is stated that the agreement dated March 24, 1977, between El Paso and Applicant provides for the best efforts transportation and delivery of El Paso's volumes by Northwest to Resources for storage and for the ultimate redelivery to El Paso of volumes equivalent to the volumes stored by Resources for El Paso's account. The three party agreement provides that Resources would, on a best efforts basis, receive volumes of natural gas from Applicant for storage in the Dakota Formation for the account of El Paso, it is indicated.

It is asserted that Resources and Applicant currently contemplate that the volumes of natural gas to be stored by Resources for Applicant's account during 1977 would be 27,000,000 Mcf. Applicant indicates that Resources has agreed to construct and operate certain additional facilities, permanent and temporary in order to develop further the Dakota Formation, on a one time basis, in order to provide, on a best efforts basis, storage service for El Paso. It is stated that the storage service to be provided by Resources for Applicant would have priority over that storage service to be provided for El Paso in order to assure that Applicant would have up to 9,400,000 Mcf of gas available in Clay Basin storage for withdrawal during the 1977-78 heating season.

Applicant states that the gas transportation and exchange agreement and the three party agreement, contemplate that of the first 27,000,000 Mcf of natural gas injected into the Dakota Formation 9,400,000 Mcf would be available to Applicant, notwithstanding the fact that all or a portion of such gas may have been injected by Resources for the account of El Paso. The subject agreements also provide, that if, as of October 31, 1977, the total gas stored in the Dakota Formation for the account of Applicant and El Paso is in excess of 27,000,000 Mcf, then all or a portion of that excess volume may be withdrawn to protect the Priority 1 and 2 requirements of Applicant's or El Paso's customers, it is indicated. Applicant states that the gas transportation and exchange agreement provides that its requirements have priority over El Paso's requirements should Applicant and El Paso simultaneously require protection gas.

It is stated that in the event volumes of gas are withdrawn from the Dakota Formation during the 1977-78 heating season for the account of El Paso, El Paso would, pursuant to the gas transportation and exchange agreement, reimburse Applicant for all costs attributable to such withdrawal. It is further stated that such costs would be El Paso's pro rata share of the amount payable by Applicant to Resources during the month of withdrawal as provided by Resources' the effective FPC Gas Rate Schedule S-1.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 22, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any persons who have heretofore filed need not file again.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22241 Filed 8-2-77;8:45 am]

[Docket No. CP77-511]

NORTHWEST PIPELINE CORP.

Application

JULY 27, 1977.

Take notice that on July 18, 1977, Northwest Pipeline Corporation (Applicant), 315 East Second South, Salt Lake City, Utah 84111, filed in Docket No. CP77-511 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation,

on a best efforts basis, and the exchange of natural gas for and with El Paso Natural Gas Company (El Paso) for a term commencing June 1, 1977, and extending through December 31, 1979 or until such time as any imbalance in exchange gas has been eliminated and for the sale of natural gas to El Paso for fuel in conjunction with said proposal, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that El Paso has requested that Applicant and Mountain Fuel Resources (Resources) cooperate with El Paso to the end that El Paso may temporarily store up to approximately 26,000,000 Mcf of natural gas during the period from June 1, 1977, through April 30, 1978. It is indicated that during the summer of 1978, the volumes of gas to be stored by El Paso would be transferred to a storage field to be developed by El Paso and would be utilized for the protection of El Paso's high-priority East of California customers. El Paso has informed Resources and Applicant that, commencing August 1, 1977 and continuing through October 31, 1977, it can make available to Resources, for storage by Resources, certain volumes of natural gas on a relatively firm basis, and that it further anticipates that it may have additional volumes available on a day to day basis during the period November 1977 through April 1978, it is said.

It is stated that Resources and Applicant have agreed to allow El Paso also to utilize the Clay Basin facilities during the 1977–78 heating season, and that in order to effectuate the storage for El Paso, Applicant and El Paso have entered into a gas transportation and exchange agreement dated March 24, 1977 and El Paso, Resources and Applicant have entered into a three party agreement dated March 21, 1977.

Applicant states that the three party agreement provides that Resources, in order to inject volumes of natural gas during the summer of 1977 for the account of El Paso, would construct and operate certain temporary and permanent facilities. It is indicated that the temporary facilities would consist of ten 1,000 horsepower compressor units and appurtenant facilities and would be utilized solely for the account of El Paso, and that the permanent facilities consist of 11 injection and withdrawal wells, and the associated gathering, dehydration and measuring facilities. It is further indicated that the 11 injection and withdrawal wells would also be utilized solely for the account of El Paso during the period commencing on the initial in-service date of each well and continuing through April 30, 1978, El Paso's injection period, and that subsequent to April 30, 1978 the additional wells would be utilized by Resources in order for Resources to provide Applicant the level of service contemplated for the 1978–79 heating season. El Paso would pay Resources the total cost of service attributable to the temporary compression, so long as such compression is required for service to El Paso or upon removal, and for the 11 wells through April 30, 1978, it is indicated. It is stated that in addition to the aforementioned costs El Paso would also pay Resources the following:

(a) During the period May 1, 1977 through September 30, 1977 one half (½) of the cost of service of the 20-inch pipeline from Applicant's tap to the Clay Basin Field and 5 percent of the cost of service attributable to all other facilities installed by Resources in the Clay Basin Field for the purpose of rendering service to Applicant and

(b) During the month of October 1977 El Paso shall pay the full cost of service of all facilities installed by Resources in the Clay Basin Field.

It is asserted that the impact on Applicant of items (a) and (b) above is that El Paso will be paying Resources a portion of the cost of service which would otherwise have been the responsibility of Applicant. Applicant estimates that during the period May through October 1977 Applicant's share of Resources cost-of-service will be reduced by approximately $750,000.

It is indicated that the transportation agreement between El Paso and Applicant provides for the best efforts transportation and delivery of El Paso's volumes by Applicant to Resources for storage and for the ultimate redelivery to El Paso of volumes equivalent to the volumes stored by Resources for El Paso's account. The three party agreement provides that Resources would, on a best efforts basis, receive volumes of natural gas from Applicant for storage in the Clay Basin Field for the account of El Paso, it is said.

Applicant states that Resources is presently in the process of developing the Dakota Formation of the Clay Basin Field as an underground gas storage reservoir for the benefit of Applicant and that Resources and Applicant currently contemplate that the volumes of natural gas to be stored by Resources for Applicant's account during 1977 would be 27,000,000 Mcf.

It is stated that Resources with Applicant's agreement has agreed to construct and operate certain additional facilities, permanent and temporary, in order to develop further the Clay Basin Field, on a one line basis, in order to provide, on a best efforts basis, storage service for El Paso, and that the storage service to be provided by Resources for Applicant would have priority over that storage service to be provided El Paso by Resources in order to assure that Applicant has sufficient gas in Clay Basin storage to support the withdrawal schedule proposed by Applicant in Docket No. CP76–389, i.e., 75,000,000 Mcf per day for approximately 125 days.

It is indicated that the March 24, 1977, agreement between Applicant and El Paso contemplates that during the period June 1, 1977 through April 30, 1978 El Paso would deliver volumes of natural gas to Applicant at one or more of three existing points of interconnection between the facilities of Applicant and El Paso in the San Juan Basin. Applicant states that the gas delivered to it by El Paso would be transported by Applicant to the existing interconnection between the facilities of Applicant and Resources in Daggett County, Utah, for delivery to Resources for injection by Resources into the Clay Basin Field for El Paso's account.

It is stated that the two agreements contemplate that title to all gas remaining in Clay Basin Storage for El Paso's account as of April 30, 1978 would ultimately pass to Applicant and Applicant would redeliver equivalent volumes of natural gas on a Btu basis to El Paso in the San Juan Field. Most of the volumes of gas in Clay Basin storage for El Paso's account would be redelivered during the summer of 1978 for transfer to a new storage facility to be developed by El Paso, it is indicated. It is stated that to the extent that all volumes due to El Paso are not fully returned in the summer of 1978 redelivery may be made through December 1979 or until such time as any imbalance in exchange gas has been eliminated.

Applicant states that redelivery to El Paso would be at an existing point of interconnection between the facilities of El Paso and Applicant in La Plata County, Colorado, and that the redelivery point is also one of the aforementioned delivery points where El Paso proposes to deliver gas to Applicant.

It is contemplated that to the extent there are volumes in Clay Basin in excess of the 27,000,000 Mcf which are required for Applicant's account then El Paso or Applicant may withdraw a portion or all of such excess during the 1977–78 heating season if such withdrawal is required for the protection of El Paso's or Applicant's Priority 1 and 2 requirements. Applicant states that no facilities would be required by it to effectuate the proposed service.

Applicant proposes to charge El Paso a transportation charge of 16.03 cents per Mcf of natural gas delivered to Applicant for transportation and delivery to Resouces, which rate represents Applicant's rolled-in transmission cost. It is stated that El Paso would purchase from Applicant the incremental fuel required to transport its volumes to Resources, and that El Paso would also purchase from Applicant the volumes of natural gas which El Paso is required to furnish Resources for the injection of natural gas for El Paso's account, as provided by Resource's S–2 Rate Schedule Applicant proposes to charge El Paso the then effective average cost of purchased gas for all gas sold to El Paso for fuel.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 22, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) as the Regulations under the Natural Gas Act (18

CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervent is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22243 Filed 8-2-77;8:45 am]

[Docket No. CP76-428]

SEA ROBIN PIPELINE CO.

Filing of Original Tariff Sheets

JULY 25, 1977.

Take notice that on July 6, 1977, Sea Robin Pipeline Company (Sea Robin) tendered for filing Original Sheet Nos. 259 through 282 to its FPC Gas Tariff, Original Volume No. 2, being a transportation agreement between Sea Robin and Northern Natural Gas Company dated August 19, 1976. It is proposed that these tariff sheets become effective on the date the facilities to connect East Cameron Block 335 are completed and the transportation service certificated in Docket No. CP76-428 commences.

The company states that copies of these tariff sheets have been mailed to Northern Natural Gas Company.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 15, 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22248 Filed 8-2-77;8:45 am]

[Docket No. CI77-329, Docket No. CP77-304, Docket No. CP64-97]

TEXACO INC. AND SABINE PIPE LINE CO.

Order Further Conditioning Acceptance of Joint Motion to Resolve all Issues

JULY 26, 1977.

As we stated in our order issued in this proceeding on July 7, 1977, we sought compliance with the requirements of the Natural Gas Act at the earliest practicable time, particularly in our requirement that gas previously diverted from the interstate market be "paid back" at the earliest possible time. We not only sought to achieve a public interest resolution to this matter, but we believed that the interstate market would need, and be benefited by the pay back deliveries this coming heating season. As we later provide, the pay back volumes will be made available to those interstate pipeline companies demonstrating the greatest need in order to maintain adequate service to their customers.

In our order of July 14, 1977, we accepted and approved the "Joint Motion of Texaco Inc. and Sabine Pipe Line Company," filed in this proceeding of July 12, 1977, subject to certain terms and conditions and modification by subsequent order. Paragraph (E) of that order required a submission by Texaco of information concerning its present intrastate sales, its non-offshore Federal Domain reserves, the extent of convertibility of its Port Arthur Refinery to fuels other than natural gas, and other operational details.

Pursuant to Paragraph (F) of the July 14 order, a public conference was held concerning Texaco's submittal on July 20, 1977. The conference was conducted by members of the Commission Staff and was attended by representatives of Texaco Inc. (Texaco) and Sabine Pipe Line Company (Sabine); Associated Gas Distributors (AGD), and intervenor; and the Public Service Commission of the State of New York (PSCNY). PSCNY has recently filed a petition to intervene.

Our July 14 order provided for acceptance by Texaco and Sabine—who have filed such acceptance, and comments to be filed thereon on or before July 22, 1977. Pursuant to this provision comments were filed by AGD, NYPSC, and the Commission staff.

Staff, in its comments, states that after investigation and analysis of information and data received from Texaco pursuant to the July 14, order, and adduced at the public conference mentioned above, and after a field trip to the facilities involved, is of the opinion that Texaco can make available to itself within two years sufficient intrastate gas to operate the Port Arthur Refinery without any offshore Federal domain gas and can also pay back all Federal Domain gas utilized in the past and to be utilized at Port Arthur during the next two years, over a period equal to the period during which Federal gas deliveries to Port Arthur were made. Staff's opinion is based in large part upon Staff's conclusion that Texaco owned or controlled some 8,974.8 Bcf of intrastate gas in the lower 48 states as of January 1, 1977, 6,961.7 Bcf of which was in non-offshore Federal Domain, Southern Louisiana. Staff further concluded that approximately 362.4 MMcf/D of this gas will be released by expiration of intrastate contracts within the next five years, or by December 31, 1982.

Staff's contention is that Texaco created its own dependence on Federal Domain gas at Port Arthur by choosing to use such gas there while selling much of its intrastate gas in its intrastate industrial supply system. Staff also contends that when viewed on an annual basis, the volumes of Offshore Federal Domain gas provided for in the Texaco-Sabine Proposal for use at Port Arthur during the first 18 months is at a rate higher than for any past year. Based on its further conclusions, Staff recommends modification of the Commission's order of July 14, 1977, principally (1) to terminate all Federal Domain deliveries to Port Arthur within 2 years, (2) to require pay back from non-offshore Federal Domain gas delivered to Port Arthur, including during the two-year phase-out period, and (3) to require Texaco to sell uncommitted Federal Domain gas from Lighthouse Point and Tiger Shoal to interstate pipelines in short supply.

PSCNY in its comments states it is willing to accept the Texaco-Sabine Proposal as modified by our July 14 order, subject to possible reservations based on Staff comments, upon the following conditions: (1) that payback sales be made only at the maximum rate as specified in Opinion No. 770-A, as that price may be modified by subsequent Commission action or pursuant to new legislation, (2) that Texaco be required to give precedence in the sale of payback volumes, on a "most favored nation" basis, to pipeline companies on the basis of severity of expected curtailments during the 1977-1978 winter,[1] (3) that volumes of Federal Domain gas to be used as boiler fuel at the Port Arthur refinery during the three year phase-out period for this use be also subject to payback, and (4) that approval of all Federal Domain volumes for use at Port Arthur be conditioned upon the final outcome of pending Commission

[1] New York would permit Texaco to reject all initial offers at less than the nationwide rate. New York also would not require Texaco to bear any additional expense of attaching gas to a particular pipeline purchaser over and above that which it would be required to expend to make the sale to another pipeline. The potential pipeline purchaser would have to decide whether to absorb such costs or to enter into exchange arrangements with other pipelines to achieve this result.

and court proceedings with respect to Opinion Nos. 727, 743 and 789.

AGD in its comments makes the same recommendations as the last two listed above by PSCNY. Additionally, it recommends that 60-day emergency sales (where no reserve dedications are involved) and direct industrial sales pursuant to 16 CFR 279 (Order No. 533) should not be allowed to qualify as payback volumes.

We have considered the parties' comments, being the result of data largely supplied by Texaco pursuant to our July 14 order, and are persuaded that their recommendations should be given due consideration.

Consequently, we are persuaded to modify the July 14 order to require that payback volumes be sold at the applicable national rate, as requested by PSCNY, and Staff. This seems to be a fair requirement because of the very fact that these are payback volumes. We also believe it proper, as well as equitable, to require that in the sale of payback volumes, priority be given to pipelines with the greatest need, as further requested by PSCNY and Staff.

The requests of PSCNY and AGD that approval of the use of Federal Domain gas at Port Arthur be conditioned on the outcome of litigation involving Opinion Nos. 727, 743, and 789 are rejected. By our July 14 order, we intended to resolve promptly all of the issues involved here, thus eliminating the likelihood of protracted litigation on these matters. The imposition of conditions making resolution of this case dependent on the outcome of other litigation and further investigation would thwart the basic purpose of the July 14 order.

We will accept the recommendation of AGD that direct sales to industrial customers under Order No. 533 should not qualify as payback volumes. However, we see no reason why 60-day emergency sales for resale should not qualify, where they take place at or below the applicable national rate, as suggested by New York.

We have adopted Staff's recommendation that Texaco be required to discharge payback obligations within the same time period that they were created. This requires that payback volumes be accounted for in terms of volumes delivered within a certain time period, rather than in terms of dedicated reserves so that Texaco will dedicate non-offshore Federal Domain reservoirs capable of actually delivering 200 billion cubic feet of natural gas to the interstate market.

Staff recommends that gas volumes used for repayment of advance payments advanced to Texaco not be eligible as payback volumes. We agree and will modify the Texaco-Sabine Proposal accordingly. We believe this to be proper because such advance payments volumes are, in a sense, already dedicated to the interstate market. Staff also recommends that applications filed by Texaco covering payback volumes should clearly state this and give the quantity of proven reserves covered by such applications. The value of this provisions is self-evident, and it will be added also.

Staff contends that the question of violations of the Natural Gas Act of Texaco and Sabine should be set for a limited hearing. We disagree. The purpose of our July 14 order and this order is to resolve all issues in the case and this includes the question of past violations. We do not intend to pursue this matter further, assuming of course, Texaco and Sabine accept the conditions of this order.

The Commission orders: (A) Texaco shall payback all volumes of gas required within the same time period that deliveries from Federal Domain reserves occurred.

(B) Payback volumes shall not come from sources which are subject to advance payment agreements with interstate pipeline companies.

(C) In order to qualify as payback volumes pursuant to the Texaco-Sabine Proposal, as conditioned a sale of gas shall be a sale for resale in the interstate market at a rate not exceeding the national rate applicable to such gas or similar gas, as that rate may be lawfully modified by subsequent Commission action or pursuant to new legislation enacted into law.

(D) In the sale of payback volumes Texaco shall give precedence on a "most favored nation" basis to pipeline companies which have indicated to the Commission in the latest Form 16 reports and data filed in the omnibus proceeding in Docket Nos. RP77–65, et al., that they expect to be curtailing service during the 1977–1978 winter season into Priority I (as defined by Section 2.78(a)(1) of the Commission's Statements of General Policy and Interpretations) first under normal weather and then under colder than normal weather conditions and, failing any such willing pipeline purchaser of the gas, to pipelines who have indicated that they would be curtailed over 50 percent of Priority II (as defined in Section 2.78(a)(1)) during the coming winter period, and finally, failing such a willing pipeline purchaser, to pipelines indicating that they would be curtailing into Priority II to a lesser extent during the forthcoming winter period.

(E) Volumes of gas sold to interstate pipeline companies under contracts executed prior to July 7, 1977, or pursuant to certificate applications filed prior to July 7, 1977, shall not be used to reduce Texaco's payback obligations.

(F) Any applications filed by Texaco involving sales of payback volumes shall clearly state that the volumes sold are being used to reduce its payback obligations and give the quantity of proven reserves covered by such application.

(G) Texaco shall file monthly reports identifying and giving the amounts of gas volumes sold to reduce payback obligations.

(H) The petition to intervene filed by the Public Service Commission of the State of New York is hereby granted.

(I) The Texaco-Sabine Proposals for resolution of the issues in this proceeding, approved subject to conditions in our order issued herein July 14, 1977, is hereby made subject to further conditions, as set forth herein.

(J) The Commission's July 7, 1977 order in this proceeding is stayed until August 2, 1977.

(K) The July 14, 1977 order, as modified herein, shall become effective as of August 2, 1977.

(L) Texaco and Sabine, over the signature of a responsible officer of each company, shall file with the Commission on or before August 1, 1977, and original and one copy of their acceptance or rejection of the terms and conditions of this order.

(M) The Secretary shall cause the instant order to be published in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22237 Filed 8-2-77;8:45 am]

[Docket No. RI77–18]

TEXAS ENERGIES, INC.

Order Granting Application for Special Relief and Permitting Intervention

JULY 27, 1977.

On December 9, 1976, Texas Energies, Inc. (Texas) filed an application for special relief pursuant to § 2.76 of the Commission's General Policy and Interpretations (18 CFR § 2.76) for the sale of natural gas to Panhandle Eastern Pipeline Co. (Panhandle) from the Adams 1–5 Lease, Meade County, Kans. Subsequently, Texas filed amended applications for special relief on January 24, 1977 and March 29, 1977.

Texas is an independent small producer which was issued a small producer certificate in Docket No. CS72–428 on February 3, 1972. Holding a 100 percent working interest in the lease, Texas is presently selling natural gas to Panhandle at a rate of 38.9 cents per Mcf at 14.65 psia pursuant to a contract dated September 15, 1967.

Texas requests that the Commission authorize it to collect 64 cents per Mcf for the sale of said gas. This increased rate would enable Applicant to recover its out-of-pocket costs. Texas proposes not to make any additional investment.

In a letter dated November 24, 1976 Panhandle has indicated its consent to the increased rate requested by Texas.

Notice of Texas' application for special relief was issued on January 3, 1977 and was published in the FEDERAL REGISTER. Notices of the amended applications for special relief were issued on February 11, 1977 and April 6, 1977. Panhandle filed a timely petition to intervene on January 25, 1977.

Based on an analysis of data submitted by Texas, Staff estimates that 136,334 Mcf of gas and 842 Bbls of liquids remain to be produced over a 6.99 years period. Staff concludes that the requested special relief is warranted on an out of pocket cost basis.

After reviewing the costs to be incurred and the reserves to be recovered, we determine that Texas' application for special relief is warranted and that it is

in the public interest to grant this application.[1]

The Commission finds:

The application for special relief filed by Texas should be granted.

The Commission orders:

(A) As amended, the application for special relief of Texas is hereby granted.

(B) Texas is authorized to collect 64 cents per Mcf at 14.65 psia for natural gas from the Adams 1-5 Lease, Meade County, Kans., effective upon the date of issuance of this order.

(C) This authorization is subject to the following condition: Texas must file, within 30 days of the date of issuance of this order, the appropriate rate change filings in accordance with Section 154.-94 of the Commission's Regulations under the Natural Gas Act (18 CFR § 154.-94), accompanied by an executed copy of the amended contract agreement providing for the rate increase.

(D) Panhandle is permitted to intervene in the above-entitled proceeding, subject to the rules and regulations of the Commission; *Provided*, however, That its participation shall be limited to matters affecting asserted rights and interests specifically set forth in its petition for leave to intervene; and *Provide, further*, that the admission of Panhandle in the manner provided shall not be construed as recognition by the Commission that Panhandle might be aggrieved because of any order or orders entered in this proceeding, and that Panhandle agrees to accept the record as it now stands.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22238 Filed 8-2-77;8:45 am]

[Docket No. RI77-16]

TEXAS ENERGIES, INC.

Order Granting Special Relief and Permitting Intervention

JULY 27, 1977.

On December 9, 1976, Texas Energies, Inc. (Texas) filed an application for special relief pursuant to § 2.76 of the Commission's General Policy and Interpretations (18 CFR § 2.76) for the sale of natural gas to Panhandle Eastern Pipeline Co. (Panhandle) from the Holmes No. 1-21 Lease, Meade County, Kans., under its FPC Gas Rate Schedule No. 1, in CI73-672. Subsequently, Texas filed amended applications for special relief on January 24, 1977 and March 29, 1977.

Texas is an independent small producer which was issued a small producer certificate in Docket No. CS72-468 on February 3, 1972. Holding an 100 percent working interest in the lease, Texas is presently selling natural gas to Panhandle at a rate of 39.9 cents per Mcf at 14.65 psia pursuant to a contract dated June 29, 1956.

Texas requests that the Commission authorize it to collect $1.07 per Mcf for the sale of said gas; this increased rate would enable Texas to install compression and artifical lift equipment. Texas states without such compression the well would have to be abandoned.

In a letter dated November 24, 1976 Panhandle has indicated its consent to the increased rate requested by Texas.

Notice of Texas' application for special relief was issued on January 3, 1977 and was published in the FEDERAL REGISTER. Notices of the amended applications for special relief were issued on February 11, 1977 and April 6, 1977. Panhandle filed a timely petition to intervene on January 25, 1977.

Based on an analysis of data submitted by Texas, Staff estimates that 252,756 Mcf of gas and 2,407 Bbls. of liquids remain to be produced over a 5.33 years period. Staff concludes that the requested special relief is warranted based on its cost study.

After reviewing the costs to be incurred and the reserves to be recovered, we determine that Texas' application for special relief is warranted and that it is in the public interest to grant this application.

The Commission finds:

The application for special relief filed by Texas meets the criteria set forth in Section 2.76 of the Commission's General Policy and Interpretations.

The Commission orders:

(A) As amended, the application for special relief of Texas is hereby granted.

(B) Texas is authorized to collect $1.07 per mcf at 14.65 psia for natural gas from the Holmes No. 1-21 Lease, Meade County, Kans., under its Gas Rate Schedule No. 1, effective upon either the date of issuance of this order or the date the remedial work is completed, whichever is later.

(C) This authorization is subject to the following conditions: (1) Texas must file, within 30 days of the date of issuance of this order, the appropriate rate change filings in accordance with § 154.94 of the Commission's regulations under the Natural Gas Act (18 CFR § 154.94), accompanied by an executed copy of the amended contract agreement providing for the rate increase; (2) Within 30 days of the effective date provided in Ordering Paragraph (B) above for the rate authorized herein, Texas must file a statement signed by Panhandle in Docket No. RI77-16 setting forth the date on which the remedial work was completed.

(D) Panhandle is permitted to intervene in the above-entitled proceeding, subject to the Rules and Regulations of the Commission; *Provided, however*, That its participation shall be limited to matters affecting asserted rights and interests specifically set forth in its petition for leave to intervene; and *Provided, further*. That the admission of Panhandle in the manner provided shall not be construed as recognition by the Commission that Panhandle might be aggrieved because of any order or orders entered in this proceeding, and that Panhandle agrees to accept the record as it now stands.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22239 Filed 8-2-77;8:45 am]

[Docket No. RI77-19]

TEXAS ENERGIES, INC.

Order Granting Special Relief

JULY 27, 1977.

On December 9, 1976, Texas Energies, Inc. (Texas) filed an application for special relief pursuant to § 2.76 of the Commission's General Policy and Interpretations (18 CFR § 2.76) for the sale of natural gas to Transwestern Pipeline Co. (Transwestern) from the Meier Unit Well, Beaver County, Okla. The above acreage is presently covered by the Sun Oil Company FPC Rate Schedule No. 122. Texas filed an amendment to its application for special relief on January 24, 1977.

Texas is an independent small producer which was issued a small producer certificate in Docket No. CS72-428 on February 3, 1972. Holding a 100 percent working interest in the lease which was purchased from Sun Oil Co., on August 1, 1976, Texas is currently operating under a gas purchase agreement between Sun Oil as seller and Transwestern Pipeline Co., as buyer dated July 10, 1958. Texas is not currently selling any gas to Transwestern as this well is presently shut-in.

Texas requests that the Commission authorize it to collect $1.30 per Mcf for the sale of said gas; this increased rate would enable Texas to install compression and artificial lift equipment. Texas states that without such equipment the well would have to be abandoned.

In a letter dated September 17, 1976, Transwestern has indicated its consent to the increased rate requested by Texas.

Notice of Texas' application for special relief was issued January 3, 1977 and was published in the FEDERAL REGISTER. Notice of the amendment to the application for special relief was issued on February 11, 1977. There were no interveners in this special relief case.

Based on an analysis of data submitted by Texas, Staff estimates that 167,780 Mcf of gas and 1,598 Bbls of liquids remain to be produced over a 4.8 year period. Staff concludes that the requested special relief is warranted on a cost basis.

After reviewing the cost to be incurred, and the reserves to be recovered, we determine that Texas' application for special relief is warranted and that it is in the public interest to grant this application.

The Commission finds:

The application for special relief filed by Texas meets the criteria set forth in Section 2.76 of the Commission's General Policy and Interpretations.

[1] While the petition does not meet the criteria of § 2.76 because there is no additional investment involved, the data presented justifies special relief on an out-of-pocket cost basis.

The Commission orders:

(A) As amended, the application for special relief of Texas is hereby granted.

(B) Texas is authorized to collect $1.30 per Mcf at 14.65 psia for natural gas from the Meier Unit Well, Beaver County, Okla., effective upon either the date of issuance of this order or the date the remedial work is completed, whichever is later.

(C) This authorization is subject to the following conditions: (1) Texas must file, within 30 days of the date of issuance of this order, the appropriate rate change filings in accordance with § 154.94 of the Commission's regulations under the Natural Gas Act (18 CFR § 154.94), accompanied by an executed copy of the amended contract agreement providing for the rate increase; (2) within 30 days of the effective date provided in Ordering Paragraph (B) above for the rate authorized herein, Texas must file a statement signed by Transwestern in Docket No. RI77-19 setting forth the date on which the remedial work was completed.

(D) The acreage described as the Meier Unit Well, Beaver County, Oklahoma is deleted from the Sun Oil Company FPC Rate Schedule No. 122 and Docket No. G-15791.

(E) The provisions of Section 157.40(c) are hereby waived to the extent necessary to permit the subject sale to be made under Texas' small producer certificate at the rate provided herein.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22240 Filed 8-2-11;8:45 am]

[Docket No. RI77-17]

TEXAS ENERGIES, INC.

Order Granting Special Relief and Permitting Intervention

JULY 27, 1977.

On December 9, 1976, Texas Energies, Inc. (Texas) filed an application for special relief pursuant to § 2.76 of the Commission's General Policy and Interpretations (18 CFR 2.76) for the sale of natural gas to Panhandle Eastern Pipeline Company (Panhandle) from the Peters 1-A Lease, Seward County, Kansas. Subsequently, Texas filed an amendment to its application for special relief on January 24, 1977.

Texas is an independent small producer which was issued a small producer certificate in Docket No. CS72-428 on February 3, 1972. Holding a 100 percent working interest in the lease, Texas is presently selling natural gas to Panhandle at a rate of 37.6 cents per Mcf at 14.65 psia pursuant to a contract dated December 19, 1960.

Texas requests that the Commission authorize it to collect $1.15 per Mcf for the sale of said gas; this increased rate would enable Texas to install equipment which would provide continuous compression. Texas states that without such compression the well would have to be abandoned since the line pressure would exceed well head pressure.

In a letter dated November 24, 1976, Panhandle has indicated its consent to the increased rate requested by Texas.

Notice of Texas' application for special relief was issued on January 3, 1977 and was published in the FEDERAL REGISTER. Notice of the amendment of the application for special relief was issued on February 11, 1977. Panhandle filed a timely petition to intervene on January 25, 1977.

Based on an analysis of data submitted by Texas, Staff estimates that 175,666 Mcf of natural gas and 59 BBls of liquids remain to be produced over a 3.5 years period. Staff concludes that the requested special relief is warranted on a cost basis.

After reviewing the costs to be incurred and the reserves to be recovered, we determine that Texas' application for special relief is warranted and that it is in the public interest to grant this application.

The Commission finds: The application for special relief filed by Texas meets the criteria set forth in Section 2.76 of the Commission's General Policy and Interpretations.

The Commission orders: (A) As amended, the application for special relief of Texas is hereby granted.

(B) Texas is authorized to collect $1.15 per Mcf at 14.65 psia for natural gas from the Peters 1-A Lease, Seward County, Kansas, effective upon either date of issuance of this order or the date the remedial work is completed, whichever is later.

(C) This authorization is subject to the following conditions: (1) Texas must file, within 30 days of the date of issuance of this order, the appropriate rate change filings in accordance with § 154.94 of the Commission's Regulations under the Natural Gas Act (18 CFR 154.94), accompanied by an executed copy of the amended contract agreement providing for the rate increase; (2) Within 30 days of the effective date prodived in Ordering Paragraph (A) above for the rate authorized herein, Texas must file a statement signed by Panhandle in Docket No. RI77-17 setting forth the date on which the work was completed.

(D) Panhandle is permitted to intervene in the above-entitled proceeding, subject to the Rules and Regulations of the Commission; Provided, however, That its participation shall be limited to matters affecting asserted rights and interest specifically set forth in its petition for leave to intervene, and Provided, further, That the admission of Panhandle in the manner provided shall not be construed as recognition by the Commission that Panhandle might be aggrieved because of any order or orders entered in this proceeding, and that Panhandle agrees to accept the record as it now stands.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22246 Filed 8-2-77;8:45 am]

[Docket No. ER77-254]

UTAH POWER & LIGHT CO.

Proposed Tariff Changes and Agreements

JULY 27, 1977.

Take notice that Utah Power & Light Company ("The Company") on May 5, 1977, tendered for filing proposed changes in its FPC Electric Service Tariff, together with resale service agreements with each of the following named customers all providing for service under the Company's FPC tariff rate RS-2:

Brigham City, Utah, (dated August 2, 1973); Levan, Utah, (dated March 10, 1976); Murray City, Utah, (dated October 3, 1973); Nephi City, Utah, (dated September 18, 1973); Springville City, Utah, (dated August 6, 1973); and Strawberry Water Users Association, Springville, Utah, (dated March 26, 1975).

The Company states that the customers under the agreements are receiving the bulk of their power and energy supplies from the U.S. Government ("CRSP") and that the customers now require amounts of power and energy which they cannot acquire from that source. The Company indicates that its system is presently interconnected with each of the customer's systems and no facilities have been installed or modified in order to render this resale service. The Company states that the customers are presently unable to receive their requirements for power and energy from CRSP and therefore are receiving service under agreements subject to FPC approval and the Company has therefore requested a waiver of the notice requirements to allow these agreements to go into effect on the dates noted above.

Copies of the filing have been mailed to each of the customers named above and to the Public Service Commission of Utah, according to the Company.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10) on or before August 12, 1977. All such petitions or 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.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22245 Filed 8-2-77;8:45 am]

[Docket No. ER76-92]

WESTERN POWER DIVISION, CENTRAL TELEPHONE & UTILITIES CORP.

Order Approving Settlement Agreement

JULY 26, 1977.

On April 20, 1977, Western Power Division, Central Telephone and Utilities Corporation (CTU) filed a motion for an order approving a stipulation and agreement and proposed settlement of proposed increased rates for service to its REA cooperative and municipal wholesale customers.[1]

CTU on August 29, 1975, submitted for filing increased rates for service to its ten full requirements REA cooperatives, 13 full requirements municipals, eight partial requirements municipal customers and one partial requirement cooperative. By letter dated September 24, 1975, the Secretary of the Commission informed CTU that its filing failed to meet the Commission's Requirements as to timeliness of the test period. In response to the Secretary's deficiency notice the Company filed a revised cost of service and related testimony on January 27, 1976. CTU in revising its cost of service exhibits and related testimony included construction work in progress (CWIP) in the rate base.

By Commission Order dated February 20, 1976, the Commission permitted the rate increases to become effective February 23, 1976, subject to refund, but ordered CTU to file revised rate schedules reflecting reduced rates based on the elimination of CWIP from the rate base and to make refunds of the differences between those rates and the rates permitted to become effective February 23, 1976. CTU, by letter dated April 6, 1976, submitted revised rate schedules based upon the elimination of CWIP from the rate base. The proposed revised rate schedule was identified as being deficient by Secretary letter of June 1, 1976. On July 12, 1976, CTU submitted a motion for reconsideration of the June 1st deficiency letter, or in the alternative, for permission to withdraw the proposed rate schedule for service to its partial requirements cooperative customer. On August 17, 1976, the Commission denied the motion for reconsideration, but granted CTU's motion to withdraw whereupon CTU filed a second revised rate schedule and accompanying cost of service, reflecting reduced rates. These latter rates were accepted for filing by letter dated November 12, 1976. In compliance with the Commission Orders of February 20, 1976 and August 17, 1976, CTU made refunds to its wholesale customers.

[1] Ark Valley Electric Cooperative, C&W Rural Electric, CMS Electric Cooperative, NCK Electric Cooperative, Jewell-Mitchell Cooperative, Ninnescah, Norton-Decatur, Smoky Hill, Sumner-Cowley, Victory, Cawker City, Cimarron, Coats, Glasco, Glen Elder, Holyrood, Isabel, Jamestown, Lucas, Luray, Mankato, Montezuma, Tipton, the Interconnected Municipal Utilities of Anthonly, Attica, Beloit, Hoisington, Kingman, Pratt, Russell and Washington; and Central Kansas Electric Cooperative.

Staff on October 27, 1976, filed cost of service Top Sheets. On November 5, 1976, and January 7, 1977, settlement conferences were held; and as a result of the conferences, parties were able to reach settlement on all issues as represented by the stipulation and agreement of settlement filed on April 20, 1977. The proposed settlement would reduce the originally proposed increased rates from $1,301,038 to $455,040. In addition, proposed settlement provides (1) settlement rates to become effective February 23, 1976; (2) the proposed settlement rates will not be changed prior to June 30, 1977; (3) CTU will make refunds for past collections, not already refunded in excess of the settlement rates with interest at 9 percent per annum and (4) service contracts to municipal customers will contain no restrictive language as to ultimate use of purchased energy.

The Presiding Administrative Law Judge certified the proposed settlement agreement and record to the Commission by notice issued April 26, 1977. No comments in opposition have been filed.

Based upon our review of the record in these proceedings including the settlement agreement itself, the filings, documents and pleadings submitted, we conclude that the settlement agreement represents a reasonable resolution of the issues in Docket No. ER76-92 and such settlement is in the public interest. Accordingly the stipulation and agreement of settlement filed in this docket on April 20, 1977, should be approved. The proposed settlement hereinafter approved by this order approves an increase in rates less than the amount indicated as reasonable by Staff (9.09 percent overall rate of return including 12.5 percent return on common equity). The settlement results in a return on common equity of 11.5 percent.

The Commission finds: The stipulation and agreement of settlement filed by Western Power Division, Central Telephone and Utilities Corporation on April 20, 1977, as is applies to electric service to its REA cooperative and municipal wholesale customers should be approved and made effective as hereinafter ordered.

The Commission orders: (A) the negotiated stipulation and agreement of settlement file by Western Power Division, Central Telephone and Utilities Corporation in this docket on April 20, 1977, is hereby approved and made effective as of February 23, 1976.

(B) In accordance with the terms of the stipulation and settlement agreement and consistent with the Commission's Regulations, CTU is hereby directed to refund the difference in revenues collected under the rates made effective February 23, 1976, and the revenues authorized to be collected pursuant to the terms of the stipulation and settlement agreement filed on April 20, 1977, with interest at 9% per annum. The total refund amount due shall be reduced by the amounts previously refunded by CTU to its wholesale customers on April 23, 1976, and December 22, 1976.

(C) CTU is hereby directed pursuant to Section 35.1(a) of the Commission's Regulations to file within 30 days the revised tariff sheets and rate schedules appended to the approved stipulation and agreement of settlement.

(D) CTU is hereby directed to file a compliance report within 15 days after refunds have been made, such report to show the monthly billing determinants and the revenues under prior, present and settlement rates. The report should also show the monthly settlement increase, the monthly revenue refund, and the monthly interest computation together with a summary of such information for the total refund period. A copy of such report shall also be furnished by CTU to each State Commission within whose jurisdiction the wholesale customer distributes and sells all electric energy at retail.

(E) This order is without prejudice to any findings or orders which may have been made or which will hereafter be made by the Commission, and is without prejudice to any claim or contentions which may be made by the Commission, the Staff, or any party or persons affected by the Order against CTU or any person or party.

(F) The Secretary of the Federal Power Commission shall cause prompt publication of this Order in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc.77-22249 Filed 8-2-77;8:45 am]

FEDERAL RESERVE SYSTEM

COMMERCE BANCSHARES, INC.

Request for Determination and Opportunity for Hearing

Notice is hereby given that a request has been made to the Board of Governors of the Federal Reserve System, pursuant to the provisions of section 2(g)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(g)(3)) ("the Act"), by Commerce Bancshares, Inc. ("Commerce"), Kansas City, Mo., for a determination that Commerce, directly or indirectly through its subsidiary, Commerce Bank of Kansas City, N.A., Kansas City, Mo., or through its ability to control any other person, is not and will not be, in fact, capable of controlling the Kemper Investment Co. or Tower Properties Co., both of Kansas City, Mo., corporations to which Commerce transferred certain property in 1971 and 1972, notwithstanding the fact that James M. Kemper, Jr., is an officer and director of Commerce and both transferee corporations.

Section 2(g)(3) of the Act provides that shares transferred after January 1, 1966, by any bank holding company (or any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor or has one or more officers, directors, trustees,

or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board, after opportunity for hearing, determines that the transferor is not, in fact, capable of controlling the transferee.

Notice is hereby given, that, pursuant to section 2(g)(3) of the Act, an opportunity is provided for filing a request for oral hearing. Any such request or written comments on the application should be submitted in writing (in duplicate) to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than August 25, 1977. If a request for oral hearing is filed, it should contain a statement of the nature of the requesting person's interest in the matter, his reasons for wishing to appear at an oral hearing, and a summary of the matters concerning which such person wishes to give testimony. The Board will subsequently designate a time and place for any hearing it orders, and will give notice of such hearing to Commerce, the transferees, and all persons that have requested an oral hearing. In the absence of a request for an oral hearing, the Board will consider the requested determination on the basis of documentary evidence filed in connection with the application.

Board of Governors of the Federal Reserve System, July 28, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 77-22263 Filed 8-2-77;8:45 am]

FIRST CHARTER FINANCIAL CORP.

Retention of Bank Shares

First Charter Financial Corporation, Syracuse, Ind., 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 retain 882 voting shares of State Bank of Syracuse, Syracuse, Ind., representing an increase in its ownership from approximately 48.8 percent to approximately 51.5 percent of the voting shares of that bank. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 25, 1977.

Board of Governors of the Federal Reserve System, July 28, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-22264 Filed 8-2-77;8:45 am]

NORTHWEST ILLINOIS BANCORP, INC.

Formation of Bank Holding Company

Northwest Illinois Bancorp., Inc., Freeport, Ill., has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares, less directors' qualifying shares, of the successor by merger to State Bank of Freeport, Freeport, Ill. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 24, 1977.

Board of Governors of the Federal Reserve System, July 27, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-22265 Filed 8-2-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

NATIONAL ADVISORY COUNCIL ON BLACK HIGHER EDUCATION AND BLACK COLLEGES AND UNIVERSITIES

Meeting

AGENCY: National Advisory Committee on Black Higher Education and Black Colleges and Universities.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of the initial meeting of the National Advisory Committee on Black Higher Education and Black Colleges and Universities. It also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1). This document is intended to notify the general public of their opportunity to attend.

DATES: September 12, 13, and 14, 1977, 9 a.m. to 5 p.m.

ADDRESS: Embassy Row Hotel, 2015 Massachusetts Avenue NW., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT:

Ms. Carol J. Smith, Program Delegate, National Advisory Committee on Black Higher Education and Black Colleges and Universities, Room 4913, ROB-3, 7th and D Streets SW., Washington, D.C. 20202, AC 202-245-2825.

The National Advisory Committee on Black Higher Education and Black Colleges and Universities is governed by the provisions of Part D of the General Education Provisions Act (Pub. L. 90-247 as amended; 20 U.S.C. 1233 et seq.) and the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix I) which set forth standards for the formation and use of advisory committees.

The committee is directed to advise the Secretary of Health, Education, and Welfare, the Assistant Secretary for Education, and the Commissioner of Education. The Committee shall examine all approaches to higher education of black Americans as well as the needs of historically black colleges and universities and in particular shall advise and make recommendations in these areas:

(1) In the identification of the several courses of action to raise substantially the participation of blacks in all terms of productive postsecondary education;

(2) In the development of alternatives sensitive to the special needs, deprivations, and aspirations of black youths;

(3) In the analysis of and planning for the future role and healthy development of the historically black colleges and their relationship to expanding the numbers of blacks enrolled in higher education nationally and regionally;

(4) In the development of a research base to support the definition of equity, the expansion of existing research, and the commissioning of original empirical research;

(5) In the stimulation and encouragement of more scholarship and research by blacks on questions of public policy relating to the educational needs of blacks and the promotion of these results at the Federal, regional, and State levels;

(6) In the evaluation and monitoring of the impact of Federal, regional, or State efforts in the public and private sectors in improving the status of blacks in higher education;

(7) In the evaluation and monitoring of current and developing Federal, regional, or State policies designed to equalize educational opportunities for blacks and improve access for large numbers of blacks in higher education;

(8) In the development of approaches to the financing of the neediest students and the institutions with the heaviest concentrations of blacks;

(9) In the development of means to increase access, retention, and graduation of blacks from institutions of higher education;

(10) In the development of alternative ways of increasing the numbers of blacks entering and completing graduate and professional degree programs;

(11) In recommending a twenty five year plan for increasing the quality of black higher education and the number of black Americans able to participate more fully in American society because they have successfully completed such education;

(12) In the assessment of the resultant implementation of policy decisions and recommendations.

The meeting on September 12, 13, and 14, 1977 will be open to the public beginning at 9 a.m. and ending at 5 p.m. each day. The meeting will be held at the Embassy Row Hotel, Washington, D.C. 20036.

The proposed agenda includes:

(1) Organization of the Committee.

(2) Discussion of methods of carrying out the above functions.

(3) Determination of program and priorities.

(4) Plans for future action.

Records shall be kept of all Committee proceedings and shall be available for public inspection at the Office of the National Advisory Committee on Black Higher Education and Black Colleges and Universities located at 7th and D Streets SW., Room 4913, ROB-3, Washington, D.C. 20202.

Signed at Washington, D.C., on July 29, 1977.

CAROL J. SMITH,
Delegate, National Advisory Committee on Black Higher Education and Black Colleges and Universities.

[FR Doc.77-22306 Filed 8-2-77;8:45 am]

Health Care Financing Administration

HEALTH INSURANCE PROGRAM

Schedule of Guidelines for Physical Therapy Services Under Health Insurance Program

Notice is hereby given that the updated schedule of guidelines for evaluating the costs of physical therapy services furnished under arrangements in the Medicare program has been established by the Administrator of the Health Care Financing Administration.

Section 1861(v)(5) of the Social Security Act, implemented by Part 405, Chapter III of Title 20 of the Code of Federal Regulations, § 405.432, requires the Medicare program to establish criteria for determining the reasonable cost of services furnished under an arrangement with a provider of services, a clinic, a rehabilitation agency, or a public health agency. The initial guidelines were issued to evaluate the cost of physical therapy services furnished under arrangements inasmuch as physical therapy is the most common therapy service obtained under arrangements.

The previous schedules of guidelines for physical therapy services were based on data from the August 1972 Bureau of Labor Statistics Triennial Industry Wage Survey of Hospitals. These data were updated from the BLS Employment and Earnings Bulletin, Line SIC-806, for hospitals. The initial schedule of guidelines was published in the FEDERAL REGISTER on February 7, 1975 (40 FR 5810), and was effective for provider cost reporting periods beginning on or after April 1, 1975. An updated schedule of guidelines was published in the FEDERAL REGISTER on February 19, 1976 (41 FR 7542), effective for provider cost reporting periods beginning on or after April 1, 1976. A revision in the effective date of this updated schedule was published in the FEDERAL REGISTER on August 30, 1976 (41 FR 36531) specifying that the guidelines would be applied to all physical therapy services performed on or after April 1, 1976, without regard to the beginning dates of providers' cost reporting periods.

A new schedule of guidelines has been prepared, using the same methodology as the original schedule, but based on data from the latest BLS Industry Wage Survey in Hospitals conducted in August 1975 and January 1976. These data have also been updated from the most currently available BLS Employment and Earnings Bulletin, Line SIC-806, for hospitals.

This revised schedule of physical therapy guidelines will be effective for physical therapy services performed on or after October 1, 1977 without regard to the beginning dates of providers' cost reporting periods, and will remain in effect until the effective date of any revised schedule that may be published.

Schedule of guidelines for physical therapy services furnished under arrangements; adjusted hourly salary equivalency amounts and standard travel allowances for qualified physical therapists (full time, regular part time, or home visits) effective for services furnished on or after ------ 1, 1977

[This schedule is not to be used for physical therapy assistants or aides]

	Adjusted hourly salary equivalency amount	Standard travel allowance
Alabama	$10.40	$5.20
Alaska [1]	15.20	7.60
Arizona	12.20	6.10
Arkansas	10.10	5.05
California	12.20	6.10
Colorado	10.10	5.05
Connecticut	10.20	5.10
Delaware	12.20	6.10
District of Columbia	11.10	5.55
Florida	11.10	5.55
Georgia	9.80	4.90
Hawaii [2]	14.30	7.15
Idaho	11.10	5.55
Illinois	11.10	5.55
Indiana	11.30	5.65
Iowa	10.10	5.05
Kansas	10.10	5.05
Kentucky	10.70	5.35
Louisiana	10.10	5.05
Maine	10.20	5.10
Maryland	10.70	5.35
Massachusetts	10.20	5.10
Michigan	11.90	5.95
Minnesota	10.70	5.35
Mississippi	10.40	5.20
Missouri	9.90	4.95
Montana	10.10	5.05
Nebraska	10.10	5.05
Nevada	12.20	6.10
New Hampshire	10.20	5.10
New Jersey	12.20	6.10
New Mexico	10.10	5.05
New York	12.50	6.25
North Carolina	10.70	5.35
North Dakota	10.10	5.05
Ohio	11.10	5.55
Oklahoma	10.10	5.05
Oregon	11.70	5.85
Pennsylvania	11.30	5.65
Rhode Island	10.20	5.10
South Carolina	10.40	5.20
South Dakota	10.10	5.05
Tennessee	10.20	5.10
Texas	10.10	5.05
Utah	10.10	5.05
Vermont	10.20	5.10
Virginia	10.70	5.35
Washington	10.40	5.20
West Virginia	10.70	5.35
Wisconsin	10.80	5.40
Wyoming	10.10	5.05

[1] Adjusted for 25 pct salary differential.
[2] Adjusted for 17.5 pct salary differential.

(Sections 1102, 1814(b), 1833(a), 1861(v)(5), 1871 of the Social Security Act, 49 Stat. 647, as amended, 79 Stat. 294, as amended, 79 Stat. 302, as amended, 79 Stat. 313, as amended, 79 Stat. 331; (42 U.S.C. 1302, 1395f(b), 1395l(a), 1395x(v)(5), 1395h(h), sec. 17(a), Pub. L. 93-233, 87 Stat. 967.)

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance, and 13.801, Health Insurance for the Aged — Supplementary Medical Insurance.)

Dated: July 28, 1977.

ROBERT A. DERZON,
Administrator, Health Care Financing Administration.

[FR Doc.77-22276 Filed 8-2-77;8:45 am]

National Institutes of Health

NIH CONSENSUS COMMITTEE FOR BREAST CANCER SCREENING (TEMPORARY

Establishment

The Director, National Institutes of Health, announces the establishment on July 19, 1977, of the advisory committee indicated below by the Acting Director, National Cancer Institute, under the authority of Section 410(a)(3) of the Public Health Service Act (42 U.S.C. 286d). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act (Public Law 92-463) setting forth standards governing the establishment and use of advisory committees.

NAME: NIH Consensus Committee for Breast Cancer Screening (Temporary).

PURPOSE: The Committee shall advise the Director, NIH, and the Director, NCI, concerning the use of X-ray mammography for screening women to detect early breast cancer. Authority for this committee will expire on December 31, 1977.

Dated: July 29, 1977.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc.77-22398 Filed 8-2-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bonneville Power Administration

MARKETING POLICY FORMULATION

Procedure for Public Participation

The Bonneville Power Administration (BPA) seeks the comments and recommendations of the public on the following proposed procedure for involving the public in formulating BPA marketing policy:

1. *Purpose and scope.* The purpose of this procedure is to enable individuals and organizations, public and private, whose interests will be substantially impacted by Bonneville Power Administration (BPA) decisions or actions to participate in development of BPA Marketing Policies, as defined in the following section 2, prior to BPA's determination of Marketing Policies. The procedure shall apply to Marketing Policy formulation, and not implementation.

2. *Definitions*—a. *Administrator.* The BPA Administrator.

b. *Customer.* A person or entity whose interests the Responsible Official determines will be substantially affected by the Proposed Marketing Policy and who currently is purchasing, exchanging, transferring, assigning, or selling electric power and energy, related services, or transmission capability to, with, or from BPA.

c. *Marketing policy.* A policy which allocates electric energy or capacity available on the Federal Columbia River Power System, or a policy the Administrator determines will, over a period of years, significantly affect or alter the manner in which BPA implements its

statutory authority to sell, exchange, otherwise dispose of, or acquire electric power and energy, or provide forced outage reserves, load factoring service, transmission service, or delay of plant reserves.

d. *Proposed marketing policy.* One under consideration for adoption as a Marketing Policy.

e. *Notice.* The method by which Customers and the Public shall be informed of BPA's intention to develop a new or revised Marketing Policy, a Proposed Marketing Policy, a revision of a Proposed Marketing Policy, a Marketing Policy, public comment and information forums, and procedures for adopting a Marketing Policy. Notice shall be by and effective on publication in the FEDERAL REGISTER. The Responsible Official may also direct that Notice be published in a general circulation newspaper in the BPA marketing area and mailed to Customers and the Public identified by the Responsible Official. Notice shall include the name, address, and telephone number of the person to contact if participation or further information is sought. Notices may be combined.

f. *Public.* Any person who, or group or entity which has or could have, a direct and significant interest in the BPA Marketing Policy.

g. *Responsible Official.* The BPA employee designated by the Administrator on initiating this procedure to be responsible for formulating the specified Marketing Policy.

h. *Staff evaluation.* A written evaluation by the BPA staff of the Transcript for a Proposed Marketing Policy. It shall include a review of the studies used in developing a revised Proposed Marketing Policy or Marketing Policy, and shall indicate revisions and reasons for them. The evaluation shall become part of the Transcript.

i. *Transcript.* The transcribed record of any forums provided for in the following sections 5 and 6, to include documents introduced at such forums; all written comments, questions, and answers thereto; all technical, theoretical, and empirical studies used in developing the Marketing Policy, and other information the Responsible Official determines is relevant.

3. *Decision to Formulate a Marketing Policy and Notice of Intent.* When the Administrator decides a new or revised Marketing Policy is needed, BPA shall give Notice of its intent at least 30 days prior to giving Notice of the Proposed Marketing Policy pursuant to the following section 4. BPA shall indicate the extent that any existing policy would be revised in developing a new Marketing Policy. BPA shall solicit written comments and proposals to use in formulating the Proposed Marketing Policy.

4. *Proposed Marketing Policy.* BPA shall give Notice of the Proposed Marketing Policy stating in it: The subject and purpose of and the legal authority for the Proposed Marketing Policy and the major issues it will raise; the text of the Proposed Marketing Policy; the date, time, and location of any scheduled public information and comment forums; and the list of technical, theoretical, and empirical studies used in developing the Proposed Marketing Policy and locations at which BPA would make them available for inspection or copying in accordance with the Freedom of Information Act, 5 U.S.C. 552.

5. *Optional Public Information Forum.* The Responsible Official shall determine whether public information forums will be held to explain the Proposed Marketing Policy and the studies used in its formulation, and answer questions and receive comments. The Responsible Official shall determine the number, if any, and locations of such forums in accordance with interest shown in the Proposed Marketing Policy. Notice to be given in advance of any such forum shall include the purpose, date; time, place, and procedures for any such forum.

The Responsible Official shall act as or appoint a forum chairman. Questions raised at the forum shall be answered by BPA representatives at the forum, a subsequent forum at the same location, or in writing. Forum proceedings shall be transcribed. All documents introduced, and questions and written answers shall be part of the Transcript which shall be available for inspection or copying in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. 552.

6. *Public Comment Forum.* A public comment forum shall be held to permit Customers and the Public to submit written comments and orally present views and proposals regarding the Proposed Marketing Policy. Notice to be given at least 30 days in advance of the forum shall include the purpose, date, time, place, and procedures for the forum, and a statement of what technical, theoretical, and empirical studies used in developing the Proposed Marketing Policy are available and their location.

The Responsible Official shall determine the number and locations of such forums in accordance with interest shown in the Proposed Marketing Policy. The Responsible Official shall act as or appoint a forum chairman. At the start of a forum the chairman shall briefly explain procedures and rules.

Notwithstanding any additional rules or procedures it might develop, BPA shall allow Customers and the Public to make oral statements and comments, introduce relevant documents, and ask questions of BPA representatives at the forum. Persons interested in speaking shall notify BPA at least 3 days before a forum so a witness list can be prepared. The chairman may permit others to speak if time allows. The chairman, BPA representatives and, at the discretion of the chairman, witnesses may question witnesses. Time limits may be set for oral presentations and questioning witnesses. Witnesses may supplement oral presentations by filing written testimony or comments with the chairman.

Questions not answered during a forum shall be answered in writing no later than the effective date of the Notice of either a revised Proposed Marketing Policy as provided in the following section 9 or, if a revised Proposed Marketing Policy is not developed, the Marketing Policy as provided in the following section 10. Forum proceedings shall be transcribed. All documents introduced, and written answers to questions shall be part of the Transcript which shall be available for inspection and copying in accordance with the Freedom of Information Act, 5 U.S.C. 552.

7. *Consultation and Comment Period.* Customers and the Public may file written comments and questions with BPA regarding the Proposed Marketing Policy until at least 15 days after the last public comment forum. Written comments, questions and answers shall be part of the Transcript.

8. *Staff Evaluation.* Following the consultation and comment period, BPA shall prepare a Staff Evaluation of the Transcript.

9. *Revised Proposed Marketing Policy and Review Period for Revised Proposed Marketing Policy.* If appropriate, BPA shall develop a revised Proposed Marketing Policy following the Staff Evaluation of the Transcript and give Notice of the revision and any studies used in developing the revised Proposed Marketing Policy not available at the date of the initial public comment forum. Customers and the Public shall be given at least 30 days from the effective date of Notice of the revised Proposed Marketing Policy to submit written comments to BPA before the Administrator adopts, modifies and adopts, or rejects the revised Proposed Marketing Policy, or submits the Proposed Marketing Policy to the Federal Power Commission (FPC) for confirmation and approval as provided in the following section 10. The comments shall become part of the Transcript.

10. *Final Marketing Policy Issued.* Following the Staff Evaluation of the Transcript, the Administrator shall decide whether to adopt, modify and adopt, or reject the Marketing Policy. Documentation of the decision shall include the purpose of and the legal authority for the Marketing Policy, findings of fact, conclusions, and the primary objections to the Proposed Power Marketing Policy submitted by Customers or the Public with brief explanations for rejecting those objections, which shall, with the Staff Evaluation, be part of the Transcript. BPA shall give Notice of the Marketing Policy adopted. It shall be Notice or at a later date specified by the Administrator.

11. *Emergency Marketing Policy Implementation.* If the Administrator determines prior to initiation or completion of the foregoing procedure that a delay in implementing a Marketing Policy will adversely affect BPA, its Customers, or the Public, the Administrator may implement the Marketing Policy on an in-

terim basis until this procedure is completed.

For further information, contact Harvard P. Spigal, Bonneville Power Administration, Department of the Interior, P.O. Box 3621, Portland, Oregon 97208 (503-234-3361 Ext. 5155). Submit written comments and recommendations to Harvard P. Spigal at the above address no later than October 3, 1977. BPA will publish a final procedure in the FEDERAL REGISTER on or about October 17, 1977.

Dated: July 28, 1977.

DONALD PAUL HODEL,
Administrator.

[FR Doc.77-22335 Filed 8-1-77;11:43 am]

Bureau of Land Management

[S 2745]

CALIFORNIA

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

JULY 26, 1977.

1. The Bureau of Reclamation, U.S. Department of the Interior, filed application Serial No. S 2745 on July 8, 1969, for a withdrawal in relation to the following described lands:

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 37 N., R. 7 E.,
Sec. 4, SW¼SE¼;
Sec. 10, NW¼SW¼ and S½SW¼;
Sec. 11, NW¼NW¼.
T. 38 N., R. 7 E.,
Sec. 4, Lots 2, 3, and 4.
T. 39 N., R. 7 E.,
Sec. 3, NW¼SW¼ and S½SW¼;
Sec. 10, NE¼, E½NW¼, NE¼SW¼, E½SE¼, and NW¼SE¼;
Sec. 11, NW¼ and W½SW¼;
Sec. 24, E½NE¼ and NE¼SE¼;
Sec. 33, E½NE¼, SW¼NE¼, and SE¼;
Sec. 34, NE¼SW¼.
T. 40 N., R. 7 E.,
Sec. 1, Lots 3 and 4, SE¼NW¼, E½SW¼, and SW¼SW¼;
Sec. 2, Lots 1, 2, and 4, SW¼NE¼, SW¼NW¼, N½NW¼SW¼, and E½SE¼SW¼;
Sec. 3, Lots 1 and 2, S½NE¼, and SE¼;
Sec. 26, N½NW¼.
T. 41 N., R. 7 E.,
Sec. 24, SE¼;
Sec. 25, NE¼NE¼, W½NE¼, NW¼, W½SW¼, SE¼SW¼, and S½SE¼;
Sec. 26, Lots 3 and 4, SW¼, and NW¼SE¼;
Sec. 27, SW¼SW¼ and E½E½SE¼;
Sec. 34, N½NE¼, SE¼NE¼, W½, and NE¼SE¼;
Sec. 35, Lot 2, SW¼NE¼, NW¼NW¼, and SE¼.
T. 37 N., R. 8 E.,
Sec. 5, SE¼NW¼ and E½SW¼;
Sec. 8, NE¼NW¼.
T. 38 N., R. 8 E.,
Sec. 32, E½SW¼.
T. 39 N., R. 8 E.,
Sec. 8, E½SW¼;
Sec. 19, Lot 3 and NE¼SW¼;
Sec. 25, SW¼SE¼.
T. 41 N., R. 8 E.,
Sec. 1, Lots 1, 2, and 3, S½NE¼, SE¼NW¼, S½SW¼, and N½SE¼;
Sec. 2, Lots 1, 2, 3, and 4, S½NE¼, S½NW¼, and S½;
Sec. 10, E½SE¼;
Sec. 11, E½ and SW¼;
Sec. 12, N½;
Sec. 14, NW¼;
Sec. 15, All;
Sec. 16, SE¼;
Sec. 19, Lots 3 and 4, E½SW¼, and NE¼SE¼;
Sec. 20, E½SW¼;
Sec. 21, NE¼, N½SW¼, SW¼SW¼, and N½SE¼;
Sec. 22, NE¼, NE¼NW¼, W½SW¼, E½SE¼, and NW¼SE¼;
Sec. 26, N½NE¼ and N½N½NW¼;
Sec. 27, SW¼NE¼, SE¼NW¼, S½SW¼, and SE¼;
Sec 28, W½NW¼ and SE¼NW¼;
Sec. 29, NE¼, E½NW¼, NW¼NW¼, and S½SW¼;
Sec. 30, Lots 1, 2, and 4, NE¼NW¼, SE¼SW¼, and SE¼;
Sec. 31, Lots 1 and 2, NE¼, and E½NW¼;
Sec. 32, N½ and SE¼;
Sec. 33, All;
Sec. 34, W½;
Sec. 35, SW¼NW¼ and S½SE¼NW¼;
Sec. 36, S½SW¼.
T. 42 N., R. 8 E.,
Sec. 35, E½SE¼;
Sec. 36, SW¼.
T. 39 N., R. 9 E.,
Sec. 19, NW¼NE¼.
T. 41 N., R. 9 E.,
Sec. 6, Lot 6 and E½SW¼;
Sec. 7, Lots 2, 3, and 4, N½NE¼, SE¼NE¼, E½SW¼, and NE¼SE¼;
Sec. 8, N½SW¼, N½SW¼SW¼, and N½SE¼;
Sec. 9, W½SE¼ and SE¼SE¼;
Sec. 16, E½NE¼ and SW¼NW¼;
Sec. 17, NE¼, S½NW¼, and SW¼;
Sec. 18, Lots 1 and 2, W½NE¼, SE¼NE¼, and E½NW¼.

The above described areas aggregate approximately 13,546 acres of Federal land, of which approximately 11,474 acres (in Tps. 40, 41, and 42 N., Rs. 7, 8, and 9 E.) are in the Modoc National Forests.

2. The applicant desires the withdrawal of the following described lands from location and entry under the mining laws, but not the mineral leasing laws, as these lands are patented, having been patented under the Stockraising Homestead Act of December 29, 1916 (39 Stat. 862), as amended, with a reservation of all minerals to the United States.

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 39 N., R. 7 E.,
Sec. 2, Lot 4 and SW¼NW¼;
Sec. 3, Lots 1, 2, and 3, S½NE¼, SE¼NW¼, NE¼SW¼, and SE¼;
Sec. 10, W½NW¼, W½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 15, W½SE¼.
T. 40 N., R. 7 E.,
Sec. 11, S½NW¼ and SW¼.
T. 38 N., R. 8 E.,
Sec. 20, S½SE¼;
Sec. 29, SE¼SW¼;
Sec. 32, NE¼NW¼ and S½NW¼.
T. 39 N., R. 8 E.,
Sec. 6, E½SE¼;
Sec. 8, NW¼SW¼;
Sec. 15, SW¼ and N½SE¼.
T. 40 N., R. 8 E.,
Sec. 31, Lots 1 and 2, NE¼, NE¼NW¼, and N½SE¼.
T. 39 N., R. 9 E.,
Sec. 19, NE¼NE¼.
T. 41 N., R. 9 E.,
Sec. 3, SE¼.

The above described lands aggregate approximately 2,236 acres.

The applicant desires all of the aforedescribed lands for the facilities of the multi-purpose Allen Camp Unit Project, Pit River Division, Central Valley Project.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on September 5, 1969, pages 14083 and 14084, F.R. Doc. 69-10587.

Pursuant to Sec. 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 to the State Director, Bureau of Land Management, E-2841 Federal Office Building, 2800 Cottage way, Sacramento, California 95825, on or before September 5, 1977. 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 on or before September 5, 1977.

The lands described in paragraph 1 are temporarily segregated from the operation of the public land laws, including the mining laws (30 U.S.C., Ch. 2); the lands described in paragraph 2 are temporarily segregated from the mining laws (30 U.S.C., Ch. 2) 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 pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except for public hearing requests) in connection with the pending withdrawal application should be addressed to the undersigned, Bureau of Land Management, Department of the Interior, Room E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

JOAN B. RUSSELL,
Chief, Lands Section Branch of Lands and Minerals Operations.

[FR Doc.77-22293 Filed 8-2-77;8:45 am]

[SAC 072929]

CALIFORNIA

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

JULY 20, 1977.

The Bureau of Reclamation, U.S. Department of the Interior, filed application Serial No. SAC 072929 on Septem-

ber 6, 1962, for a withdrawal in relation to the following described lands:

MOUNT DIABLO MERIDIAN, CALIF.

T. 32 N., R. 6 W.,
Sec. 27, Lots 77, 78, 79, 80, 81, 82, 83, 84, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 117, 118, 119, 120, 121, 122, 123, and 124.

The area described aggregates 72.45 acres in Shasta County, Calif.

The applicant desires that the land be reserved for the conduit route of the Clear Creek South Unit, Trinity River Division, Central Valley Project.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on November 30, 1962, pages 11821 and 11822, FR Doc. 62-11819.

Pursuant to Sec. 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 to the State Director, Bureau of Land Management, E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, Calif. 95825, on or before August 29, 1977. 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 on or before August 29, 1977.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws (30 U.S.C., Ch. 2), 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 pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except for public hearing requests) in connection with the pending withdrawal application should be addressed to the undersigned, Bureau of Land Management, Department of the Interior, Room E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, Calif. 95825.

JOAN B. RUSSELL,
Chief, Lands Section Branch of Lands and Minerals Operations.

[FR Doc.77-22292 Filed 8-2-77;8:45 am]

[NM 31035]

NEW MEXICO

Application

JULY 26, 1977.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 30 N., R. 14 W.,
Sec. 12, lot 4, SW¼NW¼ and NW¼SW¼.

This pipeline will convey natural gas across 0.495 of a mile of public land in San Juan County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief Branch of Lands and Minerals Operations.

[FR Doc.77-22294 Filed 8-2-77;8:45 am]

[Wyoming 60185]

WYOMING

Application

JULY 27, 1977.

Notice is hereby given that pursuant to section 28 of the Minerals Leasing Act of 1920, as amended (30 U.S.C. 185), Stauffer Chemical Co. of Wyoming, Green River, Wyo., filed an application for a 4-inch lateral pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 21 N., R. 99 W.,
Sec. 26, W½NW¼.

The pipeline will transport natural gas from an existing well in the SW¼ of sec. 23, T. 21 N., R. 99 W. to a point on an existing pipeline in sec. 27, T. 21 N., R. 99 W., Sweetwater County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, P.O. Box 1869, Highway 187 North, Rock Springs, Wyo. 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-22313 Filed 8-2-77;8:45 am]

[Wyoming 60186]

WYOMING

Application

JULY 27, 1977.

Notice is hereby given that pursuant to section 28 of the Minerals Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Co. of Colorado Springs, Colo., filed an application for 4-inch pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYO.

T. 21 N., R. 94 W.,
Sec. 32, S½SW¼.

The pipeline will transport natural gas from an existing well into Colorado Interstate's natural gas gathering system located in Sweetwater County, Wyo. The proposed 4-inch O.D. natural gas pipeline would extend from an existing well in sec. 31, T. 21 N., R. 94 W. to the point of connection with an existing line in sec. 32, T. 21 N., R. 94 W., Sweetwater County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, P.O. Box 670, 1300 Third Street, Rawlins, Wyo. 82301.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-22314 Filed 8-2-77;8:45 am]

[Serial No. I-7370]

IDAHO

Termination of Proposed Withdrawal and Reservation of Lands

Notice of an application, serial number I-7370, for withdrawal and reservation of lands was published as FEDERAL REGISTER Document No. 73-26298 on page 34215 of the issue for December 12, 1973. The applicant agency has canceled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR Subpart 2091, such lands will be at 10:00 a.m. on August 29, 1977 relieved of the segregative effect of the abovementioned application.

The lands involved in this notice of termination are:

BOISE MERIDIAN, ST. JOE NATIONAL FOREST, FORTY-NINE MEADOWS ROAD NO. 760

T. 43 N., R. 4 E.
Sec. 1: SE¼SE¼.

A strip of land 100 feet in width, being 50 feet in width on both sides of the centerline over and across the above-cited subdivision.

The area described aggregates 0.08 acres, more or less, in Shoshone County.

DONALLY RIDGE ROAD No. 1999

T. 45 N., R. 4 E.
Sec. 28: NE¼NE¼.

A strip of land 66 feet in width, being 33 feet in width on both sides of the centerline over and across the above-cited subdivision.

The area described aggregates 3.03 acres, more of less, in Shoshone County.

VINCENT S. STROBEL,
Chief, Branch of L&M Operations.

[FR Doc.77-22218 Filed 8-21-77;8:45 am]

TEXAS

Application

Notice is hereby given that under Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449; 30 U.S.C. 185), as amended Pub. L. 93-153 (87 Stat. 576) on November 16, 1973, Dow Chemical Co., a Delaware corporation, has applied for relocation of a portion of an existing 8" Nominal Diameter Natural Gas Pipeline right-of-way that will cross a part of the San Bernard National Wildlife Refuge situated along the shoreline of the Gulf of Mexico in Calvin Sumrall, A-368 and Joseph H. Gamble, A-194 Surveys and south of Cedar Lakes, Brazoria County, Tex.

The relocated pipeline will carry natural gas across 1.14 miles of the San Bernard National Wildlife Refuge.

The purpose of this notice is to inform the public that the United States Fish and Wildlife Service will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views, should do so within thirty (30) days and send their name and address to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, N. Mex. 87103.

JERRY L. STEGMAN,
Deputy Regional Director, U.S. Fish and Wildlife Service.

JULY 25, 1977.

[FR Doc.77-22298 Filed 8-2-77;8:45 am]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. CARROLS DEVELOPMENT CORP., ET AL.

Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the *Antitrust Procedures and Penalties Act*, 15 U.S.C. 16(b) through (h), that a proposed consent judgment and a competitive statement as set out below have been filed with the United States District Court for the Northern District of New York in *United States of America* v. *Carrols Development Corporation and Triple Schuyler Rome Corporation* Civil No. 76 CV 170. The complaint in the case alleges that the acquisition by Carrols Development Corporation (Carrols) of the motion picture theatres in Syracuse and Utica, New York, operated by Kallet Realty Inc. and its subsidiaries (Kallet), and the acquisition by Carrols of the motion picture theatres in Utica, New York, operated by Hallmark Releasing Corp. (Hallmark), substantially lessened competition in the purchase of licenses to exhibit feature motion pictures in the Greater Syracuse and Greater Utica Areas. The proposed judgment requires Carrols to divest the theatres which it acquired from Kallet and Hallmark. It also enjoins Carrols, for ten years, from acquiring any operating motion picture theatre in the Greater Syracuse or Greater Utica Areas without the approval of the Government.

Public comment is invited on or before September 30, 1977. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to Bernard Wehrmann, Chief, New York Office, Antitrust Division, Department of Justice, 26 Federal Plazza, New York, New York 10007.

Dated: July 25, 1977.

JOHN H. SHENEFIELD,
Acting Assistant Attorney General, Antitrust Division.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

United States of America, Plaintiff, v. *Carrols Development Corporation; and Triple Schuyler Rome Corporation*, Defendants.

[76-CV-170]

Filed: July 25, 1977.

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this stipulation, this stipulation shall be of no effect whatever and the making of this stipulation shall be without prejudice to plaintiff and defendants in this and any other proceeding.

Dated July 25, 1977.

For Plaintiff: John H. Shenefield, *Acting Assistant Attorney General*; Erwin L. Atkins, William E. Swope, Charles W. Brooks, Charles F. B. McAleer, Bernard Wehrmann, *Attorneys, Department of Justice.*

For Defendants: Farber & Cohen, *Attorneys for Carrols Development Corporation and Triple Schuyler Rome Corporation.*

By: Frank R. Cohen, *Partner, A Member of the Firm.*

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK

[76-CV-170]

United States of America, Plaintiff, v. *Carrols Development Corp.*; and *Triple Schuyler Rome Corp., Defendants.*

FINAL JUDGMENT

Filed: July 25, 1977.

Plaintiff, United States of America, having filed its complaint herein on April 23, 1976, and the defendants Carrols Development Corp. and Triple Schuyler Rome Corp., having appeared and filed their answer to the complaint denying the material allegations thereof, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party with respect to any such issue and upon the consent of the parties, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under section 7 of the Act of Congress of October 15, 1914 (15 U.S.C. § 18), commonly known as the Clayton Act, as amended.

II

As used in this Final Judgment:

(A) "CDC" shall mean defendants Carrols Development Corp. and Triple Schuyler Rome Corp., and each of their subsidiaries and affiliates.

(B) "Eligible Purchaser" shall mean any person or persons, proposing to acquire any theatre for theatre purposes, to which the plaintiff, after notice, does not object, or if the plaintiff does object, of which the Court approves.

(C) "Person" shall mean any individual, partnership, corporation or other business or legal entity other than CDC.

(D) "Greater Syracuse Area" shall mean the area within a radius of approximately 12 miles from the center of the City of Syracuse, including Syracuse and all or part of the following towns in the State of New York: Salina, DeWitt, Geddes, Cicero, Manlius, Pompey, Lafayette, Onondaga, Marcellus, Camillus, Van Buren, Lysander, and Clay.

(E) "Greater Utica Area" shall mean the area within a radius of approximately 10 miles from the center of the City of Utica, including Utica and all or part of the following towns in the State of New York: Schuyler, Newport, Frankfort, Litchfield, Paris, New Hartford, Kirkland, Whitestown, Westmoreland, Floyd, Marcy, Trenton, and Deerfield.

III

The provisions of this Final Judgement shall apply to CDC, its successors and assigns, to each of their respective officers, directors, agents and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. Any Eligible Purchaser who acquires any assets by means of a divestiture pursuant to

this Final Judgment shall not be considered a successor or assign of CDC.

IV

(A) CDC is ordered and directed to divest to Eligible Purchasers, within 24 months from the date of entry of this Final Judgment, each of the theatres listed in Appendix A to this Final Judgment.

(B) Divestiture of the theatres listed in Appendix A shall be accomplished by assignment or sublease.

(C) With respect to any theatre which is divested by sublease, such sublease shall be for the entire remaining present term of the master lease less one day (such period is hereinafter referred to as the "Sublease Term").

(D) CDC shall make known the availability of the theatres listed in Appendix A by customary and usual means, including appropriate advertising. CDC shall furnish, on an equal and nondiscriminatory basis, to all bona fide prospective purchasers who so request, all necessary information regarding said theatres and shall permit them to make such inspection of the facilities and operations of the theatres as is reasonably necessary for a prospective purchaser to advise itself properly.

(E) Ninety day after the date of entry of this Final Judgment and every 90 days thereafter until CDC has divested each of the theatres listed in Appendix A, CDC shall submit written report to the plantiff, describing the steps which have been taken to comply with this section IV. Each report shall include the name and address of each person who, during the preceding 90 days, had made an offer, expressed a desire, or entered into negotiations to acquire any theatre, together with full details of same. Each report shall also include the name and address of each person who, during the preceding 90 days, CDC has sought to interest in the acquisition of any theatre, together with full details of same.

(F) At least 60 days before the consummation, pursuant to this Section IV, of a divestiture to a proposed Eligible Purchaser of any theatre listed in Appendix A, CDC shall furnish in writing to the plaintiff the name and address of the proposed Eligible Purchaser, together with the terms and conditions of the proposed divestiture. At the same time, CDC shall list the name and address of each person not previously reported who offered or expressed a desire to acquire such theatre, together with full details of same. Within 20 days of the receipt of this information, the plaintiff may request in writing additional information concerning the transaction and parties thereto. If no request is made for additional information, the plaintiff shall advise CDC in writing no later than 20 days prior to the scheduled consummation date whether it has any objections to the proposed divestiture. If a request for additional information is made, the plaintiff shall advise CDC in writing within 30 days after receipt of all such information or within 30 days after receipt of a statement in writing from CDC that it does not have the requested information, whether it has any objections to the proposed divestiture. If the plaintiff does not object within the periods specified, then the divestiture may be consummated. If the plaintiff does so object, the proposed divestiture shall not be consummated unless CDC obtains approval from the Court or the plaintiff's objection is withdrawn.

V

If CDC does not divest itself, in accordance with the provisions of this Final Judgment, of each of the theatres listed in Appendix A within 24 months from the date of entry of this Final Judgment, the Court shall on application of the plaintiff appoint a trustee for the purpose of divesting the remaining theatres in accordance with the provisions of this Final Judgment. The trustee shall have full power and authority to dispose of each of the remaining theatres by assignment or sublease at whatever price and terms are obtainable by him subject to prior approval of the Court after the parties have had an opportunity to be heard with respect to each such proposed divestiture and the price and terms thereof. Any such sublease shall be for the applicable Sublease Term. The trustee shall use his best efforts to dispose of each of the theatres within 12 months of his appointment. Each divestiture by the trustee shall be in accordance with the provisions of this Final Judgment. The trustee shall serve, at the cost and expense of CDC, on such terms and conditions as the Court sees fit and shall account for all revenues derived from the disposal of the theatres and all expenses so incurred. After approval by the Court of the trustee's account, including fees for his services, all remaining monies shall be paid to CDC, or if there are remaining unsatisfied claims CDC shall pay them, and the trust created hereunder shall be terminated.

VI

If any theatre listed in Appendix A is not divested in accordance with the provisions of this Final Judgment within 12 months of the appointment of a trustee pursuant to section V herein, CDC shall, within 60 days thereafter, terminate its operation of such theatre unless it has obtained the written consent of the plaintiff to continue operating such theatre for the exhibition of feature motion pictures.

Any assignment or sublease to an Eligible Purchaser of a theatre listed in Appendix A shall requpire the Eligible Purchaser to file with this Court its representation that it proposes to operate the theatre for the exhibition of feature motion pictures.

VIII

(A) Subject to the provisions of section VI of this Final Judgment and subparagraph (2) of this section VIII(C), CDC shall continue to operate each threatre listed in Appendix A for the exhibition of feature motion pictures until such theatre is divested in accordance with the provisions of this Final Judgment; provided, however, that nothing contained herein shall require CDC to continue the operation of the 258 Cinema City I, II, and III prior to divestiture.

(B) CDC shall not participate in any way, directly or indirectly, in the management, operation or control of any theatre listed in Appendix A after it has been divested pursuant to this Final Judgment, nor shall CDC book or buy feature motion pictures for any such theatre after it has been divested. Where a theatre has been divested by sublease, these prohibitions shall be expressly set forth in the sublease.

(C) Notwithstanding the provisions of paragraph (B) of this section VIII:

(1) CDC may enforce the terms and conditions of any sublease in accordance with its provisions or as provided by law, and may exercise the rights of a sublessor in the event of a default.

(2) In the event of reacquisition or repossession by CDC prior to the expiration of the Sublease Term of a subleased theatre devested hereunder, CDC shall promptly notify the plaintiff in writing and shall divest such theatre by assignment or sublease to an Eligible Purchaser within 12 months of reacquisition or repossession in accordance with the provisions of this Final Judgment. The minimum duration of any such subsequent sublease shall be the applicable Sublease Term less the period of time such theatre was operated by an Eligible Purchaser prior to reacquisition or repossession by CDC. If CDC is unable to divest any such theatre to an Eligible Purchaser within 12 months of reacquisition or repossession, CDC shall, within 60 days thereafter, terminate its operation of such theatre unless it has obtained the written consent of the plaintiff to continue operating such theatre for the exhibition of feature motion pictures.

IX

CED is enjoined and restrained for a period of 10 years from the date of entry of this Final Judgment from acquiring, without the prior written consent of the plaintiff, any part of the assets or stock of any operating motion picture theatre in the Greater Syracuse or Greater Utica Areas.

X

(A) For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to CDC made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of CDC, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of CDC, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of CDC and without restraint or interference from it, to interview officers, directors, agents, partners or employees of CDC, any of whom may have counsel present, regarding any such matters.

(B) CDC, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment, as may from time to time be requested.

No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by CDC to plaintiff pursuant to this section and CDC represents that the material, or any portion thereof, in any such information or documents is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and CDC identifies such material in writing and marks each pertinent page thereof, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give CDC 10 days notice prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which CDC is not a party.

XI

Jurisdiction of this action is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modifica-

tion of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

XII

Entry of this Final Judgment is in the public interest.

Dated:----------

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United States District Judge.

APPENDIX A

Genesee, 2100 West Genesee Street, Geddes, N.Y.; Shoppingtown I and II, Erie Boulevard, East and Kinney Road, DeWitt, N.Y.; Cinema, Commercial Drive, New Hartford, N.Y.; Marcy Drive-In, Route 49, Marcy, N.Y.; New Hartford Drive-In, Commercial Drive, New Hartford, N.Y.; Paris Cinema, 12 Genesee Street, New Hartford, N.Y.; Skyler Drive-In I and II, Route 5, West Schuyler, N.Y.; 258 Cinema City I, II, and III, 258 Genesee Street, Utica, N.Y.

UNITED STATES DISTRICT COURT, NORTH DISTRICT OF NEW YORK

[76-CV-170]

UNITED STATES OF AMERICA, PLAINTIFF, v. CARROLS DEVELOPMENT CORP.; AND TRIPLE SCHUYLER ROME CORP., DEFENDANTS.

COMPETITIVE IMPACT STATEMENT RELATING TO PROPOSED CONSENT JUDGMENT

Filed: July 25, 1977.

This Competitive Impact Statement is filed by the Government pursuant to the requirements of section 2 of the Act of Congress of December 21, 1974 (15 U.S.C. § 16), commonly known as the Antitrust Procedures and Penalties Act. It relates to the proposed consent judgment shubmitted for entry against the defendants in this civil antitrust suit.

NATURE AND PURPOSE OF THE PROCEEDING

On April 23, 1976, the Government filed a civil antitrust suit charging that the acquisition by Carrols Development Corp. of the motion picture theatres in Syracuse and Utica, New York, operated by Kallet Realty, Inc., and its subsidiaries (Kallet) in February 1974, and the acquisition by Carrols Development Corp. and its wholly owned subsidiary Triple Schuyler Rome Corp. (both are referred to collectively herein as CDC), of the motion picture theatres in Utica, New York, operated by Hallmark Releasing Corp. (Hallmark), in March 1974, substantially lessened competition in the purchase of licenses to exhibit feature motion pictures in the Greater Syracuse and Greater Utica areas, in violation of section 7 of the Clayton Act.

In its complaint, the Government asked the Court to declare the acquisitions to be violative of section 7 of the Clayton Act and to order CDC to divest itself of all of the assets acquired from Kallet and Hallmark in the Greater Syracuse and Greater Utica areas.

EVENTS GIVING RISE TO THE ALLEGED VIOLATION

This suit concerns the purchase of licenses to exhibit feature motion pictures. Such licenses are purchased from distributors by exhibitors or operators of motion picture theatres, in competition with other exhibitors in the same area.

At the time of the Kallet acquisition, CDC was the largest exhibitor in the Greater Syracuse Area with ten theatres which accounted for approximately 55.7 percent of the theatres and 59 percent of the gross box offices receipts in that area.[1] Kallet, the second largest exhibitor with three theatres, accounted for about 16.8 percent of all motion picture theatres in the Greater Syracuse Area at that time and 27 percent of the gross box office receipts. Kallet was also the second largest theatre operator in the Greater Utica Area with four theatres or approximately 33 percent of all theatres in that area and 44 percent of gross box office receipts.[2] CDC did not operate any motion picture theatres in the Greater Utica Area at that time.

At the time of the Hallmark acquisition, Hallmark was the largest exhibitor in the Greater Utica Area with six theatres, which accounted for 50 percent of the theatres in that area and approximately 36 percent of gross box office receipts.

The Government alleges that the acquisition of the Kallet theatres elimnated actual competition for film licenses between Kallet and CDC in the Greater Syracuse Area, and potential competition between them in the Greater Utica Area. Although CDC did not operate any theatres in the Greater Utica Area prior to the acquisition, it had entered into an agreement for the construction of a multi-screen theatre in Utica and was, therefore, at that time the most likely entrant into the operation of motion picture theatres in that area. In addition, the Government claims that the acquisition of Kallet's theatres in the Greater Syracuse Area has significantly enhanced CDC's bargaining power with distributors to the detriment of independent exhibitors in the area.

The Government further alleges that the acquisition of the Hallmark theatres has resulted in the elimination of actual competition for film licenses between Hallmark and CDC in the Greater Utica Area. The Government also claims that CDC's bargaining power with distributors has been significantly enhanced to the detriment of independent exhibitors in the area.

THE PROPOSED CONSENT JUDGMENT AND ITS ANTICIPATED EFFECTS ON COMPETITION

Under the proposed consent judgment CDC must divest the twelve designated theatres located in the Greater Syracuse and Greater Utica Areas. Together with one former Kallet theatre already voluntarily divested by CDC during the pendency of this suit this will represent a total divestiture of all of the former Kallet and Hallmark theatres which CDC acquired in the Greater Syracuse and Greater Utica Areas. The proposed judgment will, thus, eliminate the additional bargaining power which CDC obtained as a result of the acquisitions. The divestitures will also increase competition in these areas.

The proposed judgment requires CDC to divest each of the designated theatres by sublease or assignment to persons and under terms and conditions approved by the Government or the Court. All of the theatres must be divested for theatre purposes. The proposed judgment protects against CDC reacquiring operating control of any of the theatres which it divests.

Under the proposed judgment CDC would be obliged to make reports to the Government every 90 days setting forth the steps taken to accomplish the divestitures. In order to assure to the extent possible that the designated threatres will be successfully divested, the proposed judgment provides for the appointment of a trustee by the Court if CDC has not divested all of the theatres within twenty-four months. The trustee would be appointed to divest the remaining theatres and would serve at the cost and expense of CDC.

The proposed judgment prohibits CDC, for ten years, from acquiring any operating theatre in the Greater Syracuse or Greater Utica Areas except with the approval of the Government. This provision protects against acquisitions by CDC in these areas which would be detrimental to competition. In addition, the Government would have visitation rights to inspect documents and interview officers and employees of CDC in order to determine and secure compliance with the judgment.

ALTERNATIVES TO THE PROPOSED JUDGMENT CONSIDERED BY THE GOVERNMENT

The proposed consent judgment provides substantially all of the relief prayed for in the complaint. No alternative to the judgment has been considered by the Department of Justice.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

Any potential private plaintiffs who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies that they would have had were the proposed consent judgment not entered. However, pursuant to section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), as amended, this judgment may not be used as prima facie evidence in private litigation.

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED CONSENT JUDGMENT

The proposed consent judgment is subject to a stipulation between the Government and CDC which provides that the Government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order, among other reasons, to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by section 2 of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), any person wishing to comment upon the proposed judgment may, for a sixty-day period prior to the effective date, submit written comments to the United States Department of Justice, Attention Bernard Wehrmann, Chief, New York Office, Antitrust Division, 26 Federal Plaza, New York, New York 10007. Such comments and the Government's response to them will be filed with the Court and published in the FEDERAL REGISTER. The Government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed judgment.

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[1] The Greater Syracuse Area encompasses the area within a radius of approximately twelve miles from the center of the City of Syracuse, including Syracuse and all or part of the towns of Salina, DeWitt, Geddes, Cicero, Manlius, Pompey, Lafayette, Onondaga, Marcellus, Camillus, Van Buren, Lysander, and Clay.

[2] The Greater Utica Area encompasses the area within a radius of approximately ten miles from the center of the City of Utica, including Utica and all or part of the towns of Schuyler, Newport, Frankfort, Litchfield, Paris, New Hartford, Kirkland, Whitestown, Westmoreland, Floyd, Marcy, Trenton, and Deerfield.

DETERMINATIVE DOCUMENTS

There are no materials or documents which the Government considered determinative in formulating the proposed consent judgment. Therefore, none is being filed with this competitive impact statement.

Dated: July 25, 1977.

ERWIN L. ATKINS,
Attorney, Department of Justice.

[FR Doc.77-22219 Filed 8-2-77;8:45 am]

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

RESEARCH GRANTS PANEL

Meeting

JULY 21, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463) notice is hereby given that a meeting of the Research Grants Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 1130, from 9 a.m. to 5:30 p.m. on August 23, 1977.

The purpose of the meeting is to review General Research applications in the field of State, Local and Regional History submitted to the National Endowment for the Humanities for projects beginning after April 1, 1978.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 28, 1977, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 15th Street, N.W., Washington, D.C. 20506, or call area code 202-724-0256.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc. 77-22256 Filed 8-2-77;8:45 am]

RESEARCH GRANTS PANEL

Meeting

JULY 21, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463) notice is hereby given that a meeting of the Research Grants Panel will be held at 806 15th Street, NW., Washington, D.C. 20506, in the first floor Conference Room, from 9 a.m. to 5:30 p.m. on August 30, 1977.

The purpose of the meeting is to review General Research applications in the field of State, Local and Regional History submitted to the National Endowment for the Humanities for projects beginning after April 1, 1978.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 28, 1977, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 15th Street, NW., Washington, D.C. 20506, or call area code 202-724-0256.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.77-22257 Filed 8-2-77;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 July 28, 1977 (44 USC 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 with 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

TENNESSEE VALLEY AUTHORITY

Survey of Bass Clubs in Tennessee, single-time, all bass clubs in Tennessee, Maria Gonzalez, 395-6132.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education:

Product Evaluation Questionnaire: Rural Career Education Program, OE-542, single-time, individuals or households, Human Resources Division, Raynsford, R., 395-3532.

National Direct Report of Defaulted Loans Student Loan Program, OE-574, semi-annually, institutions of postsecondary education, Lowry, R. L., 395-3772.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT HOUSING MANAGEMENT

Application for assistance under Title IV of the Housing Act of 1950, as amended, HUD-4501, on occasion, public and private nonprofit colleges and universities, housing, veterans and labor division, budget review division, 395-3532.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service, preliminary questionnaire for Residential Survey of Undocumented Aliens, single-time, households in 1,000 census tracts, Kathy Wallman, Maria Gonzalez, 395-6140.

REVISIONS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Application Claim and Agreement—Nonfood Assistance, FNS-65, FNS-83, on occasion, public and private schools, family and group day care homes, Human Resources Division, Warren Topelius, 395-3532.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Study to Assess and Compare Type A Lunches With Alternative Subsidized Lunches Among High School Students, single-time, high school students, food service employees and managers, Human Resources Division, 395-3532.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Annual Survey of Children in Institutions Operated or Supported by a State Agency for Neglected or Delinquent Children or Children in Adult Correctional Institutions, OE-4376-1, annually, State and local agencies for neglected or delinquent children, Lowry, R. L., 395-3772.

EXTENSIONS

DEPARTMENT OF COMMERCE

Bureau of Census:

Pulp, Paper and Board Production—Monthly Report, M26A, monthly, paper and paperboard mills, C. Louis Kincannon, 395-3211.

Flat Glass Report, MQ-32A, quarterly flat glass plants, C. Louis Kincannon, 395-3211.

Shipments of Steel Shipping Drums and Pails, M34K, monthly, pail and drum manufacturers, C. Louis Kincannon, 395-3211.

Paint, Varnish, and Lacquer—Monthly Report on Production and Sales, M28F, monthly, paint producers, C. Louis Kincannon, 395-3211.

Wood Pulp—Consumption by Other Than Paper and Board Manufacturers, M26E, monthly, consumers of wood pulp, C. Louis Kincannon, 395-3211.

Oilseeds and Nuts, Monthly Report of Primary Processors, M20J, monthly, Bean Crushers Manufacturers, C. Louis Kincannon, 395-3211.

DEPARTMENT OF LABOR

Employment and Training Administration, WIN Reporting System (HEW Portion), SRS-NCSS-117 Parts A and B, IM-9, SAU-4, other (see SF-83), State WIN Program SAU and IMU Offices, Budget Review Division, Warren Topelius, 395-4775.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management:
Application and Transfer of Grazing Privileges, 4115-15, on occasion, livestock ranchers, Marsha Traynham, 395-4529.
Relinquishment of Application, Entry, or Grant, 1825-3, on occasion, public land applicants, Marsha Traynham, 395-4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-22363 Filed 8-2-77;8:45 am]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

WORKING GROUP ON BASIC RESEARCH IN THE DEPARTMENT OF DEFENSE

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

NAME: Working Group on Basic Research in the Department of Defense.

DATE: August 24 and 25, 1977.

TIME: 9 a.m. to 4 p.m.

PLACE: Room 3104, New Executive Office Building, 17th and Pennsylvania Avenue NW., Washington, D.C. 20500.

TYPE OF MEETING: Open.

CONTACT PERSON:

Dr. William P. Raney, Executive Office of the President, Office of Science and Technology Policy, Washington, D.C. 20500, telephone 202-395-4692.

SUMMARY MINUTES: May be obtained from the Office of Science and Technology Policy, Washington, D.C. 20500.

PURPOSE OF ADVISORY COMMITTEE: The Office of Science and Technology Policy is conducting a study which will lead to the formulation of policy governing the performance of basic research by or for the mission agencies. Under the guidance of the Steering Committee on Basic Research in Mission Agencies, the Working Group on Basic Research in the DOD is to examine the policies and procedures and research programs of that agency for adequacy and balance between near-term and long-term technical objectives.

AGENDA: 9 a.m. to 4 p.m. Planning meeting to discuss detailed objectives of the study, methods of approach, and work schedule and assignments.

WILLIAM MONTGOMERY,
Executive Officer.

[FR Doc.77-22274 Filed 8-2-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13714; SR-TAD-77-1]

TAD DEPOSITORY CORP.

Order Approving Rule Change

JULY 1, 1977.

On May 4, 1977, TAD Depository Corporation ("TAD") 2 Broadway, New York, New York 10004, submitted, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), a proposed rule change. The rule change relates to TAD becoming a participant at The Depository Trust Co.

In accordance with Section 19(b) of the Act and Rule 19b-4 thereunder, notice of the proposed rule change was published in the FEDERAL REGISTER (42 FR 27361, May 27, 1977), and the public was invited to comment thereon. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 13553, May 19, 1977. No letters of comment were received.

The Commission has reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change contained in File No. SR-TAD-77-1 be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-22384 Filed 8-2-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1350]

GEORGIA

Declaration of Disaster Loan Area

The listing below of the 127 counties and adjacent counties within the State of Georgia constitute a disaster area as a result of drought which caused severe crop losses during the 1976 crop year and continuing into the 1977 crop year. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on September 23, 1977 and for economic injury until the close of business on April 24, 1978, at:

Small Business Administration, District Office, 1720 Peachtree Road, NW., 6th floor, Atlanta, Georgia 30309.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 22, 1977.

A. VERNON WEAVER,
Administrator.

GEORGIA (127 COUNTIES)

Appling	Burke
Atkinson	Butts
Bacon	Calhoun
Baker	Candler
Baldwin	Carroll
Banks	Chatham
Barrow	Chattahoochee
Ben Hill	Clarke
Berrien	Clay
Bibb	Clayton
Bleckley	Clinch
Brooks	Cobb
Bryan	Coffee
Colquitt	Macon
Columbia	Madison
Cook	Marion
Coweta	Meriwether
Crawford	Miller
Crisp	Mitchell
Decatur	Monroe
DeKalb	Montgomery
Dodge	Morgan
Dooly	Newton
Dougherty	Oconee
Douglas	Oglethorpe
Early	Peach
Echols	Pierce
Effingham	Pike
Elbert	Pulaski
Emanual	Putnam
Evans	Quitman
Fayette	Randolph
Franklin	Richmond
Fulton	Rockdale
Glascock	Schley
Glynn	Screven
Grady	Seminole
Greene	Spalding
Gwinett	Stewart
Hall	Sumter
Hancock	Talbot
Harris	Taliaferro
Hart	Tattnall
Heard	Taylor
Henry	Telfair
Houston	Terrell
Irwin	Thomas
Jackson	Toombs
Jasper	Treutlen
Jeff Davis	Troup
Jefferson	Turner
Jenkins	Twiggs
Johnson	Upson
Jones	Walton
Lamar	Ware
Lanier	Warren
Laurens	Washington
Lee	Wayne
Liberty	Webster
Lincoln	Wheeler
Long	Wilkes
Lowndes	Wilkinson
McDuffie	Worth
McIntosh	

[FR Doc.77-22206 Filed 8-2-77;8:45 am]

DEPARTMENT OF STATE

[Public Notice CM-7/95]

ADVISORY COMMITTEE TO UNITED STATES NATIONAL SECTION OF THE INTER-AMERICAN TROPICAL TUNA COMMISSION

Meeting

Notice is hereby given, pursuant to the provisions of Pub. L. 92-463, that a meeting of the Advisory Committee to the United States National Section of the Inter-American Tropical Tuna Commission will be held on August 30, 1977, in the auditorium of the Southwest Fisheries Center of the National Marine Fisheries Service at 8604 La Jolla Shores Drive, La Jolla, Calif., at 9:00 a.m.

The morning portion of the meeting from 9:00 a.m. to 12 noon will be open to the public and the public may participate in the discussions subject to the instructions of the Committee Chairman. Subjects to be discussed include an evaluation of the 1977 fishery experience, a preliminary outlook for the 1978 fishery and U.S. views on the overall quota and other aspects of the management program including allocations.

The afternoon session of the meeting, beginning at 1:30 p.m., will be closed as the discussions will involve matters exempt from public disclosure under 5 U.S.C. 552b(c)(1) and which the public interest requires be withheld from public disclosure. Documents classified in accordance with Executive Order 11652 will be circulated and discussed in the closed session. Requests for further information on the meeting should be directed to Douglas Marshall, OES/OFA, Room 3214, Department of State. He may be reached by telephone on (202) 632-2798.

Dated: July 21, 1977.

JOHN D. NEGROPONTE,
Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc.77-22295 Filed 8-2-77;8:45 am]

Agency for International Development

[Redelegation of Authority No. 99.1.88]

PRINCIPAL AID OFFICER, INDIA, ET AL.

Redelegation of Authority Regarding Grant Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby redelegate to the principal AID Officer in India, Indonesia, Korea, Nepal, Pakistan, Philippines, Sri Lanka, and Thailand, authority to execute Operational Program Grants (OPG's) as defined in Appendix 7A, Chapter 7, of Handbook 3, Project Assistance, on the following basis:

1. OPG's up to the present level of grant authority held by the principal AID Officer under current redelegation from the Director, Office of Contract Management.
2. OPG's up to $500,000, where the services of an Area Contracting Officer or a contracting officer on TDY from AID/Washington are utilized.
3. OPG's up to $500,000, where the services of an Area Legal Advisor are utilized.

This authority shall be exercised in accordance with the procedures of Chapter 4 of Handbook 13, Grants, and with other regulations, procedures, and policies now or hereafter established, modified, and promulgated within AID.

The authority herein redelegated may be exercised by the principal AID Officer's chief deputy, or by duly authorized persons performing the functions of the principal AID Officer in an acting capacity. The authority may not be further redelegated.

Redelegation of Authority 99.1.76 (41 FR 12239) dated March 24, 1976 is hereby revoked and ad hoc Redelegation of Authority 99.1.77.44 to USAID/Indonesia is hereby cancelled.

This Redelegation of Authority is effective upon signature.

Dated: July 22, 1977.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc.77-22297 Filed 8-2-77;8:45 am]

[Redelegation of Authority No. 99.1.87]

RAYMOND J. POTOCKI

Delegation of Contracting Officer Authority

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services, I hereby redelegate to Mr. Raymond J. Potocki the authority to sign the following instruments, up to an amount of $500,000 (or local currency equivalent) per transaction:

(1) U.S. Government contracts (including contracts with individuals for services of the individual alone);
(2) U.S. Government grants, other than grants to foreign governments or agencies thereof;
(3) Inter-agency service agreements (IASAs) between AID and other U.S. Government agencies; and
(4) Modifications to the instruments specified above.

The authority delegated herein is to be exercised in accordance with AID regulations, procedures and policies in effect at the time the authority is exercised and is not in derogation of the authority of the Director, Office of Contract Management, to exercise any of the functions herein redelegated.

Redelegation of Authority 99.1.84 (42 F.R. 8036) dated January 27, 1977, is hereby revoked.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

Actions within the scope of this delegation heretofore taken by the official designated in such delegation are hereby ratified and confirmed.

This redelegation of authority shall be effective on the date of signature.

Dated: July 25, 1977.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc.77-22296 Filed 8-2-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 77-10]

CONTROL OF WETLAND DRAINAGE INTO FEDERAL-AID HIGHWAY RIGHTS-OF-WAY

Public Meeting

AGENCY: Federal Highway Administration, DOT.

SUMMARY: The public meeting will explore possible actions FHWA may take to control the artificial drainage of wetlands into Federal-aid highway rights-of-way. All interested parties are invited to present a brief statement of their views on the subject and are urged to participate in subsequent discussions.

DATES: The public meeting is scheduled for August 31, 1977, at 9:30 a.m. in Room 3200, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Fred Bank, Environmental Quality Branch, Office of Environmental Policy (202-426-9173); or Gary Daves, Office of the Chief Counsel (202-426-0800), Federal Highway Administration 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday.

ADDRESS: Data and comments may be submitted in triplicate to FHWA Docket No. 77-10, Room 4230, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Copies of all comments will be available for examination during normal business hours, 7:45 a.m. to 4:15 p.m. ET, at the foregoing address.

BACKGROUND AND SUPPLEMENTARY INFORMATION: The intentional drainage of wetlands into Federal-aid highways rights-of-way has been of longstanding concern to Federal, State and private conservation organizations and agencies. Data from Fish and Wildlife Service field offices suggest that in some sections of the country intentional drainage into highway ditches has contributed significantly to the continual decline in wetland acreage.

The Federal Highway Administration (FHWA) responsibilities with regard to wetlands are included in the Department of Transportation (DOT) Order 5660.1, dated May 21, 1975, entitled "Preservation of the Nation's Wetlands."[1] Under

[1] The order is available for inspection and copying as prescribed in 49 CFR Part 7.

the order FHWA has the responsibility to preserve and enhance wetlands to the extent practicable. Additional agency obligation toward wetland protection is directed by the recent Executive Order 11990 of May 24, 1977, (42 FR 26961), entitled "Protection of Wetlands." However, the public meeting deals only with the single issue of wetland drainage and is not intended to be a substitute for any future agency actions that may be necessary in accordance with Executive Order 11990.

In light of the clear Federal policy with regard to wetlands preservation, FHWA desires to entertain public comment on the drainage issue and initiate appropriate corrective measures as necessary. Among the measures to be considered will be the desirability of control by FHWA of non-highway drainage structures in the right-of-way of Federal-aid highways. Such structures are sometimes used to drain water from wetlands onto the rights-of-way.

QUESTIONS

Comment is specifically invited on the following issues:

1. How serious is the threat to the nation's wetlands posed by the natural and artificial drainage of wetlands into Federal-aid highway rights-of-way?

2. What problems are posed by Federal or State laws and policies regarding the development of an FHWA policy relative to this problem?

3. Under what criteria and to what degree should artificial drainage of wetlands into Federal-aid highway rights-of-way be authorized? Consider factors such as, increased demand for agricultural products, maintenance of farm incomes, and government policies that stress the development and preservation of tillable acreage.

Issued on July 29, 1977.

WILLIAM M. COX,
Federal Highway Administrator.

[FR Doc.77-22309 Filed 8-2-77;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

ANIMAL GLUE AND INEDIBLE GELATIN FROM WEST GERMANY

Antidumping; Withholding of Appraisement Notice and Determination of Sales at Less than Fair Value

AGENCY: U.S. Treasury Department.

ACTION: Withholding of Appraisement and Determination of Sales at Less Than Fair Value.

SUMMARY: This notice is to advise the public that an antidumping investigation has been completed and that it has been determined that animal glue and inedible gelatin from West Germany are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 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. This case is being referred to the United States International Trade Commission for it to determine whether an industry in the United States is being injured. Simultaneously, appraisements of entries of this merchandise will be withheld for 3 months, pending an injury determination by the International Trade Commission.

EFFECTIVE DATE: August 3, 1977.

FOR FURTHER INFORMATION CONTACT:

David P. Mueller, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone (202-566-5492).

SUPPLEMENTARY INFORMATION: Information was received in proper form on December 23, 1976, from counsel acting on behalf of Darling & Company, Milligan & Higgins Corporation and the Peter Cooper Corporation, alleging that animal glue and inedible geltain from West Germany were being sold at less than fair value, thereby causing injury to, or the likelihood of injury to, or the prevention of establishment of an industry in the United States, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER on January 26, 1977 (42 FR 4920).

DETERMINATION OF SALES AT LESS THAN FAIR VALUE

I hereby determine that, for the reasons stated below, animal glue and inedible gelatin from West Germany are being, or are likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

The reasons and basis for the above determination are as follows:

a. *Scope of the investigation.* The predominance of imports of the subject merchandise from West Germany during the period of investigation were manufactured by the following firms: Electro Chemische Fabrik Kempen Gmbh. ("Kempen"); Chemische Dungerfabrik Rendsburg Gmbh. ("Rendsburg"); Fritz Hacker & Sohn Gmbh. ("Hacker"); G. Conradt & Sohn ("Conradt"); Johannes Martens KG ("Martens"); and Animal Produkten KG ("Produkten"). Therefore, the investigation was limited to these manufacturers.

b. *Basis of comparison.* For the purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between the purchase price and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all exports sales to the United States were made to non-related customers. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used since such or similar merchandise was sold in the home market in sufficient quantities to provide a basis for fair value.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)) pricing information was obtained concerning imports and home market sales during the period August 1, 1976 through January 31, 1977.

c. *Purchase Price.* For the purposes of this determination of sales at less than fair value, since all merchandise was purchased or agreed to be purchased prior to the time of exportation, by the persons by whom or for whose account it was imported within the meaning of section 203 of the Act, the purchase price has been calculated on the basis of the c.i.f. or f.o.b. price to unrelated United States purchasers with deductions for inland freight and insurance, and ocean freight and insurance, costs, as appropriate. Whenever actual data was unavailable such information as was available to the U.S. Customs Service has been utilized.

d. *Home market price.* For the purposes of this determination of sales at less than fair value, the home market price has been calculated on the basis of the delivered prices to unrelated West German purchasers, with reference to sales by Kempen. Adjustments have been made for inland freight and for differences in packing costs, as appropriate.

In the case of the above-named manufacturers other than Kempen, home market price was determined utilizing the best information available. Whenever actual home market prices were not available, such alternative information with respect to such prices as was available to the U.S. Customs Service, has been utilized.

With respect to sales by Kempen, that level of trade has been selected in the home market which is comparable to the level of trade to which sales to the United States have been made, pursuant to § 153.15, Customs Regulations (19 CFR 153.15).

e. *Results of fair value comparisons.* Using the above criteria, comparisons were made on the predominance of all sales of the subject merchandise to the United States during the representative period. Those comparisons indicated that the purchase price of animal glue and inedible gelatin, other than that produced and sold by Kempen, was less than the home market price of such or similar merchandise. Weighted average margins were found on 100 percent of sales compared on each of the following companies investigated: Rendsburg, 158 percent; Hacker, 28 pecent; Conradt, 67 percent; Martens, 50 percent; and Animal Produkten, 100 percent.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

Further, and based on the reasons noted above, Customs officers are being directed to withhold ap raisement of animal glue and inedible gelatin from West Germany other than that produced and sold by Kempen, in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

This withholding of appraisement notice is published pursuant to § 153.35 (a), Customs Regulations (19 CFR 153.-35(a)), and shall become effective August 3, 1977. It shall cease to be effective on November 3, 1977, unless previously revoked.

The United States International Trade Commission is being advised of this determination.

This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

HENRY C. STOCKWELL, JR.,
Acting General Counsel.

JULY 26, 1977.

[FR Doc.77-22286 Filed 8-2-77; 8:45 am]

ANIMAL GLUE AND INEDIBLE GELATIN FROM YUGOSLAVIA

Antidumping; Withholding of Appraisement Notice and Determination of Sales at Less Than Fair Value

AGENCY: U.S. Treasury Department.

ACTION: Withholding of Appraisement and Determination of Sales at Less Than Fair Value.

SUMMARY: This notice is to advise the public that an antidumping investigation has been completed and that it has been determined that animal glue and inedible gelatin from Yugoslavia are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. 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. This case is being referred to the United States International Trade Commission for it to determine whether an industry in the United States is being injured. Simultaneously, appraisements of entries of this merchandise will be withheld for 3 months, pending an injury determination by the International Trade Commission.

EFFECTIVE DATE: August 3, 1977.

FOR FURTHER INFORMATION CONTACT:

William T. Trujillo, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone (202-566-5492).

SUPPLEMENTARY INFORMATION: Information was received in proper form on December 23, 1976, from counsel acting on behalf of Darling and Company, Milligan and Higgins Corporation and the Peter Cooper Corporation, alleging that animal glue and inedible gelatin from Yugoslavia were being sold at less than fair value, thereby causing injury to, or the likelihood of injury to, or the prevention of establishment of an industry in the United States, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of January 26, 1977 (42 FR 4921).

DETERMINATION OF SALES AT LESS THAN FAIR VALUE

I hereby determine that, for the reason stated below, animal glue and inedible gelatin from Yugoslavia are being, or are likely to be, sold at less than fair value within the meaning of section 201 (a) of the Act (19 U.S.C. 160(a)).

STATEMENT OF REASONS ON WHACH THIS DETERMINATION IS BASED

The reason and bases for the above determination are as follows:

a. *Scope of the investigation.* All imports of the subject merchandise from Yugoslavia were manufactured by Kemin, a subsidiary of H. P. Kolinska, Ljublijana, Yugoslavia. Therefore, the investigation was limited to this manufacturer.

b. *Basis of comparison.* For the purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between the purchase price and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales to the United States were made to non-related customers. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used since such or similar merchandise was sold in the home market in sufficient quantities to provide a basis for fair value. It has been determined that the economy of Yugoslavia is not state-controlled to an extent that sales or offers of sales of such or similar merchandise in Yugoslavia do not permit a determination of foreign market value under section 205(a) of the Act (19 U.S.C. 164(a)).

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning imports and home market sales during the period August 1, 1976 through January 31, 1977.

c. *Purchase price.* For the purposes of this determination of sales at less than fair value, since all merchandise was purchased or agreed to be purchased prior to the time of exportation, by the persons by whom or for whose account it was imported, within the meaning of section 203 of the Act, the purchase price has been calculated on the basis of the f.o.b. Yugoslav port, and/or C&F Boston prices, with deductions for inland and ocean freight, insurance and handling expenses.

d. *Home market price.* For the purposes of this determination of sales at less than fair value, the home market price has been calculated on the basis of the f.o.b. plant price to unrelated purchasers in Yugoslavia. In the case of two types of technical gelatin appropriate adjustments were made for differences in merchandise between similar merchandise sold in the home market and to the United States in accordance with § 153.-11, Customs Regulations (19 CFR 153.11).

e. *Results of fair value comparison.* Using the above criteria, comparisons were made on all sales of the subject merchandise to the United States by KEMIN during the period of the investigation. Those comparisons indicated that the purchase price of animal glue and inedible gelatin was less than the home market price of such or similar merchandise. Margins were found, ranging from approximately 1.7 percent to approximately 31 percent, on about 92 percent of the sales of the subject merchandise to the United States during the period of investigation. The weighted average margin on all sales was 9.7 percent.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

Further, and based on the reasons noted above, Customs officers are being directed to withhold appraisement of animal glue and inedible gelatin from Yugoslavia in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

This withholding of appraisement notice is published pursuant to § 153.35(a), Customs Regulations (19 CFR 153.35 (a)), and shall become effective on August 3, 1977. It shall cease to be effective on November 3, 1977, unless previously revoked.

The United States International Trade Commission is being advised of this determination.

This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

HENRY C. STOCKWELL, JR.,
Acting General Counsel.

JULY 26, 1977.

[FR Doc.77-22287 Filed 8-2-77;8:45 am]

ANIMAL GLUE AND INEDIBLE GELATIN FROM SWEDEN

Antidumping; Withholding of Appraisement Notice and Determination of Sales at Less Than Fair Value

AGENCY: U.S. Treasury Department.

ACTION: Withholding of appraisement and determination of sales at less than fair value.

SUMMARY: This notice is to advise the public that an antidumping investigation has been completed and that it has been determined that animal glue and inedible gelatin from Sweden is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 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. This case is being referred to the United States International Trade Commission for it to determine whether an industry in the United States is being injured. Simultaneously, appraisements of entries of this merchandise will be withheld for three months, pending an injury determination by the International Trade Commission.

EFFECTIVE DATE: This notice will be effective on August 3, 1977.

FOR FURTHER INFORMATION CONTACT:

William T. Trujillo, U.S. Customs Service, Operations Officer, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: Information was received in proper form on December 23, 1976, from Stewart and Ikenson, Attorneys at Law on behalf of Darling & Co., Milligan & Higgins Corp., and the Peter Cooper Corp. alleging that animal glue and inedible gelatin from Sweden is being sold at less than fair value, thereby causing injury to or the prevention of the establishment of an industry in the United States, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of January 26, 1977 (42 FR 4921-22).

DETERMINATION OF SALES AT LESS THAN FAIR VALUE

I hereby determine that, for the reasons stated below, animal glue and inedible gelatin from Sweden is being, or is likely to be, sold at less than fair value within the meaning of section 201 (a) of the Act (19 U.S.C. 160(a)).

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

The reasons and bases for the above determination are as follows:

(a) *Scope of the investigation.* All of the imports of the subject merchandise from Sweden are manufactured by Extraco A.B., Klippan, Sweden. Therefore, the investigation was limited to that manufacturer.

(b) *Basis of comparison.* For the purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between the purchase price and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales to the United States were made to non-related customers. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2) was used since such or similar merchandise was sold in the home market in sufficient quantities to provide a basis for fair value.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning imports and home market sales during the period August 1, 1976, through January 31, 1977.

(c) *Purchase price.* For the purposes of this determination of sales at less than fair value, since all merchandise was purchased or agreed to be purchased prior to the time of exportation, by the persons by whom or for whose account it was imported, within the meaning of section 203 of the Act, the purchase price has been calculated on the basis of the c.i.f. Boston, Mass., price to unrelated purchasers with deductions for ocean freight and other charges which were included in the price and incurred in bringing the merchandise from the point of shipment to the point of delivery in accordance with section 203 of the Act.

(d) *Home market price.* For the purposes of this determination of sales at less than fair value, the home market price has been calculated on the basis of the f.o.b. plant price to an unrelated purchaser in Sweden.

A level of trade adjustment was requested in this case. Sufficient home market sales were found at a comparable level of trade and the claim for adjustment was denied.

(e) *Results of fair value comparisons.* Using the above criteria, comparisons were made on approximately 68 percent of the animal glue and inedible gelatin which were sold to the United States from Sweden during the representative period. Those comparisons indicated that the purchase price was less than the home market price of such or similar merchandise. Margins were found ranging from approximately 70 to 126 percent on 100 perecnt of the sales compared. The weighted-average margin of those sales on which comparisons were made amounted to 92.72 percent.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

Further, and based on the reasons noted above, Customs officers are being directed to withhold appraisement of animal glue and inedible gelatin from Sweden in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

This withholding of appraisement notice is published pursuant to § 153.35(a), Customs Regulations (19 CFR 153.35 (a)), and shall become effective August 3, 1977. Such action shall cease to be effective on November 3, 1977, unless previously revoked.

The United States International Trade Commission is being advised of this determination.

This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

HENRY C. STOCKWELL, Jr.,
Acting General Counsel.

JULY 26, 1977.

[FR Doc.77-22288 Filed 8-2-77;8:45 am]

ANIMAL GLUE AND INEDIBLE GELATIN FROM THE NETHERLANDS

Antidumping; Withholding of Appraisement Notice and Determination of Sales at Less Than Fair Value

AGENCY: U.S. Treasury Department.

ACTION: Withholding of appraisement and determination of sales at less than fair value.

SUMMARY: This notice is to advise the public that an antidumping investigation has been completed and that it has been determined that inedible gelatin and animal glue from the Netherlands is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 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 to third countries. This case is being referred to the International Trade Commission for it to determine whether a United States industry is being injured. Simultaneously, appraisement of entries of this merchandise will be withheld for three months, pending an injury determination by the International Trade Commission.

EFFECTIVE DATE: August 3, 1977.

FOR FURTHER INFORMATION CONTACT:

John R. Kugelman, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: Information was received in proper form on December 23, 1976, from counsel acting on behalf of the National Association of Glue Manufacturers, Inc., New York, N.Y., alleging that inedible gelatin and animal glue from the Netherlands was being sold at less than fair value, thereby causing injury to, or the likelihood of injury to, or the prevention of the establishment of an industry in the United States, within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of January 26, 1977 (42 FR 4921).

DETERMINATION OF SALES AT LESS THAN FAIR VALUE

I hereby determine that, for the reasons stated below, inedible gelatin and animal glue from the Netherlands is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

The reasons and bases for the above determination are as follows:

(a) *Scope of the investigation.* Of the imports of the subject merchandise from the Netherlands, 100 percent was manufactured by Wed. P. Smits en Zoon B.V. and Lijmfabriek C. Trommelen. Therefore, the investigation was limited to these two manufacturers.

(b) *Basis of comparison.* For the purposes of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison is between the purchase price and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales to the United States appear to be made to an unrelated customer. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used since such or similar merchandise was sold by both manufacturers in the home market in sufficient quantities to provide a basis for fair value.

In the case of Trommelen, a claim was made that home market price should be calculated by utilizing sales to a distributor based in the Netherlands, who resold the merchandise principally for use within neighboring countries of the European Community (EC) and who was at the same commercial level of trade as the sole U.S. importer. Because the goods were made to a company located in the Netherlands who took title to the goods and who in turn was free to resell the goods to whatever destinations the distributor chose, it has been determined that those sales are sales for home consumption in accordance with § 153.2, Customs Regulations (19 CFR 153.2).

(c) *Purchase price.* For the purposes of this determination of sales at less than fair value, since all merchandise was purchased or agreed to be purchased prior to the time of exportation, by the persons by whom or for whose account it was imported, within the meaning of section 203 of the Act, the purchase price has been calculated on the basis of the f.o.b. foreign port of the C&F U.S. port price to the unrelated United States purchaser, with deductions for ocean freight, trucking, loading, inland freight and handling charges, as appropriate.

(d) *Home market price.* For the purposes of this determination of sales at less than fair value, the home market price has been calculated on the basis of the ex-factory price for such or similar merchandise to unrelated Dutch purchasers in the case of Smits, and on the basis of delivered prices to, in the case of Trommelen, unrelated purchaser, have been made for inland freight discounts to a distributor, technical services and for a difference in the cost of packing.

The latter three adjustments were made pursuant to § 153.10, Customs Regulations (19 CFR 153.10). Each of the foregoing costs was directly related to the sales under consideration.

Claims were made for certain adjustments by one or both manufacturers which were disallowed. These claims involved differences in quantities and/or level of trade, differences in merchandise, and unanticipated fluctuations in the rate of currency exchange.

The claim for differences in quantities and/or level of trade was not allowed in the case of Smits en Zoon since it was based on sales to third countries and not on sales for home consumption, when in fact it was determined that a viable home market existed.

The claim for differences in merchandise was not material since the merchandise in question was not employed for comparison purposes. Comparisons were not made on this particular merchandise inasmuch as it was determined from pricing practices that substantial cost differences existed, which were not sufficiently quantified.

The claim for an adjustment due to unanticipated differences in the rate of currency exchange, which had an adverse effect on one of the manufacturer's prices, was not allowed because it was determined that price comparisons were properly made, in accordance with § 153.52, Customs Regulations (19 CFR 153.52).

(e) *Result of fair value comparisons.* Using the above criteria, comparisons were made on approximately 65 percent of the sales of the subject merchandise to the United States by Smits and Trommelen during the representative period and those comparisons indicated that the purchase price was less than the home market price of such or similar merchandise. Margins were found ranging from 0.8 to 21.5 percent on 100 percent of the sales to the United States. The weighted-average margin when weighted over 100 percent of the sales compared amounted to 7.5 percent.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

Further, and based on the reasons noted above, Customs Officers are being directed to withhold appraisement of inedible gelatin and animal glue from the Netherlands in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

This withholding of appraisement notice is published pursuant to § 153.35(a), Customs Regulations (19 CFR 153.35(a)), and shall become effective on August 3, 1977. Such action shall cease to be effective on November 3, 1977, unless previously revoked.

The United States International Trade Commission is being advised of this determination.

This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

HENRY C. STOCKWELL, Jr.,
Acting General Counsel.

JULY 26, 1977.

[(FR Doc.77-22285 Filed 8-2-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

Office of Hearings

[Notice No. 450]

ASSIGNMENT OF HEARINGS

JULY 29, 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 11977 Sub 336, Ligon Specialized Hauler, Inc. now being assigned October 13, 1977 (2 days) at Dallas, Texas and will be held in Room 5A15-17, Federal Building, 1100 Commerce Street.

AB 19 Sub No. 27 Baltimore and Ohio Railroad Company Abandonment between Flora and Sangamon Junction, in Clay, Effingham, Fayett, Shelby, Christian and Sangamon Counties, Illinois, now assigned August 16, 1977 is postponed to August 23, 1977 at Interstate Commerce Commission in Washington, D.C.

MC 41098 Sub No. 42 Global Van Lines, Inc., now being assigned November 1, 1977 (14 days) for hearing in Los Angeles, CA, in a hearing room to be later designated.

FFC 70, Imperial Air Service, Inc. Investigation of Operations now being assigned September 21, 1977 (1 day) at New York, New York in a hearing room to be later designated.

MC 4405 (Sub-No. 542), Dealers Transit, Inc., now being assigned September 27, 1977, at St. Louis, Mo., Court Room 3, 5th Floor, U.S. Court and Customhouse, 1114 Market Street (1 day).

MC 142059 (Sub-No. 4), Cardinal Transport, Inc., now being assigned September 28, 1977 (1 day), St. Louis, Mo., Court Room 3, 5th Floor, U.S. Court and Customhouse, 1114 Market St.

MC 78400 (Sub-No. 49), Beaufort Transfer Company and MC 138741 (Sub-No. 32), American Central Transport, Inc., now being assigned September 29, 1977 (2 days), at St. Louis, Mo., Court Room 3, 5th Floor, U.S. Court and Customhouse, 1114 Market Street.

MC-C-9702, *Global Van Lines, Inc.* v. *United Van Lines, Inc.*, now being assigned October 3, 1977 (1 day), at St. Louis, Mo., Court Room 3, 5th Floor, U.S. Court and Customhouse, 1114 Market Street.

MC 4405 (Sub-No. 543), Dealers Transit, Inc., now being assigned October 4, 1977 (1 day), at St. Louis, Mo., Court Room 3, 5th Floor U.S. Court and Customhouse, 1114 Market Street.

MC 135684 (Sub-No. 35), Bass Transportation Co., Inc., now being assigned October 5, 1977 (1 day), at St. Louis, Mo. Court Room 3, 5th Floor, U.S. Court and Customhouse, 1114 Market Street.

MC 113325 (Sub-No. 145), Slay Transportation Co., Inc., now being assigned for continued hearing on October 6, 1977 (2 days), at St. Louis, Mo., Court Room 3, 5th Floor, U.S. Court and Customhouse, 1114 Market Street.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-22327 Filed 8-2-77;8:45 am]

[Ex Parte No. 241, Rule 19, Amendment No. 3 to Revised Exemption No. 121]

BALTIMORE & OHIO RAILROAD CO., ET AL.

Exemption

Exemption under provision of rule 19 of the Mandatory Car Service rules ordered in ex parte No. 241.

To: The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, Norfolk and Western Railway Company, Western Maryland Railway Company.

Upon further consideration of Revised Exemption No. 121 issued April 23, 1976.

It is ordered, That, under the authority vested in my by Car Service Rule 19, Exemption No. 121 to the Mandatory Car Service Rules ordered in Ex Parte No. 241, be, and it is hereby amended to *expire September 30, 1977.*

This amendment shall become effective July 31, 1977.

Issued at Washington, D.C., July 22, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-22321 Filed 8-2-77;8:45 am]

[Ex Parte No. 241, Rules 19, Amendment No. 6 to Exemption No. 122]

BALTIMORE & OHIO RAILROAD CO., ET AL.

Exemption

JULY, 29, 1977.

Exemption under provision of rule 19 of the Mandatory Car Service rules ordered in Ex Parte No. 241.

To: The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, Consolidated Rail Corporation, Western Maryland Railway Company.

Upon further consideration of Exemption No. 122 issued April 2, 1976.

It is ordered, That, under the authority vested in me by Car Service Rule 19, Exemption No. 122 to the Mandatory Car Service Rules ordered in Ex Parte No. 241, be, and it is hereby amended to *expire August 31, 1977.*

This amendment shall become effective July 31, 1977.

Issued at Washington, D.C., July 22, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-22320 Filed 8-2-77;8:45 am]

[Ex Parte No. 241, Rule 19, Amendment No. 5 to Exemption No. 127]

BESSEMER & LAKE ERIE RAILROAD CO., ET AL.

Exemption

Exemption under provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241

To: Bessemer and Lake Erie Railroad Company, The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, Western Maryland Railway Company.

Upon further consideration of Exemption No. 127 issued June 29, 1976.

It is ordered, That, under authority vested in me by Car Service Rule 19, Exemption No. 127 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 be, and it is hereby, amended to *expire September 30, 1977.*

This amendment shall become effective July 31, 1977.

Issued at Washington, D.C., July 22, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-22324 Filed 8-2-77;8:45 am]

[Ex Parte No. 241, Rule 19, Tenth Revised Exemption No. 129]

CHICAGO, WEST PULLMAN & SOUTHERN RAILROAD CO., ET AL.

Exemption

JULY 29, 1977.

Exemption under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241.

It appearing, That the railroads named herein own numerous 40-ft. plain boxcars; that under present conditions, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 404 issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", with inside length 44-ft. 6-in. or less, regardless of door width and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b).

Chicago, West Pullman & Southern Railroad Company. Reporting Marks: CWP
Chicago, Rock Island and Pacific Railroad Company. Reporting Marks: RI-ROCK
Detroit and Mackinac Railway Company. Reporting Marks: D&M-DM
Illinois Terminal Railroad Company. Reporting Marks: ITC
Louisville, New Albany & Corydon Railroad Company. Reporting Marks: LNAC
Missouri-Kansas-Texas Railroad Company. Reporting Marks: MKT
Missouri Pacific Railroad Company. Reporting Marks: CEI-MI-MP-TP
New Hope and Ivyland Railroad Company. Reporting Marks: NHIR
Richmond, Fredericksburg and Potomac Railroad Company. Reporting Marks: RFP
Southern Railway Company.
Reporting Marks: CG-NS-SA-SOU

Effective 12:01 a.m., August 1, 1977, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., July 22, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-22319 Filed 8-2-77;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

JULY 29, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

FSA No. 43407—*Petroleum and Petroleum Products from Gilsonite, Colorado.* Filed by Western Trunk Line Committee, Agent, (No. A-2740), for interested rail carriers. Rates on petroleum, petroleum products, asphalt, petroleum road oil, and petroleum wax tailings, in tank-car loads, as described in the application, from Gilsonite, Colorado, to points in western trunk-line territory, Illinois, Indiana, and Kentucky.

Grounds for relief—Market competition; modified short-line distance formula and grouping.

Tariff—Supplement 153 to Western Trunk Line Committee, Agent, tariff 473, I.C.C. No. A-4572. Rates are published to become effective on August 27, 1977.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-22322 Filed 8-2-77;8:45 am]

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[1] Addition.

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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	Items
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1

[MA–19 amending M–38]

JULY 28, 1977.

Correction of listing of item 4.

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., August 2, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 4. Docket 30635, Petition for reconsideration and motion to consolidate *Arizona Service Investigation* (Memo. No. 6907–B, BLJ, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, (202–673–5068).

SUPPLEMENTARY INFORMATION: Inadvertently an incorrect bureau designation was listed. Item 4 should have read as listed above.

[S–1032–77 Filed 8–1–77;9:28 am]

2

COMMODITY FUTURES TRADING COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: August 4, 1977, 10 a.m.

CHANGES IN THE MEETING: Delete the discussion on the Chicago Board of Trade application for designation as a contract market in long term U.S. Treasury bonds.

[S–1024–77 Filed 8–1–77;9:27 am]

3

COMMODITY FUTURES TRADING COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: August 2, 1977, 10 a.m.

CHANGES IN THE MEETING: Add the following subject—Chicago Board of Trade application for designation as a contract market in long term U.S. Treasury bonds.

[S–1025–77 Filed 8–1–77;9:27 am]

4

CONSUMER PRODUCT SAFETY COMMISSION.

DATE AND TIME: July 29, 1977, 2 p.m.

LOCATION: 3rd Floor Hearing Room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED: At the request of the National Safety Council (NSC), the Commission met with NSC President Vincent L. Tofany to discuss strategies to assist voluntary safety efforts, strategies for CPSC/NSC working relationships, CPSC's voluntary standards policy, and interagency efforts concerning chronic chemical hazards.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Richard A. Danca, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C., telephone 202–634–7700.

[S–1026–77 Filed 8–1–77;9:27 am]

5

CONSUMER PRODUCT SAFETY COMMISSION.

DATE AND TIME: These meetings will be held on the dates listed below; all meetings will begin at 9:30 a.m.

LOCATION: All these meetings will be held in the 3rd Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: At these meetings, the Commission will consider either its fiscal year 1978 operating plan or its fiscal year 1979 budget, as stated below:

August 2—Fiscal year 1978 operating plan.
August 3—Fiscal year 1978 operating plan (if needed).
August 4—Fiscal year 1979 budget levels.
August 5—Fiscal year 1979 budget proposal.
August 8—Fiscal year 1979 budget proposal (if needed).

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Richard A. Danca, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, telephone 202–634–7790.

[S–1027–77 Filed 8–1–77;9:28 am]

6

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Monday, August 8, 1977, at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

I. Future meetings.
II. Correction and approval of minutes—July 21, 1977.
III. Advisory opinion 1977–31 (Commission memorandum No. 1405).
IV. Appropriations and budget task force report on fiscal year 1978 budget.
V. Pending legislation.
VI. Liaison with other Federal agencies.
VII. Report on pending litigation.
VIII. Promotion procedures/agency position descriptions.
IX. Communication from OMB re log of contacts.
X. Routine administrative matters.

Portions closed to the public (executive session):

Compliance; F.O.I.A. appeals; personnel.

PERSON TO CONTACT FOR INFORMATION:

David Fiske, Press Officer, Telephone 202–523–4065.

[S–1033–77 Filed 8–1–77;10:36 am]

7

[USITC SE–77–47]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 9:30 a.m., August 11, 1977.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

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. Reorganization; 2. Agenda; 3. Minutes; 4. Petitions and complaints (if necessary); 5. Any items left over from previous agenda.

Portions closed to the public:

1. Reorganization (portions regarding the selection of personnel).

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary (202–523–0161).

[S–1028–77 Filed 8–1–77;9:28 am]

8

JULY 29, 1977.

INTERSTATE COMMERCE COMISSION.

TIME AND DATE: 1 p.m., Monday, August 1, 1977.

PLACE: Room 5124, Interstate Commerce Commission Building, 12th and Constitution Avenue NW., Washington, D.C.

STATUS: Short notice of open conference. Division 3, Chairman Brown, Commissioners MacFarland and Christian have unanimously voted to call this meeting on short notice to consider the following agenda.

MATTERS TO BE CONSIDERED: Finance Docket No. 28322—Chicago South Shore and South Bend Railroad, discontinuance of all passenger train service. Docket No. AB-136—Chicago South Shore and South Bend Railroad; abandonment of line over The Illinois Central Gulf Railroad between Randolph Street and 115th Street (Kensington) in Cook County, Ill.

CONTACT PERSON FOR MORE INFORMATION:

Hildred S. Hersman, Confidential Assistant, Telephone 202-275-7535.

[S-1030-77 Filed 8-1-77;9:28 am]

9

JULY 29, 1977.

INTERSTATE COMMERCE COMMISSION, DIVISION 3.

TIME AND DATE: 10 a.m., Friday, August 5, 1977.

PLACE: Room 5124, Interstate Commerce Commission Building, 12th and Constitution Avenue NW., Washington, D.C.

STATUS: Open special conference.

MATTERS TO BE CONSIDERED:

1. No. MC-FC-76614—Remy Transportation Corp., Walpole, Mass., Transferee, and J. F. Fiore Co., Inc., South Boston, Mass., Transferor, and

2. No. MC-FC-77068—Robert J. Corduck and Jeanne L. Corduck, doing business as East Coast Movers, Woburn, Mass., Transferee, and Remy Moving & Storage Corp., Walpole, Mass., Transferor. (Discussion and possible voting.)

CONTACT PERSON FOR MORE INFORMATION:

Office of Commissioner Brown, Hildred Hersman, Confidential Assistant, Telephone 202-275-7535.

[S-1031-77 Filed 8-1-77;9:28 am]

10

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 p.m., Wednesday, August 3, 1977.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Ratification of Board actions taken by notation voting during the month of July 1977.

(2) Air conference request for amendment to section 310 of the Mediator's Manual — Representation Procedures pertaining to the distribution of employee addresses furnished by carriers for the purpose of conducting mail ballot elections.

(3) Request of United Airlines, Inc., that the Board reverse its findings upon investigation in NMB Case No. R-4550.

(4) Proposed findings upon investigation in NMB Case No. R-4582, Frontier Airlines, Inc.

(5) Request of United Airlines, Inc., that the Board dismiss the June 28, 1977, application for investigation of a representation dispute among the carrier's fleet service employees.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rowland K. Quinn, Jr., Executive Secretary; Telephone 202-523-5920.

SUPPLEMENTARY INFORMATION: Chairman Ives and Board Members Stowe and McMurray have determined by recorded vote that agency business requires a meeting on this date and that no earlier announcement of such meeting was practicable.

Date of notice: July 29, 1977.

[S-1029-77 Filed 8-1-77;9:28 am]

11

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., August 3, 1977.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: This meeting is subject to being closed by a vote of the Commissioners taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudication process.

CONTACT PERSONS FOR MORE INFORMATION:

Mrs. Nori Heuberger or Ms. Lottie Richardson (202-634-7970).

Dated: July 29, 1977.

[S-1023-77 Filed 7-29-77;3:58 pm]

federal register

WEDNESDAY, AUGUST 3, 1977

PART II



DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

■

EXPLOSIVE MATERIALS REGULATIONS

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[27 CFR Part 181]

[Notice No. 309]

EXPLOSIVE MATERIALS REGULATIONS

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to (1) substantially amend the regulations, particularly with respect to the record-keeping and storage requirements for explosive materials, (2) add new terms and revise existing language to conform more to current industry terminology, and (3) make numerous miscellaneous, clarifying, and editorial changes. This would enable the Bureau to adopt the standards of safety and security now recognized by the explosives industry.

DATE: Comments must be received on or before October 3, 1977.

ADDRESS: Before adopting these proposed regulations, we will consider any written data, comments, or suggestions which are submitted, in duplicate, to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, attention: Regulations and Procedures Division.

FOR FURTHER INFORMATION CONTACT:

Dorene F. Erhard, Research and Regulations Branch, 202-566-7626.

SUPPLEMENTARY INFORMATION: Written data, comments, or suggestions which are not exempt from disclosure by the Bureau of Alcohol, Tobacco and Firearms, may be inspected by any person upon compliance with 27 CFR 71.22(d)(7). The provisions of 27 CFR 71.31(b) shall apply with respect to exempting portions of data, comments, or suggestions from disclosure. Any interested person who desires an opportunity to comment orally at a public hearing should submit a written request to the Director within the 60-day period.

NEW SUBPART JJ—STORAGE

A new Subpart JJ is proposed which would include the provisions now found in Subpart J and all the changes affecting the storage of explosive materials proposed in this notice. The requirements in current Subpart J would apply with respect to storage for two years after the date these regulations are issued as a Treasury decision in the FEDERAL REGISTER. The provisions in Subpart JJ could be used optionally in lieu of those in Subpart J, but would become mandatory two years after the final regulations are issued.

Bullet-resistant construction of magazines.—A review of the explosives regulations implementing Title XI of the Organized Crime Control Act of 1970 was undertaken by the Bureau to improve and clarify Part 181, especially with respect to the storage of explosive materials. At the same time, the Institute of Makers of Explosives (IME) was planning to conduct tests on the bullet-resistance of storage magazines constructed under the provisions of our existing regulations. The rifles and ammunition available on the market today have become considerably more powerful in recent years and it had been quite some time since magazine construction was tested for resistance to bullet penetration. The IME also wished to evaluate the degree of ballistic protection offered by certain untested materials and combinations of materials.

Conclusions drawn from the IME tests resulted in the following proposed changes to the regulations:

(1) The testing determined that other materials and combinations of materials would also meet the minimum specifications for bullet-resistance. In August 1976, the Bureau issued ATF Ruling 76-18 (1976, ATF C. B., 106), which listed these bullet-resistant materials and ruled that they are suitable alternatives to the existing standards for the construction of explosives magazines in Subpart J. We are now proposing to incorporate this same list into new Subpart JJ as the minimum standards for the construction of explosives magazines.

(Subpart JJ —§ 181.207.)

(2) Regulations require that magazines for the storage of high explosives be bullet-resistant. The current provision that doors on bullet-resistant magazines be constructed of ¼-inch plate steel and lined with 2 inches of hardwood was discovered to be inadequate for bullet protection. Consequently, for reasons of safety and security, we are proposing that all doors be constructed of ¼-inch plate steel and lined with 3 inches of hardwood.

(Subpart JJ—§§ 181.207 and 181.208.)

Other changes affecting magazine construction and storage.—The proposed regulations further liberalize and clarify the provisions governing the construction of explosives magazines and the storage of explosive materials by making the following amendments:

(1) To conform more to the language in the statute, we intend to stress that the standards of construction in Part 181 are standards of "safety and security."

(Subpart JJ—§ 181.201.)

(2) The descriptions for "high explosives," "low explosives," and "blasting agents," the three classes of explosive materials regulated under this part, would be expanded and additional specific examples of "low explosives" and "blasting agents" are proposed.

(Subpart JJ—§ 181.202.)

(3) The restrictions on the classes of explosive materials to be stored in types 4 and 5 magazines are proposed to be liberalized. The regulations would be relaxed to (a) allow electric blasting caps that will not mass detonate to be stored in type 4 magazines, and (b) allow water gels (slurries), which can be proven to be neither bullet- nor cap-sensitive, to be stored in type 5 magazines.

(Subpart JJ—§ 181.203.)

(4) The provision that storage magazines be opened and inspected every 3 days would be clarified by explaining that an inspection of this kind need not be an inventory, but must be sufficient to determine whether there has been unauthorized entry or attempted entry into the magazines or unauthorized removal of their contents.

(Subpart JJ—§ 181.204.)

(5) We propose to amend the section covering the location of magazines so that it refers to the new table of distances for the storage of explosive materials in § 181.218. We also intend to further clarify the requirement that magazines in which blasting agents are stored shall be located no closer to inhabited buildings, passenger railways, and public highways than the distances set down in the table of distances for explosive materials found in § 181.218.

(Subpart JJ—§ 181.206.)

(6) Numerous amendments are proposed to provide more flexibility in the construction of types 1, 2, 3, 4, and 5 magazines, both indoor and outdoor models. In particular, the requirements with respect to floors, foundations, roofs, walls, ceilings, doors, locks, ventilation, exposed metal, and outside construction are liberalized to allow for substitute materials and methods which offer essentially the same protection.

(Subpart JJ—§§ 181.207, 181.208, 181.209, 181.210, and 181.211.)

(7) We are proposing to amend the requirements for the type 5 indoor magazine. Present regulations permit the maximum quantity of explosive materials to be stored in type 5 indoor magazines without having to meet the same safety requirements prescribed for large quantities stored in outdoor magazines. We would require that amounts greater than 50 lbs. stored in indoor magazines be subject to the minimum separation distances found in the tables of distances which govern the storage of explosive materials in outdoor magazines. This requirement would still permit the storage of large amounts of explosive materials in type 5 indoor magazines, while at the same time reduce the risk to nearby persons and property.

(Subpart JJ—§ 181.211.)

(8) The provisions regulating the manner in which explosive materials are placed in magazines would be amended to make it clear that nonsparking lattice work or other nonsparking material may be used to prevent stored explosive materials from coming in direct contact with interior walls. Also, the requirement that explosive materials be stored in such a way that grade, brand, and Class marks are easily visible upon inspection, is further clarified by explaining that the term "Class" refers to the Department of

Transportation shipping classification on the container.

(Subpart JJ—§ 181.214.)

(9) A new provision is proposed to allow the use of electrical lighting when explosion-proof fixtures and wiring in rigid conduit are employed inside the magazine and all electric switches are located outside the magazine.

(Subpart JJ—§ 181.217.)

Housekeeping.—The following proposed amendments are made concerning maintenance in and around storage magazines:

(1) Present regulations prohibit trees to be located less than 25 feet from magazines. We have now found that live trees more than 10 feet tall are not a hazard and, in fact, act as a barricade. We are, therefore, proposing to make an exception allowing live trees over 10 feet tall in the 25-foot area surrounding magazines.

(Subpart JJ—§ 181.215.)

(2) Deteriorated explosives that are in a dangerous condition or leaking a liquid must be destroyed. For safety reasons, we propose to further define "deteriorated explosives" to include explosives in an unstable condition and explosives leaking any material, not only a liquid.

(Subpart JJ—§ 181.215.)

Table of distances for the storage of explosive materials.—A new table of distances for the storage of explosive materials is being proposed, in lieu of the current American Table of Distances found in § 181.218, which we adopted when the regulations in Part 181 went into effect in February 1971. The current American Table of Distances was published by the IME in June 1964, and until November 1971, was recommended for use by the IME and the National Fire Protection Association (NFPA).

In November 1971, the IME revised their table to increase the distances between explosives magazines and public highways, with a traffic volume exceeding 3,000 vehicles per day, and public railways. Distances governing certain unbarricaded magazines were more realistically calculated. Previously, the required distances for unbarricaded magazines were arrived at by merely doubling the required distances for barricaded magazines.

Since our explosives regulations were not updated during this time, the table in § 181.218 conflicts with the standard IME table of safe distances now recommended for use by many Federal, State, and local regulatory agencies, the NFPA, and the explosives industry. In an effort toward uniformity with recognized safety standards, we wish to include the newer IME recommended table in Subpart JJ.

(Subpart JJ—§ 181.218.)

RECORDKEEPING

Record retention.—Presently, licensees and permittees are required to keep records of the acquisition and disposition of explosive materials for no more than 5 years. ATF has had limited or no success tracing explosive materials older than 5 years through the distribution chain to the last known purchaser. Recent unsuccessful traces have included attempts to trace several tons of explosive materials hidden by a paramilitary organization near Los Angeles; dynamite found on the office window sill of an Illinois company whose employees were on strike; a bomb, which consisted of 95 sticks of dynamite, discovered in the basement of a South Carolina county courthouse; and an explosive device placed at the uncompleted residence of a New Mexico sheriff. This problem may become even more serious in the future, resulting in a higher number of unsuccessful ATF cases.

To insure that explosives records over 5 years old are available for ATF investigative purposes, we are proposing the following alternatives:

(1) At the time of renewal of a license or permit each year, all explosive materials records relating to transactions which occurred more than 5 years before the renewal date of the license of permit, shall be forwarded to the Bureau of Alcohol, Tobacco and Firearms, Explosives Technology Branch, Washington, D.C. 20226; or

(2) Instead of the procedure in (1), upon approval by the Director of a written request, licensees and permittees may retain the records required under Part 181 on their business premises and available for inspection by ATF officers for not less than 10 years from the date a transaction occurs.

(§ 181.121 amended.)

Acquisition and disposition records.—We are proposing to revise the format for recording the acquisition and disposition of explosive materials. A more detailed description of the explosive materials is proposed to (a) provide ATF with sufficient data to aid in the tracing of stolen materials and explosives used in bombs, and (b) insure that a licensee or permittee has the necessary information in his records to properly report thefts and losses of explosive materials from his stock.

(§§ 181.122, 181.123, 181.124, and 181.125 amended.)

Daily summaries.—Instead of requiring daily magazine transaction summaries to be kept at each magazine, we would permit these records to be kept at one central location on the licensed premises, as long as separate records of daily transactions are maintained for each magazine.

(§ 181.127 amended.)

OTHER AMENDMENTS TO THE REGULATIONS

Definitions. — Numerous definition changes and additions are proposed that further clarify magazine construction requirements, are essential to the understanding and application of the tables of distances, and make miscellaneous administrative and simplifying amendments.

(§ 181.11 amended.)

Theft or loss of explosive materials.—We propose to amend the procedure for reporting a theft or loss of explosive materials to (1) require more specific information when reporting a theft or loss to provide ATF with enough data to begin an investigation as soon as possible, and (2) require a theft or loss of explosive materials in transit to be reported by the carrier of the explosive materials to insure that all thefts or losses are reported.

(§ 181.30 amended.)

Special explosive devices.—A new section is proposed to provide that certain special explosive devices, explosive actuated tools, or similar devices which do not constitute a public safety hazard, may be exempted from requirements under this part, upon special determination by the Director.

(§ 181.32 added.)

Refund of license or permit fee.—We proposed to extend the provisions for refunding the fee submitted with an application for a license or permit to also include refunding the fee if the application is withdrawn or abandoned, or if a license is cancelled after having been issued through administrative error.

(§ 181.44 amended.)

Changes of location and changes in construction.—We are proposing to clarify and separate the regulations covering changes of address of a licensee's or permittee's business premises and changes in location and construction of explosives storage magazines.

(§ 181.54 revised and § 181.63 added.)

Licenses, permits, and applications.—We are proposing that the license or permit application returned by the regional regulatory administrator with the approved license or permit be kept available for inspection with the license or permit on the business premises. However, in lieu of requiring that a copy of the license or permit and the application be kept at each approved magazine, we would permit them to be kept at one central location on the business premises.

(§ 181.101 amended.)

Manufacturer's marks of identification.—We are proposing that the Director now determine whether any explosive materials (except blasting caps) are small enough in size to be exempt from the requirement that manufacturer's marks of identification be placed on the indivdual item.

(§ 181.109 amended.)

Exempted fireworks.—In the list of exemptions from the regulations in this part, we propose to specifically refer to the types of common fireworks exempted as Class C fireworks and certain other Class C explosives described under Department of Transportation regulations.

(§ 181.141 amended.)

DRAFTING INFORMATION

The principal author of this regulation is Dorene F. Erhard of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices in the Bureau and from the Treasury Department participated in developing the regulation, both on matters of substance and style.

SPECIFIC CHANGES TO THE REGULATIONS

In consideration of the foregoing, 27 CFR 181 is proposed to be amended as follows:

1. By amending § 181.2 to read as follows:

§ 181.2 Relation to other provisions of law.

The provisions in this part are in addition to, and are not in lieu of, any other provision of law, or regulations, respecting commerce in explosive materials. For regulations applicable to commerce in firearms and ammunition, see Part 178 of this chapter. For regulations applicable to traffic in machine guns, destructive devices, and certain other firearms, see Part 179 of this chapter. For statutes applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see section 38 of the Arms Export Control Act (22 U.S.C. 2778), and regulations in Part 47 of this chapter and in Parts 121–128 of Title 22, Code of Federal Regulations. For statutes applicable to nonmailable materials, see 18 U.S.C. 1716 and implementing regulations. For statutes applicable to water quality standards, see 33 U.S.C. 1171(b).

2. By amending § 181.11 to read as follows:

§ 181.11 Meaning of terms.

When used in this part, terms are defined as follows in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender include the feminine. The terms "includes" and "including" do not exclude other things not named which are in the same general class or are otherwise within the scope of the term defined.

Act.—Chapter 40 of Title 18 of the United States Code.

Ammunition.—Small arms ammunition or cartridge cases, primers, bullets, or smokeless propellants designed for use in small arms, and includes percussion caps and 3/32-inch pyrotechnic safety fuses. The term does not include black powder.

Approved storage facility.—A place where explosive materials are stored, consisting of one or more approved magazines, conforming to the requirements of Subpart J or Subpart JJ of this part and covered by a license or permit issued under this part.

Army-type structure.—A structure approved by the Department of Defense for the storage of explosive materials.

Artificial barricade.—An artificial mound or revetted wall of earth of a minimum thickness of three feet.

ATF officer.—An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Barricaded.—A magazine containing explosives which is effectively screened from another magazine, a building, a railway, or a highway, either by a natural barricade or by an artificial barricade, of such a height that a straight line from the top of any sidewall of the magazine containing explosives to the eave line of any other magazine, or building, or to a point twelve feet above the center of a railway or highway, will pass through the natural or artificial barricade.

Blasting agent.—Any material or mixture, consisting of fuel and oxidizer, that is intended for blasting and not otherwise defined as an explosive; if the finished product, as mixed for use of shipment, is not bullet-sensitive and cannot be detonated by means of a number 8 test blasting cap when unconfined. A number 8 test blasting cap is one containing 2 grams of a mixture of 80 percent mercury fulminate and 20 percent potassium chlorate, or a blasting cap of equivalent strength. An equivalent strength cap comprises 0.32±0.02 grams (5 grains) of PETN base charge pressed in an aluminum shell with bottom thickness not to exceed 0.03 of an inch to a specific gravity of not less than 1.4 g/cc., and primed with standard weights of primer depending on the manufacturer.

Bullet-resistant.—Resistant to penetration of a bullet of 150 grain M2 ball ammunition having a nominal muzzle velocity of 2700 feet per second fired from a .30 caliber rifle from a distance of 100 feet perpendicular to the wall or door.

Bullet-sensitive explosive materials.—Explosive materials that can be detonated by 150 grain M2 ball ammunition having a nominal muzzle velocity of 2700 feet per second when the bullet is fired from a .30 caliber rifle at a distance of 100 feet. (Based on test explosive materials having a temperature of 70 to 75 degrees F., placed against a backing material of ½-inch steel plate and arranged in the same manner in which it will be stored.)

Bureau.—The Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C. 20226.

Business premises.—When used with respect to a manufacturer, importer, or dealer, the property on which explosive materials are manufactured, imported, stored, or distributed. The premises includes the property where the records of a manufacturer, importer, or dealer are kept if different than the premises where explosive materials are manufactured, imported, stored or distributed. When used with respect to a user of explosive materials, the property on which the explosive materials are received or stored. The premises includes the property where the records of the user are kept if different than the premises where explosive materials are received or stored.

Crime punishable by imprisonment for a term exceeding 1 year.—Any offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of 1 year. The term does not include (a) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or (b) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of 2 years or less.

Customs officer.—Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized to perform any duties of an officer of the Customs Service.

Dealer.—Any person engaged in the business of distributing explosive materials at wholesale or retail.

Detonator.—Any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, and detonating-cord delay connectors.

Director.—The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C. 20226.

Distribute.—To sell, issue, give, transfer, or otherwise dispose of. The term does not include a mere change of possession from a person to his agent or employee in connection with the agency or employment.

District Director.—A District Director of Internal Revenue.

Executed under penalties of perjury.—Signed with the required declaration under the penalties of perjury as provided on or with respect to the return, form, or other document or, where no form of declaration is required, with the declaration:

> I declare under the penalties of perjury that this—(insert type of document, such as, statement, application, request, certificate), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

Explosive actuated device.—Any tool or special mechanized device which is actuated by explosives, but not a propellant actuated device.

Explosive materials.—Explosives, blasting agents, water gels (slurries), and detonators. Explosive materials include, but are not limited to, all items in the List of Explosive Materials provided for in § 181.23.

Explosives.—Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high ex-

plosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters.

Fugitive from justice.—Any person who has fled from the jurisdiction of any court of record to avoid prosecution for any crime or to avoid giving testimony in any criminal proceeding. The term also includes any person who has been convicted of any crime and has fled to avoid imprisonment.

Hardwood. Red Oak, White Oak, Hard Maple, Ash, Hickory, or other equally bullet-resistant hard wood, free from loose knots and voids, or similar defects, having an ambient moisture content less than 15 percent under normal conditions.

Highway.—Any public street, alley, or road.

Importer.—Any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

Indictment.—Includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding 1 year may be prosecuted.

Inhabited building.—Any building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building occupied in connection with the manufacture, transportation, storage, or use of explosive materials.

Internal revenue district.—An internal revenue district under the jurisdiction of a District Director of Internal Revenue.

Interstate or foreign commerce.—Commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State.

Licensed dealer.—A dealer licensed under this part.

Licensed importer.—An importer licensed under this part.

Licensed manufacturer.—A manufacturer licensed under this part to engage in the business of manufacturing of explosive materials for purposes of sale or distribution or for his own use.

Licensed manufacturer - limited.—A manufacturer licensed under this part to engage in the business of manufacturing explosive materials for his own use and not for sale or distribution.

Licensee.—Any importer, manufacturer, or dealer licensed under this part.

Magazine.—Any building or structure, other than an explosives manufacturing building, used for storage of explosives.

Manufacturer.—Any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

Manufacturer-limited.—Any person engaged in the business of manufacturing explosive materials for his own use and not for sale or distribution.

Mass detonation (mass explosion).—Explosive materials mass detonate (mass explode) when a unit or any part of a larger quantity of explosive material explodes and causes all or a substantial part of the remaining material to detonate or explode.

Natural barricade.—Natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

Permittee.—Any user of explosives for lawful purpose, who has obtained a user permit under this part.

Person.—Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Plywood.—Exterior, construction grade (laminated wood) plywood.

Propellant actuated device.—Any tool or special mechanized device or gas generator system which is actuated by a smokeless propellant or which releases and directs work through a smokeless propellant charge.

Railway.—Any steam, electric, or other railroad or railway which carries passengers for hire on the particular line or branch in the vicinity of where explosives are stored or where explosives manufacturing buildings are located.

Region.—A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator.—The principal regional official responsible for administering regulations in this part.

Service Center Director.—A director of an internal revenue service center.

Softwood.—Douglas Fir or equally bullet-resistant soft wood, free from loose knots, voids, or similar defects, having an ambient moisture content less than 15 percent under normal conditions.

State.—A State of the United States. The term includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

State of residence.—The State in which an individual regularly resides or maintains his home. Temporary stay in a State does not make the State of temporary stay the State of residence.

U.S.C.—The United States Code.

User-limited permit.—A user permit valid only for a single purchase transaction, a new permit being required for a subsequent purchase transaction.

User permit.—A permit issued to a person authorizing him (a) to acquire for his own use explosive materials from a licensee in a State other than the State in which he resides or from a foreign country, and (b) to transport explosive materials in interstate or foreign commerce.

Water gels (Slurries).—A wide variety of explosive materials used for blasting. As manufactured, they have varying degrees of sensitivity to initiation. They usually contain substantial proportions of water and ammonium nitrate, some of which are in solution in the water. Some are sensitized by an explosive material, while others contain no explosive ingredient but may be sensitized with metals such as aluminum or with other fuels.

3. By amending § 181.23 to read as follows:

§ 181.23 List of Explosive Materials.

The Director shall compile and publish in the FEDERAL REGISTER a List of Explosive Materials. This list shall be published and revised at least annually.

4. By amending § 181.26(b) to read as follows:

§ 181.26 Prohibited shipment, transportation, or receipt of explosive materials.

* * * * *

(b) No person may ship or transport any explosive material in interstate or foreign commerce or receive any explosive materials which have been shipped or transported in interstate or foreign commerce who (1) is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to marihuana, or any depressant or stimulant drug, or narcotic drug (as these terms are defined in the Controlled Substances Act; 21 U.S.C. 802), or (4) has been adjudicated as a mental defective or has been committed to a mental institution.

5. By revising § 181.30 to read as follows:

§ 181.30 Reporting theft or loss of explosive materials.

(a) Any licensee or permittee who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephone to the nearest ATF office and on Form 4712 in accordance with the instructions on the form. Theft or loss of any explosive materials shall also be reported to appropriate local authorities.

(b) Any other person, including a carrier of explosive materials, who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephone and in writing to the nearest ATF office. Theft or loss shall also be reported to appropriate local authorities.

(c) Reports of theft or loss of explosive materials must include:

(1) The manufacturer or brand name.

(2) The manufacturer's marks of identification (date and shift code).

(3) Quantity (pounds of explosives, number of caps).

(4) Description (dynamite, blasting agents, detonators, etc.).

(5) Size (length and diameter).

6. By adding new § 181.32 to read as follows:

§ 181.32 Special explosive devices.

The Director may exempt certain explosive actuated devices, explosive actuated tools, or similar devices from the requirements of this part. A person who desires to obtain an exemption under

this section for any special explosive device, which as designed does not constitute a public safety or security hazard, shall submit a written request, in triplicate, to the Director. Each request shall be executed under the penalties of perjury and contain a complete and accurate description of the device, the name and address of the manufacturer or importer, the purpose of and use for which it is intended, and any photographs, diagrams, or drawings as may be necessary to enable the Director to make his determination. The Director may require that a sample of the device be submitted to him for examination and evaluation. If it is not possible to submit the device, the person requesting the exemption shall so advise the Director of this and designate the place where the device will be available for examination and evaluation.

7. By amending § 181.44 to read as follows:

§ 181.44 License or permit fee not refundable.

No refund of any part of the amount paid as a license or permit fee shall be made where the operations of the licensee or permittee are, for any reason, discontinued during the period of an issued license or permit. However, the license or permit fee submitted with an application for a license or permit shall be refunded if that application is denied, withdrawn, or abandoned, or if a license is cancelled subsequent to having been issued through administrative error.

8. By revising § 181.54 to read as follows:

§ 181.54 Change of address.

During the term of a license or permit, a licensee or permittee may move his business or operations to a new address at which he intends to regularly carry on his business or operations, without obtaining a new license or permit. However, in every case, the licensee or permittee shall—

(a) Give notification of the new location of the business or operations to the regional regulatory administrator for the region from which or within which the move is made, and the regional regulatory administrator for the region to which the move is to be made, at least 10 days before the move; and

(b) Submit his license or permit, and any copies of the license or permit, to the regional regulatory administrator for the region to which or within which the move is to be made. The regional regulatory administrator will approve the license or permit, and any copies, to show the new location and the new license or permit number (if any). The approved license or permit, and any copies, will then be returned to the licensee or permittee.

9. By adding new § 181.63 to read as follows:

§ 181.63 Changes in approved magazines.

(a) *Change in location of magazines.*—During the term of a license or permit, a licensee or permittee who intends to change the location of an approved magazine described in his license or permit application (other than a change in location of a portable approved magazine), shall submit a letter application, in triplicate, to the regional regulatory administrator who issued the license or permit. The letter application shall identify the magazine, including location, type of construction, and class of explosive materials stored within as prescribed in § 181.202; and describe the new location. Explosive materials may not be stored at the new location before receipt of a copy of the letter application stamped "Approved."

(b) *Modifications to or changes in construction of magazines.*—During the term of a license or permit, a licensee or permittee who intends to make modifications to or changes in construction of approved magazines described in his license or permit application, shall submit a letter application, in triplicate, to the regional regulatory administrator describing the proposed modifications or changes. Modifications to or changes in construction of approved magazines may not be made before receipt of a copy of the letter application stamped "Approved."

(c) *Additional magazines.*—During the term of a license or permit, a licensee or permittee who intends to construct or acquire additional magazines (including portable magazines which are owned, leased, or rented) not described in his license or permit application, shall submit a letter application, in triplicate, to the regional regulatory administrator describing the proposed additional magazines. These magazines may not be used before receipt of a copy of the letter application stamped "Approved."

(d) *Retention of approved applications.*—A licensee or permittee shall retain, as part of his records available for examination by ATF officers, any letter application approved under this section.

10. By revising § 181.101 to read as follows:

§ 181.101 Posting of license or permit.

A license or permit issued under this part or any copy of a license or permit, and the copy of the application accompanying the approved license or permit returned by the regional regulatory administrator, shall be kept available for inspection on the business premises at each place where explosive materials are manufactured, imported, or distributed, and in each magazine of an approved storage facility. However, in lieu of keeping them at each approved magazine, they may be kept at one central location on the business premises. The license or permit shall be prominently posted.

11. By amending § 181.106(c) to read as follows:

§ 181.106 Certain prohibited distributions.

* * * * *

(c) A licensed importer, licensed manufacturer, licensed manufacturer-limited, or licensed dealer may not distribute any explosive materials to any person knowing or having reason to believe that the person (1) is, except as provided under § 181.142 (d) and (e), under indictment for, or was convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of marijuana, or any depressant or stimulant drug, or narcotic drug (as these terms are defined in the Controlled Substances Act; 21 U.S.C. 802), or (4) was adjudicated as a mental defective or was committed to a mental institution.

12. By revising § 181.109 to read as follows:

§ 181.109 Identification of explosive materials.

(a) Each licensed manufacturer of explosive materials shall legibly identify, by marking, all explosive materials he manufactures for sale or distribution. The marks required by this section shall identify the manufacturer and the location, date, and shift of manufacture. The licensed manufacturer shall place on each cartridge, bag, or other immediate container of explosive materials manufactured for sale or distribution the required mark which shall also be placed on the outside container, if any, used for their packaging.

(b) *Exceptions.*—(1) Licensed manufacturers of blasting caps are only required to place the identification marks prescribed in paragraph (a) of this section on the containers used for the packaging of blasting caps.

(2) The Director may authorize other explosive materials to be marked by placing the identification prescribed in paragraph (a) of this section only on the containers used for packaging the explosive materials after he has determined that they are too small for suitable marking on the individual item.

13. By revising § 181.121(a) to read as follows:

§ 181.121 General.

(a) The records pertaining to explosive materials required by this part shall be kept in permanent form in the manner required by this subpart and shall be retained on the business premises for not less than 5 years from the date a transaction occurs or until discontinuance of business or operations by the licensee or permittee. (See also § 181.123 for discontinuance of business or operations.) Every year at the time of renewal of a license or permit, all explosive materials records pertaining to transactions occurring more than 5 years prior to the date of renewal of the license or permit, shall be submitted to the Bureau of Alcohol, Tobacco and Firearms, Explosives Technology Branch, Washington, D.C. 20226. (For example, if the expiration date for a license or permit is September 1, 1977, at the time of the renewal, all explosive materials records for the yearly period from September 1, 1971 to August 31, 1972, shall be submitted to ATF. At the time of the September 1, 1978 expiration date, records for the yearly period from September 1, 1972 to August 31, 1973, shall be submitted to

ATF. And so on.) In lieu of submitting the records to the Bureau, licensees or permittees shall, upon approval by the Director of a written request, keep the records required by this part on their business premises and available for inspection by ATF officers for not less than 10 years from the date a transaction occurs.

* * * * *

14. By amending § 181.122 to revise paragraphs (b) and (c) to read as follows:

§ 181.122 Records maintained by importers.

* * * * *

(b) Each licensed importer shall, not later than the close of the next business day following the date of importation or other acquisition of explosive materials, enter the following information in a separate record:

(1) Date of importation or other acquisition.

(2) Name or brand name of manufacturer and country of manufacture.

(3) Manufacturer's marks of identification.

(4) Quantity (pounds of explosives, number of caps).

(5) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

(c) Each licensed importer shall, not later than the close of the next business day following the date of distribution of any explosive materials to another licensee or a permittee, enter in a separate record the information required in § 181.103 (b), (c), and (d) and the following information:

(1) Date of transaction.

(2) Name or brand name of manufacturer and country of manufacture.

(3) Manufacturer's marks of identification.

(4) Quantity (pounds of explosives, number of caps).

(5) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

(6) License or permit number of licensee or permittee to whom the explosive materials are distributed.

* * * * *

15. By amending § 181.123 to revise paragraphs (b) and (c) to read as follows:

§ 181.123 Records maintained by licensed manufacturers.

* * * * *

(b) Each licensed manufacturer shall, not later than the close of the next business day following the date of manufacture or other acquisition of explosive materials, enter the following information in a separate record:

(1) Date of manufacture or other acquisition.

(2) Name or brand name of product.

(3) Manufacturer's marks of identification.

(4) Quantity (pounds of explosives, number of caps).

(5) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

(c) (1) Each licensed manufacturer shall, not later than the close of the next business day following the date of distribution of any explosive materials to another licensee or a permittee, enter in a separate record the information required in § 181.103 (b), (c), and (d) and the following information:

(i) Date of transaction.

(ii) Name or brand name of manufacturer or name of importer, as applicable, if acquired other than by his own manufacture.

(iii) Manufacturer's marks of identification.

(iv) Quantity (pounds of explosives, number of caps).

(v) Description (dynamite blasting agents, detonators, etc.) and size (length and diameter).

(vi) License or permit number of licensee or permittee to whom the explosive materials are distributed.

(2) Each licensed manufacturer who manufactures explosive materials for his own use shall, not later than the close of the next business day following the date of use, enter in a separate record the following information:

(i) Date of use.

(ii) Quantity (pounds of explosives, number of caps).

(iii) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

* * * * *

16. By revising § 181.124 (b), (c), and (d) to read as follows:

§ 181.124 Records maintained by dealers.

* * * * *

(b) Each licensed dealer shall, not later than the close of the next business day following the date of purchase or other acquisition of explosive materials (except as provided in paragraph (d) of this section), enter the following information in a separate record:

(1) Date of receipt.

(2) Name or brand name of manufacturer and name of importer (if any).

(3) Manufacturer's marks of identification.

(4) Quantity (pounds of explosives, number of caps).

(5) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

(6) Name, address, and license or permit number of the person from whom the explosive materials are received.

(c) Each licensed dealer shall, not later than the close of the next business day following the date of distribution of any explosive materials to another licensee or a permittee (except as provided in paragraph (d) of this section), enter in a separate record the information required in § 181.103 (b), (c), and (d) and the following information:

(1) Date of transaction.

(2) Name or brand name of manufacturer and name of importer (if any).

(3) Manufacturer's marks of identification.

(4) Quantity (pounds of explosives, number of caps).

(5) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

(6) License or permit number of licensee or permittee to whom the explosive materials are distributed.

(d) When a commercial record is kept by a licensed dealer showing the purchase or other acquisition information required for the permanent record prescribed by paragraph (b) of this section, or showing the distribution information required for the permanent record prescribed by paragraph (c) of this section, the licensed dealer acquiring or distributing the explosive materials may, for a period not exceeding 7 days following the date of acquisition or distribution of the explosive materials, delay making the required entry into the permanent record of acquisition or distribution. However, until the required entry of acquisition or disposition is made in the permanent record, the commercial record must be (1) kept by the licensed dealer separate from other commercial documents kept by the licensee, and (2) readily available for inspection on the licensed premises.

* * * * *

17. By amending § 181.125(c) to read as follows:

§ 181.125 Records maintained by licensed manufacturers-limited and permittees.

* * * * *

(c) (1) Each permittee shall, not later than the close of the next business day following the date of acquisition of explosive materials, enter the following information in a separate record:

(i) Date of acquisition.

(ii) Name or brand name of manufacturer.

(iii) Manufacturer's marks of identification.

(iv) Quantity (pounds of explosives, number of caps).

(v) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

(vi) Name, address, and license number of the person from whom the explosive materials are received.

(2) Each permittee shall, not later than the close of the next business day following the date of disposition of surplus explosive materials to another permittee or a licensee, enter in a separate record the information prescribed in § 181.124(c). * * *

* * * * *

18. By amending § 181.127 to read as follows:

§ 181.127 Daily summary of magazine transactions.

In taking the inventory required by §§ 181.122, 181.123, 181.124, and 181.125, the licensee or permittee shall enter the inventory in a record of daily transactions to be maintained at each magazine of an approved storage facility; however,

these records may be kept at one central location on the licensed or permit premises if separate records of daily transactions are maintained for each magazine. At the close of business of each day each licensee and permittee shall record by manufacturer's name or brand name, the total quantity received in and removed from each magazine during the day and the total remaining on hand at the end of the day. Any discrepancy which might indicate a theft or loss of explosive materials shall be reported in accordance with the provisions of § 181.30.

19. By amending § 181.129 to read as follows:

§ 181.129 Exportation.

Explosive materials shall be exported in accordance with the applicable provisions of section 38 of the Arms Export Control Act (22 U.S.C. 2778) and implementing regulations. However, licensed manufacturers, licensed importers, and licensed dealers exporting explosive materials shall maintain records showing the manufacture or acquisition of explosive materials as required by this part and records showing the quantity, the manufacturer's name or brand name of explosive materials, the name and address of the foreign consignee of the explosive materials, and the date the explosive materials were exported.

20. By revising § 181.141(a)(7) to read as follows:

§ 181.141 Exemptions.

(a) * * *

(7) The importation and distribution of Class C fireworks, generally know as "Common Fireworks" as decribed by U.S. Department of Transportation regulations in 49 CFR 173.100(r), and those Class C explosives described in 49 CFR 173.100 (p), (t), (u), and (x).

* * * * *

21. By adding an explanatory note following the heading for Subpart J to read as follows:

Subpart J—Storage

NOTE.—The provisions in this subpart shall apply until August 3, 1979. The provisions in Subpart JJ may be used in lieu of the provisions in this subpart, but shall be mandatory after August 3, 1979.

22. By adding new Subpart JJ, immediately following Subpart J, to read as follows:

Subpart JJ—Storage

Sec.
181.201 General.
181.202 Classes of explosive materials.
181.203 Types of magazines.
181.204 Inspection of magazines.
181.205 Movement of explosive materials.
181.206 Location of magazines.
181.207 Construction of type 1 magazines.
181.208 Construction of type 2 magazines.
181.209 Construction of type 3 magazines.
181.210 Construction of type 4 magazines.
181.211 Construction of type 5 magazines.
181.212 Smoking and open flames.
181.213 Quantity and storage restrictions.
181.214 Storage within types 1,2,3, and 4 magazines.
181.215 Housekeeping.
181.216 Repair of magazines.
181.217 Lighting.
181.218 Table of distances for storage of explosive materials.
181.219 Table of distances for storage of low explosives.
181.220 Table of recommended separation distances of ammonium nitrate and blasting agents from explosives or other blasting agents.

Subpart JJ—Storage

NOTE.—The provisions of this subpart may be used in lieu of the provisions in Subpart J, but are mandatory after August 3, 1977.

§ 181.201 General.

(a) No person shall store any explosive materials in a manner not in conformity with this subpart (see § 181.29). Section 842(j) of the Act requires that the storage of explosive materials by any person must be in a manner conforming with the regulations contained in this subpart. The storage standards prescribed by this subpart confer no rights or privileges to store explosive materials in a manner contrary to State or other law.

(b) The Director may authorize alternate construction for explosives storage magazines when it is shown that the alternate magazine construction is substantially equivalent to the standards of safety and security contained in this subpart. Any person intending to use alternate magazine construction shall submit a letter application, in triplicate, to the regional regulatory administrator for transmittal to the Director, specifically describing the proposed magazine. Explosive materials may not be stored in alternate magazines before receipt of a copy of the letter application stamped "Approved."

(c) A licensee or permittee who intends to make modifications to or changes in his approved magazines, or who intends to construct or acquire additional magazines, shall comply with § 181.63.

§ 181.202 Classes of explosive materials.

For purposes of this part, there are three classes of explosive materials. These classes, together with the description of explosive materials comprising each class, are as follows:

High explosives.—Explosive materials which are bullet-sensitive or which can be caused to detonate by means of a blasting cap when unconfined. (For example, dynamite.)

Low explosives.—Explosive materials which are not bullet-sensitive, but which can be caused to deflagrate when confined. (For example, black powder; safety fuses; igniters; igniter cords; fuse lighters; and "special fireworks", defined as Class B explosives by U.S. Department of Transportation regulations in 49 CFR 173.88(d).)

Blasting agents.—(For example, ammonium nitrate-fuel oil and certain water-gels.)

§ 181.203 Types of magazines.

For purposes of this part, there are five types of magazines. These types, together with the classes of explosive materials, as defined in § 181.202, which shall be stored in them, are as follows:

(a) *Type 1 Magazines.*—Permanent magazines for the storage of high explosives, subject to the limitations prescribed by §§ 181.206 and 181.213. Other classes may also be stored in type 1 magazines.

(b) *Type 2 magazines.*—Mobile indoor and outdoor magazines for the storage of high explosives, subject to the limitations prescribed by §§ 181.206, 181.208(b), and 181.213. Other classes may also be stored in type 2 magazines.

(c) *Type 3 magazines.*—Portable outdoor magazines for the temporary storage of high explosives while attended (for example, a "day-box"), subject to the limitations prescribed by §§ 181.206 and 181.213. Other classes may also be stored in type 3 magazines.

(d) *Type 4 magazines.*—Magazines for the storage of low explosives, subject to the limitations prescribed by §§ 181.206(b), 181.210(b), and 181.213. Blasting agents or electric blasting caps that will not mass detonate may also be stored in type 4 magazines, subject to the limitations prescribed by §§ 181.206(c) (1) and (2).

(e) *Type 5 magazines.*—Magazines for the storage of blasting agents and watergels (slurries), which can be demonstrated to be neither bullet- nor capsensitive, subject to the limitations prescribed by §§ 181.206 (a) and (c), 181.211(b), and 181.213.

§ 181.204 Inspection of magazines.

Any person storing explosive materials shall open and inspect his magazines at least every 3 days. This inspection need not be an inventory, but must be sufficient to determine whether there has been unauthorized entry or attempted entry into the magazines or unauthorized removal of their contents.

§ 181.205 Movement of explosive materials.

All explosive materials must be kept in locked magazines meeting the standards prescribed by this subpart unless they are:

(a) In the process of manufacture;

(b) Being physically handled in the operating process of a licensee or user;

(c) Being used; or

(d) Being transported to a place of storage or use by a permittee or by a person who has lawfully acquired explosive materials under § 181.126.

§ 181.206 Location of magazines.

(a) Outdoor magazines in which high explosives are stored shall be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which high explosives are stored, than the minimum distances specified in the table of distances for storage of explosives in § 181.218.

(b) Outdoor magazines in which low explosives are stored shall be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which explosive materials are stored, than the minimum distances specified in the table of distances for

storage of low explosives in § 181.219. The distances shown in § 181.219 shall not be reduced by the presence of barricades.

(c) (1) Outdoor magazines in which blasting agents are stored and indoor magazines in which blasting agents in quantities of more than 50 pounds are stored shall be located no closer to inhabited buildings, passenger railways, or public highways than the minimum distances specified in the table of distances for storage of explosives in § 181.218.

(2) Ammonium nitrate and magazines in which blasting agents are stored shall be located no closer to magazines in which high explosives or other blasting agents are stored than the minimum distances specified in the table of distances for the separation of ammonium nitrate and blasting agents in § 181.220. However, the minimum distances for magazines in which explosives and blasting agents are stored from inhabited buildings, etc., may not be less than that the distances specified in the table of distances for storage of explosives in § 181.-218.

§ 181.207 Construction of type 1 magazines.

A type 1 magazine shall be a permanent structure: a building, an igloo or Army-type structure, a tunnel, or a dugout. It shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated.

(a) *Buildings.*—All building type magazines shall be constructed of masonry, wood, metal, or a combination of these materials as specified in this section, and shall have no openings except for entrances and ventilation. Ground around building magazines shall slope away for drainage.

(1) *Wall construction.*—Magazine walls shall be constructed according to any of the following minimum specifications (All steel and wool dimensions are actual thicknesses. All concrete block and brick dimensions are nominal thicknesses.):

(i) Exterior of ⅝-inch steel.

(ii) Exterior of ½-inch steel, lined with an interior of not less than ⅜-inch plywood.

(iii) Exterior of ⅜-inch steel, lined with an interior of two inches of hardwood.

(iv) Exterior of ⅜-inch steel, lined with an interior of three inches of softwood or 2¼ inches of plywood.

(v) Exterior of ¼-inch steel, lined with an interior of three inches of hardwood.

(vi) Exterior of ¼-inch steel, lined with an interior of five inches of softwood or 5¼ inches of plywood.

(vii) Exterior of ¼-inch steel, lined with an intermediate layer of two inches of hardwood, and an interior lining of 1½ inches of plywood.

(viii) Exterior of 3/16-inch steel, lined with an interior of four inches of hardwood.

(ix) Exterior of 3/16-inch steel, lined with an interior of seven inches of softwood or 6¾ inches of plywood.

(x) Exterior of 3/16-inch steel, lined with an intermediate layer of three inches of hardwood, and an interior lining of ¾-inch plywood.

(xi) Exterior of ⅛-inch steel, lined with an interior of five inches of hardwood.

(xii) Exterior of ⅛-inch steel, lined with interior of nine inches of softwood.

(xiii) Exterior of ⅛-inch steel, lined with an intermediate layer of four inches of hardwood, and an interior lining of ¾-inch plywood.

(xiv) Exterior of any type fire-resistant material which is structurally sound (for example, ¾-inch plywood covered with 26-guage metal), lined with an intermediate layer of four inches solid concrete block or four inches solid brick or four inches of solid concrete, and an interior lining of ½-inch plywood placed securely against the masonry lining.

(xv) Standard eight-inch concrete block with voids filled with well-tamped sand/concrete mixture.

(xvi) Standard eight-inch solid brick.

(xvii) Exterior of any type fire-resistant material which is structurally sound (for example, ¾-inch plywood covered with 26-gauge metal), lined with a six-inch space filled with well-tamped, dry sand or well-tamped, sand/cement mixture.

(xviii) Exterior of ⅛-inch steel, lined with a first intermediate layer of ¾-inch plywood, a second intermediate layer of 3⅝ inches well-tamped, dry sand or sand/cement mixture, and an interior lining of ¾-inch plywood.

(xix) Exterior of any type fire-resistant material, lined with a first intermediate layer of ¾-inch plywood, a second intermediate layer of 3⅝ inches well-tamped, dry and or sand/cement mixture, a third intermediate layer of ¾-inch plywood, a fourth intermediate layer of two inches of hardwood or 14-gauge steel, and an interior lining of ¾-inch plywood.

(xx) Eight-inch solid concrete.

(2) *Interior walls.*—Interior walls shall be constructed of, or covered with, a nonsparking material.

(3) *Floors.*—Floors shall be constructed of, or covered with, any suitable nonsparking material and shall be strong enough to bear the weight of the maximum quantity to be stored.

(4) *Foundations.*—Foundations shall be constructed of brick, concrete, cement block, stone, or metal or wood posts. If piers or posts are used, in lieu of a continuous foundation, the spaces under the buildings shall be enclosed with fire-resistant material.

(5) *Roofs and ceilings*—Outer roofs shall be constructed of fabricated metal, tile, asbestos, concrete, or other fire-retardant material. Where it is possible for a bullet to be fired directly through the roof and into the magazine at such an angle that the bullet would strike the explosives stored within, the magazine shall be protected by one of the following methods:

(i) A sand tray lined with a layer of building paper, plastic, or other nonporous material, and filled with not less than four inches of coarse, dry sand shall be located at the tops of inner walls covering the entire ceiling area, except that portion necessary for ventilation.

(ii) A fabricated metal roof shall be constructed of 3/16-inch plate steel lined with four inches of hardwood. (For each additional 1/16-inch of plate steel, the hardwood lining may be decreased one inch.)

(6) *Doors.* Doors shall be constructed of ¼-inch plate steel and lined with three inches of hardwood.

(7) *Hinges and hasps.*—Hinges and hasps shall be attached to the doors by welding, riveting, or bolting (nuts on inside of door). The hinges and hasps shall be installed in such a manner that they cannot be removed when the doors are closed and locked.

(8) *Locks.*—Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock.

Padlocks shall have at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter.

Padlocks shall be protected with ¼-inch steel hoods constructed so as to prevent sawing or lever action on the locks or hasps. These requirements shall not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar which cannot be actuated from the outside.

(9) *Ventilation.*—Magazines shall be ventilated to prevent dampness or heating of stored explosive materials. Except at doorways, a two-inch air space shall be left around ceilings and the perimeter of floors. Vents in the foundation, roof, or gables shall be offset and screened to prevent the entrance of sparks.

(10) *Exposed metal.*—No sparking material shall be exposed to contact with stored explosive materials. All ferrous metal nails in the floor and side walls which might be exposed to contact with explosive materials shall be blind nailed, or countersunk, or the floor and side walls covered with a nonsparking lattice work or other nonsparking material.

(b) *Igloos, Army-type structures, tunnels, and dugouts.*—Igloo, Army-type, tunnel, and dugout magazines shall be constructed of reinforced concrete, masonry, metal, or a combination of these materials. They shall have an earth-mound covering of not less than 24 inches on the top, sides, and rear. Magazines of this type shall also be constructed in conformity with paragraphs (a) (2), (3), (6), (7), (8), (9), and (10) of this section.

§ 181.208 Construction of type 2 magazines.

A type 2 magazine shall be a box, trailer, semi-trailer, or other mobile facility.

(a) *Outdoor magazines.* (1) *General.*—Outdoor magazines shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated. They shall be supported in such a manner so as to prevent direct contact with the ground and, if less than one cubic yard in size, shall be securely fastened to a fixed object. The ground around outdoor magazines shall slope away for drainage. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by kingpin locking devices or other methods approved by the Director.

(2) *Exterior construction.*—The exterior and covers or doors shall be constructed of ¼-inch steel and shall be lined with three inches of hardwood. Magazines with top openings shall have lids with water-resistant seals or which overlap the sides by at least one inch when in a closed position.

(3) *Hinges and hasps.*—Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps shall be installed in such a manner that they cannot be removed when the doors are closed and locked.

(4) *Locks.*—Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock.

Padlocks shall have at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter. Padlocks shall be protected with ¼-inch steel hoods constructed so as to prevent sawing or level action on the locks or hasps. Trailers, semitrailers, and similar vehicular magazines may, for each door or opening, be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar which cannot be actuated from the outside.

(b) *Indoor magazines.* (1) *General.*—Indoor magazines shall be fire-resistant and theft-resistant. They need not be bullet-resistant and weather-resistant if the buildings in which they are stored provide protection from the weather and from bullet penetration. No indoor magazine shall contain a quantity of high explosives in excess of 50 pounds or more than 5,000 blasting caps.

(2) *Location.*—No indoor magazine shall be located in a residence or dwelling. An indoor magazine shall be provided with substantial wheels or casters to facilitate removal from its location. No more than one indoor magazine shall be kept in any one building, except that two magazines may be kept in the same building when one is used for the storage of blasting caps, squibs, or similar items and the other magazine is used for the storage of other high explosives. Two indoor magazines within the same building shall be separated by a distance of not less than 10 feet. Each indoor magazine shall be located on the floor nearest the ground level and within 10 feet of an outside exit.

(3) *Exterior construction.*—Indoor magazines shall be constructed of wood or metal according to one of the following specifications:

(i) Wood indoor magazines shall have sides, bottoms, and covers or doors constructed of two inches of hardwood and shall be well braced at corners. They shall be covered with sheet metal of not less than number 20-gauge. Nails exposed to the interior of magazines shall be countersunk.

(ii) Metal indoor magazines shall have sides, bottoms, and covers or doors constructed of number 12-gauge metal and shall be lined inside with a nonsparking material. Edges of metal covers shall overlap sides at least one inch.

(4) *Hinges and hasps.*—Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps shall be installed in such a manner that they cannot be removed when the doors are closed and locked.

(5) *Locks.*—Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock.

Padlocks shall have at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter.

Padlocks shall be protected with ¼-inch steel hoods constructed so as to prevent sawing or lever action on the locks or hasps. Indoor magazines located in rooms which are locked as provided in this paragraph may, for each door or opening, be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar which cannot be actuated from the outside.

(c) *Cap boxes.*—Magazines for blasting caps in quantities of 100 or less shall have sides, bottoms, and covers or doors constructed of number 12-gauge metal and lined with a nonsparking material. Hinges and hasps shall be attached by welding. A single lock having at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter shall be sufficient for locking purposes.

§ 181.209 Construction of type 3 magazines.

A type 3 magazine shall be a "day-box" or other portable magazine. It shall be bullet-resistant, fire-resistant, and theft-resistant. A type 3 magazine shall be constructed in the same manner prescribed for type 2 outdoor magazines in § 181.208 (a), except that it need not be securely fastened to a fixed object. Hinges, hasps, locks, and lock protection shall be in conformity with the requirements of § 181.207(a) (7) and (8). The ground around magazines shall slope away for drainage. Explosive materials shall not be left unattended in type 3 magazines, but must be removed to types 1 or 2 magazines for unattended storage.

§ 181.210 Construction of type 4 magazines.

A type 4 magazine shall be a building, igloo or Army-type structure, tunnel, dug-out, box, trailer, or a semitrailer or other mobile magazine.

(a) *Outdoor magazines.* (1) *General.*—Outdoor magazines shall be fire-resistant, weather-resistant, and theft-resistant. The ground around outdoor magazines shall slope away for drainage. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by kingpin locking devices or other methods approved by the Director.

(2) *Construction.*—Outdoor magazines shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. Foundations shall be constructed of brick, concrete, cement block, stone, or metal or wood posts. If piers or posts are used, in lieu of a continuous foundation, the spaces under the buildings shall be enclosed with fire-resistant material. The walls and floors shall be constructed of, or covered with, a nonsparking material or lattice work. The doors or covers shall be metal of solid wood covered with metal.

(3) *Hinges and hasps.*—Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps shall be installed in such a manner that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock.

Padlocks shall have at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter.

Padlocks shall be protected with ¼-inch steel hoods constructed so as to prevent sawing or lever action on the locks or hasps. Trailers, semitrailers, and similar vehicular magazines may, for each door or opening, be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar which cannot be actuated from the outside.

(b) *Indoor magazines.* (1) *General.*—Indoor magazines shall be fire-resistant and theft-resistant. They need not be

weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine shall contain a quantity of low explosives in excess of 50 pounds.

(2) *Location.*—No indoor magazine shall be located in a residence or dwelling. An indoor magazine shall be provided with substantial wheels or casters to facilitate removal from its location. No more than one indoor magazine shall be kept in any one building, except that two magazines may be kept in the same building when one is used for the storage of blasting caps, squibs, or similar items and the other magazine is used for the storage of low explosives. Two indoor magazines within the same building shall be separated by a distance of not less than 10 feet. Each indoor magazine shall be located on the floor nearest the ground level and within 10 feet of an outside exit.

(3) *Construction.*—Indoor magazines shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. The walls and floors shall be constructed of, or covered with, a nonsparking material. The doors or covers shall be metal or solid wood covered with metal.

(4) *Hinges and hasps.*—Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of doors). Hinges and hasps shall be installed in such a manner that they cannot be removed when the doors are closed and locked.

(5) *Locks.*—Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock.

Padlocks shall have at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter.

Padlocks shall be protected with ¼-inch steel hoods constructed so as to prevent sawing or lever action on the locks or hasps. Indoor magazines located in rooms which are locked as provided in this paragraph, may, for each door or opening, be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar which cannot be actuated from the outside.

§ 181.211 Construction of type 5 magazines.

A type 5 magazine shall be a building, igloo or Army-type structure, tunnel, dugout, bin, box, trailer, or a semitrailer or other mobile facility.

(a) *Outdoor magazines.* (1) *General.*—Outdoor magazines shall be weather-resistant and theft-resistant. The ground around magazines shall slope away for drainage. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by kingpin locking devices or other methods approved by the Director.

(2) *Construction.*—The doors or covers shall be constructed of solid wood or metal.

(3) *Hinges and hasps.*—Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps shall be installed in such a manner that they cannot be removed when the doors are closed and locked.

(4) *Locks.*—Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock.

Padlocks shall have at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter.

Padlocks shall be protected with ¼-inch steel hoods constructed so as to prevent sawing or level action on the locks or hasps. Trailers, semitrailers, and similar vehicular magazines may, for each door or opening, be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar which cannot be actuated from the outside.

(b) *Indoor magazines.* (1) *General.*—Indoor magazines shall be theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine shall be located in a residence or dwelling. Indoor magazines containing quantities of blasting agents in excess of 50 pounds shall be subject to the tables of distances in §§ 181.218 and 181.220 of this subpart.

(2) *Construction.*—The doors or covers shall be constructed of wood or metal.

(3) *Hinges and hasps.*—Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps shall be installed in such a manner that they cannot be removed when the doors are closed and locked.

(4) *Locks.*—Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock.

Padlocks shall have at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter.

Padlocks shall be protected with ¼-inch steel hoods constructed so as to prevent sawing or lever action on the locks or hasps. Indoor magazines located in rooms which are locked as provided in this paragraph may, for each door or opening, be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least ⅜-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar which cannot be actuated from the outside.

§ 181.212 Smoking and open flames.

Smoking, matches, open flames, and similar spark producing devices shall not be permitted—

(a) In any magazine;

(b) Within 50 feet of any outdoor magazine; or

(c) Within a 50-foot line of sight of any indoor magazine.

§ 181.213 Quantity and storage restrictions.

Explosive materials in excess of 300,000 pounds or blasting caps in excess of 20 million shall not be stored in one magazine. Blasting caps shall not be stored with other explosive materials in the same magazine, unless it can be established to the satisfaction of the Director that sufficient security exists and that the storage does not constitute an unsafe practice.

§ 181.214 Storage within types 1, 2, 3, and 4 magazines.

(a) Explosive materials within a magazine shall not be placed directly against interior walls and shall be stored so as not to interfere with ventilation. To prevent contact of stored explosive materials with walls, a nonsparking lattice work or other nonsparking material may be used.

(b) Containers of explosive materials shall be stored by being laid flat with top sides up. Corresponding Classes (as defined in Department of Transportation (DOT) regulations (49 CFR, Part 173)), grades, and brands shall be stored together within a magazine in such a manner that grade, brand, and DOT Class marks are easily visible upon inspection. Stocks of explosive materials shall be stored so as to be easily counted and checked.

(c) Except with respect to fiberboard or other nonmetal containers, containers of explosive materials shall not be unpacked or repacked inside a magazine or within 50 feet of a magazine, and shall not be unpacked or repacked near other explosive materials. Containers of explosive materials shall be securely closed while being stored.

(d) Tools used for opening or closing containers of explosive materials shall be of nonsparking materials, except that metal slitters may be used for opening fiberboard containers. A wood wedge and a fiber, rubber, or wooden mallet shall be used for opening or closing wood containers of explosive materials. Metal tools other than nonsparking transfer conveyors shall not be stored in any magazine containing high explosives.

§ 181.215 Housekeeping.

Magazines shall be kept clean, dry, and free of grit, paper, empty packages and containers, and rubbish. Floors shall be regularly swept. Brooms and other

utensils used in the cleaning and maintenance of magazines shall have no spark-producing metal parts, and may be kept in magazines. Floors stained by leakage from explosive materials shall be cleaned according to instructions of the explosives manufacturer. When any explosive material has deteriorated to the extent that it is in a dangerous condition, or if a liquid or other material is leaking from any explosive material, it shall be destroyed in accordance with the instructions of its manufacturer. The area surrounding magazines shall be kept clear of rubbish, brush, dry grass, or trees (except live trees more than 10 feet tall), for not less than 25 feet in all directions. Any other combustible materials shall be kept a distance of not less than 50 feet from outdoor magazines.

§ 181.216 Repair of magazines.

Before repairing the interior of magazines, all explosive materials shall be removed and the interior shall be cleaned. Before repairing the exterior of magazines, all explosive materials shall be removed if there exists any possibility that repairs may produce sparks or flame. Explosive materials removed from magazines under repair shall be (a) placed in other magazines appropriate for the storage of those explosive materials under this subpart, or (b) placed a safe distance from the magazines under repair where they shall be properly guarded and protected until the repairs have been completed.

§ 181.217 Lighting.

No lighting shall be placed or used in a type 1, 2, 3, or 4 magazines except battery-activated safety lights or battery-activated safety lanterns. However, electrical illumination may be used when explosion-proof fixtures and wiring in rigid conduit are used inside and all electric switches are loacted outside the magazine.

§ 181.218 Table of distances for storage of explosive materials.

Quantity of explosives		Distance (in feet)							
		Inhabited buildings		Public highways with traffic volume of less than 3,000 vehicles/day		Passenger railways—Public highways with traffic volume of more than 3,000 vehicles/day		Separation of magazines	
Pounds over	Pounds not over	Barricaded	Unbarricaded	Barricaded	Unbarricaded	Barricaded	Unbarricaded	Barricaded	Unbarricaded
2	5	70	140	30	60	51	102	6	12
5	10	90	180	35	70	64	128	8	16
10	20	110	220	45	90	81	162	10	20
20	30	125	250	50	100	93	186	11	22
30	40	140	280	55	110	103	206	12	24
40	50	150	300	60	120	110	220	14	28
50	75	170	340	70	140	127	254	15	30
75	100	190	380	75	150	139	278	16	32
100	125	200	400	80	160	150	300	18	36
125	150	215	430	85	170	159	318	19	38
150	200	235	470	95	190	175	350	21	42
200	250	255	510	105	210	189	378	23	46
250	300	270	540	110	220	201	402	24	48
300	400	295	590	120	240	221	442	27	54
400	500	320	640	130	260	238	476	29	58
500	600	340	680	135	270	253	506	31	62
600	700	355	710	145	290	266	532	32	64
700	800	375	750	150	300	278	556	33	66
800	900	390	780	155	310	289	578	35	70
900	1,000	400	800	160	320	300	600	36	72
1,000	1,200	425	850	165	330	318	636	39	78
1,200	1,400	450	900	170	340	336	672	41	82
1,400	1,600	470	940	175	350	351	702	43	86
1,600	1,800	490	980	180	360	366	732	44	88
1,800	2,000	505	1,010	185	370	378	756	45	90
2,000	2,500	545	1,090	190	380	408	816	49	98
2,500	3,000	580	1,160	195	390	432	864	52	104
3,000	4,000	635	1,270	210	420	474	948	58	116
4,000	5,000	685	1,370	225	450	513	1,026	61	122
5,000	6,000	730	1,460	235	470	546	1,092	65	130
6,000	7,000	770	1,540	245	490	573	1,146	68	136
7,000	8,000	800	1,600	250	500	600	1,200	72	144
8,000	9,000	835	1,670	255	510	624	1,248	75	150
9,000	10,000	865	1,730	260	520	645	1,290	78	156
10,000	12,000	875	1,750	270	540	687	1,374	82	164
12,000	14,000	885	1,770	275	550	723	1,446	87	174
14,000	16,000	900	1,800	280	560	756	1,512	90	180
16,000	18,000	940	1,880	285	570	786	1,572	94	188
18,000	20,000	975	1,950	290	580	813	1,626	98	196
20,000	25,000	1,055	2,000	315	630	876	1,752	105	210
25,000	30,000	1,130	2,000	340	680	933	1,866	112	224
30,000	35,000	1,205	2,000	360	720	981	1,962	119	238
35,000	40,000	1,275	2,000	380	760	1,026	2,000	124	248
40,000	45,000	1,340	2,000	400	800	1,068	2,000	129	258
45,000	50,000	1,400	2,000	420	840	1,104	2,000	135	270
50,000	55,000	1,460	2,000	440	880	1,140	2,000	140	280
55,000	60,000	1,515	2,000	455	910	1,173	2,000	145	290
60,000	65,000	1,565	2,000	470	940	1,206	2,000	150	300
65,000	70,000	1,610	2,000	485	970	1,236	2,000	155	310
70,000	75,000	1,655	2,000	500	1,000	1,263	2,000	160	320
75,000	80,000	1,695	2,000	510	1,020	1,293	2,000	165	330
80,000	85,000	1,730	2,000	520	1,040	1,317	2,000	170	340
85,000	90,000	1,760	2,000	530	1,060	1,344	2,000	175	350
90,000	95,000	1,790	2,000	540	1,080	1,368	2,000	180	360
95,000	100,000	1,815	2,000	545	1,090	1,392	2,000	185	370
100,000	110,000	1,835	2,000	550	1,100	1,437	2,000	195	390
110,000	120,000	1,855	2,000	555	1,110	1,479	2,000	205	410
120,000	130,000	1,875	2,000	560	1,120	1,521	2,000	215	430
130,000	140,000	1,890	2,000	565	1,130	1,557	2,000	225	450
140,000	150,000	1,900	2,000	570	1,140	1,593	2,000	235	470
150,000	160,000	1,935	2,000	580	1,160	1,629	2,000	245	490
160,000	170,000	1,965	2,000	590	1,180	1,662	2,000	255	510
170,000	180,000	1,990	2,000	600	1,200	1,695	2,000	265	530
180,000	190,000	2,010	2,010	605	1,210	1,725	2,000	275	550
190,000	200,000	2,030	2,030	610	1,220	1,755	2,000	285	570
200,000	210,000	2,055	2,055	620	1,240	1,782	2,000	295	590
210,000	230,000	2,100	2,100	635	1,270	1,836	2,000	315	630
230,000	250,000	2,155	2,155	650	1,300	1,890	2,000	335	670
250,000	275,000	2,215	2,215	670	1,340	1,950	2,000	360	720
275,000	300,000	2,275	2,275	690	1,380	2,000	2,000	385	770

NOTE.—(1) When two or more storage magazines are located on the same property, each magazine must comply with the minimum distances specified from inhabited buildings, railways, and highways and, in addition, they shall be separated from each other by not less than the distances shown for "Separation of Magazines." However, the quantity of explosives contained in cap magazines shall govern in the spacing of cap magazines from magazines containing other explosives. If any two or more magazines are separated from each other by less than the specified "Separation of Magazines" distances, then the two or more magazines, as a group, must be considered as one magazine. The total quantity of explosives stored in that group must then be treated as if stored in a single magazine located on the site of any magazine of the group, and must comply with the minimum distances from other magazines, inhabited buildings, railways or highways.

(2) All types of blasting caps in strengths through No. 8 cap shall be rated at 1½ lb of explosives per 1,000 caps. For strengths higher than No. 8 caps, consult the manufacturer.

(3) For quantity and distance purposes, detonating cord of 50 to 60 gr/ft shall be calculated as equivalent to 9 lb of high explosives per 1,000 ft. Heavier or lighter core loads shall be rated proportionately.

§ 181.219 Table of distances for storage of low explosives.

Pounds (over)	Pounds (not over)	Distance (in feet) From inhabited building	From public railroad and highway	From above-ground magazine
(1)	(2)	(3)	(4)	(5)
0	1,000	75	75	50
1,000	5,000	115	115	75
5,000	10,000	150	150	100
10,000	20,000	190	190	125
20,000	30,000	215	215	145
30,000	40,000	235	235	155
40,000	50,000	250	250	165
50,000	60,000	260	260	175
60,000	70,000	270	270	185
70,000	80,000	280	280	190
80,000	90,000	295	295	195
90,000	100,000	300	300	200
100,000	200,000	375	375	250
200,000	300,000	450	450	300

See notes (1-6) bottom of following table.

§ 181.220 Table of recommended separation distances of ammonium nitrate and blasting agents from explosives or other blasting agents. (1) (6)

Donor weight Pounds over	Pounds not over	Minimum separation distance of receptor from donor when barricaded (feet) (2) Ammonium nitrate	Blasting agent	Minimum thickness of artificial barricades (in.)
		(3)	(4)	(5)
----------	100	3	11	12
100	300	4	14	12
300	600	5	18	12
600	1,000	6	22	12
1,000	1,600	7	25	12
1,600	2,000	8	29	12
2,000	3,000	9	32	15
3,000	4,000	10	36	15
4,000	6,000	11	40	15
6,000	8,000	12	43	20
8,000	10,000	13	47	20
10,000	12,000	14	50	20
12,000	16,000	15	54	25
16,000	20,000	16	58	25
20,000	25,000	18	65	25
25,000	30,000	19	68	30
30,000	35,000	20	72	30
35,000	40,000	21	76	30
40,000	45,000	22	79	35
45,000	50,000	23	83	35
50,000	55,000	24	86	35
55,000	60,000	25	90	35
60,000	70,000	26	94	40
70,000	80,000	28	101	40
80,000	90,000	30	108	40
90,000	100,000	32	115	40
100,000	120,000	34	122	50
120,000	140,000	37	133	50
140,000	160,000	40	144	50
160,000	180,000	44	158	50
180,000	200,000	48	173	50
200,000	220,000	52	187	60
220,000	250,000	56	202	60
250,000	275,000	60	216	60
275,000	300,000	64	230	60

NOTE. (1) This Table recommends separation distances to prevent explosion of ammonium nitrate and ammonium nitrate-based blasting agents by propagation from nearby stores of high explosives or blasting agents referred to in the Table as the "donor." Ammonium nitrate, by itself, is not considered to be a donor when applying this table. Ammonium nitrate, ammonium nitrate-fuel oil, or combinations of the two are acceptors. If stores of ammonium nitrate are located within the sympathetic detonation distance of explosives or blasting agents, one-half the mass of the ammonium nitrate shall be included in the mass of the donor when calculating separation distances.

(2) When the ammonium nitrate and/or blasting agent is not barricaded, the distances shown in the table shall be multiplied by 6. These distances allow for the possibility of high velocity metal fragments from mixers, hoppers, truck bodies, sheet metal structures, metal containers, and the like which may enclose the "donor." Where storage is in bullet-resistant magazines recommended for explosives or where the storage is protected by a bullet-resistant wall, distances and barricade thicknesses in excess of those prescribed in Sec. 181.218 are not required.

(3) The distances in the table apply to ammonium nitrate that passes the insensitivity test prescribed in the definition of ammonium nitrate fertilizer issued by the Fertilizer Institute. Ammonium nitrate failing to pass this test shall be stored at separation distances in accordance with the table in Sec. 181.218.

(4) These distances apply to nitro-carbo-nitrates and blasting agents which pass the insensitivity test prescribed in the U.S. Department of Transportation (DOT) regulations.

(5) Earth dikes, sand dikes, or enclosures filled with the required minimum thickness of earth or sand are acceptable artificial barricades. Natural barricades, such as hills or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the "donor" when the trees are bare of leaves are also acceptable.

(6) For determining the distances to be kept from inhabitated buildings, passenger railways, and public highways, use the table in Sec. 181.218. Ammonium nitrate, when stored with blasting agents or explosives, may be counted at one-half its actual weight because its blast effort is lower.

(The proposed regulations are to be issued under the authority contained in 18 U.S.C. 847 (84 Stat. 959).)

Signed: June 29, 1977.

REX D. DAVIS,
Director.

Approved: July 25, 1977.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

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PART III

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

■

MEAT AND POULTRY INSPECTION

Recommended Changes; Solicitation of Views

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

RECOMMENDED CHANGES IN MEAT AND POULTRY INSPECTION

Solicitation of Views

AGENCY: Food Safety and Quality Service, United States Department of Agriculture.

ACTION: Solicitation of Views.

SUMMARY: The consulting firm of Booz, Allen, and Hamilton, Inc. was hired by USDA to study the meat and poultry inspection programs conducted under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) and the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), for the purpose of finding possible ways to lessen the cost of inspection and remove any unnecessary regulatory burden placed on industry while assuring no loss of consumer protection. The firm has finished its study and prepared a detailed report which is summarized below. The report contains recommendations, some of which, if accepted by the Department, would cause significant changes in the way inspection is carried out. In order to conform with USDA's commitment to encourage citizen participation and to assist the Department in deciding what actions should be taken concerning these recommendations, the Department hereby announces three briefing meetings to familiarize interested parties with the content of the recommendations, announces a public hearing to discuss the recommendations, and further solicits written views of all interested parties.

DATES AND ADDRESSES: Comments must be received by October 31, 1977.

Send comments to: Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250.

Briefing meetings will be held, beginning at 10 a.m.:

August 17, 1977—Interdepartmental Auditorium, Conference Room B, 1301 Constitution Avenue NW., Washington, D.C.

August 23, 1977—University of Illinois, Circle Campus, Room 605, Chicago Circle Center, 750 South Halstead Street, Chicago, Ill.

August 26, 1977—U.S. Custom Building, Room 503, 555 Battery Street, San Francisco, Calif.

A Public Hearing will be held, beginning at 10 a.m.:

September 26-27, 1977—Jefferson Auditorium, South Agriculture Building, 14th and Independence Avenue SW., Washington, D.C.

For information on making reservations to speak at public hearing, see supplementary information.

FOR FURTHER INFORMATION CONTACT:

Dr. Arnold Giesemann, Acting Assistant to the Deputy Administrator, Meat and Poultry Inspection, Food Safety and Quality Service, USDA, Room 4863, South Building, Washington, D.C. 20250 (202-447-4565).

SUPPLEMENTARY INFORMATION: The entire report (approximately 700 pages) is available free, one copy to a request, by contacting Mr. Robert Norton, Acting Director, Information Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3977.

To make a reservation to speak at the public hearing, contact Dr. W. J. Minor, Chief Staff Officer, Issuance Coordination Staff, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6189. A time period will be set aside at the public hearing for coments on speeches, to present rebuttals, etc. No reservation is required to speak during this time.

The three briefings will be held for the purpose of further acquainting the public with the details of the recommendations.

USDA has a commitment to encourage citizens participation, and, in keeping with that commitment, the public's views on these recommendations are solicited.

Done at Washington, D.C., on July 28, 1977.

ROBERT ANGELOTTI,
Administrator, Food Safety and Quality Services.

SUMMARY

A STUDY OF FEDERAL MEAT AND POULTRY INSPECTION SYSTEM BY BOOZ, ALLEN & HAMILTON, INC., JUNE 1977

Recommendations for substantial improvements in the Federal Meat and Poultry Inspection Program are contained in a three volume report submitted to the U.S. Department of Agriculture (USDA) by a management consulting firm in mid-June. The recommended program changes could save USDA $210 million (in 1976 dollars) by 1985, with no loss in consumer protection, according to the study conducted by Booz, Allen and Hamilton, Inc.

The study of the inspection system was initiated last year when USDA officials became increasingly concerned over the cost and efficiency of the program. The $371,848 contract was awarded to Booz, Allen in September 1976.

During the course of the 9-month study, the Booz, Allen team made extensive field visits to interview Federal and State inspection officials, industry leaders, consumer groups, officials of employee organizations, and Congressional leaders. Members of the team spent time in every region of the country and visited a variety of meat and poultry slaughtering and processing plants representative of all parts of the industry.

Volume I of the report is an indepth description of the Meat and Poultry Inspection Program (MPI), including:

The legislative history and goals of the Program; Current inspection activities; Organization of the Program; and Current Federal costs and projected costs to 1985.

LEGISLATION MANDATED INTENSIVE INSPECTION

The report traces the history of the inspection program back to the Meat Inspection Act of 1890. Aimed at promoting exports of U.S. meat products to other countries, the Act contained very limited provisions for meat inspection to protect consumers in the United States.

The Meat Inspection Act of 1906 remained the major piece of legislation regulating meat inspection for more than 60 years. The foundation of modern meat inspection, the 1906 Act, required mandatory inspection of all meat and meat products moving in interstate commerce, provided for inspection of the product at numerous points in the manufacturing process and required label inspection.

Poultry inspection, however, was a voluntary program until the passage of the Federal Poultry Products Inspection Act of 1957. That Act required ante-mortem inspection of poultry for slaughter to the degree determined necessary by the Secretary, and post-mortem inspection of all slaughtered poultry moving in interstate commerce, as well as inplant checks, review of labeling and inspection of imported products.

The 1960's brought the major legislation guiding the inspection program today. The Wholesome Meat Act of 1967 was passed to close gaps in existing legislation and to coordinate the provisions of previous meat inspection acts. It was aimed at assuring uniformity in regulation of goods shipped in interstate, intrastate, and foreign commerce.

The 1967 Act provided the backbone for Federal/State cooperation, giving explicit instructions on cooperative arrangements. State programs deemed "equal to" the Federal inspection program could continue to inspect products, but those products could be shipped only within the State. Federally inspected products were permitted to travel interstate, however. The Federal program was given the authority to take over a State program, or "designate" the State, if its inspection program was not on a par with the Federal program.

Other provisions of the Act made antemortem inspection of all animals mandatory instead of permissive, required more extensive review of foreign products, provided stronger enforcement tools for USDA, and gave the Department new regulatory authority over allied industries, such as transporters and other food handlers.

The Wholesome Poultry Products Act of 1968 is similar to the 1967 meat act in both its basic intent and provisions. The poultry act, however, went further in its attempts to ease the burden on small businessmen by providing certain exemptions from inspection for low volume processors.

Cooperative efforts between Federal and State inspection authorities were encouraged through the Talmadge-Aiken Act of 1962. The Act, which was a general bill dealing with cooperative agreements for the marketing of agricultural products, was applied to meat and poultry inspection after the significant acts of 1967 and 1968. State inspected plants saw the Talmadge-Aiken option as a means of obtaining Federal inspection under an

existing State program, thus enabling the plant to ship interstate.

MEAT AND POULTRY INSPECTION PROGRAMS SEPARATE UNTIL 1968

The report outlined the development of the meat and poultry inspection programs, which remained two distinct systems within the Agriculture Department until the late 1960's.

The meat inspection program began as a veterinary-directed group within USDA and was not connected with marketing groups. The poultry inspection program, on the other hand, began as part of an agency within USDA with marketing as well as inspection functions.

Both programs became part of the Consumer and Marketing Service, formed in 1964, while still remaining organizationally separate except for certain staff activities. Feeling the pressures created by the new meat and poultry legislation, the Department fully merged the inspection systems in 1968 into the Meat and Poultry Inspection Program (MPI), a system with a field structure made up of eight regions containing 118 circuits.

In 1972, the meat and poultry inspection programs were marged with certain animal health programs to form a new agency, the Animal and Plant Health Inspection Service (APHIS). Under APHIS, the field structure was reorganized into five regions, 35 areas, and 222 circuits.

With the reorganization of 1977, MPI was split from the other parts of APHIS and combined with other food inspection, standardization and grading services to form the Food Safety and Quality Service.

INSPECTION COSTS ROSE OVER 40 PERCENT IN PAST 5 YEARS

The recognized trend toward spiraling costs for meat and poultry inspection was confirmed in findings of the consulting firm, as presented in Volume I of the report. Federal expenditures for meat and poultry inspection increased 43 percent over the last 5 years to $202.8 million in fiscal year 1976. Inflation alone was estimated to account for over half of this increase.

The major portion of the expenditure —$173.7 million—supported Federal inspection. The remainder supported State inspection programs deemed "equal to" the Federal system, for which the Federal Government pays 50 percent of the costs.

While the Federal Government may "designate" an unsatisfactory State program, a State may also request that MPI take over its inspection system. When a State does this all costs for inspection are then paid by the Federal Government. In recent years many States have voluntarily given up their inspection programs as a means of conserving State funds without also cutting out a vital service to consumers.

Twenty-four States currently have designated poultry inspection programs and 17 have designated meat inspection programs. Almost one-third of the total meat and poultry program designations have occurred since 1975, and all have been voluntary.

The growing number of State designations has had an impact on MPI greater than a simple increase in Federal expenditures. Along with State programs came many very small, lower volume plants. Since State inspected plants may ship only intra- and not intrastate, State systems are made up largely of smaller plants.

The past 5 years have seen a 53 percent increase in the number of federally inspected plants, with only an 8 percent increase in the volume of production. This 28 percent decrease in the average volume per federally inspected plant reflects the influx of smaller plants into the Federal system.

This trend is also apparent in comparing the growth of the inspection force to the huge increase in the number of federally inspected plants. Between 1972 and 1976, the number of inplant inspectors had increased by only 16.6 percent, covering the more than 50 percent increase in plants. As small plants entered the system, less inspection time per plant was required.

The smaller increase in manpower requirements is also related to steps taken by MPI in this direction. The program developed new work standards for inspectors, made greater use of existing manpower on an overtime basis, and increased usage of veterinarians and food inspectors on a patrol basis to cover several plants in a geographic area. This use of patrol inspectors, who cover more than one plant requiring less than 1 full man-year of inspection, is expected to continue. In fiscal year 1976, patrol inspectors accounted for 55 percent of total Federal inspection.

The changes brought about by State designations had a greater impact on the red meat industry than the poultry industry. There was a 49 percent increase in the number of red meat plants changing from State to Federal inspection since 1972, but less than a 1 percent increase in the number of federally inspected poultry plants. Combination plants in which both meat and poultry products are manufactured were affected the most, showing a 114 percent increase in the number of plants coming under Federal inspection.

FEDERAL SHARE OF INSPECTION COSTS INCREASED

The costs for inspection of meat and poultry are shared by the Federal Government, State governments, and the industry. Total collective expenditures for inspection have increased 37 percent over the last 5 years to $257.7 million in fiscal year 1976.

As more States have eased their own budgetary pressures through voluntary designation, the Federal costs for inspection have correspondingly increased. In fiscal year 1976, the Federal share amounted to nearly 80 percent, a proportion that has increased almost 4 percent since 1972.

Undesignated States spent $29.1 million to maintain inspection programs "equal to" the Federal system in fiscal year 1976—an increase of 8 percent in actual expenditures over 1972. Viewed as a proportion of total inspection costs, however, State expenditures have decreased almost 3 percent since 1972 to 11.3 percent of the total in fiscal year 1976, reflecting the State designations during this time.

Industry pays part of the inspection budget by reimbursing MPI for any inspection overtime required and for voluntary inspection activities. Such reimbursements cost industry $25.8 million in fiscal year 1976, an increase of 25 percent over fiscal year 1972. During the 5 years studied, however, industry expenditures as a proportion of total costs have remained relatively stable at about 10 percent.

FEDERAL INSPECTION FOUND LABOR INTENSIVE

Meat and poultry inspection was found highly labor intensive with almost 90 percent of the total expenditures during 1976, excluding grants to States, allocated to salaries and benefits. This is the result of the many activities mandated by the inspection program's enabling acts. The cost of providing inspectors in meat and poultry plants accounted for nearly 70 percent of total Federal inspection expenditures during fiscal year 1976, a percentage of the total which has remained relatively constant since 1972. This percentage rises when grants to States are considered, since part of the grants includes funding for inplant inspection. Federal grants to States totaled $29.1 million in fiscal year 1976.

The report related the rapid rise in inspection costs over the past 5 years to two major factors—State designations and inflation.

As noted, smaller plants entering the system through State designations have resulted in a lower average volume of inspected product by each inspector. Coupled with this is spiraling inflation, estimated to account for over half of the increased dollar expenditures over the past 5 years.

As projected by Booz, Allen, by 1980 Federal inspection costs will leap to at least $211.8 million (in 1976 dollars) and $219.2 million by 1985. The projections were based on expected future trends in population, meat and poultry production and consumption, designation of State programs, and costs of inspection activities. The figures represent a projected increase of 5 percent by 1980 and 8 percent by 1985.

SEVEN AREAS CHOSEN FOR FURTHER STUDY

After its extensive study of the meat and poultry inspection system, the Booz, Allen study team drew four major conclusions about the program's operations and structure. These are discussed in Volume III.

First, the consulting firm found that meat and poultry inspection activities are consistent with legislative mandates. The operations of program personnel are conducted to detect major forms of adulteration and misbranding, as re-

quired by the agency's enabling legislation.

The second finding of the researchers related to the growth of the inspection program. The report noted that growth over the last 5 years has been significant and predicted continued growth through 1985, as more States give up their inspection programs.

The need for improvements in management structures and activities is cited as the third finding. Work loads in the field are not distributed uniformly. In addition, Program execution is not well integrated with planning and budgeting in MPI, nor supported by adequate information about the Program. Program expenditures are not analyzed in enough detail to aid managers in overall control.

Finally, the firm found that several key aspects of MPI operations and management offer opportunities to improve cost effectiveness. Seven areas of MPI operations and management, accounting for 92 percent of the Program's operating costs in FY 76, were chosen for the study.

Volume II provided a detailed discussion of these alternatives. Each area was evaluated in terms of its advantages and disadvantages, its potential for cost avoidance, potential reactions of interest groups, and ultimately, its viability.

Volume III contained Booz, Allen's recommendations to the Department of Agriculture and detailed strategies for implementation. The final volume also served as an executive summary of the first two volumes, building upon the earlier reported findings and conclusions.

In making its evaluations, Booz, Allen assumed that inspection will continue to be required in all but so-called custom exempt plants in which the law currently permits custom slaughter of a consumer's own meat animal with only periodic surveillance. The introduction to Volume II noted that the tremendous influx of smaller plants into the Federal system over the past 5 years has greatly reduced the efficiency of the Federal program on a cost-per-pound-inspection basis. In some cases, providing inspection to very small plants is perhaps as much as 1900 percent less efficient than to very large plants. This, in essence, amounts to a subsidy to small industry, the report stated.

However, any recommendation related to smaller plants, which some have suggested should be excluded from inspection, was deemed to be outside the scope of the study. The findings relate to the current scope of MPI activities—including the inspection of small plants with their own unique considerations.

The seven aspects of MPI operations and management chosen for further study accounted for 90 percent of its operating costs in FY 1976. They were:

Processing inspection
Post-mortem poultry inspection
Ante-mortem red meat inspection
Post-mortem red meat inspection
Management activities
Management structures
Cross utilization of Federal and State inspection personnel

A summary of the findings and conclusions regarding each alternative follows. An extensive discussion of each can be found in Volume II with an abbreviated analysis in Volume III.

PROCESSING INSPECTION—A MONITORING APPROACH

A monitoring approach to processing inspection in which an inspector makes use of a firm's quality control records, accompanied by frequent verification samples and a progressive economic penalty system, was considered to be the alternative offering the greatest potential benefit to the inspection program and to the consumer.

The system places the burden of proof of compliance with Federal regulations on the shoulders of industry. It is their responsibility to provide USDA with acceptable evidence of compliance, which is to be monitored and verified by the inspection program.

Since the only means of providing this evidence under existing technology is through quality control (q.c.) records kept by the industry, the proposed system, in essence, mandates quality control programs throughout the industry. The system is designed to end the practice of using USDA inspectors as a firm's quality control manager.

The report asserted that a voluntary approach to q.c. is not practical. A mandatory program would place all of the industry on an equal footing and would enable MPI to make accurate predictions of inspection workload.

The report does not recommend that "total" quality control systems be required. Much of the industry would not be able to implement such programs within the 1985 time frame considered by the consulting firm.

Instead, a comprehensive system was recommended, embracing all areas of product flow. Every firm would be required to maintain q.c. systems for microbiological monitoring, processing temperatures, net weight, and fat and added water. Other systems may be required in specific plants, such as a mandatory q.c. system accompanying use of nutrition labeling or a system where restricted ingredients are in use.

The proposed system moves MPI somewhat closer to the approach taken by the Food and Drug Administration (FDA), Department of Health, Education, and Welfare, which regulates all foods other than meat and poultry. The FDA system, in accordance with that Agency's legislative charges, checks food establishments at infrequent intervals, depending upon the risk associated with the specific commodity present. An FDA inspector may inspect a "very high risk" establishment, such as a manufacturer of milk products, twice a year, while visiting a "low risk" establishment, such as a soft drink bottler, only once every few years.

FDA depends heavily on the industry to police itself, but it has a wide range of enforcement tools available when necessary. Legislation pending in Congress would add substantially to the FDA's arsenal, giving it the authority to, among other things, demand access to a firm's processing records and require companies to have "adequate" q.c. systems.

The differences in the kind and degree of risk between meat and nonmeat items precluded the use of an FDA-type system for meat and poultry inspection, the consulting firm concluded. The greater potential risk of human disease caused by foods of animal origin is reflected in the legislation which governs the regulations of the differing commodities, with MPI required to conduct much more intensive inspection than FDA.

However, Booz, Allen indicated that the FDA approach, which more fully uses industry's quality control records, could be adapted for use by MPI. The program proposed for USDA must be accompanied by a broad array of new enforcement tools. It was recommended that MPI devise a plant rating system tied to a progressive enforcement system that includes economic penalties, such as a charge back for extra inspection time spent in problem plants.

The program would require intensive monitoring of the q.c. programs by MPI. Inspection efforts could be concentrated on three major areas: monitoring of procedures and data; spot checking (verification inspection) of the product; and conventional inspection of the plant for requirements not included within the q.c. program.

MPI would benefit from greater staffing flexibility and gain the ability to focus better on problems. In addition, the inspection program would be better able to stay within Administration's personnel ceiling while meeting its legislative mandates.

Benefits would also accrue to industry and the consumer. Mandating quality control programs would result in a more consistent product entering food channels, with less throwaway at the plant. The inspection force would utilize more objective standards—relying to a greater extent on written documentation and sample analysis. The system would also provide for a greater separation of the inspector and the plant.

Booz, Allen predicted that the proposed system could result in an average 32 percent reduction in MPI manpower per plant. When implementation costs are added in, for needs such as special training for inspectors and increased sample analysis, a cumulative cost avoidance of nearly $116.5 million (in 1976 dollars) is estimated through 1985, assuming implementation by 1980.

The report acknowledged major difficulties in implementation of such a program by small operators and suggested special arrangements, such as personnel sharing or the use of part-time personnel from the academic community. Booz, Allen proposed a delayed phase-in of mandated programs to allow additional time for smaller operators to develop the required capabilities.

The recommended changes have implications for MPI staffing requirements.

Inspectors will need a fundamental knowledge of quality control programs.

New hires for processing inspection should have completed at least 2 years of college with course work in food technology, statistics and biological sciences, the report stated. Slaughter inspectors would be eligible to cross over into processing inspection only if those requirements are met. Greater opportunities for advancement should also be available in order to attract college graduates. Management positions should be reevaluated to eliminate requirements, where appropriate, for veterinary medical expertise.

The proposed system would require consultation with Congress since such a program was not discussed with Congress during passage of MPI authorizing legislation.

POULTRY POST-MORTEM INSPECTION—A BI-LEVEL SYSTEM

A bi-level approach to poultry inspection—utilizing a specially adapted "continuous sampling plan" (actually, sampling from a continuous production line)—was recommended for intensive field study by the Booz, Allen team.

The system is feasible, the report concluded, because of the nature of poultry condemnations, particularly of young chickens. Poultry raising and marketing practices result in rather homogenous lots in which disease incidence is either quite low or fairly high—allowing a differentiation between "good" and "bad" lots. In addition, with the current state of knowledge and detection capabilities, it appears likely that most causes of condemnation have little human health significance.

Under the concept developed by the Booz, Allen team, inspection would focus on "bad" lots of poultry—while all birds would continue to be inspected by either MPI inspectors or an industry inspection crew. Under certain conditions, a plant screening crew would prescreen the birds to be examined by MPI—offering a double check. However, "good" lots would be examined by MPI officials on a continuous sampling basis, with the rest of the birds in the lot checked by trained plant employees—in effect, another form of 100 percent inspection.

Under the specifics of the system, there are three inspection modes:

Mode A: All birds are inspected by trained plant inspectors and MPI inspectors who reinspect a specified fraction of the birds to verify. (Greater than 100 percent inspection.)

Mode B: A fraction of the birds are inspected by MPI inspectors. The rest are inspected by industry inspectors. (100 percent inspection.)

Mode C: All birds are inspected by MPI inspectors. The plant may preinspect some or all of the birds. (At least 100 percent inspection.)

Every new lot, made up of a homogenous flock, begins in Mode A, unless the more stringent Mode C has been in effect in the plant.

The plant may switch to Mode B from Mode A after a predetermined number of consecutive birds have been inspected and passed, indicating that the lot is relatively free of condemnable disease conditions. If the MPI inspector finds a condemnable carcass while the plant is in Mode A, then MPI inspectors begin looking at every bird (the system switches to Mode C).

While the system is operating in Mode B, with 100 percent inspection performed by a combination of MPI and plant inspectors, if an MPI inspector condemns a carcass, the system returns to Mode A where some double checking takes place. At that time, all birds that had passed the inspection station since the last bird was inspected and passed are set aside for reinspection by MPI inspectors.

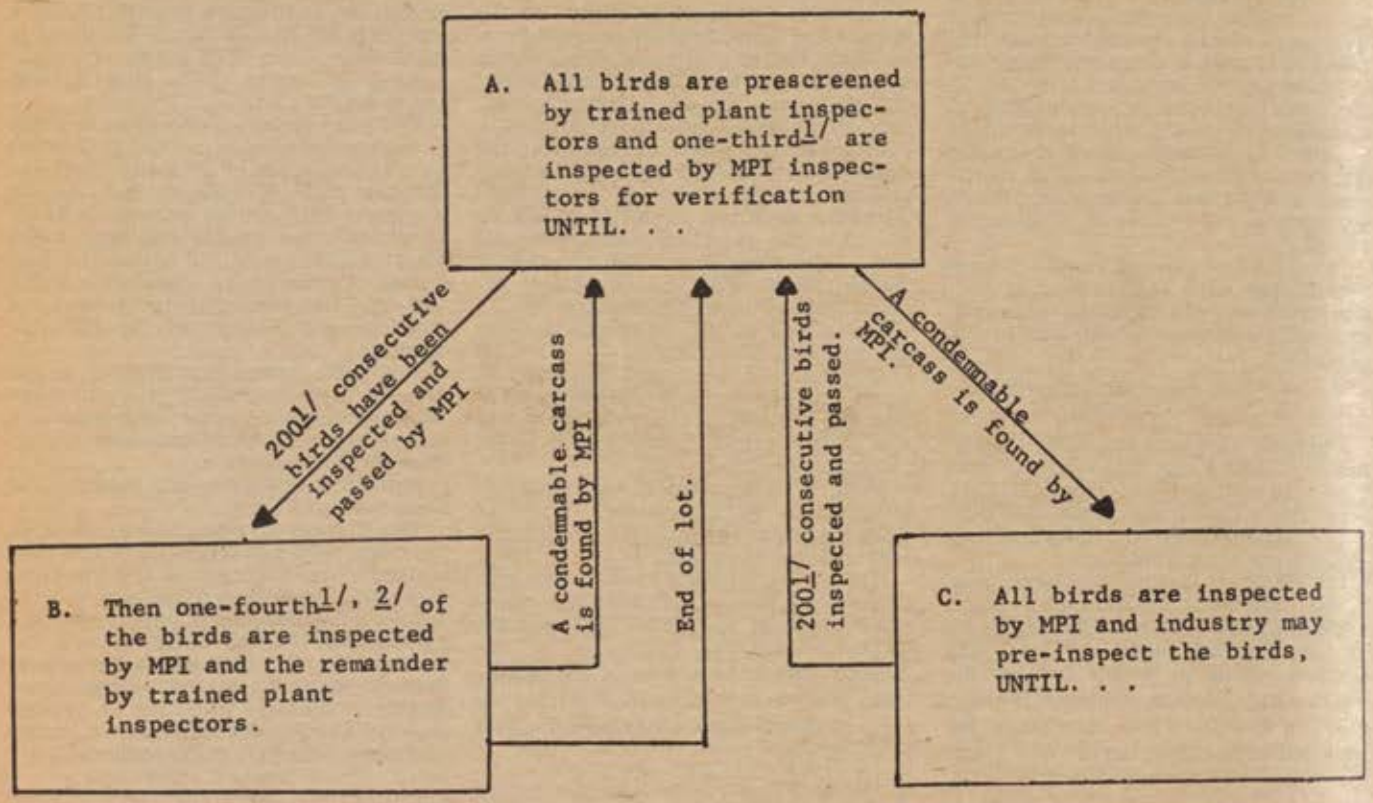
While the system is in Mode C, or 100 percent MPI inspection, if a predetermined number of consecutive birds are passed by MPI inspectors, the system may return to Mode A.

Exhibit 1 illustrates the workings of the proposed system.

The system incorporate incentives to the plant that are beneficial to the consumer. Mode C is initiated when ineffective plant inspection is detected by MPI personnel. Since line speeds slow down considerably in this mode, there is incentive for effective plant inspection. Since productivity can be highest under Mode B, there is incentive to provide healthy animals for slaughter to enable the plant to qualify for that mode.

EXHIBIT 1

Bi-Level Poultry Postmortem Inspection



[1] Numbers are for expository purposes. Actual numbers may be quite different.

[2] Fraction of birds inspected by MPI in Modes A and B may be the same.

Plants may provide their own inspectors to maximize productivity. Line speeds currently are constrained by the number of MPI inspectors. But under Modes A and B, the plant can increase its line speeds by adding plant inspectors. The plant, however, could not use more than eight of its inspectors to one MPI inspector to assure adequate verification sampling.

The Booz, Allen report predicted that the proposed system would prove to be more effective than the current system because it provides for some duplicate inspection. The study noted that no system is 100 percent effective—past estimates have suggested an error rate of perhaps 1.0 to 1.5 percent for the current system. Under the proposed system, there is actually double screening at some points and 100 percent inspection is always in effect in some manner, even when an MPI inspector is only sampling. Thus, the new concept potentially offers improved effectiveness.

This system, similar to that proposed for processing inspection, transfers some costs and responsibilities from MPI to the industry. It would require training of plant employees to function as effective inspectors. Some physical changes in line layout may also be required.

According to the report, a substantial reduction in MPI costs for poultry inspection could result from implementation of the bi-level approach. Currently, poultry inspection absorbs a sizeable share of the MPI budget—about $32 million in fiscal year 1976, or 15 percent of the total expenditures. It was estimated that the costs for poultry inspection could be cut by 25 percent, with a projected 40 percent reduction in on-line inspection. If the system is adopted by 1980, this would result in a projected savings of nearly $50 million (in 1976 dollars) by 1985.

Any change from 100 percent MPI inspection would require an amendment to the Wholesome Poultry Products Act of 1968. In view of the legislative action required and the administrative adjustments needed by both MPI and industry, the report recommended gradual implementation preceded by extensive field testing.

ANTE-MORTEM INSPECTION OF RED MEAT—A MONITORING SYSTEM

A more flexible anti-mortem inspection system that permits MPI to focus most of its inspection on questionable animals was recommended ni the Booz, Allen report.

Formerly discretionary, anti-mortem inspection was made mandatory by the Wholesome Meat Act of 1967. As presently conducted, however, such inspection appears to have little measureable impact on total inspection results. Little flexibility is permitted under the law to improve the efficiency of the process, and the inspection effort invested appears relatively high in terms of the number of defects found.

Condemnation data listed in the study indicated that only a small faction of the red meat animals offered for slaughter, which are not already dead or dying, are condemned during anti-mortem inspection—only one animal per 20,000.

The cost of ante-mortem inspection was estimated to be nearly $2 million—resulting in a cost of $5.24 to locate each defective animal. With very limited exceptions, those animals condemned on ante-mortem inspection would also be removed from the food chain on post-mortem inspection.

The consulting firm concluded that ante-mortem inspection has value and should not be eliminated. In the absence of any other responsible group in the United States, MPI must continue to meet the responsibility for disease detection. However, there is a need for more flexibility in the legislation to enable changes in procedures that will retain the intent while allowing for more efficient use of scarce resources.

Booz, Allen recommended that the program be modified to allow MPI to concentrate inspection time on classification and disposition of defective animals—the most difficult of inspection activities and the one of most significance to consumers. The proposed system would require the packer to separate the questionable animals, but MPI officials would no longer be required to examine every animal. MPI would reserve the right to inspect any animal, however, and would inspect all abnormal animals, as well as monitor closely the screening process.

Although industry efforts would increase under the system, the industry would benefit from the proposed elimination of reimbursable overtime—overtime charged to the industry—for ante-mortem inspection. Any overtime needed for this activity would be administrative under the proposed system.

The major benefit of this change would be the flexibility it provides to MPI. The marginal potential cost avoidance which would result—$3.7 million through 1985—should not be a factor in a decision to adopt this recommendation, the study stated.

The modification of the current system would require revision of the Federal Meat Inspection Act. Time for gradual changeover to the new system should be provided, the consulting firm suggested, after legislative changes are enacted.

POST-MORTEM INSPECTION OF RED MEAT—IMPROVED PROCEDURES

Determing that the relatively pervasive disease incidence of red meat animals precluded the use of a sampling system for post-mortem red meat inspection, the Booz, Allen team recommended revised procedures, as developed by an MPI task force, which would result in a projected cost avoidance of over $22 million by 1985.

A sampling procedure was not considered appropriate for red meat animals because they are raised in a variety of environments and cannot be sorted into "good" or "bad" lots. Disease rates are relatively high and the defects include several high risk conditions. Since post-mortem inspection of red meat animals accounts for 23 percent of total MPI costs, other means of improving the system were explored.

In March 1977, MPI convened a Technical Study Group to develop recommendations in the area of post-mortem inspection for the Booz, Allen study. The recommendations, incorporated into the consulting firm's report (appearing in full as Appendix D to Volume II), outlined a set of pared down basic procedures for past-mortem inspection of each species. Along with these are lists of expanded procedures for specific conditions which may be added as needed. Since each expanded procedure is separate and defined, MPI can calculate the effort—and cost—involved in implementing expansion steps.

Only those steps deemed appropriate to the type of animal and area of origin would actually be performed under the new system. In some instances, only a basic procedure need be performed. In others, such as inspection for tuberculosis, an expanded procedure is always recommended.

The Study Group report also made note of the fact that "contamination" has become a leading defect reported at post-mortem inspection. This is actually a condition produced during slaughter rather than an abnormality present in the animal before slaughter and should be a plant responsibility.

The report recommended that major MPI emphasis be placed on solving the issue of how inspection effort should be devoted to preventing dressing defects leading to contamination. After field investigation, the program should place primary regulatory emphasis on correction of defective processes rather than after-the-fact detection of damage. MPI should also make sure that the criteria for "contamination" are realistic in terms of consumer protection.

The changes in procedure would create a need for improved systems for compiling, analyzing and distributing information to assist in keying post-mortem procedures to changing situations. The improved information systems should include cost studies of post-mortem procedures since this would help in deciding among alternative procedures.

As a result of changing industry technology and the increasing opportunity for assignment as the sole inspector at a plant, the post-mortem inspector should have additional educational background. Minimum entry requirements of a high school degree, including courses in physical and biological sciences, would be a step in this direction. The report recommended that some educational background be permitted to substitute for the now-required 3 years of experience in the industry.

Some of the recommendations will require field study. Since the revised procedures require no legislative change, however, Booz, Allen estimated implementation could be achieved by 1978. A cost avoidance of $22 million (in 1976 dollars) through 1985 was projected, resulting from the reduction in inspection time required for each animal.

MANAGEMENT ACTIVITIES—AN INTEGRATED MANAGEMENT SYSTEM

The Booz, Allen team found some long-standing problems with MPI management and information systems that need to be corrected before the firm's technical proposals can be implemented fully. MPI has already begun efforts to deal with some of the problems, as it is in the process of updating its work standards and improving its data systems. The consultant's review of management activities within the Program was taken to support and complement the internal effort.

A basic problem, according to the study, is that accurate updated information generated by the Program does not always filter back to the proper levels of management in a usable form so that informed decisions can be made. Data from the lowest point in the organization, the plant, should flow up to headquarters and then back down to the area level, the firm recommended. Thus, the Program could know exactly how monies are being spent, relating expenditures to factors such as pounds of animals inspected, type of animal, type of plant, etc. The data should be provided to management at all field levels, since field managers currently make resource decisions with little feedback on the impact of their actions.

In addition, to better coordinate all aspects of decisionmaking, the report suggested that MPI develop a set of formal procedures to guide the basic management functions of planning, program development, budget formulation, and program execution. This integrated management system should express the essential linkages among these activities, involve the active and expanded participation of key field managers, and be supported by the new information system now being developed.

Regional Directors should play a major role in development of policy for the entire inspection program, the study concluded, recommending that they report directly to the Deputy Administrator. In support of increased integration of related MPI field activities, it was also recommended that the Regional Directors be given the responsibility for monitoring compliance of allied industries. Information obtained through both inspection and monitoring of different points of the food distribution chain must be coordinated and available to the Regional Directors for effective corrective and enforcement actions.

The report also recommended that area managers become major participants in planning and budgeting activities for the Program. Areas will need to receive all key statistical and financial reports on their operations. Additional training and technical assistance from the headquarters staff will be required to better equip field managers to assume their increased responsibilities.

It is expected that the improvements in management and information systems can be made for the most part with existing departmental resources. Although

there is great potential for cost avoidance through the implementation of the changes, the consulting firm found it difficult to realistically quantify the savings at this stage of development.

The qualitative benefits are significant. The recommendations would greatly help MPI officials manage the Program's operations, providing management with the ability to respond to and plan for changing needs, allocate resources, and take concerted action with the knowledge of its effects on the entire Program.

MANAGEMENT STRUCTURES—REALIGNMENT OF FIELD MANAGEMENT

Another problem identified by the Booz, Allen team is the wide variation in workloads which exists among various field management levels. For example, the 34 MPI Areas range from one to four States and territories, include 3 to 21 Circuits, and cover 31 to 827 Federal plants. Similarly, the five Regional Offices include five to nine Areas, ranging from 833 plants to 2,550 plants.

The report urged that a clear set of guidelines be developed to realign field structures in order to equalize workloads. In addition, it recommended the elimination of the positions of Regional Moisture Controller. The study team found the positions amounted to little more than duplication of work already performed by Circuit Supervisors and in-plant inspection staff in poultry inspection.

These changes could result in a cost avoidance, in 1976 dollars, of nearly $18 million through 1985—assuming realignment by 1978. The potential improvement in organizational control and effectiveness, however, is of primary consideration in recommending the changes. The changes should result in greater inspection uniformity and improved communications in the field.

CROSS-UTILIZATION—EXPANSION WHERE POSSIBLE

Cross-utilization of Federal and State personnel was the one area in which the Booz, Allen report concluded that a national program is not viable. The firm recommended, however, that where conditions permit, cross-utilization should be encouraged as a less costly means of staffing plants.

Cross-utilization in the past, despite some existing opportunities, has been minimal. The major obstacle has been the relationship between State and Federal inspection systems created by the enabling legislation of the late 1960's. States are required to conduct programs that are "equal to" the Federal program, yet State inspected product cannot move out of that State. During fiscal year 1976, cross-utilization involved only 3 percent of the total Federal man-years of inspection, or 320 man-year equivalents, almost all of which was through Talmadge-Aiken agreements.

It was estimated that opportunities to expand cross-utilization might represent as much as 15 man-years per State. With the Federal Government receiving about three-quarters of the savings, MPI could save over $1.4 million under maximum conditions. This would result in a cost avoidance of less than 1 percent of MPI expenditures for inplant inspection.

Numerous constraints to cross-utilization more than balance off the small benefits which might be derived. The problems include Civil Service policies, resistance of employee organizations, supervisory concerns, and differences in Federal and State inspection programs.

The consulting firm recommended, however, that cross-utilization should be encouraged where conditions permit. It also called on the Department to analyze existing policies related to State programs. The policy issue involving State cooperative inspection systems revolves around whether the Department wishes to "encourage" such systems or "allow" such systems to exist. Existing legislation and regulations "allow" for such systems.

If the Department wishes to "encourage" these systems, however, the legislation must be changed to permit interstate sale of State inspected product. In addition, changes in Talmadge-Aiken legislation should be made to provide economic incentives for States. The Department should consider raising Talmadge-Aiken funding from 50 percent to 80 percent Federal monies and to permit States to make the final decision on whether to allow a plant to ship interstate. These changes require Congressional approval.

Exhibit 2 summarizes the benefits which can be derived from each of the recommended changes.

PROGRAM CHANGE AFFECTED BY SEVERAL FACTORS

In Volume III, the consulting firm outlined several factors which have contributed to MPI's current problems and which must be considered in future attempts to make program changes.

A major factor playing a repeated role in the study findings is uncontrolled growth due to continuing State designations. This results in increased workloads, with the Program at the same time facing pressures to hold down Federal expenditures.

The second factor is the lack of appropriate, accessible and detailed information on the current system that can be integrated into the budgeting, resource allocation and other management processes to support management decisionmaking. Development of improved management and information systems will have an impact on MPI's ability to implement the technical proposals recommended in the report.

EXHIBIT 2.—*Summary of benefits to consumers, industry, MPI by recommended areas of change, recommended areas of change*

	Interest group		
	Consumers	Industry	MPI
A monitoring system of processing inspection.	Improved product consistency without an anticipated increase in purchase price through improved industry quality assurance and greater enforcement capabilities through a progressive penalty system. More efficient use of Federal tax dollars.	Improved product control and greater flexibility to expand production in plants with consistently good compliance records. Some potential decrease in overtime costs.	Improved information and control mechanisms to more objectively monitor industry compliance and greater enforcement capabilities to take the economic gain out of noncompliance. Potential cost avoidance of $117,000,000 through 1985 (in 1976 dollars).
Bi-level postmortem poultry inspection.	Improved quality assurance through more effective inspection. Potential increased poultry supply without an increase in purchase price. More efficient use of Federal tax dollars.	Increased flexibility to increase line speeds where good lots are received and industry inspection is effective. Some potential decrease in overtime costs.	More efficient utilization of inspection personnel with potential cost avoidance of $50,000,000 through 1985 (in 1976 dollars).
A monitoring system of antemortem red meat inspection.	More efficient use of Federal tax dollars with an equivalent assurance of protection from health risk and economic fraud.	Elimination of overtime costs.	More efficient utilization of inspection personnel with potential cost avoidance of $3,700,000 through 1985 (in 1976 dollars).
Revised postmortem red meat inspection.	....do....	Less time-consuming inspection per animal with improved potential for increased line speeds. Some potential decrease in costs for reimbursable overtime.	More efficient utilization of inspection personnel with potential cost avoidance of $22,000,000 (in 1976 dollars) assuming many instances will occur whereby inspectors can be removed from existing assignments to be used elsewhere.
Revised management and information system.	More efficient use of Federal tax dollars.	Improved inspection uniformity and access to decisions lower in the organization.	Improved data base from which to conduct planning, budgeting, and evaluation. Improve resource allocation system with long-run cost avoidance; more participative management and improved supervisory system.
Revised management structures.	....do....	....do....	Better equalization of workloads with improved communications and uniformity of policy interpretation. Potential cost avoidance of $18,000,000 through 1985 (in 1976 dollars).
Cross-utilization of Federal and State inspection personnel.	....do....	Greater uniformity in Federal and State regulatory interpretations. Some potential decrease in overtime costs.	More efficient utilization of Federal and State resources with some resultant cost avoidance. Greater harmony between Federal and State inspection programs.

A third constraint relates to Federal legislation which hampers MPI's ability to adapt inspection to changing technologies. Program changes by the Department in the past have been confined to less significant areas because of the need for legislative approval of major changes. Greater discretionary authority must be added to meat and poultry inspection legislation, the report urged.

Any solution to MPI's problems must be balanced by the concerns of the many groups affected by the program. The Department must clearly understand the interests of consumers, industry, employee unions and Congress before changes are made.

The report documented the concerns of the various interest groups and recommended that representatives from every sector play a large role in efforts to implement the study recommendations.

[FR Doc.77-22193 Filed 8-2-77;8:45 am]

federal register

WEDNESDAY, AUGUST 3, 1977

PART IV

INTERSTATE COMMERCE COMMISSION

■

ABANDONMENT OF RAILROAD SERVICES

System Diagram Maps of Various Railroad Companies

INTERSTATE COMMERCE COMMISSION

[AB 6 (SDM)]

BURLINGTON NORTHERN INC.

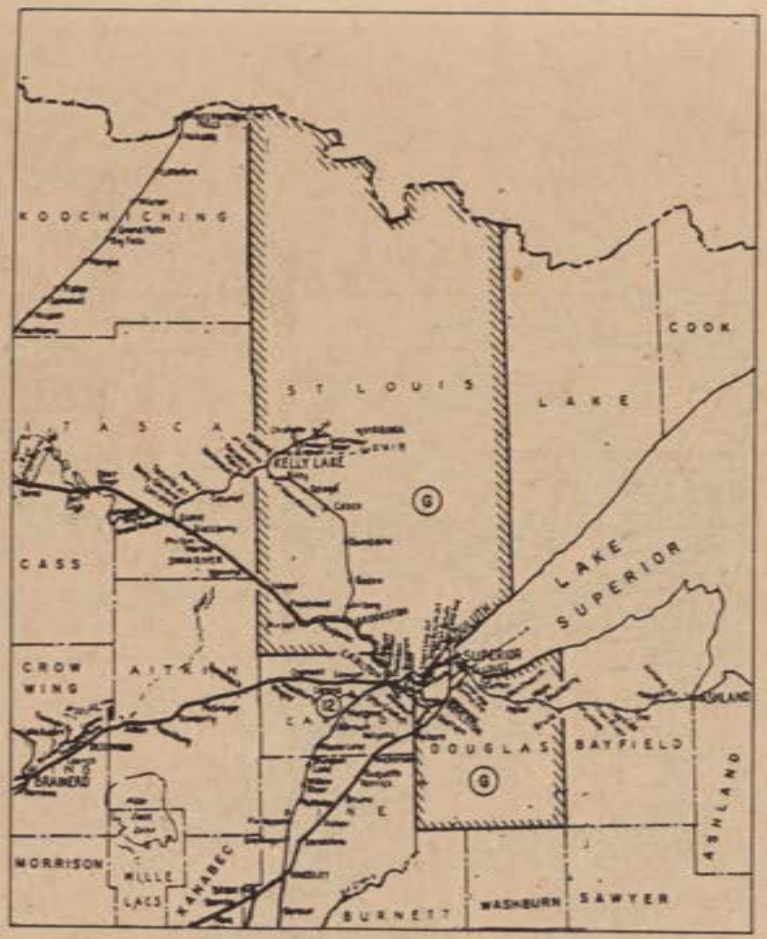
System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.22, that the Burlington Northern Inc., has filed with the Commission its color-coded system diagram map in docket No. AB 6 (SDM). The maps reproduced here in black and white are reasonable reproductions of that system diagram map and the Commission on July 21, 1977, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 6 (SDM).

H. G. Homme, Jr.,
Acting Secretary.

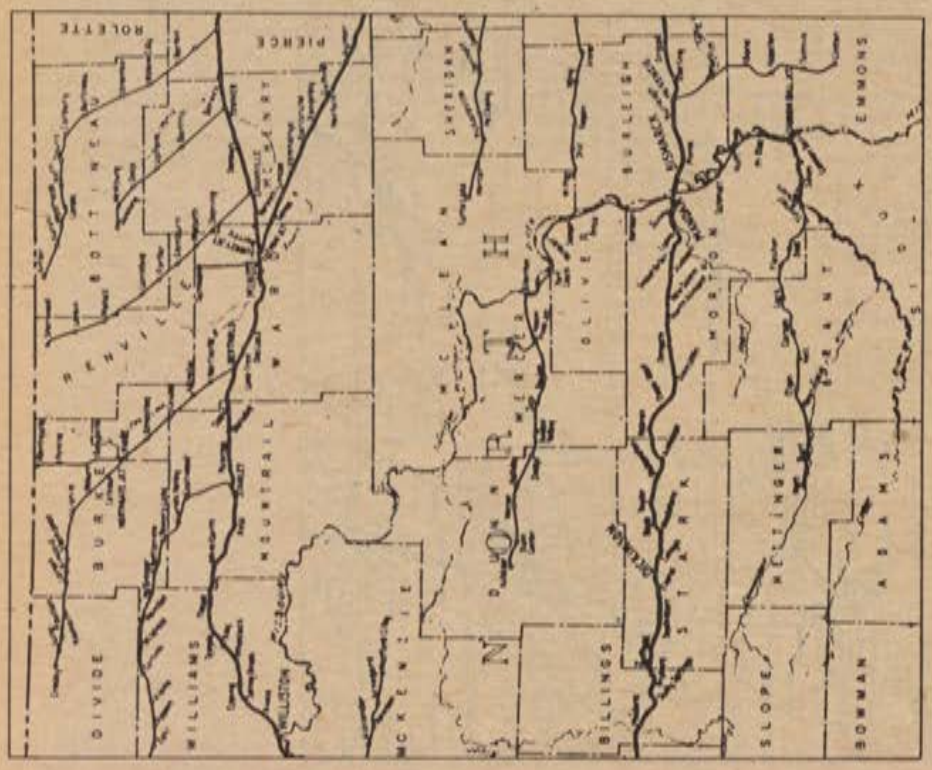
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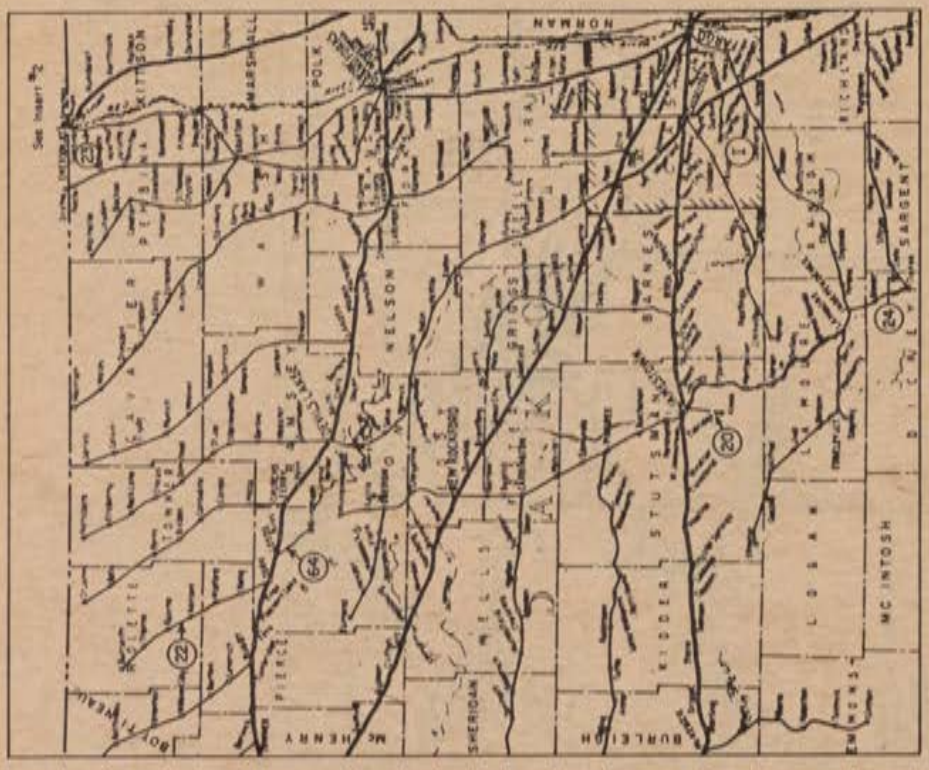
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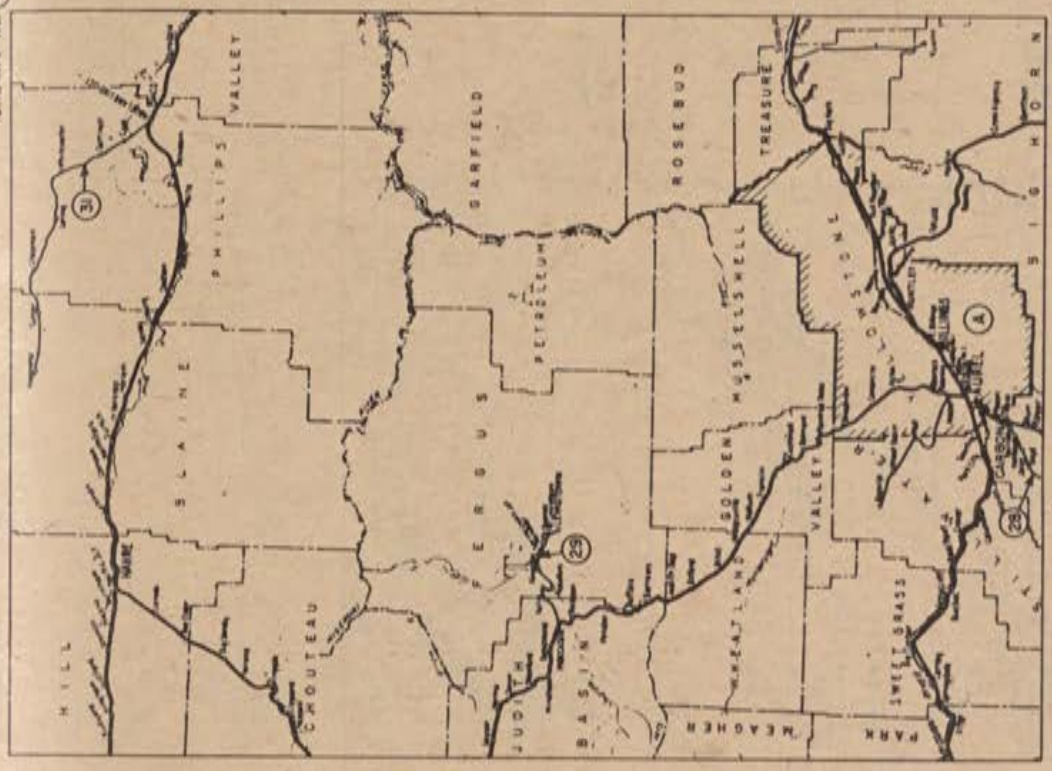
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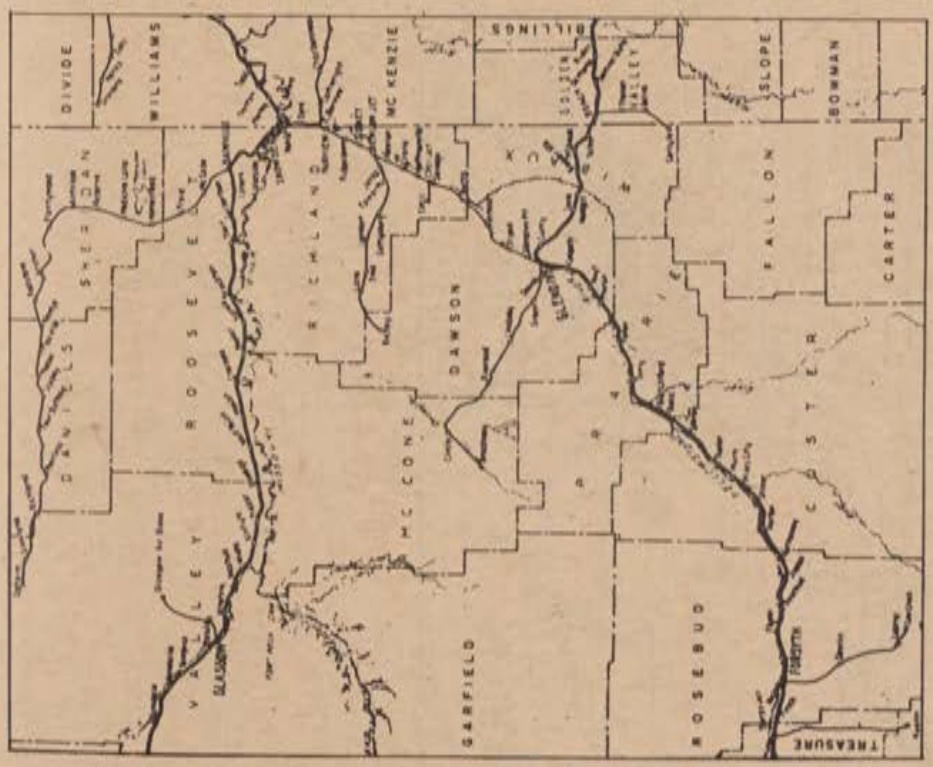
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B.N. MAP No. (6)



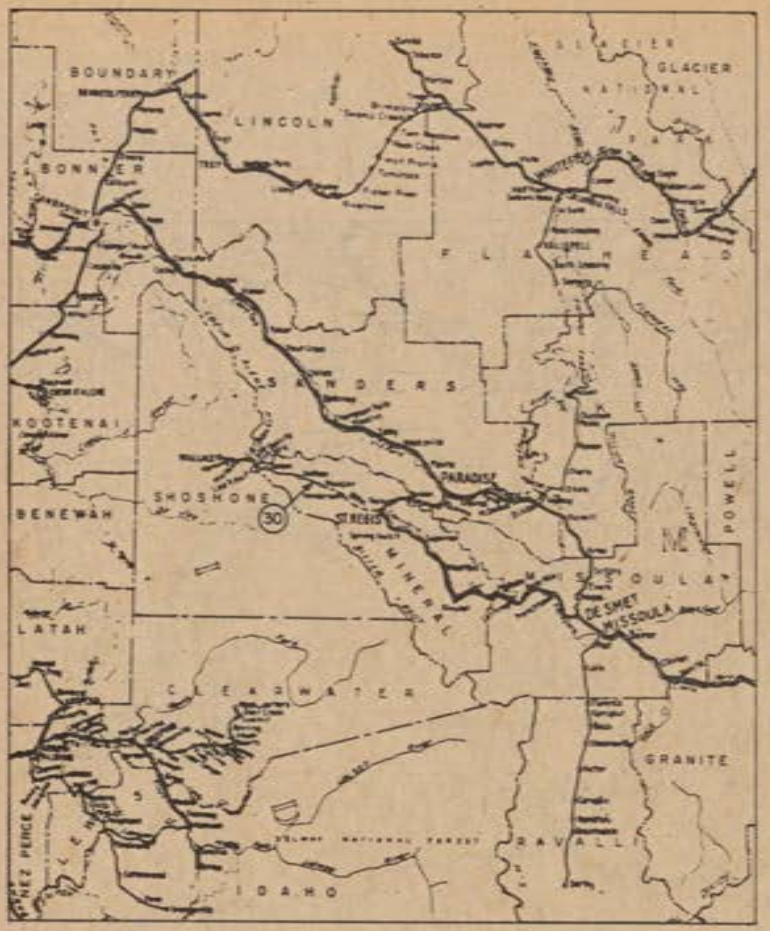
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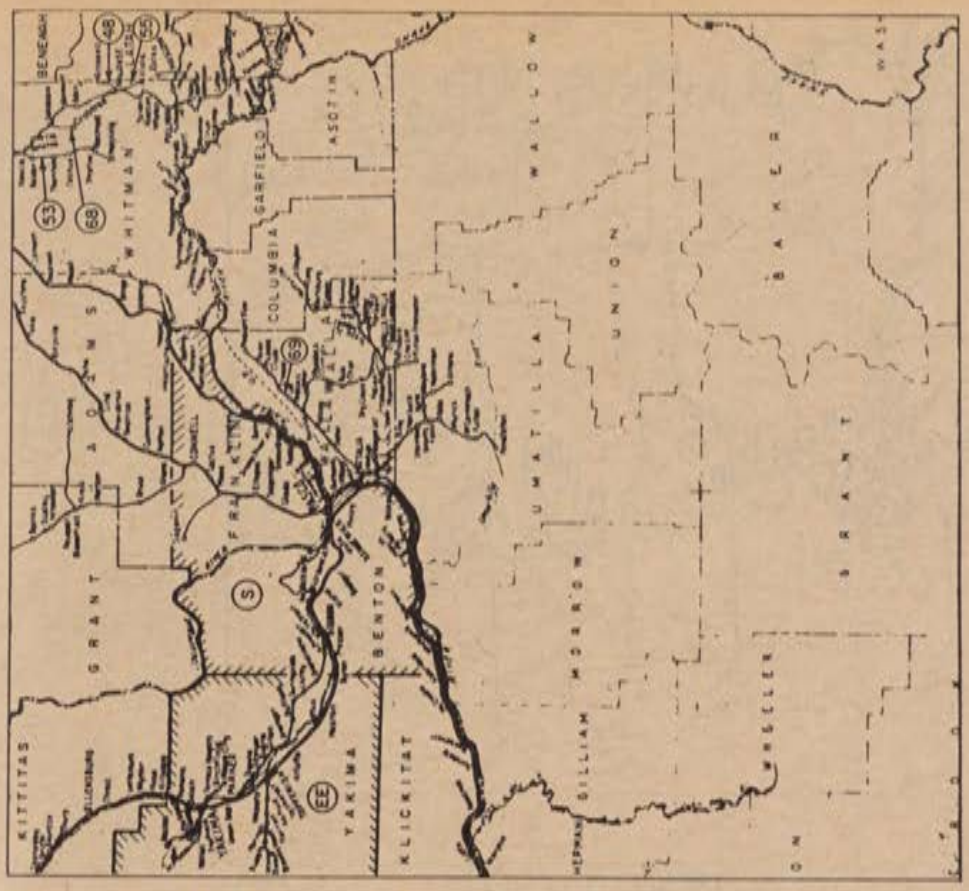
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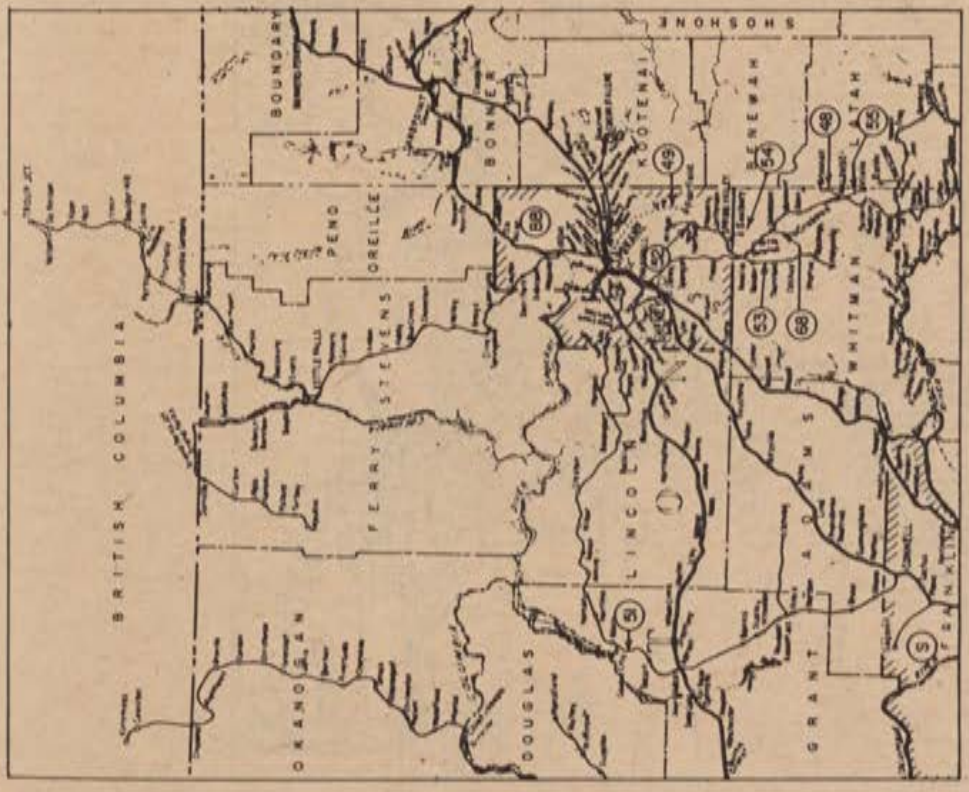
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B.N. MAP No. (10)



B.N. MAP No. (9)



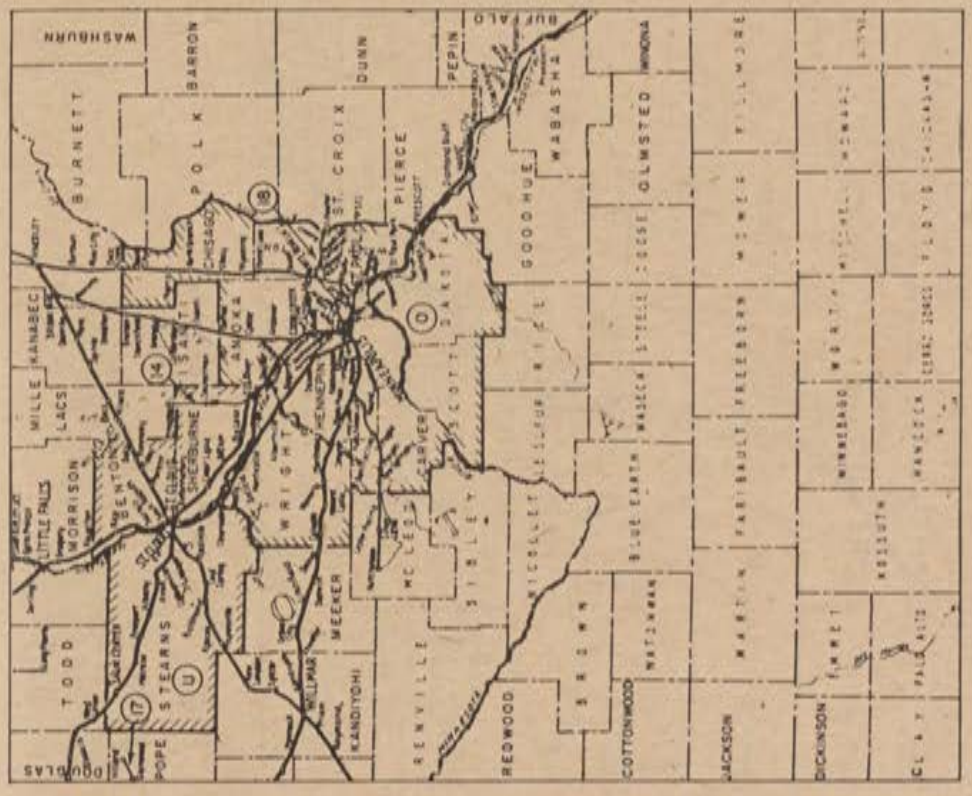
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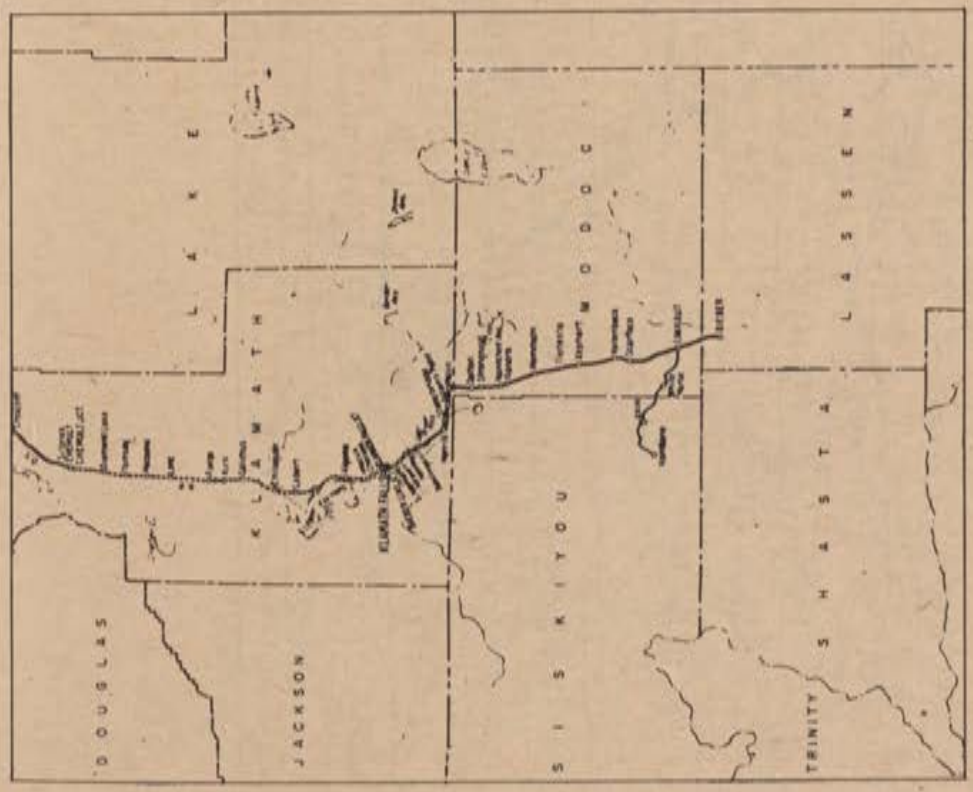
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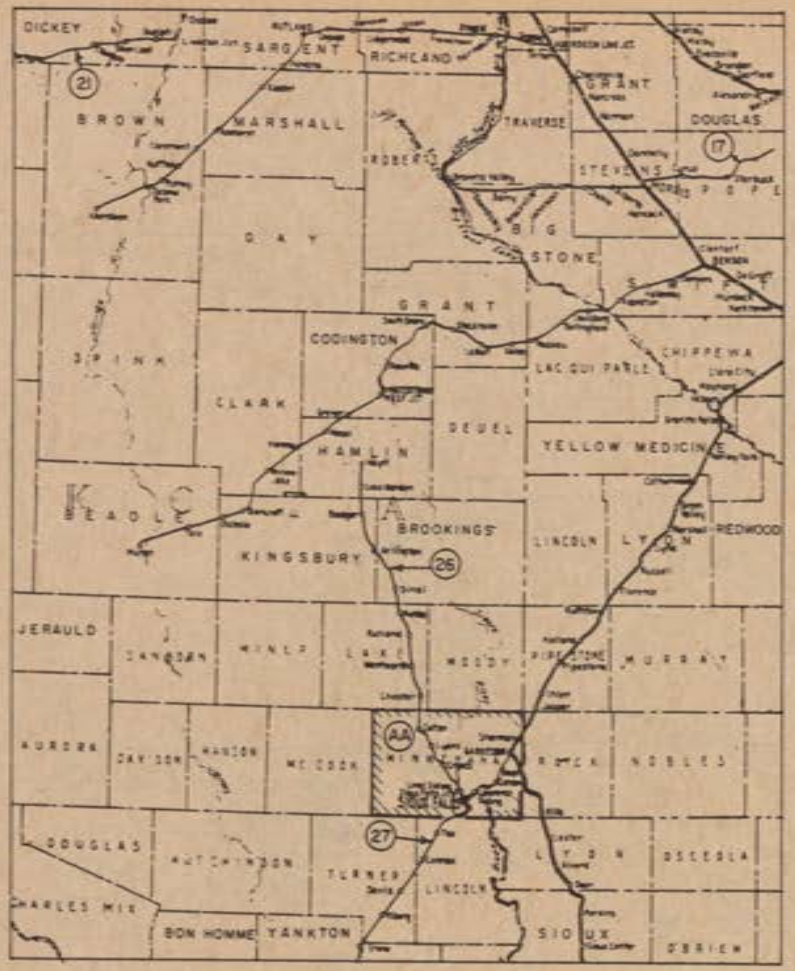
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B.N. MAP No. (13)



B.N. MAP No. (15)



B.N. MAP No. (16)



B.N. MAP No. (17)



B.N. MAP No. (18)



B.N. MAP No. (19)



B.N. MAP No. (20)



B.N. MAP No. 21



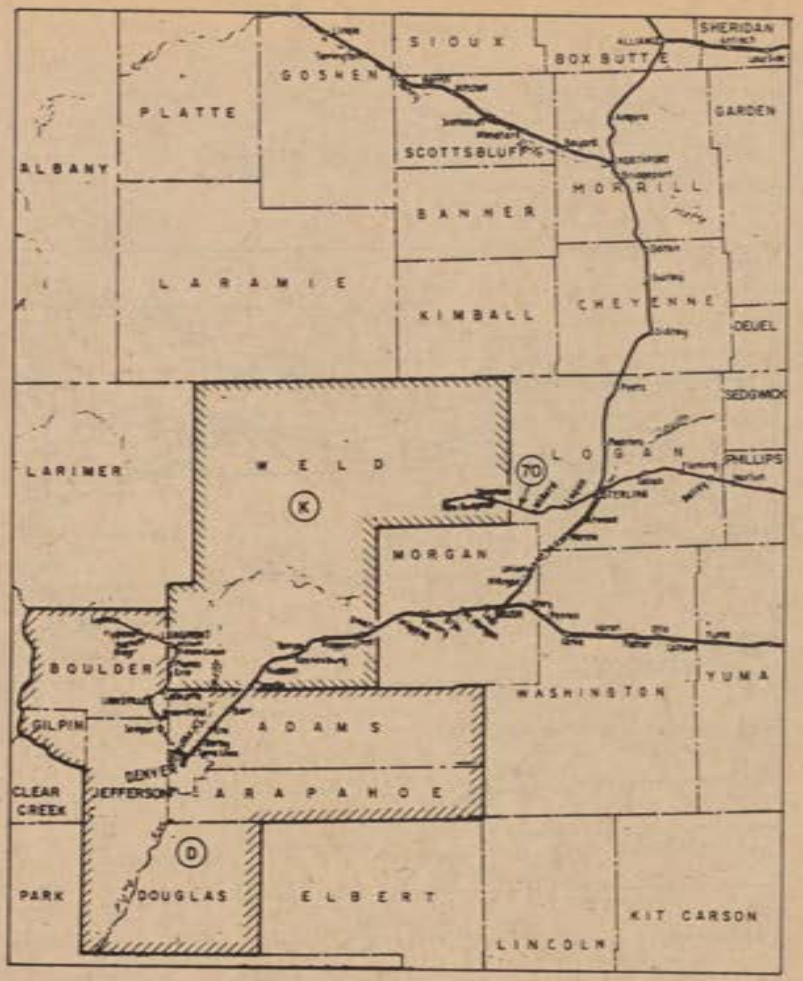
B.N. MAP No. 22



B.N. MAP No. (23)



B.N. MAP No. (24)



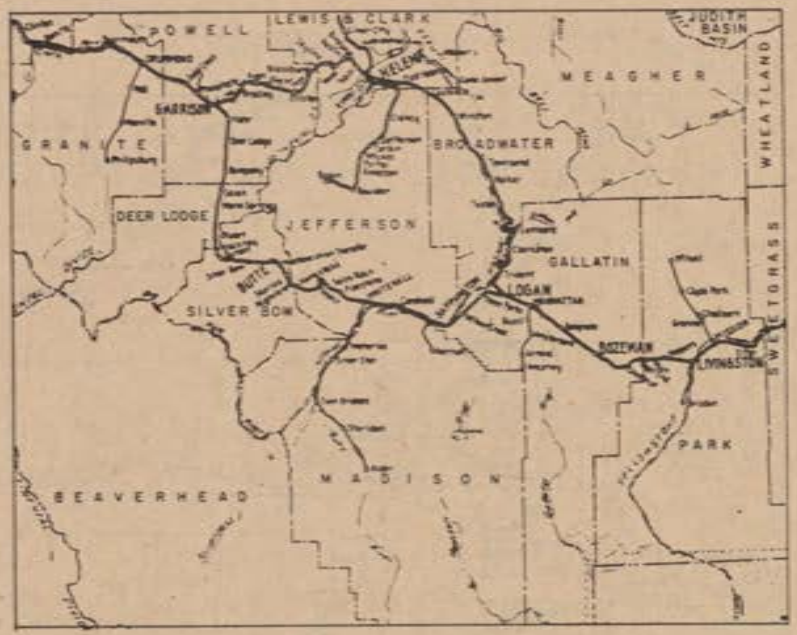
B.N. MAP No. (25)



B.N. MAP No. (26)



B.N. MAP No. (27)


POWELL
LEWIS & CLARK
JUDITH BASIN
MEAGHER
WHEATLAND
GARRISON
GRANITE
BROADWATER
DEER LODGE
JEFFERSON
GALLATIN
SWEETGRASS
LOGAN
SILVER BOW
BOZEMAN
LIVINGSTON
PARK
BEAVERHEAD
MADISON

BURLINGTON NORTHERN INC. AB-6

Category 1

BN MAP NO. 1

Line Segment No. 12—Moose Lake (MP 109.00) to Carlton (MP 129.49), Carlton County, Minn.—Stations: Barnum—112.5; Mahtowa—118.5; Otter Creek—124.2.

BN MAP NO. 2

Line Segment No. 13—French (MP 56.5) to Breckenridge (MP 74.0), Ottertail and Wilkin Counties, Minn.—Stations: Foxhome—61.27; Everdell—66.0.

Line Segment No. 15—Fergus Falls W. Jct. (MP 0.50) to Pelican Rapids (MP 21.37), Ottertail County, Minn.—Stations: Erhard—15.4; Pelican Rapids—21.37.

Line Segment No. 16—Barnesville (MP 5.0) to Downer (MP 9.09), Clay County, Minn.—Stations: Downer—9.09.

Line Segment No. 19—Battle Lake (MP 31.42) to Henning (MP 15.89), Ottertail County, Minn.—Station: Vining—22.2; Clitheral—28.8; Henning—16.09.

Line Segment No. 23—Joliette (MP 179.13) to Pembina (MP 191.71), Pembina County, N.Dak.—Stations: McArthur—82.5; Pembina—189.49.

BN MAP NO. 3 (20, 22, 24, 64)

Line Segment No. 20—Jamestown (MP 39.67) to Klose (MP 33.75), Stutsman County, N. Dak.—Station: None.

Line Segment No. 22—York (MP 0.00) to Dunseith (MP 41.8), Benson, Pierce, and Rolette Counties, N. Dak.—Station: Wolford—14.01; Rolette—27.76; Thorne—33.80; Dunseith—41.80.

Line Segment No. 24—Crete (MP 142.00) to Oakes (MP 149.50), Sargent and Dickey Counties, N. Dak.—Stations: None.

BN MAP NOS. 4 AND 5

All lines—Category 5.

BN MAP NO. 6

Line Segment No. 28 (also shown BN MP 26)—Silesia (MP 9.65) to Red Lodge (MP 44.17), Carbon County, Mont.—Stations: Rockvale—12.08; Montague—14.30; Joliet—17.70; Boyd—23.03; Roberts—31.62; Fox—37.55; Carbon Mine Spur—43.60; Red Lodge—44.24.

Line Segment No. 29—Moccasin (MP 0.00) to Lewistown (MP 30.68), Judith Basin and Fergus Counties, Mont.—Stations: Kolin—7.32; Rossfork—14.1; Kingston—20.19; Spring Creek Jct.—21.38; Hanover—70.2; Lewistown Jct.—62.2; Lewistown—61.9.

Line Segment No. 31—Saco (MP 0.10) to Hogeland (MP 77.40), Phillips and Blaine Counties, Mont.—Stations: Hogeland Jct.—0.10; Cole—6.87; Tattnall—13.41; Whitewater—24.01; Loring—36.95; Chapman—52.26; Turner—65.27; Hogeland—77.40.

BN MAP NO. 7

Line Segment No. 66 is a Category 3 line pending before the Commission.

BN MAP NO. 8

Line Segment No. 30—Haugan (MP 19.57) Mineral County, Mont., to Wallace (MP 58.61), Shoshone County, Idaho—Stations: Haugan—19.15; Saltese—24.40; Borax—33.35; Sohon—36.90; Lookout—38.42; State Line—38.45; Dorsey—42.1; Carbonite—43.50; Lucky Friday—49.5; Mullan—50.19; Morning—51.15; Golconda—54.3; Wallace—58.61.

BN MAP NO. 9

Line Segment No. 48—Palouse (MP 76.00) to Grinnell (MP 70.81), Whitman County, Wash.—Stations: Grinnell—70.81.

Line Segment No. 49—Spokane (MP 69.80) to Fairfield (MP 131.21), Spokane County, Wash.—Stations: Dishman and Spear.

Line Segment No. 51—Adrian (MP 126.24) to Odair (MP 106.70), Grant County, Wash.—Stations: Adco—125.7; Bacon—116.25.

Line Segment No. 52—Mt. Hope (MP 25.17) to Spring Valley (MP 39.96), Spokane County, Wash.,—Stations: West Fairfield—31.0; Waverly—34.1; Jefferson—36.55; Spring Valley—39.96.

Line Segment No. 53—Rosalia (MP 46.10) to Manning (MP 71.20), Whitman County, Wash.—Stations: Balder—50.6; Thornton—55.44; Cashup—59.65; Steptoe—64.65; Manning—71.12.

Line Segment No. 54—Spring Valley (MP 40.30) to Seabury (MP 47.75), Spokane and Whitman Counties, Wash.—Stations: Fairbanks—45.55; Seabury—47.75.

Line Segment No. 55—Palouse (MP 76.00), Whitman County, Wash., to Viola (MP 87.00), Latah County, Idaho—Stations: State Line—3.9; Viola—87.00.

BN MAP NO. 10

Line Segments Nos. 68 and 69 are Category 3 lines.

Line Segment Nos. 48, 53, and 55 are described with Map No. 9.

BN MAP NO. 11

Line Segment No. 50—Enumclaw (MP 9.69) to Cascade Junction (MP 17.02), King and Pierce Counties, Wash.—Stations: Buckley—12.8; Fitzer Bros. Spur—14.1.

Line Segment No. 56—Aloha (MP 96.36) to Moclips (MP 100.70), Grays Harbor County, Wash.—Stations: Moclips—100.4.

Line Segment No. 57—Clear Lake (MP 85.79) to Sedro Woolley (MP 83.05), Skagit County, Wash.—Stations: Clear Lake—83.3.

BN MAP NO. 12

Line Segment No. 58—Spokane, Portland & Seattle Railway Company, Camp Clatsop (MP 108.59) to Seaside (MP 119.09), Clatsop County, Oreg.—Stations: Bayview Transit—116.1; Seaside—118.95.

Line Segment No. 59—Oregon Electric Railway Company within Forest Grove (MP 10.27) to end of branch (MP 10.86) and within Hillsboro, Oreg., between MP 2.83 and 4.56, all in Washington County, Oreg.—Stations: None.

BN MAP NO. 13

All lines—Category 5.

BN MAP NO. 14

Line Segment No. 14—Elk River (MP 2.50) to Princeton (MP 18.78), Sherburne and Mille Lacs Counties, Minn.—Stations: Zimmerman—9.5; Princeton—18.8.

Line Segment No. 17—Starbuck (MP 67.50) to Villard (MP 51.61), Pope County, Minn.—Stations: Villard—52.0; Glenwood—58.91.

Line Segment No. 18—White Bear Lake (MP 0.00) to Duluth Jct. (MP 6.37), Ramsey and Washington Counties, Minn.—Stations: Mahtomedi—3.54.

BN MAP NO. 15

Line Segment No. 17—Starbuck to Villard—also shown on BN Map No. 14.

Line Segment No. 21—Oakes (MP 149.5) to Forbes (MP 63.0), Dickey County, N. Dak.—Stations: Guelph—34.66; Ellendale—49.17; Forbes—62.51.

Line Segment No. 26—Sioux Falls (MP 2.8) to Hayti (MP 85.26), Minnehaha, Lake, Brookings, Kingsbury, and Hamlin Counties, S. Dak.—Stations: Crooks—9.15; Lyons—14.8; Colton—20.61; Chester—28.19; Wentworth—35.80; Rutland—42.1; Nunda—47.79; Sinai—53.80; Arlington—63.47; Badger—73.03; Lake Norden—79.67; Hayti—85.26.

Line Segment No. 27—Sioux Falls (MP 150.-68) to Yankton (MP 208.80), Minnehaha, Lincoln, Turner, and Yankton Counties, S. Dak.—Stations: Tea—156.55; Lennox—163.32; Davis—171.95, Viborg—179.35; Irene—186.74; Volin—196.95; Mission Hill—201.7; Yankton—208.80.

BN MAP NO. 16

All lines—Category 5.

BN MAP NO. 17

Line Segment No. 1—Lass (MP 55.60) to Garden Plain (MP 59.63), Whiteside County, Ill.—Stations: Garden Plain—59.63.

Line Segment No. 2—Aledo (MP 38.40) to Joy (MP 45.18), Mercer County, Ill.—Stations: Joy—44.54.

Line Segment No. 3—Bushnell (MP 161.10) to Roseville (MP 176.97), McDonough and Warren Counties, Ill.—Stations: Walnut Grove—165.9; Swan Creek—172.1; Roseville—176.85.

Line Segment No. 5—Bradford (MP 10.00) to Buda (MP 0.32), Stark and Bureau Counties, Ill.—Stations: Lombardville—7.1; Burnett—3.2; Buda—0.00.

Line Segment No. 7—Earlville (MP 7.21) to Baker (MP 13.72), La Salle County, Ill.—Stations: Baker—13.72.

Line Segment No. 10—Alpha (MP 18.52) to Woodhull (MP 14.36), Henry County, Ill.—Stations: Woodhull—14.62.

Line Segment Nos. 60, 61, and 62 are Category 3 lines.

BN MAP NO. 18

Line Segment No. 4—Vermont (MP 94.34) to Rushville (MP 109.69), Schuyler and Fulton Counties, Ill.—Stations: Rushville—109.48.

Line Segment No. 6—Vermont (MP 140.13) to Astoria (MP 133.02), Fulton County, Ill.—Stations: Astoria Branch Jct.—140.13; Amax Coal Co. Sun Spot Mine—139.5; Astoria—133.4.

Line Segment No. 11—E. Alton (MP 26.63) to Whitehall (MP 72.70), Greene, Macoupin, Madison, and Jersey Counties, Ill.—Stations: Wrights—65.45; Greenfield—60.64; Rockbridge—55.53; Medora—47.95; Piasa—43.6; Brighton—38.49; Alton Hospital—28.28.

Line Segment No. 46—Old Monroe (MP 51.60) to Mexico (MP 114.60), Lincoln, Warren, Montgomery, and Audrain Counties, Mo.—Stations: Ethlyn—56.25; Moscow—61.3; South Troy—65.5; Hawk Point—72.9; Bellflower—85.25; Buell—90.6; Wellsville—98.2; Halg—109.6; Francis—114.6; Mexico via Trackage Rights.

BN MAP NO. 19

Line Segment No. 2—Aledo to Joy—see BN Map No. 17.

Line Segment No. 8—East Quincy (MP 267.28) to Hulls (MP 279.90), Adams and Pike Counties, Ill.—Stations: Marblehead—269.44; East Hannibal—280.00; Hulls via Trackage Rights—7.0.

Line Segment No. 9—Quincy (MP 70.30) to Mendon (MP 55.77), Adams County, Ill—Stations: Rock Creek—64.1; Ursa—61.2; Mendon—56.1.

Line Segment No. 40—Mediapolis (MP 15.51) to Washington (MP 52.64), Des Moines, Henry, Louisa, and Washington Counties, Iowa—Stations: Roscoe—20.55; Yarmouth—24.93; Mt. Union—28.35; Winfield—33.97; Wyman—36.6; Crawfordsville—42.43; Washington—52.50.

Line Segment No. 43—St. Joseph (MP 143.56) to Humeston (MP 16.92), including Giles to Mt. Lamoni, in Buchanan, Andrew, DeKalb, and Harrison Counties, Mo., and Decatur and Wayne Counties, Iowa—Stations: End of line—143.56; Helena—125.7; Union Star—119.66; King City—112.68; Darlington—99.16; Albany Junction—96.88; Albany—94.88; New Hampton—86.75; Bethany—77.85; Ridgeway—67.5; Blythedale—60.6; State line—52.5; Giles—49.31; Davis City—44.48; Leon—36.97; Garden Grove—23.68; Humeston—16.92; Lamoni—approximately 2 miles west of Giles.

Line Segment No. 44—West Quincy (MP 1.90) to Kirksville (MP 69.30), Marion, Lewis, Knox, and Adair Counties, Mo.—Stations: Taylor—6.55; Maywood—10.8; Ewing—18.12; Lewistown—26.05; LaBelle—31.8; Knox—37.2; Edina—46.6; Hurdland—53.4; Brashear—57.55; Kirksville Ag. Center—67.7; Kirksville—69.3.

Line Segment No. 45—Alexandria (MP 5.20), Clark, Scotland, and Schuyler Counties, Mo., to Centerville (MP 89.60), Appanoose County, Iowa—Stations: Wayland—12.4; Kahoka—20.0; Medill—23.3; Granger—34.2; Arbela—36.6; Memphis—45.1; Downing—56.35; Lancaster—65.75; Glenwood Jct.—69.0; State line—74.85; Centerville—89.6.

Line Segment No. 46—Old Monroe to Mexico—see BN Map No. 18.

Line Segment No. 47—Laclede (MP 181.73) to Unionville (MP 128.30), Linn, Sullivan, and Putnam Counties, Mo.—Stations: Linneus—174.6; Purdin—169.25; Browning—162.43; Milan—149.95; Unionville—128.3.

BN MAP NO. 20

Line Segment No. 33—Cooper Spur (MP 26.5) to Shubert (MP 11.23), Nemaha and Richardson Counties, Nebr.—Stations: Nemaha—28.45; Shubert—11.49.

Line Segment No. 34—Ashland (MP 19.00) to Prague (MP 31.42), Saunders County, Nebr.—Stations: Memphis—6.04; Ithaca—13.14; Wahoo—18.91; Malmo—25.58; Prague—31.40.

Line Segment No. 35—Pappio (MP 4.00) to Gilmore Jct. (MP 8.41), Sarpy County, Nebr.—Stations: Fort Crook—6.53.

Line Segment No. 36—Villisca (MP 52.82) to Clarinda (MP 67.80), Page and Montgomery Counties, Iowa—Stations: Hepburn—60.45; Clarinda—52.82.

Line Segment No. 37—Creston (MP 0.00), Adams, Union, and Taylor Counties, Iowa, to Maryville (MP 59.50), Nodaway County, Mo.—Stations: Kent—9.33; Lenox—17.27; Merle—24.78; Conway—27.63; Bedford—35.20; Hopkins—45.05; Pickering—52.17; Maryville—59.50.

Line Segment No. 38—Hastings (MP 0.00) to Randolph (11.50), Mills and Fremont Counties, Iowa—Stations: Clark—5.83; Randolph—11.45.

Line Segment No. 39—Merle (MP 196.13) to Clearfield (MP 189.42), Taylor County, Iowa—Stations: Clearfield—189.70.

Line Segment No. 41—Albany Jct. (MP 65.75) to Grant City (MP 45.66), Gentry and Worth Counties, Mo.—Stations: Gentry—57.45; Worth—52.2; Grant City—45.65.

Line Segment No. 42—Birmingham (MP 216.20) to Kearney (MP 199.07), Clay County, Mo.—Stations: Liberty—210.5; Kearney—200.3.

Line Segment No. 43—St. Joseph to Humeston—see BN Map No. 19.

Line Segment No. 67 is a Category 3 line.

BN MAP NO. 21

Line Segment No. 27—Sioux Falls to Yankton. See BN Map No. 15.

Line Segment No. 32—Edgar (MP 27.59) to Nelson (MP 14.01), Clay and Nuckolls Counties, Nebr.—Stations: Nelson—14.01.

Line Segment Nos. 33, 34, 35, and 38—see BN No. 20.

BN MAP NOS. 22 AND 23

Category 5 lines.

BN MAP NO. 24

Line Segment No. 70—Category 3 line.

BN MAP NO. 25

Line Segment No. 25—Hill City (MP 0.00) to Keystone (MP 8.75), Pennington County, S. Dak.—Stations: Oblivion—4.24; Keystone—8.85.

Line Segment No. 65 is a Category 3 line.

BN MAP NO. 26

Line Segment No. 28—Silesia to Red Lodge—See BN Map No. 6.

BN MAP NO. 27

Category 5 lines.

Category 3 lines.

AB 6 (Sub-No. 16)—Maryville—Barnard, Mo. 13.68 Miles, MP 59.80, 73.48, Nodaway County. Line Segment 67—BN Map No. 20.

AB 6 (Sub-No. 36)—L&S Junction—LaSalle, Ill. 14.49 Miles, MP 11.02, 25.51, La Salle County. Pending final Certificate and Order. Line Segment 60—BN Map No. 17.

AB 6 (Sub-No. 39)—Crabtree—Oaksdale, Wash. 6.97 Miles, MP 61.10, 54.13, Whitman. Line Segment 68—BN Map No. 9.

AB 6 (Sub-No. 40)—Brinsmade—Leeds, N. Dak. 9.85 Miles, MP 97.48, 107.33, Benson. Line Segment 64—BN Map No. 3.

AB 6 (Sub-No. 41)—Minnekahta—Hot Springs, S. Dak. 11.91 Miles, MP 1.00, 12.91, Fall River. Line Segment 65—BN Map No. 25.

AB 6 (Sub-No. 42)—Nifa—West Batavia, Ill. 3.5 Miles, MP 4.00, 7.15, Kane. Line Segment 61—BN Map No. 17.

AB 6 (Sub-No. 43)—Rio—Alexis, Ill. 9.0 Miles, MP 210.27, 201.27, Knox-Warren. Line Segment 62—BN Map No. 17.

AB 6 (Sub-No. 44)—Cambon—West Frankfort, Ill. 3.99 Miles, MP 1.00, 4.99, Franklin. Line Segment 63—BN Map No. 18.

AB 6 (Sub-No. 23)—Vaughn—Augusta, Mont. 42.14 Miles, MP 0.10, 42.24, Cascade, Lewis and Clark. Line Segment 66—BN Map No. 7.

AB 6 (Sub-No. 45)—Sterling—New Raymer, Colo. 35.40 Miles, MP 232.00, 266.50 Logan Weld. Line Segment 70—BN Map No. 24.

AB 6 (Sub-No. 34)—Eureka—Pleasant View, Wash. 19.73 Miles, MP 0, 19.73, Walla Walla. Abandon Operations. Pending Certificate. Line Segment 69—BN Map No. 10.

BURLINGTON NORTHERN INC.

System Diagram Map

Legend

Category I - Lines Subject to Abandonment Within Three Years shown "Red"

Index No.

ILLINOIS

1. Lass - Garden Plain
2. Aledo - Joy
3. Bushnell - Roseville
4. Vermont - Rushville
5. Bradford - Buda
6. Vermont - Astoria
7. Earlsville - Baker
8. Quincy - Hulls
9. Quincy - Mendon
10. Alpha - Woodhull
11. E. Alton - Whitehall

MINNESOTA

12. Moose Lake - Carlton
13. French - Breckenridge
14. Elk River - Princeton
15. Fergus Falls W. Jct. - Pelican Rapids
16. Barnesville - Downer
17. Starbuck - Villard
18. White Bear Lake - Duluth Jct.
19. Battle Lake - Henning

NORTH DAKOTA

20. Jamestown - Klose
21. Oakes - Forbes
22. York - Dunseith
23. Joliette - Pembina
24. Crete - Oakes

SOUTH DAKOTA

25. Hill City - Keystone
26. Sioux Falls - Hayti
27. Sioux Falls - Yankton

MONTANA

28. Silesia - Red Lodge
29. Moccasin - Lewistown
30. Haugan - Wallace, ID
31. Saco - Hogeland

Index No.

NEBRASKA

32. Edgar - Nelson
33. Cooper Spur - Shubert
34. Ashland - Prague
35. Pappio - Gilmore Jct.

IOWA

36. Vilisca - Clarinda
37. Creston - Maryville MO
38. Hastings - Randolph
39. Merle - Clearfield
40. Mediapolis - Washington

MISSOURI

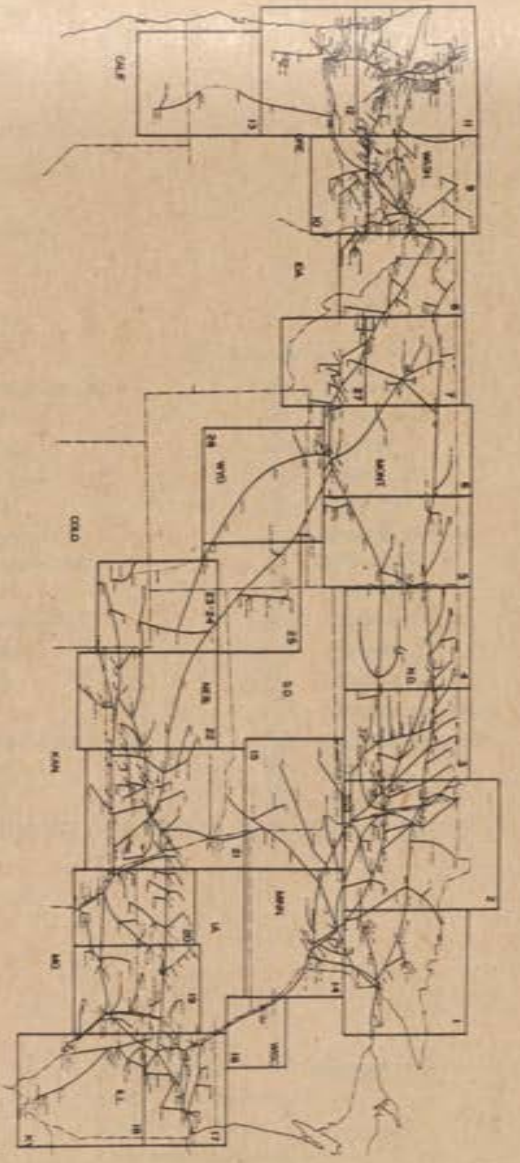
41. Albany Jct. - Grant City
42. Birmingham - Kearney
43. St. Joseph - Humeston IA
44. W. Quincy - Kirksville
45. Alexandria - Centerville
46. Old Monroe - Mexico
47. Laclede - Unionville

WASHINGTON

48. Palouse - Grinnell
49. Spokane - Fairfield
50. Enumclaw - Cascade Jct.
51. Adrian - Odair
52. Mt. Hope - Spring Valley
53. Rosalia - Manning
54. Spring Valley - Seabury
55. Palouse - Viola ID
56. Aloha - Moclips
57. Clear Lake - Sedro Woolley

OREGON

58. Camp Clatsop - Seaside
59. Hillsboro-Forest Grove (Misc. Segments)



BURLINGTON NORTHERN INC.
Index Map
May 1, 1977.

BURLINGTON NORTHERN INC.

System Diagram Map

Legend

Category 3 - Lines Having Abandonment Applications Pending Shown "Yellow"

Index No.

ILLINOIS

60. L&S Junction - LaSalle
61. Nifa - West Batavia
62. Rio - Alexis
63. Cambon - West Frankfort

NORTH DAKOTA

64. Brinsmade - Leeds

SOUTH DAKOTA

65. Minnekahta - Hot Springs

MONTANA

66. Vaughn - Augusta

MISSOURI

67. Maryville - Bernard

WASHINGTON

68. Crabtree - Oaksdale
69. Eureka - Pleasant View

COLORADO

70. Sterling - New Raymer

BURLINGTON NORTHERN INC.
SYSTEM MAP
MAY 1977

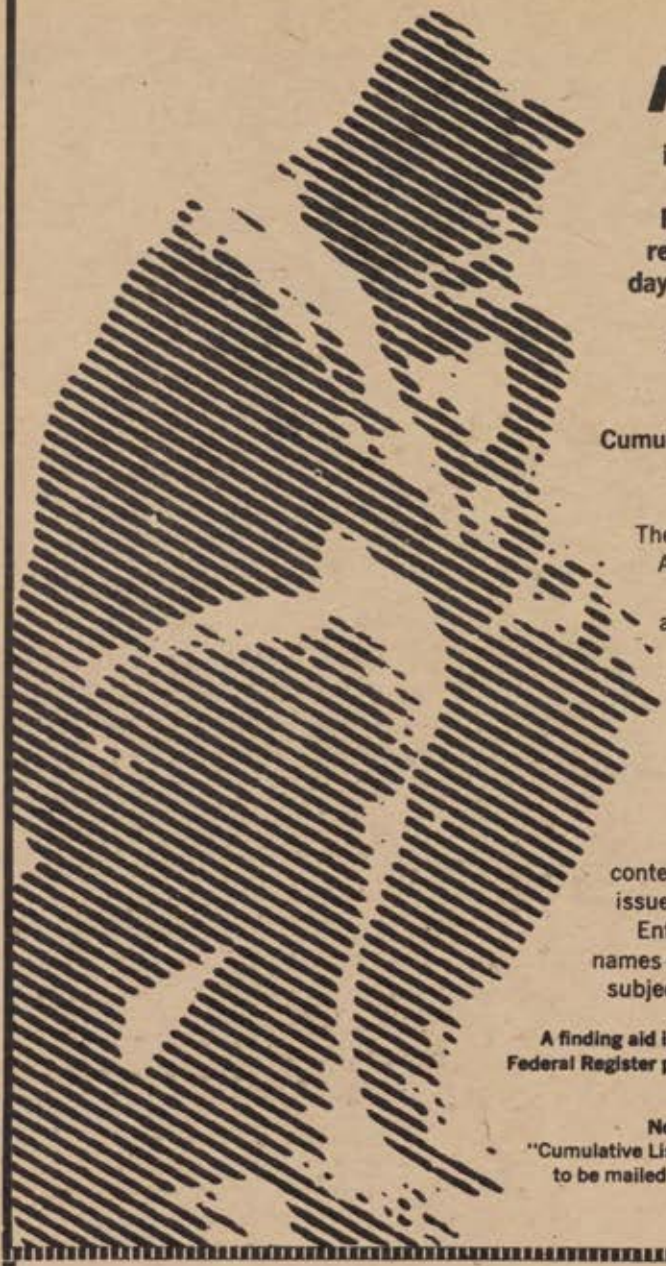
-LEGEND-

Line Index Nº Shown →①
State Lines Shown ——-·——
County Lines Shown ———·———
S.M.S.A. Shown ////////// (G)

STANDARD METROPOLITAN STATISTICAL AREAS

(A) Billings
(B) Chicago
(C) Davenport-Rock Island
(D) Denver
(E) Dubuque
(F) Des Moines
(G) Duluth-Superior
(H) Eugene
(I) Fargo-Moorhead
(J) Great Falls
(K) Greeley
(L) Kansas City
(M) La Crosse
(N) Lincoln
(O) Minneapolis-St Paul
(P) Omaha
(Q) Peoria Ill.
(R) Portland, Ore.-Wash.
(S) Richland-Kennewick
(T) Rockford
(U) St Cloud
(V) St. Louis, Mo.-Ill.
(W) St Joseph
(X) Salem, Ore.
(Y) Seattle-Everett
(Z) Sioux City
(AA) Sioux Falls
(BB) Spokane
(CC) Springfield
(DD) Tacoma
(EE) Yakima

[FR Doc.77-22054 Filed 8-2-77;8:45 am]



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